Briefing on Clauses 29-31 Children and Social Work Bill:

Is there a need to allow exemption from, or modification to, primary legislation?

A recent DfE policy paper has provided some examples as to how local authorities would like to use the new provisions in clauses 29-31 of the Children and Social Work Bill to enable innovation in practice. Additional examples were provided at a meeting attended by some local authority Partners in Practice. This briefing examines these examples and considers whether it is necessary for there to be an exemption from primary legislation to enable these practice changes to take place, or whether it is possible to make such changes by exemptions from, or amendments to, regulations or guidance. In conducting this analysis Family Rights Group does not, at this stage, express any opinion as to the merits or dangers, from a child and family welfare perspective, of any particular innovation in practice that is being suggested.

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1. Short breaks

One LA questioned why those children who have short stay respite after 75 nights must become a LAC, (given that the time limits don't apply to children who are in boarding school)

1.1 A child who is accommodated under section 20 Children Act 1989 ('CA89'), provided the placement is for more than 24 hours, is a looked after child (section 22(1) CA89). The relevant regulations are the Care Planning, Placement and Case Review (England) Regulations 2010. The regulations impose on the local authority various care planning duties, for example preparation and content of care plans and requirements for reviews, that apply to all looked after children ('LAC').

1.2 Whilst children in respite care under section 20 CA 1989 **are still LAC**, some of the duties in the Care Planning, Placement and Case Review Regulations **do not apply** in the case of a 'short break' placement where:

- The placement is with the same person or in the same accommodation each time;
- it does not last for more than 17 days continuously, or
- 75 days in total over the course of a year, and
- after each placement they return home to their parent or other person with parental responsibility.

1.3 Crucially, it is the **regulations themselves** that grant an exception (from many of the more onerous requirements in the regulations) in the case of short breaks. Regulation 48 says "these regulations apply with modification in the following circumstances...." and goes on to exempt local authorities from duties in respect of children who are on short breaks. Accordingly, if the period of 17 or 75 days was to be extended, it would be the regulations that would need to be amended to extend those time periods further in specified situations. There would be no necessity to amend **primary legislation.**

1.4 The comparison with children in boarding school is unclear – a child would be in a boarding school placement either using s17 (in which case they will not be looked after) or s20 (will be looked after) or under a care order (looked after). It is not be dependent upon the number of days that they are boarding for.

1.5 This issue was also raised in respect of disabled children, where again concern related to the imposition of care planning requirements on those families using respite care for disabled children. The issues are the same – exemption or modification would be needed to the requirements of the Care Planning, Placement, Case Review regulations, not from primary legislation

2. IRO attendance at LAC reviews

A local authority questioned whether it is always necessary to have an IRO present at LAC reviews, and in some cases, whether it be might be appropriate to have IRO present at more reviews.

2.1 Section 25B(b) CA89 states that the IRO must "participate, in accordance with regulations made by the appropriate national authority, in any review of the child's case". It does not stipulate the frequency of reviews. The frequency of reviews are set out in the Care Planning, Placement and Case Review Regulations 2010. A need to have less (or indeed more) frequent LAC reviews for some children could be achieved by seeking modification of the care planning regulations to achieve this. Frequency of reviews is dealt with in the regulations, not the primary legislation (CA89). This has already been done (by amendment to the regulations) for LAC in a placement for more than one year (long term foster care) to reduce the frequency of their reviews to not more than once every six months[1]. Frequency may be increased at the discretion of the local authority in any event[2].

2.2 Amendment to primary legislation would only be necessary if the local authority wanted to stop an IRO having to be appointed (s.25A CA 1989) or did not want to have an IRO remain on the case at all. It does not appear from the local authority example that this is what they are proposing.

2.3 If the aim is to decrease the frequency of reviews which the IRO takes part in, it is s.25B(1)(b) CA 1989 which requires an IRO to participate in any review of a child's care BUT the section actually says "participate, in accordance with regulations made by the appropriate national authority, in any review of the child's case." Returning to the Care Planning, Placement and Case Review Regulations, reg 36(1) states "The IRO must – (a) so far as reasonably practicable, attend any meeting held as part of the review ('the review meeting') and, if attending the review meeting, chair it". Therefore these regulations could be changed and provide circumstances in which IROs need not attend, or attend with less frequency, without needing to make any changes to the Children Act 1989.

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[1] The Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015

[2] CA89 Vol 2 guidance, para 4.6 "The specified frequency of reviews is a minimum standard. A review should take place as often as the circumstances of the individual case require."

3. Fostering Panels

Some local authorities expressed a wish to use fostering and adoption panels more flexibly e.g. without achieving quorum and have the option to not use them at all.

3.1 Whilst sections 22A-D CA1989 are relevant to placement of children in fostering arrangements, the actual requirements in relation to the use of fostering panels comes from the Fostering Services (England) Regulations 2011, with additional guidance in the Children Act Guidance Volume 4. The duty to establish fostering panels comes specifically from Reg 23(4) in the Fostering Services (England) Regulations 2011. LA's can already jointly establish fostering panels and agree the appointment of members between them – Reg 23(5), as a way of improving efficiency The functions of fostering panels are prescribed in those regulations, not in any primary legislation. The requirement for a panel quorum is also in the regulations, reg 24. It is clear that any change to the arrangements for the use of fostering panels would be made by modification in the application of these regulations to the local authority, not by amendment to primary legislation.

4. Adoption panels

4.1 Adoption panels are dealt with in the Adoption Agencies Regulations 2005. Again, the requirement to establish a panel, and the extent of its role, is set out in those regulations. In 2012, amendments were made to the Adoption Agencies Regulations which restricted the function of the adoption panel to consider and recommend whether a child should be placed for adoption to those cases where, if the agency decision maker decides that the child should be placed for adoption, the courts will not be involved in scrutinising the agency's adoption plan. Where an application for a placement order must be made, the case will no longer be referred to the adoption panel. In order to change the function of the adoption panel again, there would need to be exemption from or modification to the application of the Adoption Agencies Regulations to certain authorities. There would be no need to amend primary legislation.

5. Family and friend foster carers

One Local Authority expressed an interest in having a different assessment procedure for foster carers who were family members caring for one specific (related) child, instead of having to use the existing assessment procedure which applies to all foster carers regardless of their relationship to the child, or the number of children they may be likely to care for. They also question whether it is

necessary for connected foster carers to have an annual health and safety check.

5.1 Placement of a looked after child by the local authority is governed by section 22C of the Children Act 1989. If a child cannot be appropriately placed with a parent or other person with parental responsibility, the next priority is to place with a relative, friend or other person connected with the child, who is also a local authority approved foster carer (s22C(6). The process of approval is set out in two sets of regulations:- The Care Planning, Placement and Case Review Regulations 2010 and the Fostering Services (England) regulations 2011.

5.2 The Care planning regulations allow for the temporary approval of connected persons as foster carers, by regulation 24. This temporary approval may last for up to 16 weeks, but within that time frame the carers must be approved as full foster carers using the 'normal' assessment process. The detail of the temporary approval process is in Schedule 4 to those regulations. The 'full' approval process is set out in the Fostering Services (England) regulations 2011. Family and friends carers must, if they wish to continue to care for the child as a foster carer beyond 16 weeks, be approved under this 'full' approval process. There is no difference between the full assessment process for a connected person or a non-connected person. In order to change the formal process of assessment, both sets of regulations would need to be modified in their application to the specific local authority, but there would be no need to amend the primary legislation. In addition, Standard 30 of the National Minimum Standards for Fostering Services, sets out particular considerations for agencies when assessing family and friends as foster carers. These standards are issued by the Secretary of State under section 23 Care Standards Act 2000, and may be amended by the Secretary of State, whenever he considers appropriate, subject to duties to consult on the amended statement.

5.3 The duty to review foster carers' approval at least annually is set out in regulation 28 of the Fostering Services (England) regulations 2011. Discretion lies with the local authority over what enquiries they make and what information they obtain in order to be satisfied that the foster parent continues to be suitable as a foster carer (regulation 28 and 5.59 of the Vol 4 Children Act 1989 Guidance). In order to change the frequency of reviews, exemption would be required from the regulations and guidance, not the primary legislation.

6. Child protection conferences

One local authority suggested that during a child protection conference they would like to not be required to categorise the type of abuse suffered by a child(e.g. as emotional abuse) and instead produce a 'danger statement'. Also they would like to not have police present at CPCs unless there were specific reasons. Also, some local authorities have suggested they would like to replace CP conference with Family Group Conferences.

6.1 The duty on the local authority to investigate, where they believe that a child is suffering, or is likely to suffer significant harm, is set out in section 47 Children Act 1989. 'Harm' is defined in s31(9) as "ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another". Health, Development, and ill- treatment are also defined:

"development" means physical, intellectual, emotional, social or behavioural development;

"health" means physical or mental health; and

"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

When making a care order (s31 CA89), the court must be satisfied that the child has suffered, or is likely to suffer, significant harm, and that the harm is attributable to the care given to the child by the parent.

6.2 Under section 10 and 11 of Children Act 2004, statutory agencies have a duty to co-operate in order to safeguard and promote a child's welfare. Section 13 of that Act and Regulation 5 of the Local Safeguarding Children Boards Regulations 2006 sets out the expectation and role of Local Safeguarding Children Boards.

6.3 The process for investigation, for holding a child protection conference, and conducting a child protection conference are set out in statutory guidance – currently Working Together 2015. Local authorities will additionally have their own local safeguarding procedures. These do not have the status of statutory guidance. There are no requirements in WT2015 for categorising abuse in a certain way, nor for the attendance of the police at conference, unless they have been involved in the s47 investigation. Any change to the way in which abuse is categorised at conference could be done locally, by way of amendment to their own procedures. The main requirement would be to ensure that it still could be

read across to s31 threshold of significant harm, so that if a decision could be made whether or not to put in place a child protection plan.

6.3 There is no primary legislation or regulations that requires the categorization of child abuse in a certain way at conference, or that require the presence of police at a child protection conference. These are all matters in either statutory guidance, or local procedures.