



Department
for Education



Department
of Health

Regulating Social Workers

Policy Statement

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Who is this publication for?

This policy statement is for:

- Members of both Houses of Parliament to support their scrutiny of the Children and Social Work Bill Part 2.
- Social workers, social work employers, social work academics and other organisations with an interest in social work.

Status

1. The Children and Social Work Bill is intended to deliver the Government's commitment to establish a new specialist regulator for social workers in England. The new regulator will have an absolute focus on raising the quality of social work education, training and practice with children, young people, families and adults. This will help improve public safety and promote the status and standing of social work. The Bill was introduced into the House of Lords on the 19 May 2016.
2. This statement is made available on 27 June 2016 to both Houses of Parliament. It is provided to aid Members in their scrutiny of Part 2 of the Children and Social Work Bill. As such it does not provide detailed information on all aspects of social work policy, or wider children's policy addressed in other parts of the Bill.
3. Alongside this statement Government is publishing indicative social worker regulations to assist Members in their consideration of the Bill in Committee. They set out the broad content Government anticipates the final regulations will cover. The regulations will be developed further, in light of discussions with the sector and debates in Committee, before they are finalised. Subject to the passage of the Bill social worker regulations will be subject to full public consultation and will be made through the affirmative procedure.

Executive summary

4. Social work is a complex and challenging profession that has the power to transform lives. The best social work services deliver truly excellent provision. Key to this success is a highly skilled and expert workforce. That means we need to have the highest standards of initial social work education, continuing development whilst in frontline practice and strong supportive supervision and leadership. However, we know that excellent practice is not found consistently across the country.
5. That is why this Government has developed a significant reform programme to improve social work quality and the quality of the systems which support social workers. Two Chief Social Workers have been appointed, bringing social work expertise into the heart of government. Knowledge and Skills Statements have been produced to set out more clearly than ever before what we expect of social workers. For children and family social workers we are testing ways of accrediting social workers against those new standards. £700m has been invested since 2010 in supporting both traditional and fast-track routes into the profession. We are also supporting specialist areas of practice such as mental health social work.
6. More is needed though. We need a regulatory system that focuses on practice excellence and raising standards from initial education through to post qualification specialism and to key leadership roles. The current regulator, the Health and Care Professions Council (HCPC), has an approach designed to maintain minimum standards of public safety and initial education across a range of professions, rather than drive up standards in any one profession. The need to drive up standards in social work is, though, vital for a profession where the safety of our most vulnerable people is inextricably linked with the highest standards of practice. In addition, it has not been possible in social work to create a sustainable professional body which could play a decisive role in raising standards.
7. A distinct social work specific regulator will have the expertise and standards oriented approach essential to this drive for improvement. Given the need for reform, the desire to effect change quickly and the links to its wider reform programme, Government believes that the most appropriate course of action at this time is for regulation to move closer to Government.
8. Consequently, Government is proposing to establish an executive agency, jointly supported by both the Department of Health and the Department for Education. It will set standards on behalf of the Secretaries of State, but decisions about the quality of individual social work training programmes and the fitness to practise of individual social workers will be kept at arm's length of Ministers and with a high degree of transparency.

9. While this approach is needed now, more independence may be possible in the longer-term. That is why the Children and Social Work Bill allows for the regulation of the profession to be undertaken by a third party regulator as well as by the Secretary of State. With this in mind Government is committed, three years after the body is established, to consulting with the sector on whether the agency should be placed on a more independent footing.

10. We are proposing that the new agency deliver a comprehensive regulatory framework. We anticipate it will:

- Publish new professional standards, aligning with the Chief Social Workers Knowledge and Skills statements
- Set new standards for qualifying education and training, and reaccredit providers against these standards by 2020
- Maintain a single register of social workers, annotating it to denote specialist accreditations;
- Set new, social work specific, standards for continuous professional development;
- Oversee a robust and transparent fitness to practise system;
- Approve post qualifying courses and training in specialisms such as Approved Mental Health Professionals and Best Interest Assessors;
- Oversee the proposed new assessment and accreditation system for child and family social workers; and,
- Oversee the required arrangements for successfully completing the Assessed and Supported Year in Employment (ASYE).

11. Alongside this statement, Government is publishing indicative social worker regulations to assist Members in their consideration of the Bill in Committee. They will be developed further, in light of discussions with the sector and debates in Committee, before they are finalised. Subject to the passage of the Bill, any regulations brought forward would be subject to full public consultation and made through the affirmative procedure.

12. Government intends that collaboration, consultation and engagement with the social work sector will be a key feature of both the development and running of the new regulatory framework. Officials will set out in detail a plan for the transition of responsibility from HCPC to the new regulator in 2017 following discussions with HCPC. We expect this will include the transfer of functions from HCPC to the new regulator during 2018.

Introduction

13. On 14 January 2016, the Secretary of State for Education announced, in partnership with the Secretary of State for Health, the intention to set up a new regulatory body for social workers in England, charged with raising the status of the profession and driving up standards in social work education, training and practice.¹ This new bespoke social work regulator will take over the functions exercised by the existing regulator, the Health and Care Professions Council (HCPC), in relation to social workers in England. Subject to the passage of the Bill, and with the appropriate set up time, Government anticipates that the new regulator will start regulating the profession from 2018.
14. Responsibility for social work policy is shared by the Department of Health, which takes a lead in respect of social work with adults, and the Department for Education, which leads policy relating to social work with children and families. The Government is firmly committed to maintaining a single social work profession with a single standard of qualification enabling registration. However, it also recognises that different parts of the profession face different challenges and that consequently a tailored response is sometimes needed. Within this context Government also supports the development of post qualification career pathways in specialist areas of practice. The new regulator will reflect this commitment and these priorities as it oversees the regulation of both child and family and adult social workers and initial and post qualification of social workers.
15. This programme is a key plank in both Departments' reform agenda for wider children and adult's social care reform. It supports Government's ambitions to ensure that all children and young people are protected from harm, and vulnerable children are supported to succeed with the same opportunities as other children. For adults, it builds on the work of the Care Act 2014 and plays a key role in supporting the Department of Health's vision to deliver an integrated health and care system which improves health and wellbeing and better coordinates services around the person.

¹ <https://www.gov.uk/government/speeches/nicky-morgan-delivering-a-revolution-in-childrens-social-care>

Part One – The case for change

The social work profession

16. Social workers deliver critical services, safeguarding children and supporting adults with care and support needs, promoting better life chances and increasing quality of life. It is a complex, demanding, interdisciplinary profession, drawing on psychology, sociology, criminology, economics and requiring an understanding of health, social and education policy. On a daily basis all social workers deal with complex and fraught situations that require a great depth of skill, knowledge and capability.
17. There are 93,259 registered social workers in England working in a range of settings. The largest employers are local authorities with 28,570 people working as child and family social workers and 15,900 in adult services. Other social workers are found in a wide range of diverse settings.^{2,3,4} It was also recently estimated (2014) that there are approximately 1,000 social workers in independent providers and 1,600 in the NHS.⁵ Cafcass, the voluntary sector, agencies and academic institutions all also employ social workers.
18. The importance of the roles social workers undertake should not be underestimated. These are intellectually and emotionally complex. They include: undertaking child protection duties; supporting children in care; supporting people (and their families) with dementia, autism and learning disabilities; leading on adult safeguarding; and, acting as lead professional when there is a need to establish the care and support options for those lacking mental capacity or with mental health problems. They make decisions that have serious consequences, such as the removal of children from a family, or the deprivation of liberty including sectioning under mental health law.
19. The best social work services deliver truly excellent services to vulnerable children and adults with care and support needs. Key to this success is a highly skilled and expert workforce. Many social workers are having a significant impact on people's lives through the expert and skilful execution of their duties.

² Social Workers registered in England in 1 June 2016
<http://www.hpcuk.org/aboutregistration/professions/index.asp?id=18#profDetails>

³ Statistical First Release 2014
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287259/Social_Work_Workforce_2012-13_SFR_v1.3.pdf

⁴ Personal Social Services: Staff of Social Services Departments at 30 September - England, 2015
<http://www.hscic.gov.uk/catalogue/PUB19985> (Table 4.2)

⁵ Social Work, Skills for Care, March 2016 <https://www.nmds-sc-online.org.uk/Get.aspx?id=957463> (Table 4.1)

20. However, we also know that this excellent practice is not found consistently across the country and in all social work services. In recent years a number of high-profile incidents have seen the profession face higher levels of scrutiny and challenge. Although such cases are always complex, the quality of the workforce and their professional and leadership capability has been a common factor in all of them.
21. In children's services Ofsted inspections suggest there are issues with professional practice and leadership. Under Ofsted's new framework, of those inspected, 70% have been rated inadequate or requires improvement for the sub-judgement of leadership and management of their children's social care services.⁶
22. Inspections and serious case reviews point to a number of factors which contribute to failings in professional practice including: variability in leadership, supervision and line management; accountability and governance structures that work better in some areas than others; and, a weakness in the overall system's ability to learn effectively from good practice and from mistakes.
23. Whilst adult services are not inspected in the same way, they are operating in an environment of needing to manage ever more complex cases and greater levels of risk - for example in relation to mental health, mental capacity and safeguarding - in order to achieve the best outcomes. This is reflected in increasing criticisms from the court system of the misuse of adult safeguarding procedures, with deprivation of safeguarding liberties being incorrectly authorised after the event. As our population ages, and people live for longer with additional care and support needs, these demands will only increase along with the pressure to make the right call, every time.
24. We also know from independent reviews of social work education that initial education and continuous professional development needs to improve. If those coming into the profession are not equipped with the knowledge and skills they need to practise effectively, this will affect the quality of service the most vulnerable in our society experience. This is explored in more detail later in this document.
25. We must also acknowledge that the workforce operates in pressured circumstances with, for those in local authority roles in particular, sometimes low morale and high vacancy and turnover rates and over-reliance on agency workers.⁷ These are often higher than local government averages.

⁶ Ofsted judgements March 2016 <http://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/CARE/SC477209>

⁷ Children's Social Work Workforce (2015)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503071/SFR07_2016_Main_Text.pdf - there are currently 4,860 (FTE) agency social workers of whom 79% are covering vacancies in England.

26. While we should never scapegoat any individual or the profession as a whole, it is nonetheless clear that improving the capability and professional confidence of social workers needs to be tackled. This will improve the lives of our most vulnerable children and adults and ensure the wider system has the workforce it needs to change lives.

Social work reform

27. The Government is responding to these issues through a significant reform agenda.

28. Two Chief Social Workers for adult, children and families social work have been appointed. This has brought social work expertise to the heart of Government. Both Chief Social Workers have published statements which set out clearly for the first time the essential knowledge and skills that social workers need. Previously statements of what social workers need to do have been too generic, and insufficiently sharp to drive an improvement in standards. Developed in consultation with hundreds of social workers these statements now form the bedrock of the Government's agenda.⁸

29. Government has made significant investment in the training of social workers. We have invested over £700m since 2010, supporting both traditional routes into the profession and fast-track alternatives. We continue to promote both. In particular during this Parliament, over £100m will be invested in the expansion of high-quality entry routes such as Frontline, Step Up to Social Work and Think Ahead. These programmes are attracting high calibre candidates into the profession, who would previously not have considered social work as a career. Early evidence suggests that we are retaining them in the profession – an ongoing study indicates that after three years, 84% of respondents who graduated from Step Up in 2012 were still practising in child and family social work.⁹

30. We have also funded four Teaching Partnerships and will be supporting more, bringing employers and educational providers together. These are accredited collaborations between universities and social work employers which deliver high

⁸ Knowledge and Skills Statement for Social Worker in Adults Services

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411957/KSS.pdf

Knowledge and Skills Statement for Children's and Families Social Work

<https://www.gov.uk/government/publications/knowledge-and-skills-statements-for-child-and-family-social-work>

⁹ Initial Findings Step Up to Social Work Longitudinal Evaluation

<https://www.dur.ac.uk/resources/sass/research/SUSWInitialfindings21Mar2016.pdf>

quality training for social work students and qualified practitioners and equip them to practise to specified standards in statutory settings.

31. Government is also supporting the transition from training into practice – the Assessed and Supported Year in Employment (ASYE) to help ensure newly qualified social workers are supported to become confident in practice and to demonstrate that they can apply their social work knowledge and skills to particular work contexts.
32. Government also wants to see a stronger emphasis on practice focused career pathways. It is doing this through its proposals to assess and accredit child and family social workers, supporting the development of leadership roles in both adults and children’s services and supporting specialist areas of practice such as in best interests assessment and mental health social work practice. This will reap a dual dividend: providing assurance that the necessary high standards of practice are being achieved; but, also providing social workers with clear career progression routes which keep them in practice and in the profession. The new regulator will provide an opportunity to look at how this can go further.
33. We want to see these reforms successfully embedded to maximise on this investment and ensure the whole system better protects those in need. It follows that we need a regulatory system that supports and promotes these ambitions; an end to end regulatory system that supports high standards of social work practice from initial qualification, into employment and throughout a social work career.

Social work regulation

34. Although social work has been part of the welfare landscape for over a century it is a relatively young profession, with the title of social worker only becoming protected in April 2005 under section 61 of the Care Standards Act 2000. It is a graduate profession and over 4,700 students graduate with qualifications from approved social work programmes every year.¹⁰
35. Social workers in England were initially regulated by the General Social Care Council (GSCC), which was set up in 2001 to regulate the social work profession as a non-departmental public body (NDPB) of the Department of Health. The Professional Standards Authority (PSA) reviewed the conduct functions of the GSCC in 2009. It found that the GSCC’s conduct processes, and the way in which the conduct function

¹⁰ Social Work, Skills for Care, March 2016 <https://www.nmds-sc-online.org.uk/Get.aspx?id=957463> pg. 12

was managed, did not help to promote public safety or the effective, efficient and timely consideration of cases.¹¹

36. The subsequent Arm's Length Bodies Review carried out by the Department of Health in 2010 found no compelling case that the GSCC should continue to regulate social workers and recommended that regulatory functions be passed to the Health Professions Council (HPC).¹² As a result, in 2012 the HPC took over regulation of the social work profession in England and became the Health and Care Professions Council (HCPC).

37. The HCPC regulates social workers alongside 15 professions from the health sector. It operates a regulatory system based on a concept of safe practice. It sets proficiency standards which are specific to each individual profession and generic standards for conduct, performance and ethics; continual professional development; character; health; and, education and training, to ascertain whether someone is both eligible and suitable to practise.

38. The system that the HCPC operates is designed to maintain appropriate minimum standards of public safety and initial education, rather than raising standards. This multidisciplinary and generic approach necessarily constrains the capacity of a regulator of numerous professions to focus on and drive up standards in any single profession.

39. There is evidence that this is not improving standards in initial social work education. Independent reviews by Sir Martin Narey and Professor David Croisdale-Appleby found that there are significant deficiencies in the current system which constrain the quality of social work training and the confidence that experts and the public have in it.^{13, 14} In particular Narey found that:

- *We have a situation where employers cannot be confident about the abilities of newly qualified social workers.* (Page 16)
- *There are universities and colleges where entry and academic standards appear to be too low and where the preparation of students for children's social work is*

¹¹ <http://www.professionalstandards.org.uk/docs/default-source/publications/special-review-report/general-social-care-council-review-2009.pdf> pg. 3

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216278/dh_118053.pdf, pg. 22

¹³ Making the Education of Social Workers Consistently Effective (2014), Sir Martin Narey https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287756/Making_the_education_of_social_workers_consistently_effective.pdf, Jan 2014

¹⁴ Revisioning Social Work Education (2014) David Croisdale-Appleby https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285788/DCA_Accessible.pdf Feb 2014

too often inadequate (page 3)

- [Qualification accreditation is] *an overwhelmingly paper based exercise which measures universities against HCPC's inadequate prescription for social work training, cannot provide Ministers, employers, or potential students with adequate assurance about the quality of individual degree courses.* (page 21)
- *The core document, the Standards of Proficiency, does not remotely provide adequate guidance to universities about the skills and professional knowledge required of graduate social workers.* (page 7)
- *I question the utility, including the value for money, of HCPC involvement either in the registration and regulation of social workers, or in the approval of social work degree courses.* (page 21)

Croisdale-Appleby agreed that:

- *HCPC Standards of Education and Training and its Standards of Conduct, Performance and Ethicsare set at a low level of quite generic expectation that would be covered by any HEI's own governance regime. So in its totality of standards, there is very little which is focussed on, or particularly salient to, social work education.* (page 72)

40. The HCPC remit is focused on initial qualification. It does not set post qualification professional standards which relate to specialist areas of practice or more senior leadership levels. For the other professions that it regulates their work is usually complemented by a professional body or College. Such bodies can contribute to the development of qualifying standards but also to setting out post qualification standards and career pathways.

41. The transfer of regulatory responsibility to HCPC was in part premised on the fact that there would be such a professional body for social work. The College of Social Work was created in 2012 to provide a vehicle for the profession to drive quality in the same way professional bodies do in the health professions. However, over the course of its existence and despite significant investment - over £8m - from Government, the College did not manage to attract sufficient registrations of social workers and therefore did not achieve financial viability. It closed in September 2015.

42. The Government therefore believes that the current regulatory arrangements require urgent reform. We need to set credible standards which address evidence of failings in practice and set clear expectations of the profession. These need to be developed in close collaboration with the sector, drawing on the expertise of the Chief Social Workers, employers, academics and practitioners themselves. They need to address

both pre and post qualification career development and be backed up by robust systems which address any malpractice.

Regulatory reform

43. In considering how best to reform the regulatory arrangements for social work Government has considered whether HCPC could be asked to strengthen its approach to social work regulation, and drive the necessary reform agenda.
44. However, we feel that this is very challenging with its wider remit of regulating 15 other professions. In such a context the organisation necessarily lacks the status and very specific expertise which it is clear is needed to deliver improvements to social work.
45. It also needs to be recognised that asking HCPC to create a bespoke approach to one profession would be a fundamental shift in its model of regulation. It would likely involve additional cost, and could impact its ability to regulate the other professions it is responsible for.
46. Therefore what is needed is a bespoke regulator with an absolute focus on driving up standards in social work education, training and practice to deliver improvements in public safety and the status and standing of the profession. Establishing a distinct social work specific regulator that is able to focus solely on raising standards across the profession, and supporting the highest quality initial and post qualification, education and training, will have clear benefits for the profession and wider society.
47. It will raise the quality of the service children, adults and families receive. And if social workers are better equipped with the knowledge and skills they need then they will be better prepared to cope with the immensely challenging job they do. If social workers are better prepared to undertake this work then we anticipate seeing improved vacancy and retention rates leading to financial savings in the long term.
48. In considering what form the new regulator should take we have considered whether a new fully independent regulator should be established. We think there are, at this time, a number of factors which argue against this.
49. Social work is a profession which is responsible for the delivery of critical functions which involve the expenditure of billions of pounds of public funds. We have set a high level of ambition for how we want to strengthen social workers' ability to discharge those functions. The effective functioning of an independent body would need to be partnered with a strong professional body – however the profession has not been able to sustain such a body. The establishment of a wholly independent body would inevitably take significant time as leadership and infrastructure are built from scratch and would, we think, be more expensive than the alternatives.

50. Taken together Government believes that the most appropriate course of action at this time is for regulation to move closer to Government to quickly and effectively drive forward the changes we urgently need. Consequently Government is proposing to establish an executive agency, jointly supported by both the Department of Health and the Department for Education which will be a distinct, social work specific regulator.
51. The executive agency model offers a mechanism by which the Secretaries of State, working in partnership with the sector and on the advice of the Chief Social Workers, can ensure that new higher standards are set and embedded throughout the regulatory regime. These will be aligned with the Chief Social Worker's published statements of knowledge and skills that have been the subject of full consultation and have widespread support from the sector.
52. At the same time the model will provide for day to day operational independence, with systems, checks and balances to ensure that the agency's operations and decision-making are fair and transparent, and free of inappropriate political interference. Its work will be governed by a set of regulations approved by Parliament, and these will be supplemented by published framework agreements, accounts and annual reports which set out clearly its operations and achievements.
53. Critically such a model can be relatively established quickly and cost effectively. In establishing the agency, Government can take advantage of existing infrastructure such as estates, IT and corporate capacity which would not be available to an independent body. This minimises cost and set up time. Government anticipates that, subject to the passage of the Bill, the new body can start its initial operations in 2017, before becoming fully operational in 2018.
54. Government recognises that professional regulation for many other professionals is organised on a more independent footing. It should be noted however, that regulatory arrangements for social work in Scotland, Wales and Northern Ireland all involve a formal governance arrangement with central Government.
55. Consequently Government proposes that the independent nature of the regulator should be kept under review. It is Government policy that all executive agencies be reviewed three years after they commence operations and this body will be no exception. At this time Government will consult on the agency's operations and consider whether the agency could be moved to a more independent footing. Government will report to Parliament on the outcome of this review.
56. The second part of this document sets out in more detail the proposed functions of the new regulator and how we intend to exercise the powers set out in Part 2 of the Children and Social Work Bill.

Part Two – The Children and Social Work Bill: Regulation of Social Workers

Objectives and functions of the new regulator

57. The primary objective of the new regulator will be to protect the health and well-being of the public and to promote confidence in the social work profession. It will do this by developing an approach to social work regulation that focuses on practice excellence and raising standards from initial education through to post qualification specialism.

58. We expect the new regulator will carry out the following functions:

- Publish new professional standards which consolidate social work values, ethics and codes of practice and align with the Knowledge and Skills Statements already published and are specific to specialisation and career stage.¹⁵
- Set new standards for education and training for individuals in England who wish to become social workers.
- Create a new scheme for the accreditation of courses of education and training leading to qualification as a social worker, clear criteria that Higher Education Institutions must meet in order for courses to be accredited under the new scheme by 2020.
- Maintain a register of social workers that uses annotations to denote specialist accreditation, so that those at different career stages and with specialist expertise are recognised as such.
- Set new standards for continuous professional development specific to the social work profession that drive practice excellence, and undertake assurance activity to ensure compliance with these standards.
- Oversee a fitness to practise hearings system including making judgements with reference to new standards of proficiency, performance and conduct.
- Approve post qualifying courses relating to practice specialisms such as Approved Mental Health Professionals (AMHPs) and specify training for Best Interest Assessors (BIAs).
- Oversee the required arrangements for successfully completing ASYE.
- Oversee the assessment and accreditation system for child and family social workers based on the new standards of professional practice, and ensure accredited professionals registration records this.
- Make effective use of workforce-related data, to offer evidence and insight to inform workforce planning by both local and central Government.

¹⁵ Knowledge and Skills Statement for Social Worker in Adults Services
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411957/KSS.pdf

Regulatory framework

59. This Bill enables a change of approach in regulation allowing Government to establish a flexible delivery framework to tackle the issues set out above.
60. The legislation governing the current regulation of social workers is set out in Section 60 of the Health Act 1999 (the '1999 Act'). This provides for Her Majesty by Order in Council to make provision for the purpose of regulating a wide range of health professions, social workers and other care workers. Functions can be conferred on Ministers of the Crown or on other bodies.
61. Regulation by the current regulator, HCPC, is provided for in the Health and Social Work Professions Order 2001 (2002/254, 'the 2001 Order'), made under section 60 of the 1999 Act. This establishes HCPC, grants it authority to regulate 16 health and care professions, and makes detailed provision as to how it should regulate, supplemented by powers to make rules as appropriate.
62. Consideration was given by the Department for Education and the Department of Health as to whether it would be appropriate to amend section 60 of the 1999 Act to enable the existing functions of the HCPC in relation to social workers in England to be transferred to a new specialist regulator. To do this would have entailed, in particular, lifting the bar on transfer of existing regulatory functions contained in schedule 3 paragraph 8 to that Act.
63. Section 60 is already a wide power, and it was decided that rather than seek to widen it further, it would be preferable to put before Parliament detailed, up-to-date clauses which specifically address the regulation of social work.
64. The approach taken in Part 2 of this Bill mirrors the current legislative framework in that it sets out the regulatory framework for social workers in primary legislation, with this being supported by delegated legislation. This Bill provides for either Secretaries of State or another person or body to have regulatory functions in relation to the social work profession. Rather than providing for the making of an Order in Council, clause 20 of the Children and Social Work Bill provides for the making of 'social worker regulations' by the Secretary of State; and includes clearly defined expectations as to how that power can be used. The social worker regulations will set out in detail the functions of the regulator, including any powers it may have to make rules related to the exercise of its functions. These regulations will be subject to the affirmative procedure.
65. There is significant precedent regarding the use of delegated legislation, subject to the affirmative procedure, in regulating social workers. This approach provides for an adaptable and flexible regulatory framework which is subject to the appropriate level of Parliamentary scrutiny and challenge. We believe it remains the most appropriate model, ensuring the right level of operational detail in the establishment and transfer

of regulatory arrangements; the flexibility to regularly review the professional standards and standards of education; and the appropriate mechanism to provide detailed provisions for the operation of a professional register. This is how the current system runs. Work by the Law Commission on regulatory reform in 2014 also emphasised the need for flexibility in the exercise of a regulator's functions, within the context of clear powers.¹⁶ The recent report by the Delegated Powers and Regulatory Reform Committee, dealing with the Bill, agreed that it was not inappropriate for the Government to place the regulation of social workers in subordinate legislation, despite the width of the powers being conferred.¹⁷

Indicative regulations

66. Regulations made under the powers set out in the Bill will be subject to the affirmative procedure. Government must consult on draft social worker regulations, before they are made, most likely in 2017.
67. To consideration of the relevant provisions in the Bill, Government has prepared indicative social worker regulations to be read alongside this statement. These are intended to provide an indication of the operational framework for the core regulatory functions set out in Part 2 of the Bill. In this respect, the indicative regulations include general provisions in relation to the regulator; provisions for the registration of social workers; provisions for establishing professional and education and training standards; provisions in relation to discipline and fitness to practise; and provisions in relation to offences.
68. It is important to note that the regulations are indicative, and therefore by their very nature, subject to change following Parliamentary scrutiny and engagement with the sector. In this respect, there are some provisions that deliberately outline an overarching framework for achieving an operational objective effectively but do not yet set out the detailed procedure. The provisions in relation to discipline and fitness to practise and the accreditation of education, training and courses are examples. We will work closely with the sector and take into account Parliamentary views to determine the best approach, based on evidence, before putting the draft regulations out for consultation.
69. There are other administrative provisions which are not included in the indicative regulations including the detail for transferring the register and open, ongoing fitness

¹⁶ Regulation of Health Care Professionals Regulation of Social care Professionals in England, 2014 http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf pg. 73

¹⁷ http://www.publications.parliament.uk/pa/ld201617/ldselect/lldelreg/13/1304.htm#_idTextAnchor001 Chapter 1 of Part 2 – social worker regulations para 55.

to practise cases. Provision in this area will be subject to further discussion with the current regulator, HCPC. Appropriate, specific provisions in relation to visiting social work professionals and recognition of their qualifications from other jurisdictions will also be added.

70. The regulations, when finalised, will provide a bespoke regulatory framework for social workers, tailored to the needs of the profession. They will also take into account, where relevant, recent recommendations by the Law Commission following the review of regulatory frameworks for health and care professions, previously mentioned.
71. The indicative regulations demonstrate that the intention is to include much of the core framework for each of the provisions within the secondary legislation itself. Creating a bespoke regulatory framework for social workers in England provides an opportunity to tailor these detailed provisions to a single workforce and there remains a question about the level of detail, other than procedural and administrative matters, that will be required in rules.
72. Policy in relation to rule-making powers for regulators has moved towards greater operational autonomy, following the Law Commissions' recommendation that regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure. This is an important issue that the Government is considering further and it is mindful of the views expressed by the Delegated Powers and Regulatory Reform Committee in this regard.
73. The procedure for regulator rule-making powers has to balance the need for greater efficiency and flexibility to react to necessary changes to regulation, whilst ensuring safeguards against compromising effective regulation and protection of the public. With this in mind, Government is committed to undertake further work, as the regulatory framework develops, to identify those areas, such as the fitness to practise investigation procedures which directly relate to protection of the public functions, where it may be desirable to set out the specific procedure for rule-making.
74. Consequently the indicative regulations require the regulator to determine rules in relation to specific functions but do not yet set out a specific procedure for making them. At present, the indicative regulations require rules in relation to: the appointment of advisers; the procedural aspects of registration; the accreditation scheme for courses of education, training and qualifications; and, the procedure for fitness to practise investigations.
75. Finally, where the regulator is given the power to make rules, we will always take into account whether consultation would be needed. This will ensure accountability and transparency and enable the public, the profession and key interested parties to hold the regulator to account.

Consultation

76. Government intends that collaboration, consultation and engagement with the social work sector will be a key feature of the development and running of the new regulatory framework. This will make sure their needs and interests continue to be at the heart of these reforms so they can do their best to support the people they work with.
77. In preparing this statement and the accompanying indicative regulations early discussions have been held with a number of key stakeholders. Government is now establishing an expert reference group to assist it in the detailed planning for the new regulator, establishing new professional standards and setting new education and training requirements. This will help ensure that the views of the sector are taken into account as detailed proposals are developed.
78. The Bill and the indicative regulations provide for the appointment of expert advisers to the new regulator. We envisage that this provision will enable the regulator to seek advice and challenge from sector experts in effectively discharging its functions.
79. More specifically provisions in the indicative regulations require the regulator to consult when setting fees and in setting professional standards and education and training standards.

The regulator

80. It is the Government's intention to establish an executive agency to act on behalf of the Secretaries of State in the discharge of their regulatory responsibilities.
81. Ministers will lead on issues such as setting standards and delivery of responsive improvement programmes to raise the calibre and status of the profession. It will be for the agency, acting on their behalf as regulator and in accordance with the provisions set out in regulations, to take day to day decisions on processes and casework.
82. Ensuring the regulatory framework is fair and transparent is paramount. Decisions about individual social workers will be made by experts and undertaken with a high degree of transparency. While Ministers' retain ultimate responsibility, decisions will be kept at arm's length. The Bill and indicative regulations make provision for the appointment of experts to advise the regulator in the exercise of its functions. Provision is also made in the indicative regulations for the delegation of functions to a registrar, to be appointed by the regulator to oversee the operation of the register, and for the delegation of functions relating to the undertaking of the various stages in the fitness to practise process.

Governance and accountability

83. The new executive agency will be led by a Chief Executive Officer (CEO). The new CEO will have considerable delivery experience. Subject to the passage of the Bill we expect to appoint in 2017 to allow for adequate preparation in advance of the new agency assuming full regulatory responsibility in 2018.
84. Government will develop a strong governance structure for the agency reflecting, wherever possible and appropriate, recommendations from the Law Commission and the Professional Standards Authority. The governance arrangements will ensure representation from: both Departments; Departmental Non-Executive Directors; sector-specific expertise; and advice of both Chief Social Workers.
85. The agency will be located within the Department for Education estate and facilities. The Secretary of State for Education will be formally accountable for the operation and the performance of the agency. As Principal Accounting Officer, the Permanent Secretary of the Department for Education will be accountable for the expenditure of the agency, with the agency's appointed CEO responsible as the designated accounting officer.
86. Both Departments will continue to share policy responsibility for social work. Joint accountability arrangements to both Departments will be set out and published, as is usual for executive agencies, in a framework agreement. The agency will publish an annual report and strategic business plan detailing the priorities, key objectives and budget. The accounts will be published annually and consolidated within the DfE's accounts as the parent Department.

Registration

87. The new regulator will continue, as HCPC does, to maintain a single register for social workers in England. Government will maintain the status quo in that a qualifying social work degree will not distinguish between adult and children's services, enabling practice in both. It is our intention that the regulations will provide for the appointment of a registrar who will be responsible for maintaining the register on behalf of the regulator.
88. There are many specialisms beyond the simple demarcation between adult and children's social work practice. The regulator will be able to annotate the register to capture additional information about registrants, which reflect the breadth of their expertise and specialism. This will also provide reassurance to the public and employers that the social workers they are in contact with have the necessary specialist expertise relative to their particular role. This will begin with annotations to reflect the Approved Mental Health Professional (AMHP) and Best Interest Assessor (BIAs) roles.

89. The Department for Education has set out plans to establish a system to assess and accredit social workers operating at different levels in children and families social work. This will be overseen by the regulator and it is likely that, subject to consultation, the register will be annotated to reflect those accreditations. However, it is important to be clear that an annotation on a social worker's register entry will not be a condition of registration.
90. We propose to introduce proportionate language controls for social workers in England, in line with nurses, midwives, doctors, dentists and pharmacists who wish to work in the UK. It is vital that social workers have the necessary English language skills in order to care properly for and communicate with service users and members of the public. Any language controls must be fair and proportionate and there cannot be automatic testing for all European applicants.¹⁸ Controls cannot take place until the applicant's qualification has been recognised by the regulatory agency.
91. The indicative regulations set out provisions for establishing and maintaining a register; the appointment of a registrar; eligibility for registration, provision relating to application, registration and the payment of fees; suspension and removal from the register; and provide for the circumstances in which the regulator may publish and provide access to the register. The indicative regulations also make provision through rules for the necessary administrative processes and the setting of fees in relation to registration.
92. We have taken powers in the Bill that allow the social worker regulations to require the regulator to keep a register of people undertaking training or education in England to become a social worker (student social workers). Government does not have any immediate plans to establish a register of students but will ask the new regulator to consult with the sector whether this is advisable.
93. The indicative regulations also require the regulator to record the outcome of fitness to practise proceedings on the register. This will ensure the register is transparent and shows a full record of a person's history in terms of fitness to practise. We will consider how to balance this with protections under other legislation, such as the Data Protection Act.

¹⁸ EU arrangements will need to be kept under review in light of developments following the outcome of the EU referendum announced on 24 June.

Protected titles and offences

94. The protection of the social work title and restricting the practice of a social worker is central to ensuring public protection and confidence in the profession.
95. It is the intention that the new regulatory framework for social workers will broadly reflect the current provisions operated by the HCPC in respect to restrictions on practice, protected titles and offences.
96. The indicative regulations set out in chapter 3, that a person may not practise as a social worker or use the title of social worker unless they are registered in the register of social workers in England. Social workers registered in the Devolved Administrations and practising in England on a temporary basis will continue to be allowed to use the title 'Social Worker' in England.
97. The indicative regulations set out that a person may not falsely represent themselves as being a registered social worker, the status of their registration, including any annotations, or falsely represent having approved qualifications or having undertaken a course of education or training relevant to social work.
98. The scope of these offences will remain limited to those '*with intent to deceive (whether expressly or by implication)*' as it is now under the HCPC order.
99. The indicative regulations set out offences in two further areas. Firstly, it will remain an offence for anyone to fraudulently procure, or attempt to procure, the making, removal, restoration or amendment of an entry in the register. Secondly, it will be an offence for an individual to fail to produce evidence or information required by the regulator in relation to its functions or to fail to attend a fitness to practise hearing (usually though this will not apply to the social worker concerned).
100. All offences will be punishable by summary conviction only, by means of a fine.

Professional standards

101. The establishment of the new agency will enable the development of a coherent approach to social work regulation that focuses on practice excellence and raising standards. The Regulator will establish professional standards that must be met by individuals in order to be admitted to, and to remain on, the social work register. These standards will cover:

- Proficiency
- Performance
- Conduct and ethics
- Continuing professional training and development

102. New standards will be developed in partnership with the profession and be subject to a full consultation. The new standards will consolidate social work values, ethics and codes of practice and align with the Knowledge and Skills Statements already published by the Chief Social Workers. By developing the standards in this way, for the first time, the profession will have a coherent framework of the knowledge and skills needed for effective practice establishing the foundations for a clear practice-based career pathway from initial education through to areas of specialism.
103. The indicative regulations require the regulator to establish and publish professional standards. There is also a requirement for the regulator to consult before setting these standards and making any substantial changes.

Approval of qualifications, education and training

104. The new regulator will develop an approach to social work regulation that focuses on practice excellence and raising standards from initial education through to post qualification specialism. We must ensure training providers are offering high quality provision, enabling students to flourish in the profession.
105. As cited above there is evidence that standards, particularly in initial social work education, need reform. This will be a priority for the regulator. This is an area where the advice of education and social work experts will be vital, and we expect to appoint advisers in line with the relevant powers in the Bill and indicative regulations.
106. The regulator will set new standards of initial education and training. Related to these standards, we will institute a new accreditation scheme for all initial social work education and training courses and qualifications. It is the intention that the current process for approving courses will be revised and strengthened and that all initial education courses will be reviewed under the accreditation scheme and in relation to the new standards by 2020.
107. The standards and scheme will draw on the independent reviews by Sir Martin Narey and Professor David Crosidale-Appleby, and learning from Teaching Partnerships. They will be social work specific and will consider areas such as the admissions criteria for social work courses, the quality of practice placements and the curriculum that is taught on courses.
108. We will also set standards for post qualification education and training. Initially we anticipate this will involve setting out requirements in relation to the Assessed and Supported Year in Employment.
109. The indicative regulations require that the regulator establishes and publishes standards for education and training following consultation. They also require that the

regulator determine, operate and publish a scheme for the accreditation of courses of education and training and qualifications, including provision for the approval and withdrawal of approval for courses and qualifications; publication of a list of approved qualifications; and publication of a list of the qualifications and training undertaken outside of the UK that are recognised for the purposes of registration requirements.

Fitness to practise

110. The new regulator will oversee a fitness to practise system, ensuring that social work practitioners maintain the very highest standards in their professional performance, are provided with support to improve practise where there are concerns about proficiency and where appropriate prevented from practising on a temporary or permanent basis where there is evidence that this is appropriate for the protection of the public or the person concerned.
111. The professional standards established by the regulator will include standards of proficiency, conduct and performance. Failing to meet these standards may be grounds for the regulator to undertake fitness to practise proceedings. Adverse health conditions and particular convictions may also lead to fitness to practise investigations.
112. An effective, transparent and fair regulatory framework in relation to discharging these functions is paramount. Such a framework must include a robust investigation process, a clear and transparent mechanism for hearings, a requirement for separation between investigation and adjudication and a clear right of appeal.
113. In addition to provisions in relation to these core elements, there are opportunities to draw on the recommendations of the Law Commission review in this area. We are considering, for example, a provision for a system of auto-barring in relation to social workers. This would mean that social workers who had been convicted of certain very serious offences would be automatically removed from the register without the need for a hearing. We are also considering a provision for undertakings and voluntary removal where an individual and the regulator agree that fitness to practise is impaired and on the appropriate sanction. This would enable a proportionate approach to the use of hearings and the efficient disposal of cases at an earlier point. The introduction of these provisions would be subject to discussion with the sector in developing the final regulations and consultation in order to ensure the approach is proportionate.
114. The indicative regulations provide for the standard of proof in proceedings and, at a high level, the core functions in relation to preliminary and full investigation, interim orders, hearings and sanctions, reviews by the regulator and appeals. Whilst these remain broadly similar to current provisions, it is the intention that the detail in

regulation will be less prescriptive ensuring the framework is more flexible, efficient and proportionate where appropriate. This is in line with Law Commissions' recommendations, and we will work with the sector to develop the most effective and proportionate approach possible.

115. The indicative regulations also make further provision through rules in relation to the specifics of the procedure for investigations, hearings and sanctions.

Post registration training – continuous professional development

116. Continuing professional development (CPD) is one of the cornerstones of what it means to be a 'professional'. It acknowledges that knowledge, skills, behaviours and environmental and policy contexts change over the course of a career, and learning and reflection enable fitness to practise to be maintained and actual practice to be enhanced. Undertaking continuous professional development will be expected in order to remain a registered social worker.

117. As cited above, Government has made significant investment in the ASYE programme and will work with the sector to identify how the regulator can support ASYE in the future.

118. Beyond the first year in practice, however, the current requirements on social workers for CPD are not challenging enough: they do not ensure that all social workers receive a minimum number of hours of CPD that is directly related to their current practice. In his independent review of social work education Professor David Croisdale-Appleby state that there is a pressing need for a comprehensive new CPD framework for the profession.¹⁹

119. The new regulator will set new standards for CPD. Options will be consulted on with the aim of increasing the consistency of CPD activity and the relevance of that CPD to social workers' practice. This consultation will also include options on how to ensure compliance with the new standards. This will include appropriate sanctions for non-compliance. We expect changes in this area to bring greater alignment with the devolved administrations where minimum requirements are already at a higher level than England.

¹⁹ Revisioning Social Work Education (2014) David Croisdale-Appleby

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285788/DCA_Accessible.pdf, Feb 2014

120. The indicative regulations make provision for the setting of standards in relation to post registration training and continuous professional development; provide for specific CPD requirements in relation to renewal of registration (related to the professional standards) and make provision for suspension where a registrant has not met CPD requirements.

Assessment and accreditation

121. In January the Secretary of State for Education set out an ambition for all children and family social workers to be assessed and accredited against the relevant knowledge and skills statement by 2020. This will ensure practitioners are focused on excellence and will support a national practice-focused career pathway. Since March 2015 we have been working closely with stakeholders, including individual social workers, user representatives and others, to develop the system.

122. It is our intention that the new regulator will in due course take responsibility for delivery of the assessment and accreditation system. The indicative regulations provide for the regulator to annotate the register of social workers and it is our intention that this will include annotations relating to the new specialist accreditations provided through this system.

123. Consultation with the sector on proposals in relation to assessment and accreditation is planned for later this year. Consequently the indicative regulations do not yet provide for the operation of an assessment and accreditation system, so as not to prejudge the outcomes of that consultation.

Approved mental health professionals and best interest assessors

124. The regulator will approve post qualifying courses relating to Approved Mental Health Professionals (AMHPs) and specify training for Best Interest Assessors (BIAs).

125. For AMHPs, the Bill allows the Secretary of State to take over from HCPC its function of approving courses for AMHPs (clause 39) and to determine and publish professional standards in relation to the work of social workers as AMHPs. It is the intention that when a social worker who is an AMHP secures the approval of the relevant local authority, the new agency will be able to annotate the register to indicate that a social worker is approved to practice as an AMHP.

126. BIAs play a key role in the Deprivation of Liberty Safeguards which provide a legal framework for ensuring that the care arrangements for people who lack the mental capacity to consent to such arrangements are the least restrictive and in the best interests of that person. The Bill amends the provision of the Mental Capacity Act 2005 which enables the Secretary of State to specify particular training otherwise than in regulations in relation to people carrying out assessments. The amendment enables the new regulator to have that function as well in relation to best interests assessments. It is our intention that the register (of social workers) will be annotated, giving a clear indication if a social worker is a BIA.
127. We will work with other regulators to explore options for similar annotations for other professions that may qualify as an AMHP and BIA in order to retain consistency across the professions.

Fees and funding

128. Social workers in England will continue to pay a fee to register: this is consistent with other professions. The fee is currently £90 per year, paid every two years. The power to set registration fees will transfer to the new regulator. Initially these will remain at £90 p.a. and fees are not expected to rise within the current spending review period. Beyond 2020, registration fees for social workers in England will be subject to review in the same way that fees for all registered professions are and will only change after consultation with the sector.
129. The costs for setting up the new regulator will be borne by the two sponsor Departments from within their current settlement for the spending review period. Further details will be published in the autumn.
130. The indicative regulations make provision for the payment of fees in relation to registration and in connection with the operation of the accreditation scheme for courses of education and training and qualification.
131. Some regulators of other professions charge for the approval of courses: this is something that does not happen at the moment in social work. This means the costs of accrediting training courses are met by social workers through the fees they pay to the regulator. It is right that we consider if it is appropriate for this approach to continue. We will, of course, consult on any proposed charges to higher education institutions to understand any potential impact.
132. Similarly the Bill would enable the regulator to charge for assessing whether a person meets a professional standard relating to proficiency. Whilst we have no such plans at present this would allow the regulator to charge social workers, or their

employer, to take such an assessment in future. Such a system could prove a suitable means of ensuring that only social workers with a realistic chance of passing the assessment are put forward. We would, of course, expect that any such proposals be consulted upon widely with social workers and employers.

133. The Bill and indicative regulations make provision to charge fees which are set at a level which exceed the thing in respect of which they are charged. However, fees must be set with a view to ensuring that, in so far as is possible, the total fee income does not exceed the regulator's total expenses taking one year with another. The intent of these provisions is that the regulator may cross subsidise income from fees but that the body cannot make a profit. For example currently newly qualified social workers pay a reduced fee – powers to cross subsidise are needed to enable this to continue.

Transition

134. Officials will set out in detail a plan for the transition of responsibility from HCPC to the new regulator in 2017 following discussions with HCPC. We expect this will include the transfer of functions from HCPC to the new regulator during 2018. This plan will ensure that the continuation and accessibility of the register to the public and the proper handling of fitness to practise cases is made a priority.

135. The transition will take account of the staff at HCPC currently undertaking the roles and functions that will transfer to the new regulator. We will work closely with HCPC to support them in managing this and in undertaking the safe and effective transfer of any staff, systems and data to the new regulator.

136. As noted above, the indicative regulations do not yet provide for procedural and administrative detail which will be determined as the new regulator is established. This includes the detail of transition which is subject to further discussion with the current regulator, HCPC.



Department
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