

EXPLANATORY MEMORANDUM TO
THE CHILD SAFEGUARDING PRACTICE REVIEW AND RELEVANT AGENCY
(ENGLAND) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument relates to the review of serious child safeguarding cases. These are cases where children have died or been seriously harmed and abuse or neglect is known or suspected by a local authority or another person exercising functions in relation to children. The instrument covers national reviews, commissioned and supervised by the Child Safeguarding Practice Review Panel (“the Panel”), and local reviews, commissioned and supervised by the safeguarding partners. The safeguarding partners are local authorities, clinical commissioning groups and chief officers of police. The instrument includes details of the criteria for reviews, the appointment and removal of reviewers, the procedure for reviews, and requirements for reports.
- 2.2 This instrument also specifies the relevant agencies with which the safeguarding partners for a local authority area in England may choose to work. Relevant agencies are those specified in the regulations and who exercise functions in a local authority area in relation to children.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is the first exercise of power under sections 16B(1), 16B(6), 16E(3) and 16(F)(6) of the Children Act 2004, as inserted by the Children and Social Work Act 2017

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.

4. Legislative Context

- 4.1 This instrument supports implementation of the safeguarding provisions in the Children Act 2004, as inserted by the Children and Social Work Act 2017. The Act sets out a requirement for the safeguarding partners to work together in exercising their functions which relate to safeguarding and promoting the welfare of children in their local authority area. The safeguarding partners have power to determine the relevant agencies with whom they may work as part of the arrangements. This

instrument (as enabled by section 16E(3)) specifies the list of relevant agencies with whom the safeguarding partners may determine to work.

- 4.2 The regulations also set out a range of provisions about reviews, reviewers and reports, as enabled by sections 16B(1), 16B(6) and 16F(6), to support the implementation of a system of national and local reviews as set out in the Act.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for Education (Nadhim Zahawi) has made the following statement regarding Human Rights:

“In my view the provisions of the Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Prior to developing this policy, the government commissioned Alan Wood CBE to undertake an [independent review](#) of the role and functions of Local Safeguarding Children Boards (LSCBs). This included a consideration of how the intended centralisation of serious case reviews (SCRs) would work effectively at local level. Alan Wood undertook extensive oral and written consultation as part of the review; his review also includes a summary of research evidence. He recommended that SCRs should be discontinued, and an independent body established at national level to oversee a new national learning framework for reviews. He also recommended that proportionate local reviews should be produced and published. The amendments to the Children Act 2004, together with these regulations, support this vision. One of the key findings of his review in respect of local multi-agency working arrangements was that the government should ‘move away from an over-prescriptive system to one that encourages and authorises local areas to determine how they organise themselves to improve outcomes for children and meet the requirements of the new framework’. The policy of requiring the safeguarding partners to determine the agencies with whom they will work is part of this new flexibility, and contrasts with the arrangements for LSCBs which prescribed a list of statutory members.
- 7.2 These regulations will support the Panel and the safeguarding partners respectively to determine when to commission a national or local review, by specifying criteria which they must take into account. The regulations also require the Panel to set up a pool of reviewers to conduct national reviews. Further, the regulations set out arrangements for the appointment and removal of reviewers (including aspects of the Secretary of State’s role in relation to the appointment and removal of national reviewers), and set out the Panel’s supervisory powers. The safeguarding partners will be subject to certain requirements regarding the procedure for reviews. Both the Panel and the safeguarding partners will be subject to requirements on the form and

content of reports, and on the submission and public availability of reports¹. These provisions align with the duties in the Act on the Panel and the safeguarding partners to arrange for serious child safeguarding cases to be reviewed under their supervision. The intention of these reforms is to support the consistency and clarity of decision-making and to improve the standard of reviewers and the quality of reviews, compared with SCRs (as highlighted through the Wood Review). The requirements relating to reports are aimed in particular at promoting the swift and ongoing sharing of information and learning.

- 7.3 This instrument sets out the list of possible relevant agencies. The safeguarding partners will be able to determine which relevant agencies they should work with. It will provide certainty to those designated as a relevant agency that they may be called upon at the discretion of the safeguarding partners to work together with them. The safeguarding partners and relevant agencies are required under section 16E(1) of the Children Act 2004 to work together for the purposes of safeguarding and promoting the welfare of children in the area. The safeguarding partners are required (under section 16G(2) of the 2004 Act) to publish the arrangements under which they and any relevant agencies they consider appropriate will work. The safeguarding partners and relevant agencies are required to act in accordance with the arrangements (section 16G(4) of the 2004 Act). This duty may be enforced against both the safeguarding partners and the relevant agencies (section 16G(6)).
- 7.4 This policy complies with the requirements of the Public Sector Equality Duty. The regulations do not conflict with the protected characteristics. The regulations also allow significant flexibility for local areas to determine the bodies relevant to children's safeguarding and welfare in their area. More effective scrutiny and identification of lessons that can be learned should have a beneficial impact on all children.

Consolidation

- 7.5 This instrument is the first to be made under these powers.

8. Consultation outcome

- 8.1 The Department conducted a full public consultation on these regulations between 25 October 2017 and 31 December 2017, alongside consultation on the statutory guidance *Working Together to Safeguard Children* and statutory guidance on child death reviews. Over 700 people responded, from many backgrounds. In addition, nine regional public consultation events were held, between 9 November 2017 and 12 December 2017. There were almost 450 attendees.
- 8.2 Responses were broadly supportive, but there were some specific points of detail raised about the regulations and some amendments have been made as a result. The most notable changes resulting from the consultation are that:
- The importance of reviews in cases of abuse or neglect in settings with residential provision for children was highlighted. However, there were also concerns raised about the number of criteria in the regulations, as well some confusion about the way in which the criteria will operate. In the light of this, we plan to expand the statutory guidance to cover these settings, while adding

¹ It will be for the Panel to determine where the pool of reviewers is made available, and for the Panel and the safeguarding partners respectively to determine where reports are made available.

additional clarification, and have removed the references to ‘institutional settings’ from the regulations (see 9.1 below), thus reducing and simplifying the criteria.

- The time periods for the Panel and the safeguarding partners to submit reports have been clarified.

8.3 Persons or bodies involved in the provision, supervision or oversight of sport or leisure have been added to the list of relevant agencies. Religious organisations have also been added to the list. It should also be noted that Academy Trusts or Multi-Academy Trusts are proprietors of Academies (Academy Schools, 16-19 Academies and Alternative Provision Academies) so academy trusts have not been listed separately.

8.4 The consultation response document was published on 26 February 2018 and is available [here](#).

9. Guidance

9.1 An updated version of *Working Together to Safeguard Children* will provide statutory guidance for safeguarding partners and the Panel. A draft of the guidance was consulted on alongside the draft regulations. The consultation version is available [here](#). The consultation response document, referred to above, explains the outcome of the consultation and highlights the areas which will be amended before the guidance is finalised and published later this spring. As well as residential settings, the guidance will highlight the importance of considering ‘institutional settings’ in the review process. This will include children in custodial settings and settings where detention takes place. This inclusion follows a debate during the passage of the Bill on the importance of considering these settings ([HL Deb, 11 July 2016, col 10GC](#)). The guidance will, however, make clear the Panel and safeguarding partners must have regard to children in all settings and circumstances.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The aim of changing the system of reviewing serious child safeguarding cases, as supported by this instrument, is to improve the quality and timeliness of the learning which emerges from these cases, compared with the existing system of SCRs. The ultimate purpose of this is to enable services to be improved, to reduce the risk of future harm to children. We will be assessing the extent to which the reviews which are commissioned by the Panel and by the safeguarding partners meet the aim of improving this learning, including by taking steps to monitor the quality of reviewers, the timeliness of reviews and the speed of publication. The What Works Centre for Children’s Social Care will play a key part in disseminating learning. We also anticipate that regular research on the outcomes from reviews will be commissioned

and disseminated. The Panel and the safeguarding partners will regularly audit progress on the implementation of recommended improvements. We will monitor the way in which safeguarding partners involve relevant agencies through reviewing their published arrangements. We also anticipate that these matters will be considered by the relevant inspectorates.

12.2 This instrument will be reviewed every 3-5 years

13. Contact

13.1 Helen Walker at the Department for Education (tel: 020 7340 8298 or email: helen.walker@education.gov.uk) can answer any queries regarding the instrument.