

CHILDREN AND YOUNG PERSONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Delivery of Social Work Services for Children and Young Persons (sections 1 to 6)

Section 1: Power to enter into arrangements for discharge of care functions

17. *Section 1* enables local authorities to enter into arrangements with a body corporate (referred to in this Part as a “provider of social work services”) for the discharge by that body of some or all of the authority’s social services functions in relation to:
- a. individual children who are looked after by the authority; and/or
 - b. care leavers (see Annex A – Glossary of terms)
- referred to in *subsection (2)* as relevant care functions. Social services functions are defined in section 1A of the Local Authority Social Services Act 1970 (the “1970 Act”). *Subsection (5)* provides that the arrangements may make provision for the continuing exercise of the local authority functions by the provider of social work services where the child ceases to be looked after by the local authority.
18. *Subsection (6)* enables the appropriate national authority to make regulations specifying functions which are or are not to be treated as relevant care functions. An order under this subsection is subject to the affirmative resolution procedure. This means that before the order can be made a draft of it must have been laid before, and approved by, each House of Parliament (if it is to be made by the Secretary of State) or the National Assembly for Wales (if it is to be made by Welsh Ministers). This contrasts with the more common “negative” resolution procedure for exercising delegated powers that permits the statutory instrument to be laid before both Houses or, as the case may be, the National Assembly for Wales after it has been made. Under the negative resolution procedure, the instrument is subject to revocation if a resolution for annulment is passed within 40 days.
19. A provider of social work services cannot be a local authority (*subsection (3)(a)*) and regulations may make further provision about the bodies corporate that may, or may not, be providers of social work services (*subsection (7)*). This power is also subject to the affirmative resolution procedure.
20. In addition the appropriate national authority may by regulations provide that arrangements may be entered into for no less than a prescribed minimum period or for no more than a prescribed maximum period (*subsection (8)*).

Section 2: Restrictions on arrangements under section 1

21. *Section 2* places restrictions on the functions that may be the subject of arrangements under this Part. The excluded functions (set out in *subsection (2)*) are functions in relation to the appointment of independent reviewing officers and the local authority’s functions as an adoption agency (unless the provider of social work services is also a

registered adoption society). The intention is that independent reviewing officers will be one of the mechanisms by which local authorities quality assure the work carried out by providers of social work services. Making arrangements for adoption are excluded as the intention is that providers of social work services are to focus on the provision of support to looked after children, particularly those who are likely to remain in the long term care of the authority.

22. *Subsection (5)* provides that a local authority must not enter into arrangements under Part 1 unless it is satisfied that the functions will be discharged by, or under the supervision of, registered social workers.

Section 3: Effect of arrangements under section 1

23. *Section 3(1)* provides that any acts or omissions of a provider of social work services or their employees are to be treated as the acts and omissions of the local authority. *Subsection (2)* provides that this does not affect the rights and liabilities of the local authority and the provider as between one another; does not apply to criminal offences; does not make the local authority liable under section 6 of the Human Rights Act 1998 in respect of acts of the provider which are private in nature; and does not prevent any civil proceedings being brought against the provider. The liability of the provider to third parties is unaffected by this provision, which means that the local authority will in addition be equally and jointly liable for the acts of the provider. For example, in tort the provider is liable under the common law and the local authority is deemed liable under section 3.

Section 5: Functions under this Part to be social services functions

24. The power to enter into an arrangement with a provider of social work services is a social services function (*section 5* amends Schedule 1 to the 1970 Act). This means that in making arrangements under this Part the local authority must act under any general guidance of the appropriate national authority issued under section 7 of the 1970 Act and comply with any directions issued under section 7A of that Act.

Section 6: Piloting and expiry of arrangements under this Part

25. *Section 6* enables the piloting of arrangements under this Part for a period of up to five years. The intention is to pilot the arrangements in a number of local authorities. The pilots will be evaluated and, subject to that evaluation, the power may be extended to all local authorities. In that event, all providers of social work services will be regulated as agencies under the Care Standards Act 2000 and subject to registration and inspection by the Chief Inspector for Education, Children's Services and Skills and *section 4* makes provision for this. *Subsection (3)* provides that sections 1 to 5 cease to have effect if the piloting period comes to an end after 5 years without section 4 having been commenced. *Subsections (4) and (5)* provide that if section 1(1) is not commenced within a period of 5 years then sections 1 to 5 cease to have effect in relation to England or, as the case may be, Wales.