

EDUCATION AND TRAINING (WELFARE OF CHILDREN) ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Education and Training (Welfare of Children) Act 2021 which received Royal Assent on 29 April 2021 (c. 16).

- These Explanatory Notes have been provided by the Department for Education, with the consent of Mary Kelly Foy MP, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes should be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 There is an existing duty on local authorities, the governing bodies of maintained schools and the governing bodies of institutions within the FE sector to make arrangements in regard to the welfare of children which can be found in section 175 of the Education Act 2002 (“the 2002 Act”). The Education and Training (Welfare of Children) Act 2021 (“the Act”) extends the duty to other providers of publicly funded post-16 education and training in relation to safeguarding and promoting the welfare of children receiving education or training at the institution, as well as having regard to any guidance given by the Secretary of State.

Policy background

- 2 It is Government policy that all providers of education and training should be subject to a duty to safeguard and promote the wellbeing of children receiving education and training at that provider. The further education provider market has changed in recent years and new providers are entering into the market. The Department ensures that providers have appropriate safeguarding arrangements in place through the terms of funding that apply to these providers. The Act ensures that there is alignment across all providers and places a specific obligation on 16-19 Academies, as well as placing an obligation on the Secretary of State to ensure that funding provided to special post-16 institutions (SPIs) and independent learning providers (ILPs) is provided subject to the safeguarding duties set out in the Act.
- 3 The Act includes a requirement for providers to have regard to statutory guidance issued by the Secretary of State. The current version of statutory guidance issued by the Secretary of State is [Keeping Children Safe in Education](#). The Act brings 16-19 Academies, SPIs and ILPs in scope of the guidance. This will provide clarity for all providers in terms of how the safeguarding duties apply to them as the statutory guidance will be developed to cover all providers rather than only being drafted to cover those subject to the previous statutory duties.
- 4 16-19 Academies are not legally classified as a school or a college and are therefore not captured by the statutory safeguarding duties in section 175 of the 2002 Act. Recently there has been an increase in the number of 16-19 Academies as around 20 sixth form colleges have converted to academies and that number is expected to rise. It is appropriate that as a provider of education to children, 16-19 Academies should be subject to the same statutory duties as other similar institutions.
- 5 SPIs provide specialist provision to those with complex special educational needs. Most of these providers have a long history of providing this provision and are spread across the country. While safeguarding obligations are included in the funding agreements that they enter into with the Secretary of State, the Act puts an obligation on the Secretary of State to ensure that terms of funding provided to SPIs include the safeguarding duties.
- 6 ILPs are responsible for providing a range of education and training to children, including further education provision for 16-19 year-olds. There are around 125 ILPs which have a funding agreement for this provision with the Secretary of State. There are also around 1,000 ILPs that receive funding for the delivery of apprenticeship training to 16-19 year-olds (both levy and non-levy funded). Where these providers are delivering further education to 16-19 year-olds, it is expected that the safeguarding duties would apply in the same way as to other providers of further education. For those providers delivering apprenticeships it is expected that the duties would apply to any education or training delivered as part of an apprenticeship.

- 7 Any providers funded to deliver T Levels are expected to be captured by the duties.
- 8 The Act seeks to ensure there is consistency and clarity over how the safeguarding duties apply across all post-16 providers irrespective of provider type or the type of provision being delivered. It does not look to alter the nature of the safeguarding duties nor change the way in which the safeguarding duties are assessed or enforced.

Legal background

- 9 The Act amends section 175 (previously “Duties of local authorities and governing bodies in relation to welfare of children”) of the 2002 Act and makes a consequential amendment to section 16 of that Act. Section 16 of the 2002 Act enables the Secretary of State to provide financial assistance on any terms that the Secretary of State considers appropriate. Section 175 of the 2002 Act imposes duties on local education authorities, the governing bodies of maintained schools and the governing bodies of FE sector institutions to make arrangements in regard to the welfare of children. The duties relate to safeguarding and promoting the welfare of children as well as having regard to any guidance issued by the Secretary of State in deciding what arrangements they must make to comply with their duties.
- 10 The Act also amends section 101 of the Apprenticeships, Skills, Children and Learning Act 2009 (“ASCLA 2009”) to insert a new section 101A into that act. Section 100 of ASCLA 2009 (which is referred to in the Act) enables the Secretary of State to provide funding to providers of apprenticeship training as well as institutions involved in the delivery of T Levels. Section 101 of ASCLA 2009 enables the Secretary of State to set conditions on the provision of funding provided under section 100 of that Act.

Territorial extent and application

- 11 The Act extends to England and Wales and applies to England only.
- 12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: Welfare of children: 16 to 19 Academies and further education

- 13 Section 1 of the Act inserts new section 175(3A) into section 175 of the 2002 Act. Section 175(3A) extends the safeguarding duties to 16-19 Academies. The proprietor of the Academy must ensure that they have appropriate arrangements in place to safeguard and promote the welfare of children receiving education or training at the Academy. A proprietor is the Academy Trust that is responsible for the running of the Academy. Section 175(4) (as amended) requires the proprietor to take into account any guidance issued by the Secretary of State.
- 14 Section 1 also brings providers who receive funding from the Secretary of State for the provision of further education within scope of the safeguarding duties. This covers SPIs as well as ILPs providing further education. The providers have been identified as either those that enter into agreements with the Secretary of State for the provision of further education (new section 175(3B)(a)), or those that are provided with financial assistance for the provision of further education by the Secretary of State (new section 175(3B)(b)).

- 15 Subsection (3B) does not restrict the Secretary of State's power to enter into an agreement with, or give financial assistance to, an institution to which subsections (3) or (3A) apply. Subsections (3) and (3A) make respective provision themselves for the institutions to which they apply to make arrangements to ensure that functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution. This, in effect, prevents duplication of the duties that apply to those institutions.
- 16 The Secretary of State is obliged to ensure that the terms of the agreement with the proprietor of the institution, or the terms of the financial assistance provided, require the proprietor to comply with the safeguarding duties. The proprietor will be those that are responsible for the management of that institution. The proprietor must make arrangements to ensure that its functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children, having regard to any guidance issued by the Secretary of State. This includes, for example, ensuring they have appropriate recruitment, security and reporting policies and procedures in place to support the safety and wellbeing of children receiving education and training.

Section 2: Welfare of children: apprenticeships and technical education

- 17 Section 2 inserts into the 2009 Act new section 101A, which extends the safeguarding duties to apprenticeship training providers (which receive funding under section 100(1A)) and providers of education or training associated with a T Level or approved technical education qualification (which receive funding under section 100(1B)).
- 18 The obligation is on the Secretary of State to ensure that the terms of the financial resources provided to these providers contain the safeguarding duties. The safeguarding duties will be contained within the funding agreement that the provider enters into with the Secretary of State.
- 19 The provider must make arrangements to safeguard and promote the welfare of children receiving education or training as part of an apprenticeship or T Level. They must also have regard to any guidance by the Secretary of State in considering what arrangements are required.

Section 3: Extent, commencement and short title

- 20 Section 3(1) sets out the territorial extent of the Act, that is, the legal jurisdictions of which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect rather than where it forms part of the law.
- 21 The provisions of this Act extend to England and Wales and apply only to England.
- 22 Section 3(3) provides that the short title of the Act is the Education and Training (Welfare of Children) Act 2021.

Commencement

- 23 This Act came into force on 29th June, two months after the day on which it received Royal Assent.

Annex A – Territorial extent and application in the United Kingdom

24 The Act extends to England and Wales and applies to England only.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	No	No	No
Section 2	Yes	No	No	No

Annex B – Hansard References

25 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	5 February 2020	Vol. 671 Col. 318
Second Reading	13 March 2020	Vol. 673 Col. 610
Public Bill Committee	14 October 2020	Col. 1-8 of the Education and Training (Welfare of Children) Public Bill Committee
Report and Third Reading	12 March 2021	Vol. 690 Col. 1190
<i>House of Lords</i>		
Introduction	12 March 2021	Vol. 810 Col. 1984
Second Reading	19 March 2021	Vol. 811 Col. 577
Committee of the whole House	15 April 2021	Vol. 811 Col. 1451
Third Reading	26 April 2021	Vol. 811 Col. 2088
Royal Assent	29 April 2021	House of Commons Vol. 693 Col. 519
		House of Lords Vol. 811 Col. 2407

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