

## CHILDREN BILL

### PART 2

To be brought into effect by order of Sec of State. Part 2 relates to England. **There are similar provisions for Wales which are contained in Part 3 of the Bill (clauses 20 to 27)** where the powers of the Sec of State are largely exercisable by the Welsh Assembly. Part 4 provides that CAF/CASS functions in Wales will be carried out by the Welsh Assembly.

Description of Provision	Definitions	Comments
<p><b>CO-OPERATION TO IMPROVE WELL-BEING</b>            cl 6(1) Children's Services Authority (<b>CSA</b>) MUST make arrangements to co-operate with (those in its area)</p> <p>each of CSA's <b>relevant partners</b></p> <p>such other persons or bodies as the CSA considers appropriate being those of any kind which exercise functions or are engaged in activities in relation to children in the CSA's area</p> <p>cl 6(4) the <b>relevant partners</b> MUST co-operate with the CSA</p> <p>cl 6(7) the <b>CSA</b> and its <b>relevant partners</b> MUST have regard to an guidance given by Sec of State</p> <p>cl 6(8) the arrangements MAY include those for persons aged 18 and 19, over the age of 19 who are former looked after children and persons 19 to 25 with a learning difficulty within the meaning of s13 Learning and Skills Act 2000.</p> <p>cl 6(2) "The arrangements are to be made with a view to improving the well-being of <b>children</b>" in the CSA's area "so far as relating to</p> <ul style="list-style-type: none"> <li>(a) physical and mental health</li> <li>(b) protection from harm and neglect</li> <li>(c) education and training</li> <li>(d) the contribution made by them to society</li> <li>(e) social and economic well-being." </li></ul>	<p>cl 49(1)            In England  <b>CSA</b> = County Council, Metropolitan District Council, non-Metropolitan District Council where no county council, London Borough Council, City of London Corporation, Council of Isles of Scilly            In Wales  <b>CSA</b> = County Council or County Borough Council</p> <p>cl 6(3)  <b>Relevant Partner</b> = any District Council, police authority, chief officer of police, local probation board, Strategic Health Authority, Primary Care Trust, a person providing services under s114 Learning and Skills Act 2000 (LSA), Learning and Skills Council for England (= <b>anyone</b> with whom the Sec of State arranges to provide, secure or participate in the provision of services - s114(2) LSA 2000) in the CSA's area</p> <p>cl 49(1)  <b>children</b> =persons under the age of 18 (but also see cl 6(8) which extends the class of person for who arrangements may be made in certain circumstances to those under 25)</p>	<p>The classes of those with whom a CSA must co-operate are very wide and it must be very difficult if not impossible to be able to identify all those who are included. Children and their families would not know who held information about them, whether it was accurate, who was sharing it and what conclusions were being reached.</p>
<p><b>ARRANGEMENTS TO SAFEGUARD AND PROMOTE WELFARE</b>            cl 7(1) CSAs, district councils, Strategic Health Authorities, Primary Care Trusts, NHS Trusts and Foundation Trusts, police authorities, chief officers of police, local probation boards, youth offending teams, prison governors, any person to the extent that he is providing services under s114 Learning and Skills Act 2000</p> <p>cl 7(2) MUST make arrangements for ensuring that their functions and those of others are discharged having regard to the need to safeguard and promote the welfare of children.</p>		<p>cl 7(2) would appear to refer to any person to whom the CSA might choose to delegate their functions - so that widens the scope of those involved.</p>

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<p><b>INFORMATION SHARING</b></p> <p>cl 8(1) the Sec of State MAY for the purpose of arrangements under cl 7 or s175 Education Act 2002 by regulation REQUIRE CSAs to establish and operate databases containing information in respect of persons to whom such arrangements relate, or</p> <p>MAY HIMSELF ESTABLISH AND OPERATE, OR MAKE ARRANGEMENTS FOR THE OPERATION AND ESTABLISHMENT OF ONE OR MORE DATABASES CONTAINING SUCH INFORMATION</p> <p>cl 8(2) the Sec of State MAY establish a body corporate to establish and operate one or more databases</p> <p>cl 8(3) the Sec of State MAY by regulations make provision in relation to the establishment and operation of any such database(s)</p> <p>cl 8(4) those regs MAY in particular make provision in particular</p> <p>(a) as to the information which MUST or MAY be contained in any database</p> <p>(b) PERMITTING or REQUIRING the disclosure of information for INCLUSION in any database</p> <p>(c) PERMITTING or REQUIRING the disclosure of information INCLUDED in any database</p> <p>(d) PERMITTING or REQUIRING ANY PERSON TO BE GIVEN ACCESS TO ANY SUCH DATABASE FOR THE PURPOSE OF ADDING OR READING INFORMATION</p> <p>(e) REQUIRING CSA's in England to PARTICIPATE in the operation of the database</p> <p>cl 8(5) the information referred to in s8(4) includes in particular</p> <p>(a) information as to services provided to, or activities carried out in relation to persons to whom the services or activities relate</p> <p>(b) INFORMATION AS TO THE EXISTENCE OF ANY CAUSE FOR CONCERN IN RELATION TO SUCH A PERSON (ie to whom services are provided or are carried out to)</p>		<p>This would enable the Sec of State to set up a central database and gives him Henry VIII powers.</p> <p>This would enable him to establish a Central Agency. Clause 8(1)(a) -CSA's run databases - and (b) - Sec of State runs them - are expressed in the alternative. Does the inclusion of cl 8(2) and 8(3) indicate that the Sec of State will in fact opt for setting up a Central Agency rather than require the CSAs to set up their own local ones?</p> <p>No indication is given in the Bill as to what class of child is to be included in any database or whether all children are to be included. It appears the intention is to include ALL children.</p> <p>Bearing in mind that CSA's and their relevant partners must co-operate and LSCBs and their Board Partners must do the same, it must be contemplated that all they would be concerned with will be included in "information" on the databases. It is difficult to deal with this until the regulations are passed. Parliament is being asked to empower the Sec of State to make regulations which will define the extent of the database and its uses.</p> <p>The information to be provided and shared in this way would NOT REQUIRE CONSENT of the data subject (the child) or anyone else as the creation of a statutory duty to share information exempts the database from the protective provisions of the Data Protection Act 1998.</p> <p>cl 8(5) makes it certain that information about individual children will be on the database and this includes what is described as a CAUSE FOR CONCERN. This is not defined further but would appear to be capable of being entirely subjective in the interpretation of the observer, perhaps that a child is not immunised or that the family uses complimentary or alternative health practitioners or does not agree with a doctor's suggested course of action.</p>

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<p>cl 8(7) REGULATIONS MADE MAY PROVIDE THAT ANYTHING WHICH MAY OR MUST BE DONE MAY BE DONE NOTWITHSTANDING ANY RULE OF COMMON LAW WHICH PROHIBITS OR RESTRICTS THE DISCLOSURE OF INFORMATION</p>		<p>This would operate to ABOLISH CLIENT CONFIDENTIALITY, even in medical situations and could include legal professional privilege. These are substantial constitutional rights protected only by the Common Law (ie not statute law). The Sec of State is asking for powers to overturn these fundamental and historic rights by delegated legislation.</p> <p>If this clause is being included it must be taken to be the intention of the govt to require data sharing which would at present be in breach of confidence. It is an open-ended power to dispense with confidentiality which is not even expressed to be limited to where there are definite or even suspected child protection issues. It must therefore be taken to indicate that the govt intends to compel data sharing even where there is no established child protection concern.</p> <p>This creates a serious attack on personal privacy and individual freedom when taken with the creation in Clause 8 of a statutory duty to share information which would allow that data to be shared without the consent of the data subject (the child) without breaching the Data Protection Act 1998 and the protections in that act would not apply.</p>
<p>cl 8(8) anyone establishing or operating a database MUST have regard to guidance, and COMPLY with any direction, given by the Sec of State</p> <p>cl 8(9) guidance MAY in particular relate to</p> <ul style="list-style-type: none"> <li>(a) conditions of access which MUST or MAY be given to a database</li> <li>(b) management of a database</li> <li>(c) technical specifications of a database</li> <li>(d) security of a database</li> <li>(e) the transfer of information from one database to another</li> </ul>		<p>This would empower the Sec of State to tell these bodies how they should operate by issuing "guidance" which does not have to be issued by delegated legislation and so would not be scrutinised in advance by Parliament.</p> <p>By "DIRECTION" the Sec of State would have power to regulate access to the database and what should be done with the data on it, who it should be shared with and whether it should be transferred from one database to another. This would not be scrutinised by Parliament or subject to any control.</p>
<p><b>ESTABLISHMENT OF LSCBs</b></p> <p>cl 9(1 &amp; 2) each CSA MUST establish a Local Safeguarding Children Board (LSCB) for their area which MUST include representatives of the <b>CSA</b>, each <b>Board Partner</b>, (in its area) "as the Sec of State may by regulation prescribe".</p>	<p>cl 9(3)<b>Board Partner</b> =any District Council, chief officer of police, local probation board, Strategic Health Authority, Primary Care Trust, NHS Trust and Foundation Trust, a person providing services under s114 Learning and Skills Act 2000, Children and Family Court Advisory and Support Service (CAFCASS), governor of secure training centre, prison governor in the CSA's area</p>	<p>Nearly the same people as defined in "relevant partner" - seems additional cost to do substantially the same job.</p>

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<p>cl 9(4) CSA MUST take reasonable steps to ensure that LSCB includes representatives of <b>relevant persons and bodies</b> prescribed by Sec of State</p> <p>cl 9(5) LSCB MAY co-opt representatives of other <b>relevant persons and bodies</b> after consulting <b>Board Partners</b></p> <p>cl 9(7) CSA's and <b>Board Partners</b> MUST co-operate</p>	<p>cl 9(6) <b>relevant persons and bodies</b> are those of any nature which exercise functions or are engaged in activities relating to children in the CSA's area</p>	<p>So the LSCB has to be comprised of all those who are "relevant partners".</p>
<p>cl 9(8) two or more CSA's can combine to create a joint LSCB</p>		<p>There is no limit to the number of LSCB's which can combine in this way.</p>
<p><b>FUNCTIONS AND PROCEDURE OF LSCBs</b></p> <p>cl 10(1) the objective of an LSCB is (a) to co-ordinate what is done by each representative person or body on the LSCB for the purposes of safeguarding and promoting the welfare of <b>children</b> in its area, and (b) to ensure the effectiveness of what is done by each such person or body</p> <p>cl 10(2) "the functions in relation to its objective" are "as the Sec of State MAY by regulations prescribe" (which MAY include review or investigation)</p> <p>cl 10(3) the "procedures" of the LSCB MAY be provided for by regulation by the Sec of State</p>	<p>cl 49(1) <b>children</b> =persons under the age of 18 (but also see cl 6(8) which extends the class of person for who arrangements may be made in certain circumstances to those under 25)</p>	<p>Without knowing what the Sec of State might prescribe by regulation as to the functions and procedures of LSCBs, it is impossible to criticise - save that these are Henry VIII powers.</p>
<p>cl 12(1) empowers the Sec of State to make provision as to the functions of CSA's in relation to LSCBs by regulation</p> <p>cl 12(2) provides that CSA's and Board Partners in exercising their LSCB functions MUST have regard to guidance given by the Sec State</p>		<p>As with other provisions, the govt is asking for wide powers to issue regulations to set up CSAs and LSCBs and say how they will operate. The Sec of State would be able to tell these bodies how they should operate by issuing "guidance" which does not have to be issued by delegated legislation and so would not be scrutinised in advance by Parliament.</p>
<p><b>DIRECTOR OF CHILDREN'S SERVICES</b></p> <p>cl 13 provides that each CSA in England MUST appoint a Director of Children's Services for its functions as a local education authority (LEA) (save for higher and further education), social services department, former looked after children and any functions under s31 Health Act 1999 which relate to children, and other functions conferred upon or exercisable by a CSA as an LEA as the Sec of State MAY by regulations prescribe. In doing this the CSA MUST have regard to guidance issued by the Sec of State.</p> <p>2 or more CSA's can appoint the same Director of Children's Services</p> <p>The amendments set out in Schedule 2 come into effect on a day appointed by the Sec of State by order, but if a CSA appoints a Director they come into effect before the appointed day.</p>		<p>Amendments can have effect before they are by order of the Sec of State brought into force?</p>

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<p><b>LEAD MEMBER FOR CHILDREN'S SERVICES</b>            cl 14 CSA MUST appoint a "lead member for children's services" for discharging the functions exercisable by its Director of Children's Services.</p>		
<p><b>INSPECTIONS OF CHILDREN'S SERVICES</b>            cl 15 provides for the Sec of State to require reviews to be carried out into the provision of <b>children's services</b> in each CSA "to evaluate the extent to which, taken together, the children's services being reviewed improve the well-being of <b>children and relevant young persons</b>."</p> <p>cl 15(9) the Sec of State MAY by regulations make provision for reviews and in particular provision            (a) requiring or facilitating the sharing or production of information for the purposes of a review            (b) authorising any person or body conducting a review under this section to enter any premises for the purposes of the review</p> <p>cl 16 the Chief Inspector of School MUST devise a framework for Inspection of Children's Services</p>	<p>cl 18(2)  <b>children's services</b> = anything done for or in relation to children and relevant young persons (alone or with other persons)</p> <p>cl 18(3)  <b>relevant young persons</b> = persons, other than children in relation to whom arrangements under cl 6 MAY be made</p> <p>cl 49(1)  <b>children</b> = persons under the age of 18 (but also see cl 6(8) which extends the class of person for who arrangements may be made in certain circumstances to those under 25)</p>	<p>cl 15(9)(b) appears to give wide powers of entry into premises which are not in any way limited.</p>