

EXPLANATORY MEMORANDUM TO
THE SOCIAL WORKERS REGULATIONS 2018
2018 No. 893

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.

2. Purpose of the instrument

- 2.1 Part 2 of the Children and Social Work Act 2017 establishes Social Work England as the new regulator of social workers in England, taking over from the Health and Care Professions Council (HCPC). This instrument supports the implementation of Social Work England by setting out the detail of the new regulatory framework.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 As the instrument applies only to the regulation of social workers in England, it applies only to England, save for a number of minor and consequential effects outside England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.
- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to the regulation of social workers, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is the subject of an exception within paragraph 140 of Schedule 7A to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Legislative Context

- 4.1 This instrument supports the implementation of Part 2 of the Children and Social Work Act 2017 in setting out the detail of the new regulatory framework under which Social Work England will regulate social workers in England.
- 4.2 During the passage of the Act, Peers raised concerns about the role of Government in social work regulation and the delegation of too much of the detail about the key regulatory responsibilities to secondary legislation. In response, the Act was amended during its passage. Social Work England was established as a body corporate on the face of the Act and its responsibility for core regulatory functions was also set out in the Act, with the operational detail about how regulation will be delivered still reserved for secondary legislation. This indicated clearly the intention to create a body separate from Government and confirmed the role of Social Work England as regulator. In further responding to these concerns, Social Work England's overarching public protection objective was included in the Act, and changes were made to give an oversight role to the Professional Standards Authority for Health and Social Care (the PSA). These changes are intended to align Social Work England with the other health and social care regulators and to clarify the limitations on the role of Government in the regulation of social workers.¹
- 4.3 During these debates, other issues raised included the apparent potential dual role that Social Work England would have as regulator and improvement agency, the cost of transferring regulation and an increase in registration fees as a result, charging education providers for course approvals and insufficient engagement with the sector.
- 4.4 In response, Government clarified the objective and functions of Social Work England in the Act establishing its role firmly as regulator; confirmed that the set up costs would be covered by Government, with no increase in fees to social workers as a result of transfer; set requirements for consultation before Social Work England can introduce or increase fees in relation to its core functions; and, in December 2016 established the Social Work England Advisory Group² to provide a forum for ongoing sector engagement in developing and implementing Social Work England.
- 4.5 Provisions relating to fees to be paid by Social Work England to the PSA are being implemented at the same time at this instrument through The Professional Standards Authority for Health and Social Care (Fees) (Social Work England) Regulations 2018, S.I. 2018/655.

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".

¹ [Lords Report Day Two 08-Nov-16 \[Hansard Volume 776 Columns 1103 – 112\]](#)

² Advisory Group membership: Association of Directors of Adult Social Services, Association of Directors of Children's Services, Association of Professors of Social Work, British Association of Social Workers, Joint University Council - Social Work Education Committee, Local Government Association, Professional Standards Authority, Principal Child and Family Social Worker Network, Principal Adult Social Worker Network, Unison, Shaping Our Lives, Become, Royal Institution of Chartered Surveyors, General Pharmaceutical Council, Department for Education, Department of Health and Social Care.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Education, The Right Honourable Damian Hinds MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Social Workers Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Establishing Social Work England is part of Government’s wider social work reform agenda³, which aims to promote a strong, consistently effective social work profession that is well trained, competent and properly supported to transform the lives of those who are most vulnerable. A number of high-profile incidents have seen the social work profession face greater scrutiny and challenge over the quality and capability of the workforce. Reviews of the social work education system by Sir Martin Narey (2014)⁴ and David Croisdale-Appleby (2014)⁵ found that too often social workers are poorly trained and not ready for frontline practice when they leave social work education.
- 7.2 Government is confident that moving to a single-profession regulator is the best option for social workers, ensuring the development of an in-depth understanding of the profession, the capacity to set profession-specific standards, and the opportunity to operate a fitness to practise system able to identify and support those social workers that are not meeting the standards. As with all health and care profession regulators, the impact of the work undertaken by the social work profession requires a regulatory framework established in legislation. A non-legislative model would lack legal consequence for failings in practice that undermine public protection.
- 7.3 Government’s ambition is to establish a flexible and efficient model of professional regulation, which secures public protection, fosters professionalism and is able to adapt swiftly to future developments. As such, the underpinning policy for the legislative framework utilises recent findings from the PSA’s right-touch reform work⁶ and from the 2014 review of health and social care regulation⁷ carried out by the Law Commission, the Scottish Law Commission and the Northern Ireland Law Commission, to create a modern, agile and proportionate framework, allowing the regulator greater autonomy in setting its own working procedures. In particular, the instrument provides for Social Work England to set much of its procedural detail in rules, following a streamlined oversight process that will maximise Social Work England’s capacity to innovate as practice changes.

Regulatory functions and rule-making

- 7.4 The instrument sets out the detail of how Social Work England will perform its core functions of keeping a register of social workers in England, approving education and training for social workers (including for certain mental health professionals) and

³ [Putting Children First](#)

[Department of Health strategic statement for social work with adults in England 2016-2020](#)

⁴ [Making the education of social workers consistently effective](#)

⁵ [Re-visioning social work education](#)

⁶ [Right touch reform 2017](#)

⁷ [Regulation of health and social care professionals](#)

making arrangements for the operation of the fitness to practise system. It also replicates criminal offences under the existing regime.

- 7.5 The instrument requires Social Work England to register social workers on the basis that they meet the professional standards determined by Social Work England under the Act, are appropriately qualified, and have the necessary knowledge of English. Introducing English language requirements for all social workers in England recognises that it is vital that social workers can understand and communicate effectively with vulnerable adults, children, their families and other professionals in order to practise safely and effectively. Including these provisions is also in line with some of the other professional regulators and follows the introduction of the code of practice on English language requirements for public sector workers⁸. Social Work England is also provided with powers to annotate the register in relation to both post qualification specialisms and expired, as well as current, fitness to practise sanctions, where this supports public protection.
- 7.6 Through the instrument, Social Work England is required to operate a scheme for approval, monitoring and re-approval of social work education and training, and is permitted to attach conditions to approval, supporting a proportionate approach to improvement within specified timescales. The instrument provides for this approval process to be set out in rules, recognising the importance of creating a system that can adapt with emerging research and evidence. It also allows Social Work England to use the scheme to approve post-qualification training. The instrument also transfers responsibility for approving courses for Approved Mental Health Professionals from HCPC to Social Work England. Legislative amendments also transfer responsibility for specifying training for Best Interest Assessors to Social Work England.
- 7.7 Social Work England is required to operate a fitness to practise system. The instrument sets out the grounds under which a social worker's practice may be found to be impaired. The instrument also sets a framework for effective and proportionate action to tackle impaired fitness to practise. This includes providing for more efficient means of resolving cases where a registrant agrees the impairment and proposed outcome and expedited processes where registrants have been convicted of certain very serious offences or other criminal offences resulting in custodial sentences.
- 7.8 The instrument prescribes the role that the Secretaries of State will have, in terms of oversight of all rules set by Social Work England, approving the terms of appointment of advisers, and exercising powers of intervention in the event of the regulator's default
- 7.9 Social Work England will be required to make rules in relation to many of its functions. For example, rules relating to the payment of fees, and rules setting out the criteria by which it will determine whether there are reasonable grounds for investigating whether a social worker's fitness to practise is impaired. The instrument requires that rules be submitted to the Secretary of State for approval before they can come into force. The process provides sufficient oversight without unnecessary delay, allowing Social Work England to operate more efficiently.
- 7.10 The instrument requires Social Work England to consult the sector when deciding its rules, publish information and advice about its functions that is appropriate to the

⁸ [English language requirement for public sector workers: code of practice](#) under Part 7 of the immigration Act 2016

sector, and to co-operate with, amongst others, social work employers and educators for the purposes of exercising its functions. These provisions are in line with the approach to create a modern, collaborative regulator with evidence underpinning operation.

Other legislation

- 7.11 The instrument amends other legislation enabling Social Work England to recognise social workers benefitting from European Union rights for mutual recognition of professional qualifications and ensuring the regulator is subject to relevant UK equality legislation.

Level of public interest

- 7.12 Public interest in social work regulatory policy has been limited. Public interest is more focused on the frontline practice that regulation underpins. However, taking steps to establish Social Work England and consulting on the draft regulatory framework has attracted some sector media coverage and significant engagement by the sector. Sector media coverage focused on factual reporting of proposed changes in the consultation document and noted some of the complexities of new aspects of registration and fitness to practise. This has been addressed through the consultation process, as set out below.

8. Consultation outcome

- 8.1 A public consultation on the proposed secondary legislative framework ran from 8th February to 21st March 2018. Whilst the formal consultation period was relatively limited, this built on extensive pre-consultation work with a broad range of sector partners. From September 2017, regular meetings with the Regulatory Expert Group⁹ helped to shape the proposed regulatory framework, alongside meetings with the Social Work England Advisory Group (which has been meeting since December 2016). As part of the consultation process officials also facilitated 11 events across the country with members of the principal social workers network¹⁰, education providers, sector organisations and service users, amongst others.
- 8.2 The consultation received 198 written responses, including 43 from organisations (social worker networks, local authorities, unions, charities, education providers and service user groups, amongst others). Views gathered at the events mentioned above and other direct engagement are also reflected in the final analysis and response to the consultation.
- 8.3 Government is confident that this was an effective consultation based on the range of people and organisations who responded. The consultation response is available at: <https://www.gov.uk/government/consultations/social-work-england-secondary->

⁹ Regulatory Expert Group membership: Royal Institution of Chartered Surveyors, General Medical Council, Banking Standards Board, General Osteopathic Council, General Pharmaceutical Council, Professional Standards Authority, Rosalyn Hayles, General Dental Council, Solicitors Regulation Authority, General Optical Council, Law Commission, Legal Services Board, DfE Social Work England Project Implementation.

¹⁰ Recommendation 14 of Professor Eileen Munro's review of Child Protection proposed that local authorities should designate a Principal Child and Family Social Worker (PCFSW), a senior manager with lead responsibility for social work practice in the local. The Principal Social Worker (PSW) networks bring together PSWs from councils to share learning, and help shape and support practice and policy at local and national levels. There are two networks one for adults (including mental health) and one for children and family PSWs.

[legislative-framework](#). We have provided the Government response as a report to accompany the laying of regulations, which is a requirement of the Act.

- 8.4 Many respondents recognised the potential benefits that a profession specific regulator will bring to social workers in England. Almost all proposals received a positive majority; between 70% - 80% of those who answered the question.
- 8.5 Where appropriate, changes have been made to the instrument as a result of the following concerns and views shared:
- a) Respondents were clear that the fitness to practise framework should ensure a clear separation between investigation and adjudication. The instrument clarifies this.
 - b) A particular concern was raised about the proposed process for making interim orders and whether this was compatible with the European Convention on Human Rights (ECHR). Interim orders can now only be made by adjudicators, rather than case examiners.
 - c) There were some concerns regarding the impact on students of the power to suspend approval of education courses as a remedial measure. Social Work England will not have power to suspend approval of education courses or training as a remedial measure.
 - d) The majority of respondents thought that oversight should apply to all rules. All rules will generally be subject to a minimum 28-day oversight period, coming into force on a date determined by the regulator at the end of this period, unless the Secretary of State objects or an earlier date is agreed between the regulator and Secretary of State. The regulations also clarify that the Secretary of State can use existing legislative power to seek independent advice from the PSA in considering proposed rules¹¹.
 - e) Some concerns were raised about the threshold for regulatory failure and the potential for political interference if the Secretary of State is able to take over regulatory functions. In response to these concerns, the draft regulations restrict the Secretary of State from making fitness to practise determinations or decisions about an individual social worker's registration status in the event of taking over regulatory functions.
 - f) In reviewing the proposed list of offences that would result in automatic removal, modern slavery offences have been added as this is in line with the other offences listed, such as trafficking.
 - g) We consulted on proposals relating to the bodies with which Social Work England should be required to co-operate, in addition to those already required under the 2017 Act. A significant majority of respondents agreed that Social Work England should be required to co-operate with relevant inspectorates, the police, NHS bodies and the Disclosure and Barring Service (DBS). The draft regulations reflect this.
- 8.6 Respondents urged further clarity on the role of Government in relation to Social Work England and vocalised strong support for collaboration between Social Work England and the sector, and the importance of minimising disruption to the profession during the transfer of regulatory functions. While these responses fall outside the

¹¹ By virtue of section 26A(1A) of the National Health Service Reform and Health Care Professions Act 2002, the Secretary of State may seek the advice of the Professional Standards Authority for Health and Social Care in considering proposed rules.

scope of the consultation on the secondary legislative framework, Government expects Social Work England to work closely with the sector through its consultation on standards and regulatory rules, and as it establishes itself as the new regulator for social workers in England.

9. Guidance

9.1 No additional guidance is being issued.

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 The instrument does not impose any additional requirements directly on organisations employing social workers nor does it add to their costs. In relation to education providers the instrument permits Social Work England to charge a fee for course approvals. This reflects powers already available to the current regulator. Of itself, the power to charge a fee does not automatically impose any new costs. If the regulator decides to charge a fee for course approval, the level of any such fee would be subject to public consultation and Secretary of State approval under requirements in the Act.

10.4 The full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Education, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT and at: <https://www.gov.uk/government/consultations/social-work-england-secondary-legislative-framework>.

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 objective of this instrument is to enable Social Work England to deliver its regulatory functions and meet its public protection objective, to establish respect from the profession, employers and educators for the challenge and confidence it gives them as a regulator and to prioritise the improvements in regulation it seeks to make, starting with the education of new entrants. It will achieve these objectives by setting clear professional and education and training standards, ensuring those registered meet the standards and remain fit to practise.

12.2 The objective will be monitored through standard arrangements between the Department for Education, as the sponsoring department, and Social Work England. In addition, section 64 of the Children and Social Work Act 2017 requires the Secretary of State to commission an independent person to review and report on the first five years of the operation of Part 2 of the 2017 Act. The reviewer's report must be laid before Parliament along with the Secretary of State's response to the report.

12.3 The PSA also has an ongoing role overseeing the performance of Social Work England in delivering its regulatory functions. This is in the context of the PSA's general functions as set out in section 25 of the National Health Service Reform and Health Care Professions Act 2002.

13. Contact

- 13.1 Andrew Senior at the Department for Education Telephone: 0114 274 2624 or email: andrew.senior@education.gov.uk can answer any queries regarding the instrument.