

# EDUCATION AND TRAINING (WELFARE OF CHILDREN) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Education and Training (Welfare of Children) Bill as brought from the House of Commons on 12 March 2021 (HL Bill 178).

- These Explanatory Notes have been provided by the Department for Education, with the consent of Baroness Blower, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each clause of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes should be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 There is an existing duty on local authorities, the governing bodies of maintained schools and the governing bodies of FE institutions to make arrangements in regard to the welfare of children which can be found in section 175 of the Education Act 2002. The Bill extends the duty to all 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 Bill will ensure 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 Bill.
- 3 The Bill 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 Bill 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 existing 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 Education Act 2002. There has recently 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 Bill 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 provision 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 In terms of T Levels, any providers funded to deliver T Levels are expected to be captured by the duties.

- 8 The Bill 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 Bill amends section 175 of the Education Act 2002 and makes a consequential amendment to section 16 of the Act. Section 16 of the Education Act 2002 enables the Secretary of State to provide financial assistance on any terms that the Secretary of State considers appropriate. Section 175 of the Education Act 2002 imposes duties on local education authorities, the governing bodies of maintained schools and the governing bodies of FE 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 Bill also amends section 101 of the Apprenticeships, Skills, Children and Learning Act 2009 to insert a new section 101A into the Act. Section 100 of the Apprenticeships, Skills, Children and Learning Act 2009 (which is referred to in the Bill) 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 the Apprenticeships, Skills, Children and Learning Act 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 Bill extends to England and Wales and will apply 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. As the Bill is a Private Member's Bill, the English votes provisions in the Standing Orders of the House of Commons relating to Public Business do not apply to the Bill.

## Commentary on provisions of Bill

### Clause 1: Extension of duties in relation to welfare of children: further education

- 13 Clause 1 of the Bill inserts into section 175 of the Education Act 2002 a new section 175(3A) which extends the safeguarding duty 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 considered to be the Academy Trust that is responsible for the running of the Academy. The Academy must also take into account any guidance issued by the Secretary of State.
- 14 Clause 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 those that either enter into agreements with the Secretary of State for the provision of further education (new section 175(3B)(a)) or where the Secretary of State provides that institution with financial assistance for the provision of further education (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.

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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 provider, or the terms of the financial assistance provided, require the proprietor to comply with the safeguarding duty. The proprietor will be those that are responsible for the management of that institution and 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. This includes 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. Sub-section (6) explains what ‘appropriate authority’ means in the Bill – for Academy schools, alternative provision Academies and non-maintained special schools, the proprietor, for maintained schools, the governing body and for pupil referral units, the local authority.

### Clause 2: Extension of duties in relation to welfare of children: apprenticeships

- 17 Clause 2 inserts into the Apprenticeships, Skills, Children and Learning Act 2009 new section 101A, which extends the safeguarding duty to apprenticeship training providers (which receive funding under section 100(1B)) 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 duty. The safeguarding duty 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. The duty also specifies that they must have regard to any guidance by the Secretary of State in considering what arrangements are required.

### Clause 3: Extent, commencement and short title

- 20 Clause 3(1) sets out the territorial extent of the Bill, that is, the legal jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill 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 Clause 3(3) establishes that the short title is the Education and Training (Welfare of Children) Act 2021.

## Commencement

- 23 This Bill will come into force two months after the day on which it receives Royal Assent.

## Financial implications of the Bill

- 24 There are no financial implications of this Bill. The providers that this Bill extends the statutory safeguarding duties to already have safeguarding requirements as part of their funding agreements with the Secretary of State, and their safeguarding procedures will be

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considered as part of any Ofsted inspection. The expectations of providers to have appropriate safeguarding arrangements in place for children accessing education or training are not changed by this Bill.

## **Parliamentary approval for financial costs or for charges imposed**

- 25 As there are no financial implications of this Bill, neither a money resolution nor a Ways and Means resolution are necessary to authorise the provisions of the Bill.

## **Compatibility with the European Convention on Human Rights**

- 26 The provisions of the Bill are compatible with the Convention rights. The Bill puts 16-19 Academies, SPIs and ILPs under a duty to comply with the safeguarding duties. This engages Article 3 of the Convention which requires that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. The Bill is also in line with Article 24(1) of the European Charter of Fundamental Rights, which requires children to have such protection and care as is necessary for their well-being, as well as Article 4, which requires that no one shall be subject to inhuman or degrading treatment or punishment. The Bill reaffirms the commitments made under the UN Convention on the Rights of the Child, particularly Article 3 of the Convention. This requires state parties to undertake to ensure the child such protection and care as is necessary for his or her well-being and to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with standards established by competent authorities, particularly in the areas of safety, health, and the number and suitability of their staff, as well as competent supervision.

## Annex A – Territorial extent and application in the United Kingdom

27 The Bill extends to England and Wales and applies to England only.<sup>1</sup>

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?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	Yes	Yes	Yes	No
Clause 2	Yes	No	No	No	Yes	Yes	Yes	No

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<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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Ordered by the House of Lords to be printed, 12 March 2021

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