

DIRECTION UNDER SECTION 15(5) OF THE LOCAL GOVERNMENT ACT 1999 AND SECTION 497A(4) and (4B) OF THE EDUCATION ACT 1996 TO DONCASTER METROPOLITAN BOROUGH COUNCIL

WHEREAS

1. In this Direction:
 - a. “the 1996 Act” means the Education Act 1996;
 - b. “the 1999 Act” means the Local Government Act 1999;
 - c. “the August 2013 direction” means the direction of 16 August 2013 given by the Secretaries of State to the authority;
 - d. “the authority” means Doncaster Metropolitan Borough Council;
 - e. “children’s social care functions” means the functions described in section 50(2) of the Children Act 2004;
 - f. “disabled child” has the meaning given by section 17(11) of the Children Act 1989 and references to disabled children are to be construed accordingly;
 - g. “Secretaries of State” means the Secretary of State for Communities and Local Government and the Secretary of State for Education;
 - h. “the Services Agreement” means the contract to be entered into by the authority and the Trust, a draft of which is annexed to this Direction;
 - i. “the Trust” means the Doncaster Children’s Services Trust Limited (registered company number 8805834), established pursuant to the August 2013 direction.
2. Pursuant to the August 2013 direction, the Secretaries of State remain of the view that the most appropriate means of securing that the authority’s children’s social care functions are performed to an adequate standard is the establishment and carrying on of the Trust.
3. The Secretary of State for Communities and Local Government, having considered the representations made by the authority as required by section 15(9) of the 1999 Act, and the Secretary of State for Education, having considered the representations made by the authority, consider it necessary or, as the case may be, expedient in accordance with their powers under section 15(5) of the 1999 Act and section 497A(4) and (4B) of the 1996 Act respectively, to direct the authority, as set out below, in order to ensure:
 - a. the authority’s compliance with the requirements of Part 1 of the 1999 Act in respect of its children’s social care functions; and
 - b. that the authority’s children’s social care functions are performed to an adequate standard.

NOW THEREFORE

4. Pursuant to their powers under section 15(5) of the 1999 Act and section 497A(4) and (4B) of the 1996 Act, the Secretaries of State direct that the authority shall:

DRAFT

- a. secure that:
 - i. the functions set out in Schedule 1 to this Direction are performed by the Trust, on behalf of the authority;
 - ii. the functions set out in Schedule 2 to this Direction are performed by the Trust with respect to children who are not disabled children and by the authority with respect to disabled children;
 - iii. the functions set out in Schedule 3 to this Direction are performed by both the Trust and the authority;
 - b. enter into, and comply with, the terms of the Services Agreement;
 - c. comply with any instructions of either of the Secretaries of State in relation to:
 - i. ensuring that the authority's children's social care functions are performed to an adequate standard;
 - ii. the carrying on or, as the case may be, the winding up of the Trust;
 - iii. terms of the Service Agreement that require the Secretary of State's consent or approval;
 - iv. the operation of this Direction;
 - d. refrain from exercising functions under Part 1 of the Children and Young Persons Act 2008 (entry into arrangements with a body corporate in relation to the discharge of the authority's children's social care functions) in relation to the authority's children's social care functions without the prior written approval of the Secretary of State for Education.
5. In this Direction, a reference to a function under a particular section, part or chapter of any primary legislation ("Act"):
- a. means that function only insofar as it relates to children; and
 - b. includes:
 - i. subsequent amendments, modifications, enactments or re-enactments to or of the particular section, part or chapter of that Act;
 - ii. schedules brought into force by virtue of the particular section, part or chapter of that Act;
 - iii. regulations or orders made under the particular section, part or chapter of that Act.

DRAFT

6. If a particular section, part or chapter of any Act is repealed, to any extent, then the function in question shall cease to apply and neither the Trust nor the authority shall be required to perform that function (to the extent of the repeal).
7. If a particular section, part or chapter of any Act listed in the Schedules to this Direction is to come into force, then the function in question shall not apply, and neither the Trust nor the authority shall be required to perform that function, until such time as, and to the extent that, the relevant provision enters into force.
8. The headings to the statutory provisions set out in the Schedules to this Direction in parentheses are for illustrative purposes only and do not form part of this direction.
9. Nothing in this Direction shall affect any right of the authority to arrange for the provision of additional services by the Trust, whether pursuant to the Services Agreement or otherwise.

Signed on behalf of the Secretary of State for Communities and Local Government and the Secretary of State for Education:

Paul Rowsell

A Senior Civil Servant in the Department for Communities and Local Government

Graham Archer

A Senior Civil Servant in the Department for Education

Date:

DRAFT
SCHEDULE 1

FUNCTIONS TO BE PERFORMED BY THE TRUST

Functions under the Children and Young Persons Act 1933

Section 34 (Receipt of information in relation to the arrest and/or police detention of a child or young person for whom the Authority is providing accommodation).

Section 34A (Duty to attend court during all stages of proceedings in relation to a child or young person charged with an offence and who is in the care of or being accommodated by the Authority).

Functions under the Children and Young Persons Act 1969

Section 5 (Receipt of information in relation to the laying of information in relation to offences by young persons who reside in the Authority's area).

Section 9 (Duties in relation to investigating and providing such information about a young person resident in the Authority's area (e.g. home, school and health backgrounds) as the Authority feels will assist proceedings in courts where such a young person appears in connection with any offence).

Section 23B (Duty to prepare a report in relation to where a young person is to be placed on remand in accommodation provided or arranged by the Authority).

Section 26 (Duty to receive into care any person under the age of 18 years designated by the Secretary of State as subject to orders under authorities of, and on transfer into England from, the Channel Islands or Isle of Man).

Section 30 (Duty to detain a convicted young offender in a community home provided by the Authority in accordance with directions and instructions given by the Secretary of State).

Section 32 (Duty to receive and accommodate a young person who has been detained by a constable following absenteeism from accommodation provided by the Authority).

Schedule 3 (Functions in relation to the transfer of staff and liabilities of existing institutions to be used for the purposes of a community home provided by the Authority).

Functions under the Children Act 1989

Section 31 (Power to apply to the court for a care or supervision order in respect of a child who has not yet attained the age of 17 years (or 16 years where the child is married)).

Section 31A (Duties relating to preparation of a care plan for any child in respect of whom a care order application has been made).

Section 33 (Duty, in relation to any child in respect of whom a care order has been made, to receive into and keep in care the child for so long as the care order remains in force).

DRAFT

Section 34 (Duty, in respect of a child in the care of the Authority, to allow the child contact with the parents, guardian or any person with parental responsibility for the child, subject to provisions of this section).

Section 35 (Duties, in capacity as a Supervisor of a child subject to a supervision order, in relation to the supervision order).

Section 37 (Duties, under direction of the court, in relation to undertaking investigations into the circumstances of a child's welfare).

Section 39 (Power to apply to the court for discharge of a care order by which the Authority is designated).

Section 42 (Duties in relation to allowing access to an officer of the Service to records compiled in connection with the making or proposed making by any person of an application under this Act in respect of the child concerned).

Section 43 (Power to apply to the court for a child assessment order under specified conditions).

Section 44 (Functions in relation to emergency protection orders).

Section 46 (Functions in relation to receiving information from the police regarding the police removing a child into protection).

Section 47 (Duties in relation to investigating whether the Authority should take any action to safeguard or promote the welfare of any child in the Authority's area whom the Authority has been informed has been made the subject of an emergency protection order or is in police protection).

Section 50 (Functions with respect to recovery orders and the recovery of abducted children).

Section 52 (Functions with respect to rules and regulations made under this section).

Schedule 3 (Parts 1 and 2 only: duties in relation to supervision orders).

Functions under the Adoption (Intercountry Aspects) Act 1999

Sections 1 and 2(4) (Duties in relation to giving effect to the Convention on Protection of Children and Co-operation in respect of intercountry adoption).

Functions of the authority under the Adoption and Children Act 2002 in its capacity as an adoption agency

Section 1 (Duty to have regard for various specified matters when coming to a decision relating to adoption of a child).

Section 3 (Duty to maintain an adoption service).

DRAFT

Section 3A (Functions in relation to recruitment, assessment and approval of prospective adopters).

Section 4 (Duty to carry out assessments of needs for adoption support services).

Section 4A (Functions in relation to adoption support services and personal budgets) – upon commencement of this provision.

Section 4B (Functions in relation to adoption support services and the provision of information).

Section 7 (Duties to comply with, and powers under, directions of an appropriate Minister regarding inactive or defunct adoption societies).

Sections 9 to 12 (Duties to comply with various Regulations made under this Act).

Section 13 (Duty to provide an appropriate Minister such information pertaining to adoption as is requested).

Section 14 (Duty to comply with such directions as appear to an appropriate Minister to be necessary for purposes of ensuring that any duties of the Authority pertaining to adoption are complied with).

Section 15 (Duties and powers in relation to inspections of premises in which a child who has been placed by an adoption agency is living).

Section 18 (Powers in relation to placement for adoption and adoption orders).

Section 19 (Powers in relation to placing children for adoption with parental consent).

Section 22 (Duty to apply to the courts for adoption placement orders).

Section 23 (Power to join with another Authority in application for variation of a placement order).

Section 24 (Power in relation to the revocation of placement orders).

Section 25 (Functions in relation to parental responsibility over a child authorised to be placed for adoption).

Section 26 (Powers in relation to making applications for contact orders regarding children placed for adoption).

Section 27 (Powers in relation to variation or compliance with contact orders).

Section 30 (Functions in relation to removal of children who have been placed for adoption).

DRAFT

Section 31 (Duty to return a child not placed or who is a baby within 7 days upon request of parents).

Section 32 (Duty to return a child placed for adoption within 14 days when parental consent is withdrawn).

Section 33 (Duty to return a child placed for adoption within time stipulated by the court when a placement order is refused).

Section 34 (Functions in relation to prohibition on removal of a child who has been placed).

Section 35 (Duties in relation to a child returned by the adopters).

Section 37 (Power to remove a child where adoption does not materialise).

Section 38 (Power to remove a child where the child has been placed with foster parents and adoption does not materialise).

Section 39 (Power to remove a child from a parent's partner where adoption does not materialise).

Section 40 (Power to remove a child in other circumstances where adoption does not materialise).

Section 41 (Duties in relation to recovery orders made by the courts).

Section 42 (Duties in relation to preliminaries to adoption).

Section 43 (Duty to submit to a court considering an adoption order a report on the suitability of the applicants for the adoption order).

Section 44 (Duties in relation to a notice of intended adoption).

Section 45 (Functions in relation to the suitability of adopters).

Sections 51A and 51B (Functions in relation to post-adoption contact).

Section 53 (Functions in relation to regulations modifying the Children Act 1989 in relation to adoption).

Section 54 (Duty to disclose prescribed information to prospective adopters).

Section 56 (Duty to keep and/or disclose prescribed protected information in relation to a person's adoption).

Section 57 (Duties in relation to restriction of disclosure of protected information about a person's adoption).

DRAFT

Section 58 (Duty to keep and/or disclose prescribed other information in relation to a person's adoption).

Section 62 (Functions in relation to processing an application seeking protected information about the adoption of a person who has not yet attained the age of 18 years).

Section 63 (Duty to comply with regulations regarding the availability and provision of counselling in relation to adoption).

Section 64 (Duty to comply with regulations making other provisions in relation to adoption).

Section 79 (Functions in connection with the Adopted Children Register).

Section 83 (Duty to comply with regulations in relation to adoption of a child brought into the United Kingdom).

Section 94 (Powers in respect of certain reports about adoptions).

Section 98 (Duty to comply with regulations conferring functions in relation to disclosure of information regarding adoption).

Section 103 (Duty to give officers of the Service access to certain Authority records).

Section 125 (Functions in relation to the Adoption and Children Act Register).

Section 128 (Duty to comply with request for information prescribed by the Secretary of State for inclusion in the Adoption and Children Register compiled pursuant to section 123 of this Act).

Section 129 (Functions in relation to the disclosure of information).

Functions under the Children and Young Persons Act 2008

Part 1 (Duties and powers in relation to discharging care functions in respect of children and young persons).

Functions under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Section 92 (Duties in relation to arranging or providing for a child remanded to local authority accommodation).

DRAFT
SCHEDULE 2

**FUNCTIONS TO BE PERFORMED BY THE AUTHORITY WITH RESPECT TO
DISABLED CHILDREN AND BY THE TRUST WITH RESPECT TO CHILDREN WHO
ARE NOT DISABLED CHILDREN**

Functions under the Mental Health Act 1983

Section 116 (Duties in relation to arranging for visits to be made to, and other steps to be taken in relation to, a child or young person who has been admitted to a hospital or care home and who is in the care of the Authority by virtue of a care order within the meaning of the Children Act 1989).

Functions under the Health and Social Services and Social Adjudications Act 1983

Section 17 (Powers in relation to charges for welfare services provided by the Authority).

Functions under the Children Act 1989

Section 7 (Duties in relation to providing reports on the welfare of children).

Section 9 (Duties with respect to restrictions on applying for child arrangement orders).

Section 14A (Duties with respect to special guardianship orders).

Section 14D (Power to apply for varying or discharge of a special guardianship order in respect of a child who is the subject of a care order in which the Authority is designated).

Section 14F (Duty with respect to assessment of and making arrangements for the provision of special guardianship services in the Authority's area).

Section 16 (Duty to make an officer of the Authority available to advise, assist and/or befriend any person named in a family assistance order where directed by the Family court).

Section 17 (Duties in relation to safeguarding and promoting the welfare and upbringing by their families of children in the Authority's area who are in need).

Sections 17ZA, 17ZB and 17ZC (Functions with respect to young carers' needs assessments) – upon commencement of these provisions.

Sections 17ZD, 17ZE and 17ZF (Functions with respect to parent carers' needs assessments) – upon commencement of these provisions.

Section 17ZG (Functions with respect to provision of section 17 services where EHC plan maintained).

Section 17A (Power to make direct payments as may be determined and as may be authorised by the appropriate national authority to a person with parental responsibility

DRAFT

for a disabled child, a disabled person with parental responsibility for a child; or a child aged 16 or 17 years).

Section 17ZB (Functions with respect to vouchers for persons with parental responsibility for disabled children).

Section 18 (Duties in relation to provision of day-care for specified children in the Authority's area).

Section 20 (Duties in relation to provision of accommodation for children in need in the Authority's area).

Section 21 (Duties in relation to provision of accommodation for children who are removed or kept away from home).

Section 22 (General duty in relation to children looked after by the Authority).

Section 22A (Duty to provide accommodation for children in the care of the Authority).

Section 22B (Duty to maintain, in respects apart from provision of accommodation, children in the care of the Authority).

Section 22C (Duties in relation to making arrangements for accommodation and maintenance of children looked after by the Authority).

Section 22D (Duty, where the Authority is providing specified accommodation, to review a child's case before making arrangements for alternative accommodation).

Section 22E (Duty in relation to placing a child being looked after by the Authority in a children's home provided, equipped and maintained by an appropriate national authority).

Section 22G (General duty to secure sufficient accommodation for specified children being looked after by the Authority).

Section 23 (Duties in relation to provision of accommodation and maintenance of children being looked after by the Authority).

Section 23ZA (Duty to ensure that specified children are visited by a representative of the Authority).

Section 23ZB (Duty to appoint an independent person to be a specified child's visitor where prescribed by regulations of the appropriate national authority or where it appears to the Authority to be in the child's interest to do so).

Section 23A (Power to prescribe additional categories of relevant children for purposes of duties under Section 23B of this Act).

Section 23B (Duties as to additional functions in respect of relevant children for whom the Authority is the responsible authority).

DRAFT

Section 23C (Duties continuing in relation to former relevant children).

Section 23CZA (Functions with respect to arrangements for certain former relevant children to continue to live with former foster parents).

Section 23CA (Duties in relation to providing assistance to specified former relevant children to pursue education or training).

Section 23D (Duty to appoint a personal adviser for specified young persons as required by the appropriate national authority).

Section 23E (Duties and powers in relation to pathway plans for specified children).

Section 24 (General duties in relation to specified persons qualifying for advice and assistance).

Section 24A (Duties, in respect of specified persons, in relation to considering and then providing, if considered that the person qualifies for it, advice and assistance).

Section 24B (Power to give assistance to any specified person qualifying for assistance by virtue of section 24 by contributing to expenses incurred by that person in living near the place where he or she is or will be employed).

Section 24C (Duty to inform another local authority in whose area a specified person proposes to live or is living).

Section 24D (Duty to establish a procedure for considering representations from a relevant child or other specified person).

Section 25 (Duty not to place a child being looked after by the Authority in secure accommodation (i.e. accommodation provided for the purpose of restricting liberty), subject to specified conditions).

Section 25A (Duty to appoint an individual, prescribed according to regulations, as an independent reviewing officer for the case of a child who is being looked after by the Authority).

Section 25B (Duties in relation to co-operating with any individual appointed as an independent reviewing officer for the cases of any children being looked after by the Authority).

Section 26 (Duties with respect to case reviews).

Section 26A (Duties in relation to making arrangements for the provision of assistance to persons making representations under sections 24D or 26 of this Act).

Section 27 (Duties and powers in relation to co-operation between specified authorities in exercising functions under Part 3 of this Act).

DRAFT

Section 29 (Power to recover from a specified person such charges for services other than advice, guidance or counselling as the Authority considers necessary, subject to conditions in this section).

Section 53 (Duties in relation to provision of community homes for care and accommodation of children looked after by the Authority and for purposes connected with the welfare of children).

Section 55 (Power to refer to the Secretary of State for determination of any dispute arising in respect of a controlled community home).

Section 56 (Duty, pursuant to a notice from the Secretary of State, to conduct a controlled or assisted community home in the Authority's area where the provision of the home is ceased by a voluntary organisation).

Section 57 (Power to withdraw designation of a controlled or assisted community home).

Section 58 (Duty to receive compensation payable by the proprietor of a premises used for purposes of a controlled or assisted community home where provision of the home is ceased or the premises disposed of).

Section 62 (Duties in relation to ensuring safeguarding and promotion of welfare of children by voluntary organisations providing accommodation to the children in the Authority's area).

Section 67 (Duties in relation to ensuring promotion of welfare of children who are privately fostered in the Authority's area).

Section 68 (Powers in relation to giving of consent to a person to foster a child privately where he is otherwise disqualified from doing so by regulations made by the Secretary of State for the purposes of this section).

Section 69 (Power to prohibit private fostering by a person, subject to specified conditions).

Section 80 (Power to give or withhold consent to authorisation of an officer of the Authority by the Secretary of State to inspect children's homes).

Section 83 (Powers in relation to conducting, or assisting other persons conducting, research into specified matters in relation to adoption or accommodation of children in the Authority's area).

Section 85 (Duty to receive notification in respect of children in the Authority's area accommodated by health authorities and local education authorities under specified conditions).

Section 86 (Duty to receive notification in respect of children in the Authority's area accommodated in care homes or independent hospitals under specified conditions).

DRAFT

Section 86A (Duties in relation to arranging for a child for which notification has been received under sections 85 or 86 of this Act to be visited by a representative of the Authority).

Section 100 (Duty to obtain leave of the court for any application for any exercise of the court's jurisdiction with respect to children).

Schedule 1 (Powers in relation to contributions to a child's maintenance under paragraph 15).

Schedule 2 (Duties in relation to providing support for children and families).

Schedule 4 (Functions in relation to management and conduct of community homes).

Schedule 5 (Functions in relation to the placing of children in voluntary homes).

Schedule 6 (Functions in relation to the placing of children in private children's homes).

Schedule 7 (Functions in relation to foster parents and the limit on the number of foster children).

Schedule 8 (Functions in relation to privately fostered children).

Functions under the Carers (Recognition and Services) Act 1995

Section 1 (Duty to assess the ability of carers to provide care).

Functions under the Carers and Disabled Children Act 2000

Whole Act (Functions in relation to assessment of carers' needs; provision of services to carers; and provision of vouchers in respect of care provision).

DRAFT

SCHEDULE 3

FUNCTIONS TO BE PERFORMED BY BOTH BY THE TRUST AND THE AUTHORITY

Functions under the Health Services and Public Health Act 1968

Section 65 (Powers to give financial and other assistance to certain voluntary organisations).

Functions under the Health and Social Care (Community Health and Standards) Act 2003

Section 114 (Duty to consider complaints in relation to discharge of any social services functions of the Authority).

Functions under the Children Act 2004

Section 9A (Duty in respect of safeguarding targets which may be set by the Secretary of State).

Section 10 (Duty to promote co-operation with various relevant partners and such other bodies as the Authority considers appropriate for the purpose of improving well-being of children in the Authority's area).

Section 12 (Duty, where required by the Secretary of State, to establish and operate databases of information in respect of persons to whom arrangements under Section 10 relate).

Section 12C (Power to make payments in respect of expenditure incurred by or for any purposes in connection with a Children's Trust Board on which the Authority or its partners are represented).

Section 12D (Where represented on a Children's Trust Board, a duty to supply to the Board any information requested by it for the purposes of enabling or assisting it to perform its functions).

Sections 13 to 16 (Functions in relation to establishment and operation of a Local Safeguarding Children Board for the area of the Authority).

Section 17A (Duty to have regard for the children and young people's plan of any Children's Trust Board which includes a strategy for co-operation with the Authority).