

Draft Regulations laid before Parliament under section 93(2)(g) of the Immigration Act 2016, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No.

IMMIGRATION

The Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2017

*Made - - - - - ***
Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 73 and 93(6) of the Immigration Act 2016(1).

In accordance with section 93(2)(g) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2017 and come into force on the day after the day on which they were made.

Amendments to Part 5 of the Immigration Act 2016: general

2. Sections 69 to 72 of the Immigration Act 2016 (transfer of responsibility for relevant children)

- (a) extend to Scotland and Northern Ireland (as well as to England and Wales); and
- (b) are amended in accordance with regulations 3 to 6.

Amendments to section 69 of the Immigration Act 2016

3.—(1) Section 69 (transfer of responsibility for relevant children) is amended as follows.

- (2) In subsection (1)—
 - (a) omit “in England”;

- (b) in paragraph (a), for the words from “provisions of” to “(“the relevant provisions”)” substitute “relevant provisions”.
- (3) In subsection (2), for “England” substitute “the same part of the United Kingdom”.
- (4) In subsection (3), for “this section” substitute “subsection (2)”.
- (5) After subsection (3) insert—
- “(3A) The first authority may make arrangements with another local authority in a different part of the United Kingdom (“the second authority”) having the effects mentioned in subsection (3B).
- (3B) The effects are that, from the time at which the arrangements have effect in accordance with their terms—
- (a) the first authority ceases to have any functions in relation to the relevant child (“C”) under the relevant provisions and functions under those provisions may not be conferred on the first authority in relation to C,
- (b) C is to be treated as having a like connection with the second authority, or the area of the second authority, as C had immediately before that time with the first authority or the area of the first authority, and
- (c) C is to be treated for the purposes of the relevant provisions in relation to both the first authority and the second authority as if the first authority had never had any functions in relation to C.
- (3C) Where a statutory provision would, but for this subsection, require the approval of a court or of any other person for arrangements under subsection (3A), that statutory provision does not apply in relation to such arrangements.”.
- (6) In subsection (4), for “Subsection (3)(b) is” substitute “Subsections (3)(b) and (3B)(b) are”.
- (7) In subsection (5), after “(3)” insert “or (3B)”.
- (8) For subsection (8) substitute—
- “(8) In this section “local authority”—
- (a) in relation to England and Wales has the same meaning as in the Children Act 1989 (see section 105(1) of that Act)(2),
- (b) in relation to Scotland means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(3), and
- (c) in relation to Northern Ireland means a Health and Social Care trust established under Article 10 of the Health and Personal Services (Northern Ireland) Order 1991(4).
- (8A) In this section “the relevant provisions”—
- (a) in relation to a local authority in England, means the provisions of or made under Part 3, 4 or 5 of the Children Act 1989 (support for children and families and care, supervision and protection of children), and
- (b) in relation to a local authority in Wales, Scotland or Northern Ireland, means any statutory provision which confers functions on, or which are exercisable by, such an authority which correspond, or are similar, to the functions conferred on a local authority in England by or under any of those Parts of that Act.”.
- (9) After subsection (11) insert—

(2) 1989 c. 41; the definition of “local authority” in section 105 was amended by the Local Government (Wales) Act 1994 (c. 19).

(3) 1994 c. 39.

(4) S.I. 1991/194 (NI 1); Health and Social Services trusts established by Article 10 were renamed Health and Social Care trusts by section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1).

“(12) In this section “statutory provision” means a provision made by or under—

- (a) an Act,
- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, or
- (d) an Act of the Northern Ireland Assembly.

(13) In this section a reference to a part of the United Kingdom is a reference to England, Wales, Scotland or Northern Ireland.”.

Amendments to section 70 of the Immigration Act 2016

4.—(1) Section 70 (duty to provide information for the purposes of transfers of responsibility) is amended as follows.

(2) In subsection (1), omit “in England”.

(3) In subsection (2)(a), for “Children Act 1989” substitute “relevant provisions”.

(4) In subsection (4) for “has the same meaning” substitute “and “relevant provisions” have the same meanings”.

Amendment to section 71 of the Immigration Act 2016

5. In section 71(1)(a) (request for transfer of responsibility for relevant children) omit “in England”, in both places it appears.

Amendments to section 72 of the Immigration Act 2016

6.—(1) Section 72 (scheme for transfer of responsibility for relevant children) is amended as follows.

(2) In subsection (1)—

(a) omit “in England” in the first place it appears;

(b) for “England”, in the second place it appears, substitute “the same part of the United Kingdom”;

(c) for “69” substitute “69(2)”.

(3) After subsection (1) insert—

“(1A) The Secretary of State may prepare a scheme in relation to a local authority to which section 69 applies (“the transferring authority”) and one or more other local authorities in one or more other parts of the United Kingdom (“a receiving authority”) having the effects mentioned in section 69(3B).”.

(4) In subsection (11), for “and “relevant child”” substitute, “, relevant child” and “part of the United Kingdom””.

Consequential amendments to the Immigration Act 2016

7.—(1) In section 93 of the Immigration Act 2016 (regulations) in subsection (2), after subparagraph (f) insert—

“(fa) regulations under section 69(6) or (10),

(fb) regulations under section 70(2)(b),”.

(2) In consequence of regulation 2(a), in section 95 of the Immigration Act 2016 (extent) omit subsection (2).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2018 No. 153*

Date

Name
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 69 of the Immigration Act 2016 (“the 2016 Act”) allows local authorities in England to transfer responsibility for unaccompanied asylum-seeking children to other local authorities in England. These Regulations extend that provision so that local authorities in any part of the United Kingdom may transfer responsibility for such children to local authorities in any part of the United Kingdom.

Sections 70 to 72 of the 2016 Act enable the Secretary of State to issue directions to, and prepare schemes for transfer for, local authorities in England. Regulations 3 to 6 of these Regulations allow such directions and schemes to apply in relation to local authorities in all parts of the United Kingdom.

Section 93 of the 2016 Act provides for the Parliamentary procedure applicable to regulations made under that Act. Regulation 7 of these Regulations provides for regulations under sections 69 and 70 in relation to England to be subject to the affirmative resolution procedure so as to align that with the procedure which will be applicable for such regulations as they apply to the rest of the United Kingdom.

Regulation 7 also makes a consequential amendment to section 95 of the 2016 Act.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.