

SCHEDULES

SCHEDULE 5

Section 115

CHILDREN’S COMMISSIONER: MINOR AND CONSEQUENTIAL AMENDMENTS

Inquiries

- 1 (1) Section 3 of the Children Act 2004 (inquiries initiated by Commissioner) is amended as follows.
 - (2) Omit subsection (3) (requirement to consult the Secretary of State before holding an inquiry).
 - (3) In subsection (7) for “under any enactment” substitute “of a public nature”.
- 2 (1) Section 4 of the Children Act 2004 (inquiries held on the direction of the Secretary of State) is repealed.
 - (2) In consequence of sub-paragraph (1), omit the following provisions of the Children Act 2004—
 - (a) section 5(6) and (7) (inquiries in Wales),
 - (b) section 6(7) to (9) (inquiries in Scotland), and
 - (c) section 7(7) to (9) (inquiries in Northern Ireland).

Functions of Commissioner: children in Wales, Scotland and Northern Ireland

- 3 (1) Section 5 of the Children Act 2004 (functions of Commissioner in Wales) is amended as follows.
 - (2) In subsection (1), for “promoting awareness of the views and interests of children in Wales” substitute “promoting and protecting the rights of children in Wales”.
 - (3) After subsection (1) insert—

“(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Wales.”
 - (4) For subsection (2) substitute—

“(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children’s Commissioner’s function under subsection (1) as in relation to the Commissioner’s primary function.

(2A) For the purposes of subsection (2)—

 - (a) section 2(3)(i) has effect as if for “in England” there were substituted “in Wales, except in so far as relating to any matter falling within the remit of the Children’s Commissioner for Wales under section 72B, 73 or 74 of the Care Standards Act 2000,”

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- (b) sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”,
 - (c) section 2E(1) has effect as if “and the function under section 2D” were omitted, and
 - (d) section 2F(1) has effect as if “or the function under section 2D” were omitted.”
- 4 (1) Section 6 of the Children Act 2004 (functions of Commissioner in Scotland) is amended as follows.
- (2) In subsection (1), for “promoting awareness of the views and interests of children in Scotland in relation to reserved matters” substitute “promoting and protecting the rights of children in Scotland where those rights are or may be affected by reserved matters”.
- (3) After subsection (1) insert—
- “(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Scotland.”
- (4) For subsection (2) substitute—
- “(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children’s Commissioner’s function under subsection (1) as in relation to the Commissioner’s primary function.
- (2A) For the purposes of subsection (2)—
- (a) section 2(3)(i) has effect as if for “in England” there were substituted “in Scotland, in relation to reserved matters,”,
 - (b) sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”,
 - (c) section 2E(1) has effect as if “and the function under section 2D” were omitted, and
 - (d) section 2F(1) has effect as if “or the function under section 2D” were omitted.”
- 5 (1) Section 7 of the Children Act 2004 (functions of Commissioner in Northern Ireland) is amended as follows.
- (2) In subsection (1), for “promoting awareness of the views and interests of children in Northern Ireland in relation to excepted matters” substitute “promoting and protecting the rights of children in Northern Ireland where those rights are or may be affected by excepted matters”.
- (3) After subsection (1) insert—
- “(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Northern Ireland.”
- (4) For subsection (2) substitute—

Status: This is the original version (as it was originally enacted).

- “(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children’s Commissioner’s function under subsection (1) as in relation to the Commissioner’s primary function.
- (2A) For the purposes of subsection (2)—
- (a) section 2(3)(i) has effect as if for “in England” there were substituted “in Northern Ireland, in relation to excepted matters,”
 - (b) sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”,
 - (c) section 2E(1) has effect as if “and the function under section 2D” were omitted, and
 - (d) section 2F(1) has effect as if “or the function under section 2D” were omitted.”

Young persons

- 6 (1) For section 9 of the Children Act 2004 (care leavers and young persons with learning disabilities) substitute—

“9 Commissioner’s functions in relation to certain young people

- (1) This section applies for the purposes of this Part, other than sections 2A and 8A (and references in this Part to a child who is within section 8A).
- (2) For the purposes of the Children’s Commissioner’s functions in respect of children in England, a reference to a child includes, in addition to a person under the age of 18—
 - (a) a person aged 18 or over for whom an EHC plan is maintained by a local authority,
 - (b) a person aged 18 or over and under 25 to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16, or
 - (c) a person aged 18 or over and under 25 who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16.
- (3) For the purposes of the Children’s Commissioner’s functions in respect of children in Wales, Scotland and Northern Ireland, a reference to a child includes, in addition to a person under the age of 18, a person aged 18 or over and under 25—
 - (a) who has a learning disability,
 - (b) who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16, or
 - (c) to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16.
- (4) For the purposes of this section—

“EHC plan” means a plan within section 37(2) of the Children and Families Act 2014 (education, health and care plans);

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“learning disability” means a state of arrested or incomplete development of mind which induces significant impairment of intelligence and social functioning;

a person is “looked after by a local authority” if—

- (a) for the purposes of the Children Act 1989, he or she is looked after by a local authority in Wales;
- (b) for the purposes of the Children (Scotland) Act 1995, he or she is looked after by a local authority in Scotland;
- (c) for the purposes of the Children (Northern Ireland) Order 1995, he or she is looked after by an authority in Northern Ireland.”

(2) Until the coming into force of Part 3 of this Act, section 9 of the Children Act 2004 (as substituted by sub-paragraph (1)) has effect as if—

(a) in subsection (2) for paragraph (a) there were substituted—

“(a) a person aged 18 or over and under 25 in respect of whom an assessment under section 139A of the Learning and Skills Act 2000 (a learning difficulty assessment) has been conducted,” and

(b) in subsection (4) the definition of “EHC plan” were omitted.

Appointment and tenure of Children’s Commissioner

7 In Schedule 1 to the Children Act 2004, in paragraph 3 (appointment and tenure of office)—

- (a) in sub-paragraph (2) for “, to such extent and in such manner as he thinks fit,” substitute “take reasonable steps to”,
- (b) in sub-paragraph (4) for “five years” substitute “six years”, and
- (c) in sub-paragraph (5) for “is eligible for reappointment once only” substitute “is not eligible for reappointment”.

8 In Schedule 1 to the Children Act 2004, after paragraph 3 insert—

“Interim appointments

3A (1) Where there is a vacancy in the office of Children’s Commissioner, the Secretary of State may appoint a person as interim Children’s Commissioner.

(2) Subject to the provisions of this paragraph, a person holds and vacates office as interim Children’s Commissioner in accordance with the terms and conditions of the appointment as determined by the Secretary of State.

(3) An appointment as interim Children’s Commissioner is for a term ending—

- (a) with the appointment of a person as the Children’s Commissioner under paragraph 3, or
- (b) if sooner, at the end of the period of six months beginning with the date on which the appointment as interim Children’s Commissioner was made.

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- (4) A person who has held office as interim Children’s Commissioner—
 - (a) is eligible for reappointment, and
 - (b) is eligible for appointment as the Children’s Commissioner.
- (5) An interim Children’s Commissioner may at any time resign by notice in writing to the Secretary of State.
- (6) The Secretary of State may remove an interim Children’s Commissioner from office if satisfied that the interim Commissioner has—
 - (a) become unfit or unable properly to discharge his or her functions; or
 - (b) behaved in a way that is not compatible with continuing in office.”

Deputy Children’s Commissioner

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- (1) In Schedule 1 to the Children Act 2004, in paragraph 5 (staff)—
 - (a) in sub-paragraph (1) omit “, one of whom shall be appointed as deputy Children’s Commissioner”,
 - (b) omit sub-paragraph (2), and
 - (c) in sub-paragraph (3) omit “Without prejudice to sub-paragraph (2),”.
 - (2) In consequence of sub-paragraph (1), in section 36(6) of the Criminal Justice and Court Services Act 2000 (meaning of “regulated position”), in paragraph (fa) omit “and deputy Children’s Commissioner”.