



# Children and Young Persons Act 2008

## 2008 CHAPTER 23

An Act to make provision about the delivery of local authority social work services for children and young persons; to amend Parts 2 and 3 of the Children Act 1989; to make further provision about the functions of local authorities and others in relation to children and young persons; to make provision about the enforcement of care standards in relation to certain establishments or agencies connected with children; to make provision about the independent review of determinations relating to adoption; and for connected purposes. 9 [13th November 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 12/02/2009

### PART 1

#### DELIVERY OF SOCIAL WORK SERVICES FOR CHILDREN AND YOUNG PERSONS

#### **1 Power to enter into arrangements for discharge of care functions**

- (1) A local authority may enter into arrangements with a body corporate for the discharge by that body of some or all of the relevant care functions of that authority (but subject to section 2).
- (2) The relevant care functions of a local authority are—
  - (a) its social services functions in relation to individual children who are looked after by it; and
  - (b) its functions under sections 23B to 24D of the 1989 Act.

**Status:** Point in time view as at 13/11/2008. This version of this Act contains provisions that are not valid for this point in time.

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- (3) A party (other than the local authority concerned) to arrangements entered into under this section—
- (a) may not include any other local authority; and
  - (b) is referred to in this Part as a provider of social work services.
- (4) Arrangements under this section may be framed by reference to—
- (a) individuals of a particular description;
  - (b) particular localities within the area of the local authority concerned.
- (5) Where an individual child (A) ceases to be looked after by a local authority and a provider of social work services (P) was discharging under arrangements under this Part social services functions of the authority in relation to A at that time, the arrangements may also make provision for P to discharge all or any of the authority's social services functions in relation to A after A ceases to be looked after by the authority.
- (6) The appropriate national authority may by regulations specify—
- (a) functions not falling within subsection (2) which are to be treated as being relevant care functions for the purposes of this section;
  - (b) functions otherwise falling within that subsection which are to be treated as not being relevant care functions for the purposes of this section.
- (7) The appropriate national authority may by regulations make provision about the bodies corporate which may, or may not, be parties to arrangements under this section.
- (8) The appropriate national authority may by regulations provide that arrangements under this section may not be entered into—
- (a) for a period shorter than the prescribed minimum period; or
  - (b) for a period exceeding the prescribed maximum period.
- (9) References in this Part to a child looked after by a local authority have the same meaning as they have in the 1989 Act (by virtue of section 22 of that Act).
- (10) “ Social services functions ” has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42).
- (11) In this Part—
- “ appropriate national authority ” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the Welsh Ministers;
- “ function ” includes any power to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of a function;
- “ local authority ” means—
- (a) in relation to England, the council of a county, a metropolitan district or a London Borough or the Common Council of the City of London; and
  - (b) in relation to Wales, the council of a county or a county borough.

#### **Commencement Information**

**II** S. 1 in force at 16.2.2009 for specified purposes for E. by S.I. 2009/323, art. 2(a)

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## 2 Restrictions on arrangements under section 1

- (1) A local authority must not enter into arrangements under section 1 for the discharge of an excluded function.
- (2) The excluded functions are—
  - (a) the local authority's functions in relation to independent reviewing officers; and
  - (b) its functions as an adoption agency (unless the other party to the arrangements is a registered adoption society).
- (3) The functions referred to in subsection (2)(a) are the local authority's functions under—
  - (a) regulations made under section 26 of the 1989 Act by virtue of subsection (2) (k) of that section (provision for appointment by local authority of a person to carry out certain functions in review of case of child looked after by the authority);
  - (b) section 25A of the 1989 Act (appointment of independent reviewing officer).
- (4) A restriction imposed on a local authority by reference to its area applies to a provider of social work services as if the provider has the same area as the authority.
- (5) A local authority must not enter into arrangements under section 1 unless it is satisfied that the functions to which the arrangements relate will be discharged by, or under the supervision of, registered social workers.
- (6) “Registered social worker” means a person registered as a social worker—
  - (a) in a register maintained under section 56 of the 2000 Act;
  - (b) in the register maintained by the Scottish Social Services Council under section 44 of the Regulation of Care (Scotland) Act 2001 (2001 asp 8); or
  - (c) in the register maintained by the Northern Ireland Social Care Council under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3).
- (7) “Registered adoption society” has the meaning given by section 2(2) of the Adoption and Children Act 2002 (c. 38).

### Commencement Information

**I2** S. 2 in force at 16.2.2009 for E. by [S.I. 2009/323](#), [art. 2\(b\)](#)

## 3 Effect of arrangements under section 1

- (1) Anything done or omitted to be done by or in relation to a provider of social work services in, or in connection with, the exercise or purported exercise of a function which is the subject of the arrangements under section 1 to which the provider is a party is to be treated as done or omitted to be done by or in relation to the local authority which entered into the arrangements.
- (2) Subsection (1)—
  - (a) does not affect the rights and liabilities of the parties to the arrangements as between one another;

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- (b) does not make the local authority liable under section 6 of the Human Rights Act 1998 (c. 42) in respect of any act (within the meaning of that section) of a provider of social work services if the act is one of a private nature;
  - (c) does not prevent any civil proceedings which could otherwise be brought by or against the provider of social work services from being brought; and
  - (d) does not apply for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the provider of social work services.
- (3) A reference in this section to anything done or omitted to be done by or in relation to a provider of social work services includes a reference to anything done or omitted to be done by or in relation to an employee or agent of the provider.
- (4) In this section—
- “civil proceedings” includes a claim for judicial review; and
  - “employee”, in relation to a body corporate, includes any director or other officer of that body.

#### Commencement Information

**I3** S. 3 in force at 16.2.2009 for E. by [S.I. 2009/323](#), [art. 2\(b\)](#)

VALID FROM 12/11/2013

#### **4 Regulation of providers of social work services**

- (1) In section 4 of the 2000 Act (basic definitions for the purposes of the Act), after subsection (9), insert—
- “(10) This Act applies to a provider of social work services as it applies to an agency, except in so far as the undertaking of that provider consists of or includes the carrying on of an establishment; and “provider of social work services” has the same meaning as in Part 1 of the Children and Young Persons Act 2008.”
- (2) In section 5 of that Act (registration authorities)—
- (a) if when this section comes into force the amendment made by paragraph 6(3) of Schedule 5 to the Health and Social Care Act 2008 (c. 14) has not come into force, in subsection (1)(a)(iii), for “and adoption support agencies” substitute “, adoption support agencies and providers of social work services” ; and
  - (b) if that amendment has come into force at that time or subsequently comes into force, in subsection (1A) after paragraph (e) insert “and,
    - (f) providers of social work services in England or, where the activities of a provider of social work services are carried on from two or more branches, the branches in England.”
- (3) In section 121 of that Act (interpretation) after subsection (4) insert—

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“(4A) For the purposes of this Act as it applies to a provider of social work services, the person who carries on that body corporate is the body corporate itself.”

- (4) In section 148(2) of the Education and Inspections Act 2006 (c. 41) (Chief Inspector to make available information about services provided by those for whom that Inspector is the registration authority under Part 2 of the 2000 Act), omit “(in accordance with subsection (1))”.

#### Commencement Information

I4 S. 4 in force at 12.11.2013 for E. by S.I. 2013/2606, art. 2(b)

### 5 Functions under this Part to be social services functions

In Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (functions which are social services functions for the purposes of that Act), at the end insert—

“Children and Young Persons Act 2008

Part 1, in so far as it confers functions on a local authority in England or Wales within the meaning of that Part.....	Making arrangements for the discharge of relevant care functions in relation to certain children and young persons.”
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#### Commencement Information

I5 S. 5 in force at 16.2.2009 for E. by S.I. 2009/323, art. 2(b)

### 6 Piloting and expiry of arrangements under this Part

- (1) The piloting period—
- (a) begins on the day on which section 1(1) comes into force; and
  - (b) ends on the earlier of—
    - (i) the day on which section 4 comes into force; or
    - (ii) the end of the period of five years beginning with the day on which this Act is passed.
- (2) An order bringing section 1 into force may do so by reference to particular local authorities or local authorities of a particular description.
- (3) If the piloting period comes to an end in accordance with subsection (1)(b)(ii), sections 1 to 5 cease to have effect at that time.
- (4) If the period of five years beginning with the day on which this Act is passed ends without an order to bring section 1(1) into force having been made by the Secretary of State, sections 1 to 5 cease to have effect in relation to England at that time.
- (5) If the period of five years beginning with the day on which this Act is passed ends without an order to bring section 1(1) into force having been made by the Welsh Ministers, sections 1 to 5 cease to have effect in relation to Wales at that time.

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- (6) No regulations under section 1(8) may be made so as to come into force before the end of the piloting period; and arrangements entered into during the piloting period must not be for a duration which lasts beyond the end of the period mentioned in subsection (1)(b)(ii).

## PART 2

### FUNCTIONS IN RELATION TO CHILDREN AND YOUNG PERSONS

#### *Well-being*

#### **7 Well-being of children and young persons**

- (1) It is the general duty of the Secretary of State to promote the well-being of children in England.
- (2) The general duty imposed by subsection (1) has effect subject to any specific duties imposed on the Secretary of State.
- (3) The activities which may be undertaken or supported in the discharge of the general duty imposed by subsection (1) include activities in connection with parenting.
- (4) The Secretary of State may take such action as the Secretary of State considers appropriate to promote the well-being of—
  - (a) persons who are receiving services under sections 23C to 24D of the 1989 Act; and
  - (b) persons under the age of 25 of a prescribed description.
- (5) The Secretary of State, in discharging functions under this section, must have regard to the aspects of well-being mentioned in section 10(2)(a) to (e) of the Children Act 2004 (c. 31).
- (6) In this section—
  - “children” means persons under the age of 18; and
  - “prescribed” means prescribed in regulations made by the Secretary of State.

VALID FROM 12/02/2009

#### *Accommodation*

#### **8 Provision of accommodation and maintenance for children who are looked after by a local authority**

- (1) For section 23 of the 1989 Act substitute—

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## **“22A Provision of accommodation for children in care**

When a child is in the care of a local authority, it is their duty to provide the child with accommodation.

## **22B Maintenance of looked after children**

It is the duty of a local authority to maintain a child they are looking after in other respects apart from the provision of accommodation.

## **22C Ways in which looked after children are to be accommodated and maintained**

- (1) This section applies where a local authority are looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).
- (3) A person (“P”) falls within this subsection if—
  - (a) P is a parent of C;
  - (b) P is not a parent of C but has parental responsibility for C; or
  - (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
  - (a) would not be consistent with C's welfare; or
  - (b) would not be reasonably practicable.
- (5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, the most appropriate placement available.
- (6) In subsection (5) “placement” means—
  - (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;
  - (b) placement with a local authority foster parent who does not fall within paragraph (a);
  - (c) placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or
  - (d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.
- (7) In determining the most appropriate placement for C, the local authority must, subject to the other provisions of this Part (in particular, to their duties under section 22)—
  - (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;

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- (b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and
  - (c) comply with subsection (9) unless that is not reasonably practicable.
- (8) The local authority must ensure that the placement is such that—
- (a) it allows C to live near C's home;
  - (b) it does not disrupt C's education or training;
  - (c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;
  - (d) if C is disabled, the accommodation provided is suitable to C's particular needs.
- (9) The placement must be such that C is provided with accommodation within the local authority's area.
- (10) The local authority may determine—
- (a) the terms of any arrangements they make under subsection (2) in relation to C (including terms as to payment); and
  - (b) the terms on which they place C with a local authority foster parent (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).
- (11) The appropriate national authority may make regulations for, and in connection with, the purposes of this section.
- (12) In this Act “local authority foster parent” means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2.

### **22D Review of child's case before making alternative arrangements for accommodation**

- (1) Where a local authority are providing accommodation for a child (“C”) other than by arrangements under section 22C(6)(d), they must not make such arrangements for C unless they have decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 26.
- (2) But subsection (1) does not prevent a local authority making arrangements for C under section 22C(6)(d) if they are satisfied that in order to safeguard C's welfare it is necessary—
- (a) to make such arrangements; and
  - (b) to do so as a matter of urgency.

### **22E Children's homes provided by appropriate national authority**

Where a local authority place a child they are looking after in a children's home provided, equipped and maintained by an appropriate national authority under section 82(5), they must do so on such terms as that national authority may from time to time determine.



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## **22F Regulations as to children looked after by local authorities**

Part 2 of Schedule 2 has effect for the purposes of making further provision as to children looked after by local authorities and in particular as to the regulations which may be made under section 22C(11).”

- (2) Schedule 1 (which makes amendments supplementary to, and consequential on, the provisions of this section, including a power to make regulations about an independent review mechanism for certain decisions in relation to foster parents) has effect.
- (3) Until the coming into force of subsection (1), Schedule 2 to the 1989 Act has effect with the modifications specified in Schedule 2.

VALID FROM 01/04/2011

## **9 General duty of local authority to secure sufficient accommodation**

After section 22F of the 1989 Act (which is inserted by section 8) insert—

### **“22G General duty of local authority to secure sufficient accommodation for looked after children**

- (1) It is the general duty of a local authority to take steps that secure, so far as reasonably practicable, the outcome in subsection (2).
- (2) The outcome is that the local authority are able to provide the children mentioned in subsection (3) with accommodation that—
  - (a) is within the authority's area; and
  - (b) meets the needs of those children.
- (3) The children referred to in subsection (2) are those—
  - (a) that the local authority are looking after,
  - (b) in respect of whom the authority are unable to make arrangements under section 22C(2), and
  - (c) whose circumstances are such that it would be consistent with their welfare for them to be provided with accommodation that is in the authority's area.
- (4) In taking steps to secure the outcome in subsection (2), the local authority must have regard to the benefit of having—
  - (a) a number of accommodation providers in their area that is, in their opinion, sufficient to secure that outcome; and
  - (b) a range of accommodation in their area capable of meeting different needs that is, in their opinion, sufficient to secure that outcome.
- (5) In this section “accommodation providers” means—
  - local authority foster parents; and

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children's homes in respect of which a person is registered under Part 2 of the Care Standards Act 2000.”

VALID FROM 01/09/2009

*Independent reviewing officers*

**10 Independent reviewing officers**

(1) After section 25 of the 1989 Act insert—

*“Independent reviewing officers*

**25A Appointment of independent reviewing officer**

- (1) If a local authority are looking after a child, they must appoint an individual as the independent reviewing officer for that child's case.
- (2) The initial appointment under subsection (1) must be made before the child's case is first reviewed in accordance with regulations made under section 26.
- (3) If a vacancy arises in respect of a child's case, the local authority must make another appointment under subsection (1) as soon as is practicable.
- (4) An appointee must be of a description prescribed in regulations made by the appropriate national authority.

**25B Functions of the independent reviewing officer**

- (1) The independent reviewing officer must—
  - (a) monitor the performance by the local authority of their functions in relation to the child's case;
  - (b) participate, in accordance with regulations made by the appropriate national authority, in any review of the child's case;
  - (c) ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the local authority;
  - (d) perform any other function which is prescribed in regulations made by the appropriate national authority.
- (2) An independent reviewing officer's functions must be performed—
  - (a) in such manner (if any) as may be prescribed in regulations made by the appropriate national authority; and
  - (b) having regard to such guidance as that authority may issue in relation to the discharge of those functions.
- (3) If the independent reviewing officer considers it appropriate to do so, the child's case may be referred by that officer to—

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- (a) an officer of the Children and Family Court Advisory and Support Service; or
  - (b) a Welsh family proceedings officer.
- (4) If the independent reviewing officer is not an officer of the local authority, it is the duty of the authority—
- (a) to co-operate with that individual; and
  - (b) to take all such reasonable steps as that individual may require of them to enable that individual's functions under this section to be performed satisfactorily.”
- (2) After section 25B of that Act (which is inserted by subsection (1)) insert—

**“25C Referred cases**

- (1) In relation to children whose cases are referred to officers under section 25B(3), the Lord Chancellor may by regulations—
- (a) extend any functions of the officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings;
  - (b) require any functions of the officers to be performed in the manner prescribed by the regulations.
- (2) The power to make regulations in this section is exercisable in relation to functions of Welsh family proceedings officers only with the consent of the Welsh Ministers.”
- (3) In section 26 of that Act omit—
- (a) subsection (2)(k);
  - (b) subsections (2A) to (2D).

PROSPECTIVE

**11 Power to make further provision concerning independent reviewing officers: England**

- (1) The Secretary of State may by order—
- (a) establish a body corporate to discharge such functions as may be conferred on it by the order; or
  - (b) confer functions on the Service.
- (2) An order under this section may confer functions in relation to England in connection with any or all of the following matters (but no others)—
- (a) the provision of training for persons appointed or to be appointed as independent reviewing officers;
  - (b) the accreditation of persons as independent reviewing officers;
  - (c) the appointment of persons as independent reviewing officers;
  - (d) the management of persons appointed or accredited as independent reviewing officers.

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- (3) An order under this section may, in consequence of the conferral of a function by the order, modify any provision made by or under an enactment—
- (a) relating to independent reviewing officers;
  - (b) where the function is conferred on the Service, relating to the Service.
- (4) An order under this section which establishes a body corporate may provide—
- (a) that the body is to be subject to inspection by the Chief Inspector and may, for that purpose apply, with or without modification, any provision of the Education and Inspections Act 2006 (c. 41);
  - (b) that the functions of the body must be performed in accordance with directions given by the Secretary of State.
- (5) In this section—
- “accreditation” means the process by which a person qualifies for, and remains qualified for, appointment as an independent reviewing officer;
- “the Chief Inspector” means Her Majesty's Chief Inspector of Education, Children's Services and Skills;
- “the Service” means the Children and Family Court Advisory Support Service.

PROSPECTIVE

## **12 Power to make further provision concerning independent reviewing officers: Wales**

- (1) The Welsh Ministers may by order—
- (a) establish a body corporate to discharge such functions as may be conferred on it by the order; or
  - (b) provide for the discharge by them of such functions as may be conferred on them by the order.
- (2) An order under this section may confer functions in relation to Wales in connection with any or all of the following matters (but no others)—
- (a) the provision of training for persons appointed or to be appointed as independent reviewing officers;
  - (b) the accreditation of persons as independent reviewing officers;
  - (c) the appointment of persons as independent reviewing officers;
  - (d) the management of persons appointed or accredited as independent reviewing officers.
- (3) An order under this section may, in consequence of the conferral of a function by the order, modify any provision made by or under an enactment—
- (a) relating to independent reviewing officers;
  - (b) where the function is conferred on the Welsh Ministers, relating to those Ministers.
- (4) An order under this section which establishes a body corporate may provide—
- (a) that the body is to be subject to inspection by an independent inspector specified in or established by the order, and may for that purpose apply,

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with or without modifications, any enactment relating to the carrying out of inspections;

- (b) that the functions of the body must be performed in accordance with directions given by the Welsh Ministers.

(5) In this section “accreditation” has the same meaning as in section 11.

PROSPECTIVE

### 13 Orders under sections 11 and 12: supplementary provisions

- (1) The conferral of any function by an order under section 11 or 12(1)(a) also confers on the recipient power to do anything which is incidental or conducive to, or designed to facilitate, the discharge of that function.
- (2) An order under section 11 or 12 may authorise the recipient to charge fees for the discharge by it of any function conferred by the order.
- (3) An order under section 11 or 12 may transfer property, rights and liabilities to the recipient (and may also provide that anything which might otherwise prevent, penalise or restrict such a transfer is not to do so).
- (4) Where an order makes provision by virtue of subsection (3) in relation to rights and liabilities relating to an employee it must make provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply to that transfer.
- (5) An order under section 11 or 12 may require the recipient to establish a procedure for dealing with complaints relating to the discharge by it of its functions.
- (6) In this section “recipient” means, in relation to a function, the body on which the function is conferred by the order in question, and for this purpose “body” includes the Welsh Ministers.

PROSPECTIVE

### 14 Expiry of powers conferred by sections 11 and 12

- (1) If no order has been made under section 11 by the relevant time, that section, and section 13 so far as it applies for the purposes of that section, cease to have effect.
- (2) If no order has been made under section 12 by the relevant time, that section, and section 13 so far as it applies for the purposes of that section, cease to have effect.
- (3) “The relevant time” is the end of the period of 7 years beginning with the day on which this Act is passed.

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VALID FROM 01/09/2009

### *Visiting*

#### **15 Duty of local authority to ensure visits to looked after children and others**

After section 23 of the 1989 Act insert—

#### *“Visiting*

#### **23ZA Duty of local authority to ensure visits to, and contact with, looked after children and others**

- (1) This section applies to—
  - (a) a child looked after by a local authority;
  - (b) a child who was looked after by a local authority but who has ceased to be looked after by them as a result of prescribed circumstances.
- (2) It is the duty of the local authority—
  - (a) to ensure that a person to whom this section applies is visited by a representative of the authority (“a representative”);
  - (b) to arrange for appropriate advice, support and assistance to be available to a person to whom this section applies who seeks it from them.
- (3) The duties imposed by subsection (2)—
  - (a) are to be discharged in accordance with any regulations made for the purposes of this section by the appropriate national authority;
  - (b) are subject to any requirement imposed by or under an enactment applicable to the place in which the person to whom this section applies is accommodated.
- (4) Regulations under this section for the purposes of subsection (3)(a) may make provision about—
  - (a) the frequency of visits;
  - (b) circumstances in which a person to whom this section applies must be visited by a representative; and
  - (c) the functions of a representative.
- (5) In choosing a representative a local authority must satisfy themselves that the person chosen has the necessary skills and experience to perform the functions of a representative.”

#### **16 Independent visitors for children looked after by a local authority**

- (1) After section 23ZA of the 1989 Act (which is inserted by section 15) insert—

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### **“23ZB Independent visitors for children looked after by a local authority**

- (1) A local authority looking after a child must appoint an independent person to be the child's visitor if—
  - (a) the child falls within a description prescribed in regulations made by the appropriate national authority; or
  - (b) in any other case, it appears to them that it would be in the child's interests to do so.
- (2) A person appointed under this section must visit, befriend and advise the child.
- (3) A person appointed under this section is entitled to recover from the appointing authority any reasonable expenses incurred by that person for the purposes of that person's functions under this section.
- (4) A person's appointment as a visitor in pursuance of this section comes to an end if—
  - (a) the child ceases to be looked after by the local authority;
  - (b) the person resigns the appointment by giving notice in writing to the appointing authority; or
  - (c) the authority give him notice in writing that they have terminated it.
- (5) The ending of such an appointment does not affect any duty under this section to make a further appointment.
- (6) Where a local authority propose to appoint a visitor for a child under this section, the appointment shall not be made if—
  - (a) the child objects to it; and
  - (b) the authority are satisfied that the child has sufficient understanding to make an informed decision.
- (7) Where a visitor has been appointed for a child under this section, the local authority shall terminate the appointment if—
  - (a) the child objects to its continuing; and
  - (b) the authority are satisfied that the child has sufficient understanding to make an informed decision.
- (8) If the local authority give effect to a child's objection under subsection (6) or (7) and the objection is to having anyone as the child's visitor, the authority does not have to propose to appoint another person under subsection (1) until the objection is withdrawn.
- (9) The appropriate national authority may make regulations as to the circumstances in which a person is to be regarded for the purposes of this section as independent of the appointing authority.”

(2) Omit paragraph 17 of Schedule 2 to the 1989 Act.

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VALID FROM 01/04/2011

## **17 Children in long-term care: notification to appropriate officer etc**

- (1) Section 85 of the 1989 Act (children accommodated by health bodies or local education authorities) is amended in accordance with subsections (2) to (5).
- (2) In each of subsections (1) and (2), after “notify” insert “ the appropriate officer of”.
- (3) After subsection (3) insert—
  - “(3A) In this section and sections 86 and 86A “the appropriate officer” means—
    - (a) in relation to a local authority in England, their director of children's services; and
    - (b) in relation to a local authority in Wales, their lead director for children and young people's services.”
- (4) In subsection (4)—
  - (a) for “a local authority have” substitute “ the appropriate officer of a local authority has ”; and
  - (b) for “they”, where it first occurs, substitute “ the local authority ”.
- (5) After that subsection add—
  - “(5) For the purposes of subsection (4)(b), if the child is not in the area of the local authority, they must treat him as if he were in that area.”
- (6) Section 86 of the 1989 Act (children accommodated in care homes or independent hospitals) is amended in accordance with subsections (7) to (10).
- (7) In subsection (1)—
  - (a) for the words “the home”, in the first place where they occur, substitute “ the establishment in question ”;
  - (b) after “notify” insert “ the appropriate officer of ”; and
  - (c) for the words “the home”, in the second place where they occur, substitute “ the establishment ”.
- (8) In subsection (2)—
  - (a) for “the home”, in both places, substitute “ the establishment ”; and
  - (b) after “notify” insert “ the appropriate officer of ”.
- (9) In subsection (3)—
  - (a) for “a local authority have” substitute “ the appropriate officer of a local authority has ”;
  - (b) for “they”, where it first occurs, substitute “ the local authority ”; and
  - (c) in paragraph (a), for “the home” substitute “ the establishment in question ”.
- (10) In subsection (4) for “home” substitute “ care home or independent hospital ”.



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VALID FROM 01/01/2010

## 18 Visits to children in long-term care

After section 86 of the 1989 Act insert—

### **“86A Visitors for children notified to local authority under section 85 or 86**

- (1) This section applies if the appropriate officer of a local authority—
  - (a) has been notified with respect to a child under section 85(1) or 86(1); and
  - (b) has not been notified with respect to that child under section 85(2) or, as the case may be, 86(2).
- (2) The local authority must, in accordance with regulations made under this section, make arrangements for the child to be visited by a representative of the authority (“a representative”).
- (3) It is the function of a representative to provide advice and assistance to the local authority on the performance of their duties under section 85(4) or, as the case may be, 86(3).
- (4) Regulations under this section may make provision about—
  - (a) the frequency of visits under visiting arrangements;
  - (b) circumstances in which visiting arrangements must require a child to be visited; and
  - (c) additional functions of a representative.
- (5) Regulations under this section are to be made by the Secretary of State and the Welsh Ministers acting jointly.
- (6) In choosing a representative a local authority must satisfy themselves that the person chosen has the necessary skills and experience to perform the functions of a representative.
- (7) In this section “visiting arrangements” means arrangements made under subsection (2).”

VALID FROM 28/03/2011

### *Provision of support services for certain children*

## 19 Support for accommodated children

After paragraph 8 of Schedule 2 to the 1989 Act insert—

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#### **“Provision for accommodated children**

- 8A (1) Every local authority shall make provision for such services as they consider appropriate to be available with respect to accommodated children.
- (2) “Accommodated children” are those children in respect of whose accommodation the local authority have been notified under section 85 or 86.
- (3) The services shall be provided with a view to promoting contact between each accommodated child and that child's family.
- (4) The services may, in particular, include—
- (a) advice, guidance and counselling;
  - (b) services necessary to enable the child to visit, or to be visited by, members of the family;
  - (c) assistance to enable the child and members of the family to have a holiday together.
- (5) Nothing in this paragraph affects the duty imposed by paragraph 10.”

VALID FROM 12/02/2009

#### *Education and training*

#### **20 Designated member of staff at school for pupils looked after by a local authority**

- (1) The governing body of a maintained school must designate a member of the staff at the school (“the designated person”) as having responsibility for promoting the educational achievement of registered pupils at the school who—
- (a) are being looked after by a local authority; or
  - (b) fall within subsection (6).
- (2) The governing body must ensure that the designated person undertakes appropriate training.
- (3) The appropriate national authority may by regulations make provision requiring the governing body of a maintained school to ensure that the designated person has qualifications or experience (or both) prescribed by the regulations.
- (4) In exercising its functions under this section a governing body of a maintained school must have regard to any guidance issued by the appropriate national authority.
- (5) For the purposes of subsection (1)(a) a person is “looked after by a local authority” if the person is—
- (a) looked after by a local authority for the purposes of the 1989 Act or the Children (Scotland) Act 1995 (c. 36); or
  - (b) looked after by an authority for the purposes of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

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- (6) A person falls within this subsection if the person—
- (a) is a relevant child within the meaning of section 23A of the 1989 Act or article 34B of the Children (Northern Ireland) Order 1995;
  - (b) is a former relevant child within the meaning of section 23C of the 1989 Act or article 34D of the Children (Northern Ireland) Order 1995; or
  - (c) has been looked after by a local authority for the purposes of the Children (Scotland) Act 1995 at any time after attaining the age of 16.
- (7) In this section—
- “appropriate national authority” means—
- (a) in relation to a governing body of a maintained school in England, the Secretary of State;
  - (b) in relation to a governing body of a maintained school in Wales, the Welsh Ministers;
- “maintained school” has the same meaning as in Chapter 1 of Part 3 of the Education Act 2002 (c. 32) (see section 39(1) of that Act);
- “registered pupil” has the same meaning as in the Education Act 1996 (c. 56) (see section 434(5) of that Act).

## **21 Entitlement to payment in respect of higher education**

- (1) Section 23C of the 1989 Act (continuing functions of local authorities in respect of former relevant children) is amended in accordance with subsections (2) and (3).
- (2) After subsection (5) insert—
- “(5A) It is the duty of the local authority to pay the relevant amount to a former relevant child who pursues higher education in accordance with a pathway plan prepared for that person.
- (5B) The appropriate national authority may by regulations—
- (a) prescribe the relevant amount for the purposes of subsection (5A);
  - (b) prescribe the meaning of “higher education” for those purposes;
  - (c) make provision as to the payment of the relevant amount;
  - (d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by the local authority from a former relevant child to whom a payment has been made.
- (5C) The duty set out in subsection (5A) is without prejudice to that set out in subsection (4)(b).”
- (3) In subsection (9) after “subsection (4)(b)” insert “ or who is in receipt of a payment under subsection (5A) ”.
- (4) In section 776 of the Income Tax (Trading and Other Income) Act 2005 (c. 5) (scholarship income) after subsection (2) insert—
- “(2A) No liability to income tax arises in respect of income from a payment made under section 23C(5A) of the Children Act 1989 (duty to make payments to former relevant children who pursue higher education).”

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VALID FROM 01/09/2009

## **22 Assistance to pursue education or training**

- (1) In section 23B of the 1989 Act omit subsections (4) to (7).
- (2) After section 23C of the 1989 Act insert—

### **“23CA Further assistance to pursue education or training**

- (1) This section applies to a person if—
  - (a) he is under the age of twenty-five or of such lesser age as may be prescribed by the appropriate national authority;
  - (b) he is a former relevant child (within the meaning of section 23C) towards whom the duties imposed by subsections (2), (3) and (4) of that section no longer subsist; and
  - (c) he has informed the responsible local authority that he is pursuing, or wishes to pursue, a programme of education or training.
- (2) It is the duty of the responsible local authority to appoint a personal adviser for a person to whom this section applies.
- (3) It is the duty of the responsible local authority—
  - (a) to carry out an assessment of the needs of a person to whom this section applies with a view to determining what assistance (if any) it would be appropriate for them to provide to him under this section; and
  - (b) to prepare a pathway plan for him.
- (4) It is the duty of the responsible local authority to give assistance of a kind referred to subsection (5) to a person to whom this section applies to the extent that his educational or training needs require it.
- (5) The kinds of assistance are—
  - (a) contributing to expenses incurred by him in living near the place where he is, or will be, receiving education or training; or
  - (b) making a grant to enable him to meet expenses connected with his education and training.
- (6) If a person to whom this section applies pursues a programme of education or training in accordance with the pathway plan prepared for him, the duties of the local authority under this section (and under any provision applicable to the pathway plan prepared under this section for that person) subsist for as long as he continues to pursue that programme.
- (7) For the purposes of subsection (6), the local authority may disregard any interruption in the person's pursuance of a programme of education or training if they are satisfied that he will resume it as soon as is reasonably practicable.
- (8) Subsections (7) to (9) of section 17 apply to assistance given to a person under this section as they apply to assistance given to or in respect of a child

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under that section, but with the omission in subsection (8) of the words “and of each of his parents”.

- (9) Subsection (5) of section 24B applies to a person to whom this section applies as it applies to a person to whom subsection (3) of that section applies.
- (10) Nothing in this section affects the duty imposed by subsection (5A) of section 23C to the extent that it subsists in relation to a person to whom this section applies; but the duty to make a payment under that subsection may be taken into account in the assessment of the person's needs under subsection (3)(a).
- (11) In this section “the responsible local authority” means, in relation to a person to whom this section applies, the local authority which had the duties provided for in section 23C towards him.”
- (3) Section 23E (pathway plans) of the 1989 Act is amended in accordance with subsections (4) and (5).
- (4) In subsection (1)(b) after “23B” insert “ or 23CA ”.
- (5) After subsection (1) insert—
- “(1A) A local authority may carry out an assessment under section 23B(3) or 23CA(3) of a person's needs at the same time as any assessment of his needs is made under—
- (a) the Chronically Sick and Disabled Persons Act 1970;
  - (b) Part 4 of the Education Act 1996 (in the case of an assessment under section 23B(3));
  - (c) the Disabled Persons (Services, Consultation and Representation) Act 1986; or
  - (d) any other enactment.
- (1B) The appropriate national authority may by regulations make provision as to assessments for the purposes of section 23B(3) or 23CA.
- (1C) Regulations under subsection (1B) may in particular make provision about—
- (a) who is to be consulted in relation to an assessment;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment;
  - (d) the considerations to which a local authority are to have regard in carrying out an assessment.
- (1D) A local authority shall keep each pathway plan prepared by them under section 23B or 23CA under review.”
- (6) In paragraph 1 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (ineligibility for support) in sub-paragraph (1)(g), after “23C,” insert “ 23CA, ”.

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VALID FROM 01/01/2010

**23 Extension of entitlements to personal adviser and to assistance in connection with education or training**

- (1) In section 23D(1) of the 1989 Act (power to make provision for personal advisers for certain young persons)—
- (a) for “twenty-one” substitute “ twenty-five ”; and
  - (b) after paragraph (c) insert “; or  
 (“) persons to whom section 23CA applies.”
- (2) In section 24B of that Act (assistance in connection with employment, education and training), in subsection (3)(a) for “twenty-four” substitute “ twenty-five ”.

VALID FROM 01/04/2011

*Cash payments*

**24 Extension of power to make payments in cash**

In section 17(6) of the 1989 Act (nature of services which may be provided by a local authority for children in need, their families and others) omit “, in exceptional circumstances,”.

VALID FROM 01/09/2009

*Care breaks*

**25 Breaks from caring for disabled children**

- (1) Paragraph 6 of Schedule 2 to the 1989 Act (provision by local authorities for disabled children) is amended as follows.
- (2) The existing provision becomes sub-paragraph (1) of that paragraph.
- (3) In that sub-paragraph, after paragraph (b) insert “; and  
 (c) to assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring.”
- (4) After that sub-paragraph insert—
- “(2) The duty imposed by sub-paragraph (1)(c) shall be performed in accordance with regulations made by the appropriate national authority.”

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VALID FROM 01/09/2009

### *Enforcement of care standards*

VALID FROM 01/04/2010

#### **26 Power of Chief Inspector where person is failing to comply with requirement relating to children's home etc.**

(1) In section 14(1) of the 2000 Act (cancellation of registration) after paragraph (c) insert—

“(ca) on the ground that—

- (i) a notice under section 22A relating to the establishment or agency has been served on that person or any other person; and
- (ii) the person on whom the notice was served has failed to take the steps specified in that notice within the period so specified;”.

(2) After section 22 of that Act insert—

#### **“22A Power of CIECSS to serve notice where person is failing to comply with regulations**

(1) This section applies if—

- (a) a person (“P”) is registered in respect of a relevant establishment or agency; and
- (b) the CIECSS is of the opinion that P is failing or has failed to comply with a requirement imposed on P in relation to that establishment or agency.

(2) The CIECSS may serve a compliance notice on P.

(3) A compliance notice is a notice which—

- (a) states that the CIECSS is of the opinion mentioned in subsection (1)(b);
- (b) specifies the requirement with which the CIECSS considers P is failing or has failed to comply;
- (c) specifies how the CIECSS considers that P is failing or has failed to comply with that requirement;
- (d) specifies the establishment or agency in relation to which the CIECSS considers P is failing or has failed to comply with that requirement;
- (e) specifies the steps the CIECSS considers need to be taken by P in relation to that establishment or agency to comply with that requirement or (as the case may be) to prevent a recurrence of the failure to comply with that requirement;
- (f) specifies a period for the taking of those steps; and
- (g) explains the effect of subsections (4) and (5).

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- (4) Failing to take the steps specified in a compliance notice within the period so specified is an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section—
  - (a) a “relevant establishment or agency” means an establishment or agency in relation to which the functions of the registration authority under section 13 are exercisable by the CIECSS;
  - (b) references to a “requirement” are references to a requirement imposed by regulations under—
    - (i) section 22;
    - (ii) section 9 of the Adoption Act 1976; or
    - (iii) section 9 of the Adoption and Children Act 2002.”

VALID FROM 01/04/2010

## 27 Notice restricting accommodation at certain establishments

After section 22A of the 2000 Act (which is inserted by section 26) insert—

### “22B Notice restricting accommodation at certain establishments

- (1) The registration authority may serve a notice on a person who is registered in respect of an establishment to which this section applies imposing on that person the requirement in subsection (2) in relation to that establishment.
- (2) The requirement is to ensure that no child is accommodated at the establishment unless the child—
  - (a) was accommodated there when the notice was served; and
  - (b) has continued to be accommodated there since the notice was served.
- (3) A notice under subsection (1) must—
  - (a) explain the requirement imposed by the notice;
  - (b) specify the establishment in relation to which that requirement is imposed;
  - (c) give the registration authority's reasons for serving the notice;
  - (d) explain the right of appeal conferred by section 21.
- (4) A notice under subsection (1) ceases to have effect—
  - (a) at such time as may be specified in the notice;
  - (b) if the registration authority serves a notice to that effect on the person on whom the notice under subsection (1) was served;
  - (c) if the Tribunal so directs under section 21(4A) or (4B).
- (5) Subsection (6) applies if—



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- (a) the registration authority serves a notice on a person under subsection (1) or (4)(b); and
  - (b) one or more other persons are registered in respect of the establishment to which the notice relates.
- (6) The registration authority must as soon as practicable serve a notice in the same terms under subsection (1) or (as the case may be) (4)(b) on the persons mentioned in subsection (5)(b).
- (7) The reference in subsection (5) to serving a notice on a person does not include a reference to serving a notice on a person in pursuance of subsection (6).
- (8) This section applies to the following establishments—
- (a) a children's home;
  - (b) a residential family centre.”

VALID FROM 01/04/2010

## **28 Appeals etc. in relation to notices under section 22B of the 2000 Act**

- (1) Section 21 of the 2000 Act (appeals to the Tribunal) is amended in accordance with subsections (2) to (5).
- (2) In subsection (1), after paragraph (b) insert “; or
- (c) a notice served under section 22B(1)”.
- (3) After subsection (2) insert—
- “(2A) No appeal against a notice under section 22B(1) may be brought by a person more than 28 days after the notice was served on him.”
- (4) After subsection (4) insert—
- “(4A) On an appeal against a notice served under section 22B(1) the Tribunal may confirm the notice or direct that it shall cease to have effect.
- (4B) If the Tribunal directs that a notice (“the first notice”) under section 22B(1) shall cease to have effect it must direct that any other notice under that section which is connected to the first notice shall also cease to have effect.
- (4C) For the purposes of subsection (4B), notices are connected if they impose the requirement mentioned in section 22B(2) in relation to the same establishment.”
- (5) In subsection (5) omit “against a decision or order”.
- (6) In section 23(4) of that Act (occasions on which national minimum standards are to be taken into account)—
- (a) after paragraph (b) insert—
- “(ba) by the registration authority in considering whether to serve a notice under section 22B;”; and

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(b) in paragraph (c) for “against such a decision or order” substitute “ under section 21 ”.

**29 Notification of matters relating to persons carrying on or managing children's homes etc.**

Before section 31 of the 2000 Act, but after the cross-heading which precedes that section, insert—

**“30A Notification of matters relating to persons carrying on or managing certain establishments or agencies**

- (1) This section applies where a person (“P”) is carrying on or managing an establishment or agency mentioned in subsection (6).
- (2) If the registration authority—
  - (a) has decided to adopt a proposal under section 17(4)(a) to cancel the registration of P in respect of the establishment or agency,
  - (b) has brought proceedings against P for a relevant offence which it alleges P committed in relation to the establishment or agency, or
  - (c) has served a notice on P under section 22B,
 it must as soon as practicable notify each local authority in England and Wales of that fact.
- (3) If the registration authority becomes aware of any prescribed circumstances which relate to P it must as soon as practicable notify each local authority in England and Wales of those circumstances.
- (4) A notification under this section must contain such information as may be prescribed.
- (5) A notification under this section may be transmitted to a local authority electronically if—
  - (a) the local authority has agreed that notifications may be given to them by being transmitted to an electronic address and in an electronic form specified in the agreement; and
  - (b) the notification is a notification to which that agreement applies.
- (6) The establishments and agencies are—
  - (a) a children's home;
  - (b) a residential family centre;
  - (c) a fostering agency;
  - (d) a voluntary adoption agency;
  - (e) an adoption support agency;
  - (f) a provider of social work services.
- (7) In this section—
 

“electronic address” includes any number or address used for the purposes of receiving electronic communications;

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“electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000 the processing of which on receipt is intended to produce writing;

“electronically” means in the form of an electronic communication;

“relevant offence” means an offence under—

- (a) this Part;
- (b) regulations under this Part;
- (c) section 9(4) of the Adoption Act 1976;
- (d) regulations under section 9 of the Adoption and Children Act 2002;

“prescribed” means prescribed by regulations made—

- (a) in relation to England, by the Secretary of State;
- (b) in relation to Wales, by the Welsh Ministers.”

VALID FROM 06/04/2009

### *Emergency protection orders*

#### **30 Removal of restriction on hearing of application for discharge of emergency protection order**

In section 45 of the 1989 Act (emergency protection orders: supplementary provisions) omit subsection (9).

VALID FROM 12/02/2009

### *Information and research*

VALID FROM 01/04/2009

#### **31 Supply of information concerning the death of children to Local Safeguarding Children Boards**

- (1) Subsection (2) applies if, under the 1953 Act, a registrar of births and deaths registers the death of a person and the registrar believes that the deceased was or may have been under the age of 18 at the time of death.
- (2) The registrar must, before the end of the required period, secure that the appropriate Local Safeguarding Children Board is notified of the particulars of the death entered in the register.
- (3) Subsection (4) applies if, under the 1953 Act, an entry in a register kept for a sub-district concerning a death is corrected and the person making the correction believes that the entry relates to a person who was or may have been under the age of 18 at the time of death.

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- (4) The person who makes the correction must, before the end of the required period, secure that the appropriate Local Safeguarding Children Board is notified of the particulars of the death as corrected.
- (5) Subsection (6) applies if, under the 1953 Act, a registrar of births and deaths issues a certificate to the effect that a death is not required by law to be registered in England or Wales but the registrar believes that the deceased was or may have been under the age of 18 at the time of death.
- (6) The registrar must, before the end of the required period, secure that the Local Safeguarding Children Board established by the children's services authority within whose area the registrar's sub-district is situated is notified—
  - (a) of the issuing of the certificate; and
  - (b) of the registrar's belief and the grounds for it.
- (7) The required period is the period of seven days beginning with the day after—
  - (a) for the purposes of subsection (2), the day on which the death was registered;
  - (b) for the purposes of subsection (4), the day on which the correction was made; and
  - (c) for the purposes of subsection (6), the day on which the certificate was issued.
- (8) The requirements of this section do not apply if the death occurred before 1 April 2008.
- (9) Each Local Safeguarding Children Board must—
  - (a) make arrangements for the receipt by it of notifications under this section; and
  - (b) publish those arrangements.
- (10) In this section—
 

“the 1953 Act” means the Births and Deaths Registration Act 1953 (c. 20);

“the appropriate Local Safeguarding Children Board” means the Board established by the children's services authority in England or in Wales within whose area is situated the sub-district for which the register is kept;

“children's services authority in England” and “children's services authority in Wales” have the same meaning as in the Children Act 2004 (c. 31).

VALID FROM 01/04/2009

### **32 Power of Registrar General to supply information to national authorities**

- (1) The Registrar General may supply information to which this section applies—
  - (a) to the Secretary of State, or
  - (b) to the Welsh Ministers,
 for research purposes.

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- (2) Information supplied under subsection (1) to the Secretary of State or the Welsh Ministers may be disclosed by them—
  - (a) to any other person if the disclosure is for research purposes; and
  - (b) to a Local Safeguarding Children Board for the purposes of its functions.
- (3) This section applies to any information that—
  - (a) is kept by the Registrar General under any provision made by or under an enactment; and
  - (b) relates to a deceased person who was or may have been under the age of 18 at the time of death.
- (4) “For research purposes” means for the purposes of any research that is being or may be conducted or assisted under section 83(1) of the 1989 Act.

### **33 Research etc. into matters connected with certain statutory functions**

- (1) Section 83 of the 1989 Act (research and returns of information) is amended as follows.
- (2) In subsection (1) after paragraph (a) insert—

“(aa) the functions of Local Safeguarding Children Boards;”.
- (3) In subsection (2) after paragraph (a) insert—

“(aa) the functions of Local Safeguarding Children Boards;”.
- (4) In subsection (3) after paragraph (b) insert “; and”
  - (c) the performance by the Local Safeguarding Children Board established by them under the Children Act 2004 of all or any of its functions.”
- (5) In subsection (9) after paragraph (c) insert—
  - (ca) Part 1 of the Adoption and Children Act 2002;
  - (cb) the Children Act 2004;
  - (cc) the Children and Young Persons Act 2008.”

VALID FROM 12/02/2009

## **PART 3**

### **ADOPTION AND FOSTERING**

### **34 Independent review of determinations relating to adoption**

- (1) Section 12 of the Adoption and Children Act 2002 (c. 38) (independent review of determinations) is amended as follows.
- (2) In subsection (1)—
  - (a) omit the words “a panel constituted by”;
  - (b) at the end insert “ by a panel constituted by that Minister ”.

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(3) In paragraph (a) of subsection (3), omit the words from “(including” to the end of that paragraph.

(4) After subsection (3) insert—

“(3A) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to the appropriate Minister such sum as that Minister may determine.

(3B) The appropriate Minister must secure that, taking one financial year with another, the aggregate of the sums which become payable to him under regulations made by virtue of subsection (3A) does not exceed the cost to him of performing his independent review functions.”

(5) In subsection (4) for the words “functions in relation to the panel” substitute “independent review functions”.

(6) After subsection (6) insert—

“(6A) Payments made by the appropriate Minister in accordance with such provision shall be taken into account in determining (for the purpose of subsection (3B)) the cost to that Minister of performing his independent review functions.”

(7) In subsection (8), after “section” insert “—

“financial year” means a period of twelve months ending with 31st March,

“independent review function” means a function conferred or imposed on an appropriate Minister by regulations made by virtue of this section”.

**35 Extension of period allowed for making regulations under section 45 or 46 of the Children Act 2004**

In section 47(3) of the Children Act 2004 (c. 31) (relevant time for the expiry of powers under sections 45 and 46 of that Act) for “four” substitute “seven”.

VALID FROM 01/09/2009

**PART 4**

ORDERS UNDER PART 2 OF THE 1989 ACT

*Residence orders*

**36 Entitlement of relative to apply for a residence order**

In section 10 of the 1989 Act (power of the court to make orders under section 8 of that Act), after subsection (5A) insert—

“(5B) A relative of a child is entitled to apply for a residence order with respect to the child if the child has lived with the relative for a period of at least one year immediately preceding the application.”

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### **37 Duration of residence orders**

- (1) In section 9(6) of the 1989 Act (restriction on length of orders under section 8 of that Act) for the words from the beginning to “which” substitute “ No court shall make a specific issue order, contact order or prohibited steps order ”.
- (2) In section 12 of that Act (residence orders and parental responsibility) omit subsections (5) and (6).
- (3) In section 91(10) of that Act (duration of section 8 orders)—
  - (a) after “section 8 order” insert “ other than a residence order ”; and
  - (b) omit “or 12(5)”.

#### *Special guardianship orders*

### **38 Entitlement of relative to apply for a special guardianship order**

In section 14A(5) of the 1989 Act (persons entitled to apply for special guardianship order), after paragraph (d) insert “;

- (e) a relative with whom the child has lived for a period of at least one year immediately preceding the application.”

## **PART 5**

### **SUPPLEMENTARY, GENERAL AND FINAL PROVISIONS**

#### *Supplementary*

### **39 Minor and supplementary amendments to the 1989 Act**

Schedule 3 (which contains minor and supplementary amendments to the 1989 Act, including amendments to Parts 3 and 7 of that Act to substitute references to the Welsh Ministers for existing phrases which are to be read as including references to those Ministers by virtue of the Government of Wales Act 2006 (c. 32)) has effect.

#### *General*

### **40 Orders, regulations and guidance**

- (1) Any order or regulations made by the Secretary of State or the Welsh Ministers under this Act must be made by statutory instrument.
- (2) A statutory instrument containing provision made by the Secretary of State under section 1(6) or (7) or section 11 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Any other statutory instrument containing provision made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) A statutory instrument containing provision made by the Welsh Ministers under section 1(6) or (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.
- (5) A statutory instrument containing provision made under section 12 may not be made unless—
  - (a) a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales, and
  - (b) having been so approved, has been laid before and approved by a resolution of each House of Parliament.
- (6) As soon as reasonably practicable after the resolution required by subsection (5)(a) has been passed, the First Minister must ensure that notice in writing of the resolution and a copy of the draft of the statutory instrument is sent to the Secretary of State.
- (7) On receipt of a draft of a statutory instrument under subsection (6) the Secretary of State must as soon as reasonably practicable lay it before each House of Parliament.
- (8) Paragraph (b) of subsection (5) and subsections (6) and (7) cease to have effect on the making of an order under section 105 of the Government of Wales Act 2006 (c. 32) bringing the Assembly Act provisions into force.
- (9) In subsection (8) “the Assembly Act provisions” has the same meaning as in the Government of Wales Act 2006 (see section 103(8) of that Act).
- (10) Any other statutory instrument containing provision made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (11) Subsections (3) and (10) do not apply to a statutory instrument containing only provision made under section 44.
- (12) Any power to make regulations under this Act includes power to make—
  - (a) different provision for different cases;
  - (b) such supplemental or consequential provisions as appear to the Secretary of State or, as the case may, the Welsh Ministers to be appropriate.
- (13) Any power under this Act to give guidance includes power to give different guidance for different cases.

## 41 Interpretation

In this Act—

“the 1989 Act” means the Children Act 1989 (c. 41);

“the 2000 Act” means the Care Standards Act 2000 (c. 14).

VALID FROM 01/04/2009

## 42 Repeals

The provisions specified in Schedule 4 are repealed to the extent there specified.



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#### Commencement Information

**16** S. 42 in force for specified purposes at 1.4.2009 for E. by [S.I. 2009/268](#), [art. 3\(2\)\(b\)](#)

### *Final*

#### **43 Extent**

- (1) Subject to subsection (2), this Act extends to England and Wales only.
- (2) Paragraph 9 of Schedule 1 also extends to Scotland.

#### **44 Commencement**

- (1) Section 7 and this Part come into force on the day on which this Act is passed.
- (2) The reference in subsection (1) to this Part does not include—
  - (a) paragraph 4 of Schedule 3 (which comes into force in accordance with subsection (9)); and
  - (b) section 42 and Schedule 4 (which come into force in accordance with subsections (3) and (4)).
- (3) In relation to Wales, the provisions specified in subsection (5) come into force on such day as the Welsh Ministers may by order appoint.
- (4) Otherwise the provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (5) The provisions are—
  - (a) Parts 1 to 4 (except sections 7, 17, 18, 31 and 32);
  - (b) section 42 and Schedule 4.
- (6) An order under this section bringing subsection (2) of section 10 into force in relation to Wales requires the consent of the Secretary of State.
- (7) An order under this section bringing section 17 or 18 into force requires the consent of the Welsh Ministers.
- (8) Before making an order bringing section 31 or 32 into force, the Secretary of State must consult the Welsh Ministers.
- (9) Paragraph 4 of Schedule 3 comes into force on the same day as section 7(1) of the Carers and Disabled Children Act 2000 (c. 16) comes into force for the purpose of inserting section 17B into the 1989 Act in relation to Wales.
- (10) An order under this section may—
  - (a) appoint different days for different purposes;
  - (b) include transitional, saving or transitory provision.

#### **45 Short title**

This Act may be cited as the Children and Young Persons Act 2008.

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## SCHEDULES

VALID FROM 01/09/2009
<p><b>SCHEDULE 1</b> <span style="float: right;">Section 8(2)</span></p> <p><b>CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES:  SUPPLEMENTARY AND CONSEQUENTIAL PROVISIONS</b></p> <p>.....</p>

VALID FROM 12/02/2009
<p><b>SCHEDULE 2</b> <span style="float: right;">Section 8(3)</span></p> <p><b>TRANSITORY MODIFICATIONS OF SCHEDULE 2 TO THE 1989 ACT</b></p> <p>.....</p>

**SCHEDULE 3** Section 39

**MINOR AND SUPPLEMENTARY AMENDMENTS TO THE 1989 ACT**

1     The 1989 Act is amended in accordance with this Schedule.

2     In section 17(4) for “Secretary of State” substitute “appropriate national authority”.

3     In section 17A(1) for “Secretary of State” substitute “appropriate national authority”.

PROSPECTIVE
<p><b>F14</b> .....</p>

**Textual Amendments**

**F1**   Sch. 3 paras. 2-19 omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(No. 413\)](#), regs. 2(1), **267(a)**

5     In section 21(3), after “Secretary of State” insert “, the Welsh Ministers”.

6     In section 22(7)—

(a) for “Secretary of State” substitute “appropriate national authority”;

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- (b) for “he” substitute “the appropriate national authority”;
  - (c) for “the authority” substitute “the local authority”.
- 7 (1) Section 23 is amended as follows.
  - (2) In subsection (2), in paragraphs (a) and (f)(ii) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (2A)—
    - (a) for the words “the Secretary of State”, in the first place where they occur, substitute “an appropriate national authority”;
    - (b) for those words in the second place where they occur, substitute “that national authority”.
  - (4) In subsection (5) for “Secretary of State” substitute “appropriate national authority”.
  - (5) In subsection (6) for “Secretary of State” substitute “appropriate national authority”.
- 8 (1) Section 23A is amended as follows.
  - (2) In subsection (3) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (5)—
    - (a) for “Secretary of State” substitute “appropriate national authority”;
    - (b) for “he” substitute “the appropriate national authority”.
- 9 (1) Section 23B is amended as follows.
  - (2) In subsection (5) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (7) for “The authority” substitute “The local authority”.
  - (4) In subsection (10) for “Secretary of State” substitute “appropriate national authority”.
- 10 In section 23D, in subsections (1) and (2), for “Secretary of State” substitute “appropriate national authority”.
- 11 In section 23E(2) for “Secretary of State” substitute “appropriate national authority”.
- 12 In section 24(5)(za) for “Secretary of State” substitute “appropriate national authority”.
- 13 In section 24B(6) for “Secretary of State” substitute “appropriate national authority”.
- 14 In section 24D, in subsections (1A) and (2), for “Secretary of State” substitute “appropriate national authority”.
- 15 In section 25, in subsections (2) and (7), for “Secretary of State” substitute “appropriate national authority”.
- 16 (1) Section 26 is amended as follows.
  - (2) In subsection (1) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (2D) for “National Assembly for Wales” substitute “Welsh Ministers”.
  - (4) In each of subsections (3A), (3B), (3C), (4A), (5) and (6) for “Secretary of State” substitute “appropriate national authority”.

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- 17 In section 26ZB(1) for “Secretary of State” substitute “Welsh Ministers”.
- 18 In section 26A, in each of subsections (3)(a) and (4), for “Secretary of State” substitute “appropriate national authority”.
- 19 In section 27(3)(e) for “Secretary of State” substitute “appropriate national authority”.
- 20 In section 29(8)(c) after “Secretary of State” insert “, the Welsh Ministers”.
- 21 (1) Section 30 is amended as follows.
- (2) In subsection (2) for “Secretary of State” substitute “determining authority”.
- (3) After subsection (2) insert—
- “(2A) For the purposes of subsection (2) “the determining authority” is—
- (a) in a case where all the local authorities concerned are in Wales, the Welsh Ministers;
- (b) in any other case, the Secretary of State.
- (2B) In a case where—
- (a) the determining authority is the Secretary of State, and
- (b) one or more of the local authorities concerned are in Wales,
- the Secretary of State must consult the Welsh Ministers before making a determination for the purposes of subsection (2).”
- (4) In subsection (4) for “Secretary of State” substitute “appropriate national authority”.
- 22 After section 30 insert—
- “30A Meaning of appropriate national authority**
- In this Part “the appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.”
- 23 (1) Section 59 is amended as follows.
- (2) In subsection (1A)—
- (a) for the words “the Secretary of State”, in the first place where they occur, substitute “ an appropriate national authority ”; and
- (b) for those words in the second place where they occur, substitute “ that national authority ”.
- (3) In subsection (2) for “Secretary of State” substitute “ appropriate national authority ”.
- (4) In subsection (3) for “Secretary of State” substitute “ appropriate national authority ”.
- (5) In subsection (4) for “Secretary of State” substitute “ appropriate national authority ”.
- (6) After subsection (6) add—
- “(7) In this Part “appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.”
- 24 In section 62(3) for “Secretary of State” substitute “ appropriate national authority ”.

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- 25 (1) Section 104 is amended as follows.
- (2) In subsection (2) after “108(2)” insert “or one containing regulations which fall within subsection (3B) or (3C)”.
- (3) Omit subsection (2A).
- (4) For subsection (3) substitute—
- “(3A) An order under section 4(1B) or 17(4) or regulations which fall within subsection (3B) or (3C) shall not be made by the Secretary of State unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (3B) Regulations fall within this subsection if they are the first regulations to be made by the Secretary of State in the exercise of the power conferred by section 23C(5B)(b).
- (3C) Regulations fall within this subsection if they are the first regulations to be made by the Secretary of State in the exercise of the power conferred by paragraph 6(2) of Schedule 2.”
- (5) In subsection (4)(c) omit—
- (a) the word “such”;
- (b) the words “as the person making it considers expedient”.
- 26 After section 104 insert—
- “104A Regulations and orders made by the Welsh Ministers under Part 3 etc.**
- (1) Any power of the Welsh Ministers under Part 3, Part 7 or section 86A to make an order or regulations shall be exercisable by statutory instrument.
- (2) Any such statutory instrument, except one made under section 17(4) or one containing regulations which fall within subsection (4) or (5), shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (3) An order under section 17(4) or regulations which fall within subsection (4) or (5) shall not be made by the Welsh Ministers unless a draft of the statutory instrument containing the order or regulations has been laid before and approved by a resolution of the National Assembly for Wales.
- (4) Regulations fall within this subsection if they are the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by section 23C(5B)(b).
- (5) Regulations fall within this subsection if they are the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by paragraph 6(2) of Schedule 2.”
- 27 (1) Schedule 2 is amended as follows.
- (2) In paragraph 17(7) for “Secretary of State” substitute “appropriate national authority”.
- (3) In paragraph 19B, in sub-paragraphs (3) and (7), for “Secretary of State” substitute “appropriate national authority”.

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- (4) In paragraph 20(1)(a) for “Secretary of State” substitute “appropriate national authority”.
- (5) In paragraph 25—
- (a) for “Secretary of State” substitute “appropriate national authority”;
  - (b) for “they” substitute “a local authority”.
- 28 In paragraph 7 of Schedule 5 for “Secretary of State” substitute “appropriate national authority”.

VALID FROM 01/04/2009

SCHEDULE 4

Section 42

REPEALS

**Commencement Information**

**I7** Sch. 4 in force for specified purposes at 1.4.2009 for E. by [S.I. 2009/268](#), [art. 3\(2\)\(b\)](#)

**Status:**

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