

CHILDREN AND YOUNG PERSONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Supplementary, General and Final Provisions (Sections 39 to 45)

Supplementary

Section 39 and Schedule 3: Minor and supplementary amendments to the 1989 Act

153. Provisions in the Act, notably *sections 8, 9, 10, 15, 16, 18, 19 and 25*; and *Schedules 1 and 2* insert new provisions into the 1989 Act, primarily into Part 3 and Schedule 2. The new provisions reflect the current status of devolution under the Government of Wales Act 2006 and, where appropriate, refer to “Welsh Ministers” directly, or to the Welsh Ministers as the “appropriate national authority”. These references are not textually consistent with existing references in Part 3 of the 1989 Act to the “Secretary of State”, which are to be read (where appropriate) as references to the Welsh Ministers by virtue of the Government of Wales Act 2006. Therefore, in order to achieve clarity and textual consistency in the Parts of 1989 Act that are amended by this Act, *section 39* gives effect to *Schedule 3*, which amends Parts 3 and 7 of, and Schedule 2 to, the 1989 Act by substituting references to the Welsh Ministers or to the appropriate national authority, for existing references to the Secretary of State. *Schedule 3* also inserts a new section 104A into the 1989 Act, which makes provision for regulations and orders made by the Welsh Ministers under Part 3 and certain other parts of that Act.

General

Section 40: Orders, regulations and guidance

154. *Section 40* provides that all subordinate legislation made under the Act is to be made by statutory instrument. Any statutory instruments made by the Secretary of State under *section 1(6) or (7)* (social work practices) or *section 11* (independent reviewing officers) are subject to the affirmative resolution procedure (*subsection (2)*). All other statutory instruments made by the Secretary of State will be subject to the negative resolution procedure (*subsection (3)*), except for commencement orders made under section 44 which will not be subject to any parliamentary procedure. (See paragraph 18 for an explanation of the affirmative resolution procedure and the negative resolution procedure.)
155. *Subsection (4) of section 40* mirrors *subsection (2)*, and makes the exercise by the Welsh Ministers of their power to make regulations under section 1(6) or 1(7) subject to approval by a resolution of the National Assembly for Wales, the equivalent in relation to Wales of the affirmative resolution procedure.
156. *Subsection (5)(a)* provides for the exercise by Welsh Ministers of their power under section 12 to create a new body to carry out functions in relation to Independent Reviewing Officers, or to confer those functions on themselves, to be made subject to approval by a resolution of the National Assembly for Wales (affirmative resolution procedure). *Subsection (5)(b)* provides for additional scrutiny by Parliament of the

*These notes refer to the Children and Young Persons Act 2008
(c.23) which received Royal Assent on 13 November 2008*

exercise of the power under section 12, following the passing of the resolution required by *subsection (5)(a)*. The additional Parliamentary scrutiny is considered necessary because the power conferred on the Welsh Ministers by section 12 extends beyond the current legislative competence of the National Assembly for Wales under the Government of Wales Act 2006.

157. *Subsections (6) and (7)* make provision for the procedure to be followed by the First Minister (appointed under section 46 of the Government of Wales Act 2006) and by the Secretary of State, following the passing of the resolution required by *subsection (5)(a)*.
158. *Subsection (8)* removes the requirement in *subsection (5)(b)* for additional Parliamentary scrutiny following the passing of the resolution required by *subsection (5)(a)*, in the event that an order is made under section 105 of the Government of Wales Act 2006 bringing the Assembly Act provisions into force. The effect of making such an order would be to substantially extend the legislative competence of the National Assembly for Wales, bringing the power conferred on the Welsh Ministers by section 12 within the Assembly's legislative competence, with the result that the requirement for additional Parliamentary scrutiny of the exercise of the power in *subsection (5)(b)* would become inconsistent with the new stage of devolution, and therefore no longer be necessary.
159. A commencement order made by Welsh Ministers under *section 44* is not to be subject to scrutiny by the National Assembly for Wales (*subsection (11)*). Any subordinate legislation made by the Welsh Ministers – other than subordinate legislation made under sections 1(6) or (7), 12 or 44 – will be capable of being annulled by a resolution of the National Assembly for Wales.

Section 42 and Schedule 3: Repeals

160. *Section 42* introduces the repeal schedule (*Schedule 4*) which specifies the extent to which the enactments listed are to be repealed.