

# CHILDREN AND FAMILIES ACT 2014

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT AND APPLICATION

32. Except where stated otherwise below, the Children and Families Act 2014 extends to England and Wales only, and applies to England only. The significant exceptions are explained in the text below. Annex B sets out the territorial extent and application of each of the sections in a table.

#### *Scotland*

33. [Section 7](#) and Schedule 1 amend sections 125 to 131 (which have not been commenced) of the Adoption and Children Act 2002, which provide for the establishment of the Adoption and Children Act Register (“the register”). The register contains information about children who are suitable for adoption and for whom the local authority are considering adoption and prospective adopters who are suitable to adopt a child. This section removes Wales and Scotland from the scope of these sections and provides for the establishment of a register that applies in relation to England only.
34. [Section 94](#) gives the Secretary of State the power to make regulations to standardise tobacco packaging if he or she considers that they may contribute to reducing the risk of harm to or promoting the health or welfare of children. The Secretary of State must obtain the consent of the Scottish Ministers before making regulations containing provisions which would be within the legislative competence of that Parliament.
35. [Part 6](#) of the Act (sections 107 to 116) amends Part 1 of the Children Act 2004, to reform the office of Children’s Commissioner. Part 1 of that Act extends to the whole of the UK. The changes made by Part 6 apply to the Commissioner’s role in promoting and protecting the rights of children in Scotland, but only in relation to non-devolved matters.
36. [Parts 7, 8 and 9](#) of the Act (sections 117 to 134) contain amendments to the Employment Rights Act 1996 (ERA) and the Social Security Contributions and Benefits Act 1992 (SSCBA) to make provision for statutory rights to leave and pay, time off work for antenatal and adoption appointments, and flexible working. The sections relate to reserved matters and extend to Scotland.

#### *Northern Ireland*

37. [Section 94](#) gives the Secretary of State the power to regulate tobacco packaging if he or she considers that regulations may contribute to reducing the risk of harm to or promoting the health or welfare of children. The Secretary of State must obtain the consent of the Office of the First Minister and deputy First Minister before making regulations containing provisions which would be within the legislative competence of the Assembly.
38. [Part 6](#) of the Act (sections 107 to 116) reform the office of Children’s Commissioner. These changes apply to the Commissioner’s role in promoting and protecting the rights

of children in Northern Ireland, but only in relation to non-devolved matters. In some cases section 126(3) and (4), in Part 7 of the Act, also extends to Northern Ireland.

## **Wales**

### **Part 1: Adoption and contact**

39. **Section 1** amends section 98(1) of the Adoption and Children Act 2002 so that regulations can make provision to facilitate contact between persons with a prescribed relationship to a person adopted before 30 December 2005 and the adopted person's birth relatives. Regulations will be made by the Welsh Ministers in relation to Wales.
40. In relation to section 7 and Schedule 1 see paragraphs 70 to 79.
41. **Sections 8 and 9** of the Act amend provisions in the Children Act 1989 and the Adoption and Children Act 2002 which deal with contact between a child in the care of the local authority and their birth family and certain other people. Family proceedings are non-devolved matters and so the provisions relating to these apply to Wales. Adoption policy and functions of local authorities in relation to adoption are matters devolved to the Welsh Government and the provisions which relate to local authorities' duties in relation to contact in the Children Act 1989 (other than section 7(2)) do not apply to Wales.

### **Part 2: Family justice**

42. **Part 2** of the Act (sections 10 to 18) makes provisions that reform the family justice system. All of the sections relate to family law and proceedings with one exception set out in the text below. Family law and proceedings are a non-devolved matter and so these provisions also apply to Wales.
43. **Section 15** amends section 31A of the Children Act 1989 which relates to care orders and care planning. Care planning is an area where the National Assembly for Wales has legislative competence. The amendments to section 31A(1) confer a new power on Welsh Ministers to allow them to prescribe by regulations the time within which a care plan (which a local authority in Wales is responsible for preparing) must be prepared by the local authority.
44. In addition, section 12 introduces a "child arrangements order" which has a consequential impact on the power of Welsh Ministers to make regulations. The power that is affected is not one that falls within an area of Assembly legislative competence but the changes affect an area of Welsh Ministers' executive competence.

### **Part 3: Children and young people in England with special educational needs or disabilities**

45. **Part 3** of the Act (sections 19 to 83) makes provision that reforms the special educational needs system. These provisions extend to England and Wales, but the majority only apply in England. Schedule 3 makes consequential amendments to existing provisions so that they apply to Wales only. There will be some cross border effects, where a child or young person in England attends a school or institution in Wales, and the amendment made by section 60 applies in Wales. The amendment does not change the effect of the amended provision as it applies in Wales. Section 70 provides the Secretary of State with a power to make regulations to apply provisions in relation to those in custody, with or without modification. The Secretary of State is required to consult the Welsh Ministers before making any such regulations where they apply to a person who is detained in Wales.

### **Part 5: Welfare of children**

46. **Section 90** repeals section 38 of the Children and Young Persons Act 1963 in relation to England and Wales only, to remove restrictions on the circumstances in which a local authority can issue a performance licence to a child under the age of 14.
47. **Sections 91 to 95** make provision to protect children and young people from tobacco and nicotine addiction. Section 91 introduces an offence of “proxy purchasing” of tobacco products and cigarette papers. Sections 92 and 93 provide the Secretary of State with the power to make regulations to prohibit the sale of nicotine products to persons under the age of 18. Section 94 gives the Secretary of State the power to regulate tobacco packaging if he or she considers that regulations may contribute to reducing the risk of harm to or promoting the health or welfare of children. The Secretary of State must obtain the consent of Welsh Ministers before making regulations containing provision which would be within the legislative competence of the National Assembly for Wales. Section 95 amends smoke-free legislation to provide the Secretary of State, or the Welsh Ministers in relation to Wales, with the power to make regulations to provide for a private vehicle to be smoke-free when a person under the age of 18 is present.
48. **Section 101** applies to England and Wales.

### **Part 6: The Children’s Commissioner**

49. **Part 6** of the Act (sections 107 to 116) reforms the office of Children’s Commissioner. These changes apply to the Commissioner’s role in promoting and protecting the rights of children in Wales, but only in relation to non-devolved matters.

### **Parts 7, 8 & 9: Statutory rights to leave and pay, Time off work: ante-natal care etc and Right to request flexible working**

50. **Parts 7, 8 and 9** of the Act (sections 117 to 134) make provision for statutory rights to leave and pay, time off work for ante-natal and adoption appointments, and flexible working. The sections relate to non-devolved matters and so apply to Wales.