

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 5 – WELFARE OF CHILDREN

Section 90: Extension of licensing of child performances to children under 14

394. This section repeals section 38 of the Children and Young Persons Act 1963 in relation to England and Wales. The effect of that repeal is to remove restrictions on the circumstances in which a local authority can issue a performance licence to a child under the age of 14.

Section 91: Purchase of tobacco etc. on behalf of persons under 18

395. This section introduces an offence in England and Wales of “proxy purchasing” of tobacco products and cigarette papers. This makes it an offence for a person aged 18 or over to buy, or attempt to buy, tobacco or cigarette papers on behalf of a person under the age of 18. If found guilty of an offence, the penalty is a fine not exceeding level 4 on the standard scale. This section also provides local authority enforcement officers with the flexibility to issue fixed penalty notices if they believe an offence has been committed. To enable effective enforcement, the section provides enforcement officers with powers of entry.
396. These provisions apply to England and Wales.

Section 92: Prohibition of sale of nicotine products to persons under 18

397. This section provides the Secretary of State with the power to make regulations to prohibit the sale of nicotine products to persons under the age of 18.
398. Subsections (9) to (11) explain what is meant by nicotine products. Examples of nicotine products include an electronic cigarette and part of an electronic cigarette. Tobacco products, which are already subject to a prohibition on sale to persons aged under 18, are not nicotine products for the purposes of this section. The powers at subsection (7) enable the Secretary of State to provide for exceptions or to make provision in relation to nicotine products of a specified kind or all nicotine products.
399. There is an exemption for under 18s employed in the industry and a due diligence defence. The penalty for committing the offence is a fine not exceeding level 4 on the standard scale. These provisions apply to England and Wales.
400. Regulations made under these powers will be subject to the affirmative parliamentary procedure and the Secretary of State must obtain the consent of the Welsh Ministers before making regulations under this section which would be within the legislative competence of the National Assembly for Wales.

Section 93: Amendments consequential on section 92

401. This section makes consequential amendments to integrate the new age of sale offence for nicotine products into the existing age of sale legislation for tobacco products. Consequential amendments to section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 apply the enforcement regime for tobacco age of sale offences to an offence under section 92. Consequential amendments to sections 12A to 12D of the Children and Young Persons Act 1933 integrate the offence under section 92 into the existing regime for repeated tobacco age of sale offences.

Section 94: Regulation of retail packaging etc of tobacco products

402. This section gives the Secretary of State the power to make regulations about specified elements of the retail packaging of tobacco products and the products themselves where he or she considers that the regulations may contribute to reducing the risk of harm to, or to promoting, the health or welfare of children.
403. These provisions apply to the whole of the UK. Regulations made under these powers will be subject to the affirmative parliamentary procedure and the Secretary of State must obtain the consent of the Scottish Ministers, Welsh Ministers, or Office of the First Minister or Deputy First Minister of Northern Ireland, where they contain provisions which would be within the legislative competence of their respective Parliament or Assembly.

Section 95: Smoking in a private vehicle

404. This section amends smoke-free legislation (the Health Act 2006) to provide the Secretary of State, or 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 in the vehicle. The Health Act 2006 contains two offences in relation to vehicles that are designated as smoke-free under the regulations: smoking in a smoke-free vehicle and failure by the person in control of the vehicle to prevent smoking in a smoke-free vehicle.
405. The Health Act 2006 includes a power to provide for penalty notices in relation to the offence of smoking in a smoke-free vehicle and this section amends that Act to allow penalty notices to also be used for the offence of failing to prevent smoking in a vehicle when a person under the age of 18 is present.
406. All regulations made under these powers will be subject to the affirmative parliamentary procedure.

Section 96: Young carers

407. This section consolidates existing rights for young carers, in particular from the Carers (Recognition and Services) Act 1995 and the Carers and Disabled Children Act 2000, and insert new sections into Part 3 of the Children Act 1989.
408. This section also extends the right to an assessment of needs for support to all young carers under the age of 18 regardless of who they care for, what type of care they provide or how often they provide it. It requires a local authority to carry out an assessment of a young carer's needs for support on request or on the appearance of need, and provides for local authorities to combine the assessment of a young carer with an assessment of the person they care for. Previously, a young carer had to request such an assessment. The section enables the Secretary of State to make regulations making provision about the carrying out of a young carer's needs assessment. Those regulations may, in particular, specify matters to which a local authority is to have regard or is to determine in carrying out the assessment, the manner in which an assessment is to be carried out and the form that assessment is to take.

Section 97: Parent carers

409. This section consolidates into Part 3 of the Children Act 1989 existing legislation, in particular the Carers and Disabled Children Act 2000, which gives individuals with parental responsibility for a disabled child the right to an assessment of their needs by a local authority. This consolidation simplifies the legislation relating to parent carers of disabled children, making rights and duties clearer to both parent and practitioners. It removes the requirement for such carers to be providing “a substantial amount of care on a regular basis” in order to be assessed, and requires local authorities to assess on the appearance of need, as well as on request.
410. This section requires local authorities explicitly to have regard to the well-being of parent carers in undertaking an assessment of their needs. The definition of well-being will be the same as in Part 1 of the Care Act 2014 (subject to Parliamentary approval of the Care Act).
411. This section enables the Secretary of State to make regulations making provision about the carrying out of a parent carer’s needs assessment. Those regulations may, in particular, specify matters to which a local authority is to have regard or is to determine in carrying out the assessment, the manner in which an assessment is to be carried out and the form that assessment is to take.

Section 98: Arrangements for living with former foster parents after reaching adulthood

412. This section inserts a new section 23CZA into the Children Act 1989. New section 23CZA sets out what constitutes a staying put arrangement, the duties placed on local authorities for the duration of the arrangement and the conditions that underpin the support from the local authority. Section 23CZA(2) provides that a staying put arrangement is one where the young person is someone who was in care immediately prior to their 18th birthday as an eligible child, and that person continues to reside with their former foster carer once they turn 18.
413. So long as the arrangement is consistent with the welfare of the young person, the local authority is required to provide advice, assistance and support to them and their former foster parent to support the maintenance of the arrangement. The local authority is also required to monitor the arrangement (section 23CZA(3)).
414. The support provided to the former foster carer must include financial support (section 23CZA(4)).
415. *Subsection (3)* inserts a new paragraph 19BA into Schedule 2 to the Children Act 1989 which places a duty on local authorities to determine once the child becomes an eligible child, the appropriateness of working towards facilitating a future staying put arrangement.
416. These duties will continue until the young person reaches the age of 21 unless either they or their former foster parent decides to end the arrangement sooner.

Section 99: Promotion of educational achievement of children looked after by local authorities

417. Section 22 of the Children Act 1989 places a general duty on local authorities to safeguard and promote the welfare of the children they look after. Section 22(3A) places a particular duty on local authorities in England to promote the educational achievement of the children they look after, regardless of where they are placed. Many local authorities in England have an education lead to champion the needs of looked after children. They are often referred to as “Virtual School Heads” (VSH), because they monitor and track the educational progress of the children looked after by their authority as if they attended a single school.

*These notes refer to the Children and Families Act 2014
(c.6) which received Royal Assent on 13 March 2014*

418. This section amends section 22 by inserting new subsections (3B) and (3C). Subsection (3B) requires every local authority in England to appoint an officer employed by the authority to make sure the duty under section 22(3A) is properly discharged. Subsection (3C) requires that the person appointed under subsection (3B) is an officer employed by that local authority or another local authority in England.
419. The section makes explicit reference to permitting a local authority to appoint more than one officer to perform this role.
420. There is existing statutory guidance from the Department for Education, issued under section 7 of the Local Authority Social Services Act 1970, about how local authorities should discharge their duty to promote the education of their looked after children. This guidance will be revised to take account of this new provision. The revised guidance will also explain the relationship between the functions of the appointed officer carrying out the role of the Virtual School Head and the Director of Children’s Services (“DCS”). In effect, the DCS, who is appointed for the purposes of the authority’s social services functions relating to children, is responsible for promoting the educational achievement of the children looked after by the authority. The appointed officer or VSH and the service he or she manages will be responsible for how this is achieved.

Section 100: Duty to support pupils with medical conditions

421. This section places a duty on governing bodies of maintained schools, proprietors of Academies and management committees of pupil referral units to make arrangements for supporting pupils at school with medical conditions. In meeting that duty, the section requires all of those bodies to have regard to guidance issued by the Secretary of State under this provision.

Section 101: Local authority functions relating to children etc: intervention

422. This section clarifies the law in relation to the Secretary of State’s power to intervene under section 497A(4A) of the Education Act 1996 and section 50 of the Children Act 2004, where a local authority is failing to deliver services to an adequate standard. The section ensures that these powers would be exercised effectively, in particular in the interests of certainty for children who may be taken into care or placed for adoption.
423. Parallel amendments are also made to the Secretary of State’s power to intervene under section 15 of the Local Government Act 1999 where he or she is satisfied that a best value authority is failing to comply with the requirements of Part 1 of that Act.
424. *Subsection (2)* amends section 497A of the Education Act 1996 to clarify the effect of the power in section 497A(4A) of that Act. This puts beyond doubt that either the Secretary of State or a nominee, exercising functions in place of a local authority pursuant to a direction under section 497A(4A) of the Education Act 1996 can, for example, apply for or be named in care orders under section 31 of the Children Act 1989, exercise the adoption related functions set out in section 92(2) of the Adoption and Children Act 2002 and exercise certain other court-related functions in the same way as a local authority. The section makes it clear that, following such a direction, other relevant references in legislation to a “local authority”, such as in relation to the Chief Inspector’s functions and powers under sections 136 to 141 of the Education and Inspections Act 2006, are to be read as references to the Secretary of State or a nominee.
425. *Subsection (3)* amends section 15 of the Local Government Act 1999 to clarify the effect of the power in section 15(6) of that Act. This clarifies the Secretary of State’s intervention powers under that Act in the same way as *subsection (2)* does in relation to the Secretary of State’s power in section 497A(4A) of the Education Act 1996.

Section 102: Application of suspension etc powers to establishments and agencies in England

426. This section makes available to the Chief Inspector the powers in sections 14A and 20B of the Care Standards Act 2000 to suspend a person's registration in respect of an establishment or agency in England. At present these powers are only available to Welsh Ministers in respect of establishments or agencies in Wales. If a registered person continued to operate a setting whilst suspended, they would commit a criminal offence. This section clarifies the Chief Inspector's enforcement powers so action can be taken if, for example, it has serious concerns about the safety and care provided by a regulated setting, such as a children's home, that require an urgent response.

Section 103: Objectives and standards for establishments and agencies in England

427. This section adds a new subsection (1A) into section 22 of the Care Standards Act 2000. It provides for the Secretary of State to have a power to make regulations to prescribe objectives and standards that must be met by an establishment or agency that is regulated by the Chief Inspector. This includes children's homes.

Section 104: National minimum standards for establishments and agencies in England

428. This section amends section 23 of the Care Standards Act 2000, which is concerned with "national minimum standards" (NMS). The section inserts a new section (1A) into section 23 of the Care Standards Act 2000. It provides that the NMS applicable to an establishment or agency regulated by the Chief Inspector, such as a children's home, may explain and supplement regulations made under section 22 of the Care Standards Act 2000.

Section 105: Disqualification from carrying on, or being employed in, a children's home

429. This section amends section 65 of the Children Act 1989, which provides for persons who are disqualified from private fostering under section 68 of that Act to be disqualified from carrying on, managing or having a financial interest in children's homes. This section introduces, in relation to England, a time limit for a person to disclose to the Chief Inspector that they have been disqualified from private fostering.

Section 106: Provision of free school lunches

430. This section amends Part 9 of the Education Act 1996 in relation to the provision of school lunches. It ensures that all state-funded schools – both maintained schools and Academies – have an obligation to provide free school lunches on request for all pupils in infant classes (i.e reception, year one and year two). It also creates an enabling power for the Secretary of State to extend this obligation to other school year groups or to children in maintained nursery schools and other state-funded early years settings.
431. For maintained schools, this new obligation will sit alongside the existing statutory obligations imposed on them in respect of the provision of school lunches. For Academies, the section inserts a new provision requiring all future Academies (where funding agreements are entered into after this amendment comes into effect) to have a provision in their funding agreement that mirrors the school lunch obligations placed on maintained schools; and all funding agreements entered into before this section comes into effect must be read as if they included this requirement.