

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

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

3. The Act takes forward a range of Government commitments which are intended to improve services for key groups of vulnerable children (children in the adoption and care systems, those affected by decisions of the family courts and those with special educational needs and disabilities) and to support families in balancing home and work life, particularly when children are very young. It takes forward legislation that has been announced in a range of Government documents over the past 2 years, including:
 - An Action Plan for Adoption: Tackling Delay (March 2012).
 - Further Action on Adoption: Finding More Loving Homes (January 2013).
 - The Government Response to the Family Justice Review (February 2012).
 - Support and aspiration: A new approach to special educational needs and disability: Progress and next steps (May 2012).
 - More great childcare (January 2013) and More affordable childcare (July 2013).
 - The Government Response to the Modern Workplaces consultation (November 2012).
4. The Act contains provisions on a range of policies which span the responsibilities of the Department for Education, the Ministry of Justice, the Department for Business, Innovation and Skills, the Department for Work and Pensions and the Department of Health. It contains measures intended to remove barriers to adoption; reform the family justice system and the special educational needs system and ensure that services place children and young people at the centre of decision making and support. It contains measures which relate to the welfare of children, including areas such as: child performance; protecting children and young people from tobacco and nicotine addiction; young carers and parent carers; “staying put” arrangements; supporting pupils at school with medical conditions; reform of children’s homes; clarifying the Secretary of State’s intervention powers; and free school lunches. The Act contains measures which support wider changes to childcare; introduces a new system of shared parental leave following childbirth or adoption; and extends to all employees the right to request flexible working. Through its reforms to the functions and role of the Children’s Commissioner, the Act is intended to ensure that children in England have a strong advocate for their rights.
5. Pre-legislative scrutiny was conducted in relation to Parts 1, 2, 3 and 6 during 2012. The Government published its response in the Command paper *Children and Families Bill: Contextual Information and Responses to Pre-Legislative Scrutiny* (CM8540) on 5 February 2013.
6. The Act consists of 10 Parts, 140 sections and 7 Schedules.

7. Where explanatory notes are provided for Schedules, these are included in the notes for the relevant sections. Annex A of this document sets out further detail relating to the parental involvement provision.

Part 1: Adoption and contact

8. **Part 1** of the Act contains provisions to give effect to proposals in *An Action Plan for Adoption: Tackling Delay*, published by the Department for Education on 14 March 2012, and *Further Action on Adoption: Finding More Loving Homes*, published on 24 January 2013. These set out proposals to speed up the adoption process and enable more children to be placed in stable, loving homes with less delay and disruption. The Act includes provisions which are intended to:
 - Allow persons with a prescribed relationship to a person adopted before 30 December 2005 to have access to intermediary services to facilitate contact between them and the adopted person's birth relatives;
 - Encourage local authorities to place children for whom they are considering adoption with their potential permanent carers more swiftly, by requiring a local authority looking after a child for whom they are considering adoption to place them with foster carers who are also approved prospective adopters, on a fostering basis. The provisions require the local authority first to consider family and friend carers;
 - Reduce delay by removing the explicit legal wording around a child's ethnicity so that black and minority ethnic children are not left waiting in care longer than necessary because local authorities are seeking a perfect or partial ethnic match;
 - Enable the Secretary of State to require local authorities to commission adopter recruitment services from one or more other adoption agencies;
 - Give approved prospective adopters a more active role in identifying possible matches with children for whom the local authority are considering adoption, or children whom the local authority are satisfied ought to be placed for adoption but whom they are not yet authorised to place by virtue of parental consent or a placement order, by amending the current restrictions in relation to "public inspection or search" of the Adoption and Children Act Register so that they can access the register directly, subject to appropriate safeguards;
 - Improve the current provision of adoption support by placing new duties on local authorities to provide personal budgets upon request and to give prospective adopters and adoptive parents information about their entitlements to support;
 - Make changes to the arrangements for contact between children in care and their birth parents, guardians and certain others and adopted children and their birth families, former guardians and certain others with the aim of reducing the disruption that inappropriate contact can cause to adoptive placements.
9. Pre-legislative scrutiny of the provisions on "Fostering for Adoption" and ethnicity was undertaken by the House of Lords Select Committee on Adoption Legislation. The Committee's *Interim Report* containing its recommendations on these provisions was published on 19 December 2012. The Government response was published on 5 February 2013 as part of *Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*.

Part 2: Family justice

10. **Part 2** makes changes to improve the operation of the family justice system, as recommended by the independent Family Justice Review and accepted by the Government in its response published on 6 February 2012. The Family Justice Review, chaired by David Norgrove, was set up by the Government in 2010 to look at the family justice system and make recommendations as to how the system could be changed for

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the benefit of children and families. An *Interim Report* was published in March 2011 and the Family Justice Review Final Report was published in November 2011.

11. In respect of private family law (by which is meant the law about resolving disputes between family members, as distinct from public family law, about intervention by public authorities), the Act includes provisions to:
 - Require a potential applicant to attend a family mediation, information and assessment meeting to find out about and consider mediation before being able to apply for certain types of court order;
 - Send a clear signal to separated parents that courts will take account of the principle that both should continue to be involved in their children's lives where that is safe and consistent with the child's welfare, which remains the court's paramount consideration;
 - Introduce a "child arrangements order", replacing residence and contact orders;
 - Make changes so that when a child arrangements order is breached, the court can direct the parties to undertake activities designed to help them understand the importance of complying with the order and making it work;
 - Streamline court processes in proceedings for a decree of divorce, nullity of marriage, or judicial separation (or, in relation to a civil partnership, for a dissolution, nullity or separation order) by removing the requirement for the court to consider whether it should exercise any of its powers under the Children Act 1989. Arrangements for children can be decided at any time through separate proceedings under the Children Act 1989.
12. In respect of public family law, the Act includes provisions to:
 - Introduce a maximum 26 week time limit for completing care and supervision proceedings with the possibility of extending the time limit in a particular case for up to eight weeks at a time, should that be necessary to resolve the proceedings justly;
 - Ensure that the timetable for the case is child focused and decisions about it are made with explicit reference to the child's welfare;
 - Make it explicit that, when the court considers a care plan, it should focus on those issues essential to deciding whether to make a care order; and
 - Remove the eight week time limit on the duration of initial interim care orders and interim supervision orders, and the four week time limit on subsequent orders, and allow the court to make interim orders for the length of time it sees fit, although not extending beyond the date when the relevant care or supervision order proceedings are disposed of.
13. In respect of experts, the Act includes provision to ensure that expert evidence in children proceedings is permitted only when necessary to resolve the case justly, taking account of factors including the impact on the welfare of the child, and whether the information could be obtained from one of the parties already involved in the proceedings. Family Procedure Rules are to prescribe the meaning of "children proceedings" which may include both private and public law proceedings.
14. Pre-legislative scrutiny of the family justice sections was undertaken by the House of Commons Justice Select Committee. The Committee published its report on 14 December 2012 and the provisions in Part 2 reflect the Government's response to the report, published on 5 February 2013 (*Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*).

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

15. **Part 3** of the Act contains provisions following the Green Paper *Support and Aspiration: A new approach to special educational needs and disability* published by the Department for Education on 18 March 2011 and the follow up *Progress and Next Steps* published 15 May 2012.
16. The provisions are a major reform of the present statutory framework for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. They require local authorities to keep local provision for children and young people with SEN and disabilities under review, to co-operate with their partners to plan and commission provision for those children and young people and publish clear information on services they expect to be available. The provisions set out the statutory framework for identifying, and assessing the needs of, children and young people with SEN who require support beyond that which is normally available. Statements made under section 324 of the Education Act 1996 and Learning Difficulty Assessments made under section 139A of the Learning and Skills Act 2000 are replaced by new 0-25 Education, Health and Care plans (EHC plans) for both children and young people. The provisions place a new requirement on health commissioners to deliver the health care services specified in plans.
17. The provisions extend the rights that parents of children with statements of SEN currently have, to express a preference for the school they wish their child to attend, to young people in education and training (including further education). In addition, they widen the institutions for which they can express a preference to include Academy schools, further education colleges and sixth form colleges, non-maintained special schools and independent special schools and independent specialist colleges approved for this purpose by the Secretary of State.
18. The provisions are also intended to give parents and young people greater control over the way their support is provided through involvement with local authorities in reviewing services and through the option of personal budgets in certain circumstances. They introduce a requirement to consider mediation before appeals are made to the First-tier Tribunal. This is to help resolve disagreements without the need for Tribunal appeals wherever possible. The provisions also extend the right to appeal to young people in education and training (including further education); include a power to pilot giving children the right to make appeals to the Tribunal themselves, rather than it having to be through their parent; and to pilot the Tribunal making recommendations on the health and social care provision set out in an EHC plan.
19. The sections replace and extend, in relation to England, provisions in Part 4 of the Education Act 1996, associated regulations, and sections 139A to 139C of the Learning and Skills Act 2000, which will be repealed in relation to children and young people in the area of a local authority in England. Regulations will set out the detailed requirements of particular provisions where provided for in the sections. A statutory Code of Practice will be developed to provide guidance on the new framework for SEN, for the approval of Parliament.
20. Pre-legislative scrutiny of the SEN provisions was undertaken by the House of Commons Education Select Committee. The Committee published its report on 18 December 2012 and the provisions in Part 3 reflect the Government's response to the report, published on 5 February 2013 (*Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*).

Part 4: Childcare etc

21. **Part 4** of the Act contains various provisions relating to childcare, some of which flow from proposals described in *More Great Childcare* which the Government published on 29 January 2013 and which includes the Government's response to Professor Cathy

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Nutbrown's report, *Foundations for Quality* (published in June 2012). Section 3D of *More Great Childcare* refers to the plans to introduce childminder agencies.

22. This Part contains provision:

- For childminder agencies (that is persons who are registered in the appropriate childcare register by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") and who are therefore able to register childminders and other providers of childcare on domestic premises for the purposes of Part 3 of the Childcare Act 2006);
- For the Chief Inspector to charge a fee for carrying out an inspection of early years childcare provision where the inspection is carried out at the request of the provider and the Chief Inspector is required by the Secretary of State to conduct the inspection;
- To allow regulations to be made about the way local authorities meet their duty to secure early years provision for young children;
- Repealing the duty in section 11 of the Childcare Act 2006 on English local authorities to prepare, at least every three years, an assessment of the sufficiency of the provision of childcare in their area;
- To remove the requirements in section 28 of the Education Act 2002 on governing bodies of maintained schools to consult with local authorities, staff and parents on whether to offer community facilities or services. This would remove a current burden on schools considering offering before and after school childcare, amongst other services. It also removes the requirement for the governing bodies to have regard to advice or guidance from the Secretary of State or local authorities before providing such facilities;
- For Her Majesty's Revenue and Customs (HMRC) to undertake preparatory expenditure in relation to the introduction of a scheme for providing assistance in respect of the costs of childcare.

Part 5: Welfare of Children

23. **Part 5** of the Act contains various provisions relating to the welfare of children, including to:

- Repeal section 38 of the Children and Young Persons Act 1963, in relation to England and Wales, removing restrictions on the circumstances in which a local authority can issue a performance licence to a child under the age of 14;
- Protect children and young people from tobacco and nicotine addiction;
- Consolidate legislation relating to the rights and support for young carers and parent carers, and extend their rights to assessment;
- Enable former looked after children to continue to live ("stay put") with their former foster parents until age 21, if the local authority determines that it would be appropriate for them to do so and both the young person and the foster parent wish to make a "staying put" arrangement;
- Amend section 22 of the Children Act 1989 to require local authorities in England to appoint an officer for the purpose of discharging the authority's duty to promote the educational achievement of the children they look after;
- Place 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;

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- Clarify 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 children's services to an adequate standard;
- Support the reform of children's homes, particularly by enabling the development of a regulation and inspection framework that sets high standards for children in residential care and offers them the support required to achieve positive outcomes;
- Ensure that all state-funded schools – both maintained schools and Academies – have an obligation to provide free school lunches on request for all pupils in reception, year one and year two.

Part 6: The Children's Commissioner

24. **Part 6** of the Act implements the recommendations from John Dunford's independent review of the Children's Commissioner (*Review of the Office of the Children's Commissioner (England): December 2010*), which concluded that there were strong arguments for retaining the office of Children's Commissioner ("OCC"), but that the legislative framework had prevented the Commissioner from having sufficient impact on children's lives. The provisions in the Act aim to remove the barriers that John Dunford identified, in particular by:
- Amending the Commissioner's primary function to one of promoting and protecting children's rights;
 - Making the Commissioner more clearly independent from Government;
 - Providing for greater scrutiny of the Commissioner's impact, through an annual report to Parliament;
 - Combining the functions of the Commissioner with the activities currently carried out by the Children's Rights Director;
 - Clarifying the Commissioner's powers and remit.
25. Pre-legislative scrutiny of the OCC sections was undertaken by the Joint Committee on Human Rights (JCHR). The Government's response to the report was published on 5 February 2013 (*Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*).

Part 7: Statutory rights to leave and pay

26. **Part 7** of the Act delivers the legislative commitments made in the Government Response to the Modern Workplaces consultation (November 2012). The provisions create a new employment right to shared parental leave and statutory shared parental pay for eligible working parents. Women continue to be eligible for maternity leave and statutory maternity pay or allowance in the same way as previously. If they choose to bring their leave and pay or allowance to an early end, eligible working parents can share up to the balance of the remaining leave and pay as shared parental leave and pay. Eligible adopters can use the new system for shared parental leave and pay. Adoption leave and pay include prospective parents in the "Fostering for Adoption" system, and parents in a surrogacy arrangement who are eligible, and intend to apply, for a parental order.

Part 8: Time off work: Ante-natal care etc

27. **Part 8** creates a new right for employees and qualifying agency workers to take unpaid time off work to attend up to two ante-natal appointments with a pregnant woman. The right is available to the pregnant woman's husband, civil partner or partner, the father

or parent of the pregnant woman's child, and intended parents in a surrogacy situation who meet specified conditions.

28. Provision is made for paid and unpaid time off work for adopters to attend meetings in advance of a child being placed with them for adoption.

Part 9: Right to request flexible working

29. **Part 9** provides for the expansion of the right to request flexible working from employees who are parents or carers to all employees, and the removal of the statutory process that employers must currently follow when considering requests for flexible working. The Government's policy reforms for the right to request flexible working are set out in its paper *Modern Workplaces – Government Response on Flexible Working* (published in November 2012). This Part sets out the statutory provisions to support those reforms.
30. Changes enable employers to consider requests using their existing HR processes instead of having to follow a statutory procedure.
31. These sections amend the Employment Rights Act 1996 ("ERA"). Following consultation the Advisory, Conciliation and Arbitration Service ("ACAS") has published a draft Code of Practice on handling requests to work flexibly in a reasonable manner. This Code will explain what the minimum requirements are in order to consider a request in a reasonable manner. If neither House of Parliament resolves that no further proceedings shall be taken, the Code of Practice will be issued using powers in the Trade Union and Labour Relations (Consolidation) Act 1992 and will be brought into force by order on a date appointed by the Secretary of State.