

Written Evidence from HM Government\Department for Education (CFA0001)

HOUSE OF LORDS CHILDREN AND FAMILIES ACT 2014 SELECT COMMITTEE INQUIRY

Memorandum to the House of Lords Special Select Committee`

Post-legislative scrutiny of the Children and Families Act 2014

Introduction

1. This memorandum provides an assessment of the Children and Families Act 2014 (CFA) and has been prepared by the Department for Education with contributions from the Ministry of Justice (on Part 2), the Department for Health and Social Care (on Part 5), the Department for Work and Pensions (on Part 7) and the Department for Business, Energy & Industrial Strategy (on Part(s) 7, 8, 9).
2. The majority of the CFA extends to England and Wales and only applies in England, however a few provisions extended and applied to Wales, Scotland and Northern Ireland. However, this memorandum only covers the provisions of the Act in terms of their application to England and English local authorities.
3. The CFA brought forward a range of Government commitments which were 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.
4. The CFA Bill and Pre-legislative work was carried out by the Coalition Government – formed in 2010. The aim of the reforms was to ensure that services consistently place children and young people at the centre of decision making and support.,

The Children and Families Act 2014

5. The CFA contains provisions on a range of policies which span the responsibilities of the Department for Education, the Ministry of Justice, the Department for Business, Energy & Industrial Strategy (formally, the Department for Business, Innovation and Skills), the Department for Work and Pensions and the Department of Health and Social Care (formally Department for Health).
6. 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 performances; protecting children and young people from tobacco and nicotine addiction; young carers and parent carers; “staying put” arrangements for children leaving care; supporting pupils at school with medical conditions; reform of children’s homes; clarifying the Secretary of State’s intervention powers in relation to local authority functions relating to children; and free school lunches. The Act contains measures which support wider changes to childcare; it introduced a new system of shared parental leave following childbirth or adoption; and

extended to all employees the right to request flexible working.

7. 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.
8. The CFA is split into nine substantive parts. This memorandum deals with each part of the CFA in turn and provides post-legislative scrutiny for each set of related powers set out in the Contents Table.

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Part 1 - Adoption and contact

Sections 1-9: (1-7) Adoption; (8-9) ContactIntroduction

9. Part 1 of the Act contained provisions 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 were intended to:
- Section 1 (Contact between prescribed persons and adopted person's relatives): 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.
 - Section 2 (Placement of looked after children with prospective adopters): Encourage local authorities to place children for whom they are considering adoption with their potential permanent carers more swiftly, by requiring a local authority to place them with foster carers who are also approved prospective adopters ('fostering for adoption').
 - Section 3 (Repeal of requirement to give due consideration to ethnicity: England): Reduce delay by removing the requirement for an adoption agency in England to give due consideration to 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 an ethnic match.
 - Section 4 (Recruitment, assessment and approval of prospective adopters): Enable the Secretary of State to direct local authorities in England to commission adopter recruitment, assessment and approval services from one or more other adoption agencies.
 - Section 5 (Adoption support services: personal budgets): Improve the provision of adoption support by placing new duties on local authorities to provide personal budgets upon request.
 - Section 6 (Adoption support services: duty to provide information): To give prospective adopters and adoptive parents information about their entitlements to support.
 - Section 7 (The Adoption and Children Act Register): Give approved prospective adopters a more active role in identifying possible matches with children for whom the local authority are considering adoption by amending the "public inspection or search" of the Adoption and Children Act Register so that they can access the register directly,
 - Section 8 (Contact: children in care of local authorities): Amended section 34(1)(a) to (d) of the Children Act 1989 to provide that the requirement on the local authority to allow a child reasonable contact with their parent, wider family, guardian or other appropriate person is subject to the duty in section 22(3)(a) to safeguard and promote the child's welfare.
 - Section 9 (Contact: post-adoption): Make changes to the arrangements for contact between adopted children and their birth families, and certain others, with the aim of reducing the disruption that inappropriate contact can cause to adoptive placements.

Implementation

10. Section 1 was implemented fully in relation to England in July 2014 and has been used to trace and contact birth family members.

11. Section 2 was implemented fully in July 2014 and has been used by local authorities and adoption agencies.
12. Section 3 was implemented fully in July 2014. It amended section 1(5) of the Adoption and Children Act 2002 to provide that the wording which required adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when placing him or her for adoption does not apply to an adoption agency whose principal office is in England.
13. Section 4 was implemented fully in July 2014 but was repealed by the Education and Adoption Act 2016.
14. Section 5 has not been implemented.
15. Section 6 was implemented fully in July 2014 and has been used by adoption agencies.
16. Section 7 was implemented fully in May 2014 and the Register was used by approved adopters to look for children they were willing to adopt. However, the Register has since ceased.
17. Section 8 was implemented fully in July 2014.
18. Section 9 was implemented fully in April 2014 and is being used by adoption agencies, adopters and courts in deciding contact arrangements for adopted children.

Secondary legislation

Section	Related legislation/guidance	Purpose	Date of issue
1	The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Amendment) Regulations 2014	To allow all relatives of a person who was adopted before 30 December 2005, access to an intermediary service to facilitate contact (and in some cases disclosure of information) between such persons and the birth relatives of the adopted person.	31 st October 2014
2	The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014	To tackle delay in the adoption system by enabling the early placement of children with local authority	25 th July 2014

7	The Adoption and Children Act Register Regulations 2014 The Adoption and Children Act Register (Search and Inspection) Regulations 2017	To establish and maintain the Adoption and Children Act Register; and to enable approved prospective adopters to search and inspect the Register for the purposes of assisting them to find a child for whom they would be appropriate adopters and/or for the purposes of assisting them to find a child for whom they would care for on a fostering basis.	25 th July 2014 2 nd November 2017
8	The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014	To require local authorities to have regard to a child's care plan when considering the issue of what contact there should be between a child and their family.	25 July 2014

Assessment

19. Section 1 (Contact between prescribed persons and adopted person's relatives) extended the provision of intermediary services to a wider range of relatives. However, we do not collect information on how many people use intermediary services and the Department has not carried out any research on the impact of this section.
20. Section 2 (Placement of looked after children with prospective adopters) - early Permanence placements (a fostering for adoption or concurrent planning placement) are now widely used across the country and have increased since the new provisions came into force. For children looked after on 31 March 2021, 470 children (0.6%) were in such a placement compared to 250 (0.4%) on 31 March 2015.
21. The Department has not carried out any research on the outcomes of the children in these placements, but we have recently appointed a research Consortium (Ecorys UK, Ipsos MORI and the Rees Centre) to explore the potential of a seminal study to research the needs, experiences and outcomes for young people leaving care on Adoption Orders and Special Guardianship Orders. This will include those children who were adopted via a fostering for adoption placement. The feasibility study will conclude in May 2022.
22. In *Adoption Strategy: Achieving Excellence Everywhere*, published in July 2020, (<https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere>) we also say we will "support Regional Adoption Agencies (RAAs) leaders to deliver:
 - the expansion of Early Permanence services to all RAAs, using the best tested practice to support everybody involved, with the aim of increasing the number of children being placed via Early Permanence placements where this is the best option for the child.
 - raised awareness of the benefits of Early Permanence placements amongst wider stakeholders, including LAs and the courts, encouraging the use of such placements whenever appropriate."
23. Section 3 (Repeal of requirement to give due consideration to ethnicity: England) - the Department has not carried out any research on the impact of removing this requirement. However, Black and minority ethnic children are now being placed for adoption on average 8 months earlier than in 2013-14. The average time was 37 months in 2013-14 and had improved to 29 months by 2020-21.
24. Black and minority ethnic children remain one of the groups of children who wait the longest to be matched with a new adoptive family and we have set out further action to reduce their waiting times in the *Adoption strategy Achieving excellence everywhere* published in July 2020. (<https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere>)
25. Section 4 (Recruitment, assessment, and approval of prospective adopters) - the Secretary of State did not use his new powers to give any directions requiring local authorities to make arrangements for their recruitment, assessment or approval to be carried out on their behalf by other adoption agencies and the section was repealed by the Education and Adoption Act 2016.
26. In *Adoption: A vision for change* (2016) the government outlined its overarching vision for transforming the quality of adoption services by developing Regional Adoption Agencies (RAAs). The regional approach has made a real difference, and RAA leaders are driving improvements throughout the system. Children are moving in with their adoptive families

more quickly and greater numbers of adoptive families are getting the adoption support they need. Nearly all local authorities are now in the 32 RAAs.

27. For the past two years the Government has funded RAA leaders to work with partners in voluntary adoption agencies to deliver a national recruitment campaign to recruit more adopters. This has led to an increase in the number of approved adopters and we now have more approved adopters (2,370) than children waiting to be matched with a new family (1,860) (figures as at September 2021).
28. The *Adoption strategy Achieving excellence everywhere* published in July 2020. (<https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere>) sets out how we intend to further approve the recruitment, assessment and approval of adopters.
29. Section 5 (Adoption support services: personal budgets) - following discussions with the Department's Adopter Reference Group it was decided not to bring this section into force. Adopters were concerned they would not have the expertise to decide what therapy would be needed to support their child and how to buy this from a wide range of providers. It remains uncommenced.
30. Section 6 (Adoption support services: duty to provide information) - all local authorities and Regional Adoption Agencies (RAAs) provide the information to the public required by this section via their individual websites and helplines. The Department has not carried out any research on the impact of this duty.
31. However, in 2020 we funded RAA leaders to commission a mystery shopper evaluation to provide 'critical friend' feedback to individual RAAs on their handling of adoption enquiry phone calls at the start and end of the 2020 National Adopter Recruitment Campaign *#You Can Adopt*. The report identified positive practice but also highlighted areas of variation. RAAs will use this to drive future local improvements and create a nationally consistent approach.
32. In the *Adoption Strategy: Achieving Excellence Everywhere*, published in July 2020. (<https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere>) we say we will ensure that "*information for prospective adopters is continuously improved through regular mystery shopping and a relentless focus on service improvement.*"
33. Section 7 (The Adoption and Children Act Register) - we do not know exactly how many adopters used the statutory Adoption Register to try and find a match with a child, but we know that it was used by some adopters. The statutory Adoption Register closed on 29 March 2019. This followed withdrawal of Government funding because, although the Register had been useful in matching children with adopters over its period of operation, practitioners did not favour it. Their preference was to be provided with up-to-date, accessible information. By 2019 over 90% of adoption agencies had chosen to pay for subscriptions to alternative services, despite the Adoption Register being free.
34. All local authorities and Regional Adoption Agencies now use a non-statutory register to match children with adopters provided by Link Maker, a social enterprise. Prospective adopters can use Link Maker directly to make their profiles available, and to work with their adoption agencies in identifying possible matches.
35. Section 8 (Contact: children in care of local authorities) - although there is a focus on

working in partnership with families and towards reunification where possible, the primary purpose of this clause is to make it clear that contact arrangements between children in care and their birth parents, guardians and certain others, must be made in the best interests of the child. It gives greater emphasis on the need to consider the safeguarding and welfare of the child with the aim to reduce the potential for harmful contact arrangements. We have not collected information on how local authorities have implemented these requirements.

36. [The Adoption and Care Planning \(Miscellaneous Amendments\) Regulations 2014](#) require local authorities to have regard to a child's care plan when considering the issue of whether family contact is consistent with safeguarding and promoting the child's welfare.
37. The Act has introduced greater consistency in court orders. The court must consider the parental contact arrangements made by local authorities and the involvement of those with parental contact when making, varying or discharging an order under Section 34 of the Children's Act. Previously this only applied before making care orders. It is unclear what the impact of this has been.
38. Section 9 (Contact: post-adoption) provided the court with a specific power to make an order for post-adoption contact when the court is making an adoption order or when an adoption order has been made. Although we know that contact is an issue that courts now consider in all adoption cases, we do not collect information on how many adoption orders have an accompanying contact order.
39. We are also aware that unwarranted contact with adoptive children has increased in recent years by birth relatives using social media. In the *Adoption Strategy Achieving Excellence Everywhere* published in July 2020. (<https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere>) we say we will improve contact arrangements: "We will work with the RAA Leaders Group to develop and trial what good practice looks like with a view to setting national standards in this area."

Legal issues

40. There have been no legal challenges to the Adoption and Contact sections of the CFA.

Part 2 - Family justice Sections 10-18 Introduction

41. Part 2 makes changes to improve the operation of the family justice system, as recommended by the independent Family Justice Review in November 2011¹ and accepted by the Government in its response published in February 2012². The Family Justice Review, chaired by Sir David Norgrove, was set up by the Government in 2010 to make recommendations for reform of the system.
42. The Department for Education, the Ministry of Justice, the judiciary, and other key sector partners have worked together to improve family court proceedings and secure better outcomes for children. Most recently, this has included close collaboration to ensure the family justice system continues to operate and recover, despite the challenges posed by court backlogs and new demands from the COVID-19 pandemic.
43. Part 2 deals with family proceedings (both public and private law) and is divided into the following sections:
- 10. Family mediation information and assessment meetings
 - 11. Welfare of the child: parental involvement
 - 12. Child arrangements orders
 - 13. Control of expert evidence, and of assessments, in children proceedings
 - 14. Care, supervision and other family proceedings: time limits and timetables
 - 15. Care plans
 - 16. Care proceedings and care plans: regulations: procedural requirements
 - 17. Repeal of restrictions on divorce and dissolution etc where there are children
 - 18. Repeal of uncommenced provisions of Part 2 of the Family Law Act 1996

Implementation

44. Provisions relating to all family proceedings, including those in this Part, fall within the remit of the Ministry of Justice.
45. The provisions in Part 2 of the Act are mainly used by the judiciary. The provisions set out considerations to which the court must have regard when making decisions during family court proceedings. HMCTS (Her Majesty's Courts and Tribunals Service) and Cafcass (Children and Family Court Advisory and Support Service) also make use of the provisions in this Part.

¹ [Family Justice Review Final Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61222/fjr-final-report.pdf)

² [Government response to the family justice review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/fjr-response)

Secondary legislation

46. The Family Procedure Rules, and the supporting Practice Directions, provide the practice and procedure for family proceedings and have been updated to reflect provisions made by Part 2 of the Act.

Assessment

47. Section 10 (Family mediation information and assessment meetings) provides that, unless exempt, a person must attend a family mediation information and assessment meeting (MIAM) before making a relevant family court application.

48. These provisions have been implemented. Chapter III of Part 3 of the Family Procedure Rules, supported by Practice Direction 3A, make more detailed provision for the operation of the requirement and the exemptions to it. Whilst this provision has been successfully implemented and is operational, the proportion of cases going to a MIAM and subsequently on to mediation are lower than anticipated. Government is now developing further policy to strengthen the enforcement of MIAM requirements and, where suitable, more robustly challenge MIAM exemptions.

49. Section 11 (Welfare of the child: parental involvement) amends Section 1 of the Children Act 1989 to require the court in certain circumstances, such as when considering child arrangements orders, to presume that the involvement of each parent in a child's life, where they are able to be involved in a way which does not put the child at risk of suffering harm, will further the welfare of the child. The court is also required to treat each parent as able to be involved unless there is evidence to the contrary.

50. This provision received significant attention in the 2020 Report: Assessing Risk of Harm to Children and Parents in Private Law Children Cases, and the government implementation plan published in response to the report. The report suggested that the presumption outlined in Section 11 had led to an undesirable 'pro-contact' culture in the family court and recommended that the operation of the presumption of parental involvement be reviewed urgently in order to address detrimental effects in practice.

51. In November 2020, the government announced the launch of the Review of the Presumption of Parental Involvement via a written ministerial statement. The Covid-19 pandemic led to delays in the commissioning and delivery of the research; however, it is now progressing and due to be completed by the end of the year.

52. This provision, in addition to the Review of the Presumption of Parental Involvement, received sustained attention during the passage of the Domestic Abuse Act 2021. The government maintained its position that the outcome of the Review should be awaited before deciding whether legislative change is needed.

53. Section 12 (Child arrangement orders) amends Section 8 (1) of the Children Act 1989, replacing 'contact order' and 'residence order' with 'child arrangements order'. It has been fully implemented and is outlined in Practice Direction 12B – Child Arrangements Programme (CAP), which was issued on 22 April 2014. Several guidance documents³ were published at the time of implementation of CAP.

54. Section 13 (Control of expert evidence, and of assessments, in children proceedings) includes provisions to ensure that expert evidence in children proceedings is permitted only when necessary to resolve the case justly. It sets out the considerations to which

³ [Practice Direction 12B - Associated Documents \(justice.gov.uk\)](https://www.justice.gov.uk/practice-direction-12b-associated-documents)

the court is to have regard when deciding whether to give permission to instruct a person to provide expert evidence in children proceedings. These considerations include, for example, what other expert evidence is available, and the impact which giving permission would be likely to have on the timetable for, and duration and conduct of, the proceedings.

55. The Public Law Working Group's final report⁴ (March 2021) provided that there has been 'an increase in the number of experts being approved by the courts in public law proceedings' and that 'the issue is most acute in relation to the instruction of independent social workers and psychologists'. The national Family Justice Board (FJB), co-chaired by ministers at the Department for Education and the Ministry of Justice, is looking at evidence on the use of experts in public law proceedings in England and Wales. This is part of wider work to evaluate the potential reasons behind those children's cases which are taking the longest to conclude and to find recommendations and solutions for addressing these delays. The use of expert assessments has been identified as a potential cause of delays in the family courts and is being considered as part of this work prioritised by the FJB.
56. In November 2020 the President of the Family Division published a report on the shortage of expert witnesses in the family courts. The report found a shortage of medical experts and other allied professions, in particular psychologists and independent social workers. The main impact of the shortages are delays to proceedings, although there are also concerns about the quality of some expert evidence.
57. In May 2021, Tim Farron MP tabled a petition asking for the House of Commons to refer the issue of the lack of independent assessment of expert reports in the family courts to the Justice and Education Select Committees for review. In response, the government referred to this section of the Act and supporting Rules and Practice Directions, highlighting the independence of experts and the key role of judicial discretion in determining when expert evidence should be put before the court.
58. The Government's response also referred to the associated Family Procedure Rules and supporting Practice Directions, which provides directions regarding the use of experts and assessors in family courts, including setting out that the duty of an expert is "to help the court on matters within their expertise", and that this "overrides any obligation" to the person instructing or paying the expert.
59. In respect of public family law proceedings, Section 14 (Care, supervision and other family proceedings: time limits and timetables) introduces 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 8 weeks at a time should that be necessary to resolve the proceedings justly. With regard to the 26-week time limit, the previous President of the Family Division, Sir James Munby, said in 2013 that 'this deadline can be met, it must be met, it will be met. And remember, 26 weeks is a deadline, not a target; it is a maximum, not an average or a mean. So many cases will need to be finished in less than 26 weeks'⁵.
60. In the year before the introduction of the 26-week timeframe, public law cases in England and Wales were completed, on average, within 38 weeks (2013). The average case

⁴ [Public Law Working Group, Recommendations to achieve best practice in the child protection and family justice systems, final report \(March 2021\)](#)

⁵ [President of the Family Division update: The process of reform \(judiciary.uk\)](#)

duration reduced to 30 weeks in 2014 and 28 weeks in 2015. However, since 2016, there has been a yearly increase in average case duration in public law proceedings. The latest national average for public law case duration is 45 weeks (September 2021)⁶.

61. We continue to strive to support courts to conclude cases in a timely way. The impact of the COVID-19 pandemic led to a backlog of cases in the family courts, which significantly impacted the timeliness of proceedings. Between July and September 2021, 24% of public law cases were completed within 26 weeks, down 5 percentage points compared to the same period in 2020⁷. As above, it is a core priority of the FJB to identify and address those children's cases that have been in the system the longest.
62. The President of the Family Division will shortly be issuing a 'View from the President's Chambers' note, with accompanying practice guidance, emphasising the importance of tightening up case management and 'making every hearing count', in order to improve the timeliness of case conclusions.
63. As part of wider COVID-19 pandemic recovery support within the children's social care system, the Department for Education has invested around £1.49m across seven regions in England to improve family justice practice and local decision-making, with the overarching aim of reducing court backlogs. This work includes training and embedding into practice a Public Law Outline (PLO) toolkit, designed to ensure that any action to bring a case to court is necessary, timely and above all in the child's best interest. There is also a parallel project underway to collect enhanced family justice data, designed to give us a better picture of what is happening on the ground at the pre-proceedings stage. Initial outputs from this work are expected during Spring/Summer 2022.
64. We invested £250 million to support recovery in our courts in the last financial year (20/21). This included £76 million to increase our capacity to hear cases in the family and civil courts, as well as in tribunals. The Spending Review provided £324 million over the next three years to improve waiting times in the civil and family courts, and tribunals.
65. Section 14 also removes time limits for interim care and supervision orders – the first interim order no longer expires after 8 weeks and subsequent 4-week extensions are no longer required. Interim orders, once granted, now last until the conclusion of proceedings; though the introduction of the 26-week timeframe and the focus on improving the timeliness of proceedings is to reduce the risk of children remaining subject to interim orders for a significant length of time. We are not aware of issues or concerns with the removal of the time limits in Section 14.
66. As part of the work by the FJB (referenced earlier) to identify and address those children's cases that have been in the system the longest, Cafcass (Children and Family Court Advisory and Support Service) will be providing local authorities with data on these longest cases in their particular area, including the types of order that have been sought. When this data and analysis is available in Spring/Summer 2022, we will have a clearer view of whether there is a link between types of order (including interim care and supervision orders) and case duration.

⁶ [Family Court Statistics Quarterly: July to September 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2021)

⁷ [Family Court Statistics Quarterly: July to September 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2021)

67. Section 15 (Care plans) introduces the requirement for a court to consider the permanence provisions of the section 31A care plan when deciding whether to make a care order. This makes the decision as to where a child will be placed, i.e. whether they will be removed from their parents. We think that this greater emphasis on the importance of permanence considerations has been seen as a positive step and has had a positive impact on decisions made by the family courts.
68. Section 16 (Care proceedings and care plans: regulations: procedural requirements) inserts a new section (3BA) in section 104 of the Children Act 1989 and is consequential on the previous two sections. There is no policy assessment to make in relation to Section 16.
69. Section 17 (Repeal of restrictions on divorce and dissolution etc where there are children) repeals section 41 of the Matrimonial Causes Act 1973 and section 63 of the Civil Partnership Act 2004 which require the court to consider whether it should exercise any of its powers under the Children Act 1989 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. There is no policy assessment to make in relation to Section 17.
70. There is no policy assessment to make in relation to Section 18, as section 18 repeals uncommenced provisions (of Part 2 of the Family Law Act 1996).

Legal issues

71. We are not aware of any legal challenges to the provisions in Part 2.

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

72. This section of the memo recognises that the SEND Review, due for publication this month, will have an impact on Part 3 of the Act. The Review will be a comprehensive assessment of the system as it is currently operating, with policy proposals for reform. It was agreed with the Clerk of the Committee that we would supply the material provided to the Education Select Committee with regards to their post-legislative scrutiny of Part 3 of the Act, undertaken in 2019. The links to these are provided below. We have also chosen to provide a note below on the intent of the legislation, current position of the system and next steps.

[Written evidence - Department for Education and Department for Health and Social Care \(parliament.uk\)](#)

[Written evidence - Department for Education and Department for Health and Social Care \(parliament.uk\)](#)

Background

73. The Children and Families Act 2014 brought in a range of changes to the SEND system, including:

- A requirement on local authorities and health bodies to commission education, health and social care services jointly for those with SEN or disabilities and to integrate such provision where this would improve outcomes and support well-being.
- A clear, transparent Local Offer of services across education, health and social care published by the local authority for children and young people with SEN or disabilities and developed and reviewed with them. Local authorities must publish comments from children, young people and parents about the Local Offer and also publish the action they plan to take to address them.
- Local impartial Information, Advice and Support Services to help children, their parents and young people access the support they need – in relation to SEN and disability
- A more streamlined assessment process for statutory plans, with time limits reduced from 26 to 20 weeks and a focus on co-ordination across education, health and care, and involving children, their parents and young people throughout.
- 0-25 EHC plans for those with more complex needs, replacing Statements of SEN and Learning Difficulty Assessments. Plans should reflect the child or young person's aspirations for the future, as well as their current needs.
- New statutory protections for young people aged 16-25 in Further Education, including a new right to request that a particular institution is named in their EHC plan and a right to appeal to the independent Tribunal.
- A new duty on health commissioners to arrange the health element of EHC plans.
- In the context of EHC plans, the option of a personal budget for parents and

young people, extending choice and control over support.

- New powers for those under 19 in custody to request an assessment for an EHC plan. Local authorities and health bodies must arrange the provision in an EHC plan and 'home' local authorities retain responsibility for a child or young person when they enter custody, while in custody and for arrangements on release.
- New mediation arrangements, also extended to cover health and social care as well as education.
- A review of disagreement resolution arrangements. This includes a trial testing giving the Tribunal the power to make non-binding recommendations on health and social care – in addition to its existing power to place binding orders on local authorities in respect of appeals against decisions about special educational needs and provision.

Current state of play: key SEND system stats:

74. The number of pupils with SEN has increased every year since 2016. In 2016, there were 1.23 million pupils (14.4%), this rose to 1.41 million (15.8%) in 2021.
75. Between 2016 and 2021, the population of pupils identified with SEN increased on average by 2.8% per year; in contrast over the same time period the total pupil population increased on average by 0.8% a year.
76. There were 430,700 children and young people (ages 0-25) with EHC plans maintained by local authorities as at January 2021.
77. Of all FE and Skills students, 16.3% of those aged 19 and over had a self-declared learning difficulty and/or disability in 2020/21.
78. 88.5% of 16/17 year olds with an EHC plan and 87.1% with SEN support were in education and training in March 2020, compared to 93.2% of those without SEN.
79. The total number of 2-year-olds benefitting from funded early years education decreased between 2020 and 2021 and the proportion with SEN remained stable at 3.5%.
80. The total number of 3 and 4-year-olds in receipt of funded early education declined between 2020 and 2021 and the proportion with SEN decreased from 6.6% in 2020 to 6.3% in 2021.

Support for children and young people with SEND

81. We continue to provide a high level of support for children and young people with SEND and their families and carers:

Funding

82. We are investing £2.6 billion between 2022 and 2025 to deliver new places and improve

existing provision for pupils with SEND or who require alternative provision. This capital funding represents a transformational investment in new High Needs provision and will help deliver tens of thousands of new places.

83. High needs revenue funding for children and young people with complex needs is increasing in the next financial year, 2022-23 by £1 billion to over £9.1 billion. This unprecedented increase of 13% comes on top of the £1.5 billion increase over the last two years and will continue to support local authorities, schools and colleges with the increasing costs they are facing.
84. We allocated £42 million this financial year (2021-22) to continue funding projects to support children and young people with SEND. This is ensuring that specialist organisations around the country, such as, the charity Contact, can continue to strengthen local area performance, support families and provide practical support to schools and colleges. It is strengthening participation of parents and young people in the SEND system – ensuring they have a voice in designing policies and services and have access to high quality information and support. This includes £27.3 million to support over 60,000 families on low incomes raising children and young people with disabilities or serious illnesses.

New and continued funding for SEND support from 2022-23-2024-25

85. On 1 February, as part of a departmental package to transform education and opportunities for our most disadvantaged children and young people, we announced new funding for respite care and supported internships (SI). Parents and carers will be able to access respite care to support them in caring for their disabled children. Councils will be able to bid for projects to be funded from a new £30 million investment over the next three years, to set up more than 10,000 additional respite places, helping to provide positive opportunities for disabled children and young people, whilst also enabling parents/carers to have a short break from caring responsibilities.
86. In addition, we are investing up to £18 million over the next three years to build capacity in the SI programme, aiming to double the number of SIs to give more young people with an EHC plan the skills to secure and sustain paid employment. We have also worked with stakeholders across the sector to update our [Providing supported internships for young people with an EHC plan](#) guidance, to help education providers and employers deliver high quality supported internship placements for young people across the country.
87. As part of this package, we also announced continued funding of more than £45 million over the next three years to:
- target support to improve monitoring, support and intervention for local authorities, local health and care partners' delivery of statutory SEND services, with a focus on underperforming areas and sharing best practice;
 - improve participation and access for parents and young people for high quality advice and support; and
 - directly support schools and colleges to work effectively with children and young people with SEND, for example through training on specific needs like autism.
88. We continue to work with the local authorities with the highest dedicated schools grants deficits, accumulated where LAs have struggled to manage their high needs systems within their allocated funding. This is our safety valve intervention programme. The

programme requires the local authorities to develop substantial plans for reform to their high needs systems, with support and challenge from the department, to place them on a sustainable footing. We have announced that in 2022-23 we will have an additional £150m for the safety valve intervention programme. This is on top of our existing annual budget for the programme and will enable us to work with a greater cohort of local authorities.

89. In addition to the safety valve programme, there is £85m over 3 years from 2022-23 to support a wider group of LAs with smaller DSG deficits. This is a new programme called Delivering Better Value in SEND and will provide dedicated support and funding to the selected local authorities to help them reform their high needs systems.

Local area SEND inspections

90. Since 2016, we have been driving measures to support and hold local areas to account through Ofsted/Care Quality Commission SEND inspections. Where an inspection identifies an area of significant weakness, local authorities and Clinical Commissioning Groups are required to agree and implement a joint Written Statement of Action detailing how they will improve. These areas then receive a follow up inspection (revisit) after two years, and if serious concerns remain, further action can be taken, including issuing an Improvement Notice or Statutory Direction, by appointing a commissioner.

12. 138 local areas have been inspected, and 74 have required a Written Statement of Action. Of the 35 local areas which have been revisited 15 have cleared all of their areas of significant concern.

Education recovery

91. The pandemic disproportionately impacted children and young people with SEND and their families and we are committed to helping all pupils and students, make up lost learning. We have consistently prioritised support for children and young people with SEND and have:

- provided £153 million for the training of early years staff, which will particularly benefit vulnerable children, helping them with their speech and language skills, as well as their physical and emotional development
- provided additional uplifts for those attending specialist settings, including specialist units in mainstream schools, in both the catch-up premium paid in the 2020/21 academic year and the recovery premium being paid this academic year (2021/22)
- given schools flexibility through the new school-led tutoring element of the National Tutoring Programme (NTP), enabling them to select those tutors most able to support pupils with SEND.
- delivered a significant proportion of tutoring places available for pupils with SEND. 26 of our 33 providers are able to support pupils with SEND, with 17 of these also able to support pupils in special schools
- in response to the fact that many specialist services had to adjust their delivery models during the recovery period, issued new guidance on access to therapy services explaining our expectations for the delivery of these services
- given additional weighting for eligible pupils in special schools, alternative provision, hospital schools and specialist units within mainstream schools as part of the

additional £1 billion Spending Review settlement for the recovery premiums for academic years 2022/23 and 2023/24

- the 16-19 Tuition Fund, which will continue to support students with SEND through small group tuition.

Alternative Provision

92. Children and young people in alternative provision are some of the most disengaged in the education system and have the most to gain from spending more time in school. Alternative provision schools play an essential part in providing supportive relationships and facilitating engagement in education. They keep children and young people safe, promote mental health and well-being, and provide quality education and support. They also support re-integration back into mainstream, or successful transition to post-16.
93. We know that 83% of pupils in state place-funded alternative provision have been identified with Special Educational Needs (SEN). 24% have an EHC plan and 59% receive SEN Support. This compares to 16%, 4% and 12% respectively in all schools.
94. Social, Emotional and Mental Health (SEMH) needs are the most common types of need among alternative provision pupils with EHC plans or SEN support. Which account for 79% of all primary needs.
95. Reforming the alternative provision sector has been a top priority for this Government. As most alternative provision pupils have SEND and in response to manifesto commitments, an extensive alternative provision reform programme will be included in the SEND Green Paper.

Next steps - publication of SEND Green Paper

96. We recognise that the SEND system is not working well enough for too many families. That is why we launched a review of the SEND system in September 2019.
97. A key objective of the Review is to ensure that children and young people with SEND get the educational, health and care support they need, identified early and delivered promptly, in institutions that are best suited to meet their needs. We need to improve outcomes and experiences, within a financially sustainable system.
98. We have heard consistently throughout the Review that the level of variation in SEND provision across the country is part of what drives some of the challenges and dissatisfaction with the current system. d. The result is that a children and young people with the same type of needs are being treated differently depending on where they live.
99. The Review will clarify accountabilities at every level of the system in order to improve outcomes for children and young people with SEND and improve confidence in a financially sustainable system
100. We will shortly be publishing a Green Paper for full public consultation, with proposals for reforms to the system. We will ensure the committee receives a copy of the Green Paper.

Part 4 - Childcare, etc Sections 84-89

Introduction

101. The Department for Education's report, [More Great Childcare \(January 2013\)](#), set out how it planned to raise quality and give parents more choice, including via the creation of childminder agencies (CMAs). Childminder agencies are organisations that can register and quality assure childminders⁸ and providers of childcare on domestic premises⁹ as an alternative to registering with Ofsted. However, unlike Ofsted, which regulates and inspects its registered providers, the aim of childminder agencies was to:
- act as a lever to increase the number of childminders in the market by helping potential childminders understand the various requirements to establish their business and to get them up and running
 - provide an alternative route into the profession that offers more support to childminders, including training and development and business and marketing support, and
 - provide parents with support finding a childminder by offering a brokering service, advice and support about the things to consider when choosing a childminder.
102. Childminder agencies must themselves register with Ofsted and, once registered, are regulated and inspected by Ofsted. However, it is the CMA itself that assesses and quality assures its registered providers (although, during its inspection of a CMA, Ofsted visit a sample of the CMA's registered providers to assess the quality of support being offered by the CMA).
103. Section 84 of the [Children and Families Act 2014](#) (the "2014 Act") introduces Schedule 4, which amended the Childcare Act 2006 to:
- Enable prospective childminders and certain other providers of childcare on domestic premises to apply to register with a childminder agency as an alternative to making an application to the Chief Inspector (Ofsted)
 - Provide for childminder agencies, which must be registered on the early years register or Part A of the general childcare register
 - Enable the Chief Inspector (Ofsted) to impose conditions on and inspect childminder agencies, and
 - Enable the Chief Inspector (Ofsted) to take enforcement action in respect of unregistered persons who are falsely representing that they are childminder agencies.
104. The 2014 Act made amendments to the Childcare Act 2006 to provide for the registration of childminder agencies on the childcare registers (maintained by the Chief Inspector of Ofsted) and the registration of certain childcare providers with those agencies, and other related amendments. However, other requirements, provisions, and consequential amendments are set out in regulations – see "Secondary legislation" section below.

⁸ Childminders care for children on domestic premises (usually the childminder's own home) where at least half of that provision is on domestic premises.

⁹ 'Childcare on domestic premises' refers to provision by a group of four or more people where at least half of that provision is on domestic premises but which is not childminding by virtue of sections 96(5) and (9) of the Childcare Act 2006.

105. The [More Great Childcare \(January 2013\)](#) report set out how the government planned to improve the quality of early years provision and choice for parents. It included proposals for a number of changes to the regulatory regime for childcare. The intention was to ensure “providers are focused on quality rather than process and provides parents with assessments in which they can have confidence”. The report argued that the regime at the time got in the way of “allowing staff and inspectors to concentrate on the most important consideration: how well adults are interacting with children.”
106. The report went on to propose a number of reforms to Ofsted’s early years inspections, including allowing early years providers, “to request a paid-for, early re- inspection if they believe they have improved since their previous inspection.” This was at least partly in response to calls from the early years sector to allow providers judged as “Requires Improvement” or “Inadequate” to quickly reverse that judgement once they had addressed issues.
107. The requirement for local authorities to produce a childcare sufficiency assessment every three years under Section 11 of the Childcare Act (2006) was repealed in 2014. Many local authorities found the documents bureaucratic and costly to produce. The resulting documents were considered too long and technical to be useful to parents, and as they were only produced every three years, they were usually considered to be out of date.
108. [More Great Childcare](#) set out the Government’s intentions to improve the quality of early years provision and choice for parents. As a part of this, the report set out a number of proposals to streamline processes and improve efficiency. One proposal was to make Ofsted the sole arbiter of quality, and to reduce the role of local authorities in inspecting early years providers and acting as gatekeepers for access to the entitlements. The latter proposal, and subsequent Section 87 legislation meant that local authorities could no longer refuse to fund an early years entitlement place at an early years provider rated as “Good” or “Outstanding” by Ofsted if parents want to use that provider and if the provider is willing to provide that place. Section 87 also restricted the ability of local authorities to place conditions on the funding of these places.

Implementation

109. Section 84 (Childminder agencies) are the underpinning regulations that enabled childminder agencies to register with Ofsted came into force on 1 September 2014.
110. Any organisation able to meet the registration requirements is able register with Ofsted as a childminder agency, including local authorities, schools, and private nurseries. According to [Ofsted’s latest data](#), on 31 August 2021, nine childminder agencies were registered with Ofsted (all of which are private enterprises).
111. New childminders can choose to register with either Ofsted or with a childminder agency. However, childminders registered with Ofsted can also choose to de-register from Ofsted and register instead with a childminder agency (and vice versa). According to [Ofsted’s Annual Report 2020/21: Education, children's services and skills \(December 2021\)](#) there are around 760 childminders registered with CMA, with the largest CMAs having hundreds of childminders registered.
112. Implementation of paid-for inspections was initially delayed (Section 85 – Inspections at request of providers of childcare of young children), and eventually did not take

place. Ofsted did not consult on the use of this power to charge, and does not have a policy on allowing providers to request an inspection.

113. Section 86 repealed local authority's duty to assess sufficiency of childcare provision. Local authorities continue to be required, under Section 6 of the Childcare Act (2006), to ensure sufficient childcare provision for their area. So that they are held to account, our [statutory guidance](#), which local authorities must have regard to, requires local authorities to make an annual report to elected members and to parents about performance against this duty.
114. While the scope of annual reports is less prescriptive than that previously required for three-yearly childcare sufficiency assessments under the repealed Section 11 of the Childcare Act (2006), our 2014 [statutory guidance for local authorities](#) (Page 14) is clear that local authorities should include:
 - a. a specific reference to how they are ensuring there is sufficient childcare available to meet the needs of: children with special educational needs and disabilities; children from families in receipt of the childcare element of Working Tax Credit or Universal Credit; children with parents who work irregular hours; children aged two, three and four taking up free places; school age children; and children needing holiday care;
 - b. information about the current and projected supply and demand of childcare for particular age ranges of children, and the affordability, accessibility and quality of provision; and
 - c. details of how any gaps in childcare provision will be addressed.
115. Section 87 measures were set out in the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 and were elaborated on in [2014 statutory guidance to local authorities](#) (page 8).

Secondary legislation

Section	Related legislation/guidance	Purpose	Date of issue
84	Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014/1920, made under sections 51A, 51B, 51D, 61A, 61B, 61E, 83A and 84A of the Childcare Act 2006	These Regulations make provision relating to the registration and inspection of childminder agencies and the supply and disclosure of information by childminder agencies about childcare providers registered with them.	1 st Sep 2014
87	Amendments made to The Local	Section 7A of the 2006 Act makes provision for regulations to require an English local	8 th Sep 2014
Section	Related legislation/guidance	Purpose	Date of issue

	ce		
	Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014/2147 (amendments made by SI 2016/887). Amendments made under section 7A and 9A of the Childcare Act 2006	authority to discharge its duty to a young child under section 7 by making arrangements which secure that an early years provider chosen by a parent of the child provides the early years provision to which the child is entitled in cases where the early years provider is willing to provide the provision, and to accept the terms of the local authority imposed in respect of the provision. Section 9A of the 2006 Act makes provision for regulations to prescribe requirements which may, or may not, be imposed in arrangements made by an English local authority for the purpose of discharging its duty under section 7. Regulation 8(1) prescribes the requirements which may be imposed, and regulation 8(2) prescribes the requirements which may not be imposed.	
87	The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014. SI 2014 / 2147	Section 7A of the 2006 Act makes provision for regulations to require an English local authority to discharge its duty to a young child under section 7 by making arrangements which secure that an early years provider chosen by a parent of the child provides the early years provision to which the child is entitled in cases where the early years provider is willing to provide the provision, and to accept the terms of the local authority imposed in respect of the provision. Section 9A of the 2006 Act makes provision for regulations to prescribe requirements which may, or may not, be imposed in arrangements made by an English local authority for the purpose of discharging its duty under section 7. Regulation 8(1) prescribes the requirements which may be imposed, and regulation 8(2) prescribes the requirements which may not be imposed.	8 th Sep 2014

Assessment

116. When CMA legislation was introduced, the government worked with a partner from the voluntary and community sector to support prospective childminder agencies – helping them assess their suitability, establish their processes and navigate the registration

process. Shortly after this, the [Childcare Business Grant Scheme \(CBGS\)](#) was extended to CMAs, providing grants of up to £1000 to cover business start up costs (the scheme ended in 2019). **Despite this, the number of childminder agencies has remained low.** On 31 August 2021, nine childminder agencies were registered with Ofsted. However, of these, only five had childminders on roll.

117. **Despite the introduction of childminder agencies, the number of childminders continues to decline year on year.** According to [Ofsted's latest data](#), on 31 August 2021, there were 33,700 childminders registered with Ofsted – down by 14,100 (31%) since 31 August 2015.
118. The total number of providers registered with childminder agencies is not collected centrally. However, according to [Ofsted's Annual Report 2020/21](#), there are around 760 childminders registered with a childminder agency, which equates to around 2% of all childminders (with the remainder having chosen to join, or remain registered with Ofsted).
119. We do not know the reason for the reluctance on the part of childminders to register with a childminder agency. However, we believe it could relate to a number of factors, including: the fact that Ofsted branding is widely recognised compared with childminder agencies; the difference in cost to childminders as Ofsted fees are subsidised by government (currently set at £35 per year¹⁰) compared with childminder agencies that are self-funded and offer a wider range of services – and consequently may charge much higher fees; and other factors such as poor awareness and understanding about childminder agencies, and accurate or inaccurate perceptions of the experience of working with childminder agencies (particularly following the negative response from some key sector organisations to the government's plans to introduce childminder agencies in 2014).
120. Over the past year, the department has taken a number of steps to improve awareness and understanding about childminder agencies, including: publishing a [list of open childminder agencies](#) on [www.gov.uk](#); preparing a new policy paper to publish on [www.gov.uk](#) that sets out information about childminder agencies; and – in addition to regular communications to local authorities about CMAs – issuing a letter to remind local authorities of the statutory duty for childminder agencies to have in place arrangements to conduct background checks with local authorities on providers who wish to register with an agency.
121. We are currently working with both CMAs and childminder representatives to understand better the challenges for both groups, and to explore options for further supporting both childminders and CMAs. We are open to making significant reforms.
122. Since this measure was proposed (Section 85 – Inspections at request of providers of children to young children), the context of early years inspection has changed significantly, not least because the work is no longer contracted out. Ofsted returns more frequently to providers they have judged inadequate or requires improvement, and arguably the 'need' for such inspections has changed.
123. Ofsted does not gather data on re-inspection requests, however as their re-inspection timescales are 6 and 12 months for providers judged inadequate and requires improvement respectively, it may be that any requests for re-inspections resolve themselves within these timescales.
124. In an informal review conducted in late January 2022, we found that approximately two thirds of local authorities have either published an up-to-date annual sufficiency duty report on their website or plan to do so later in 2022. This includes a number of

¹⁰ In summer 2019, the Department for Education launched [consultation about increasing Ofsted's early years fees](#) for all early years providers (including childminders) from April 2020. However, the [government response](#) (March 2020) confirmed there would be no fee increase from April 2020, and provided assurances to the sector that any future fee proposals would be subject to a further public consultation.

local authorities which paused reporting due to the pressures of responding to COVID-19, but which are now resuming their sufficiency assessments. About one third of local authorities have not published an updated sufficiency duty report on their website for some years. We know that some of these authorities have been assessing sufficiency in the meantime but have cited barriers at the publication stage.

125. Annual sufficiency reports vary in structure and the level of detail included, from very comprehensive products similar to the previously required three-yearly childcare sufficiency assessments, to more light-touch reports. When reviewing a random sample of sufficiency reports against the requirements set out in [Statutory Guidance](#) (Page 14), we found that some local authorities provided limited information about sufficiency for specific cohorts of children, including those with SEND and school- aged children requiring wraparound care.
126. The key measure of sufficiency of childcare places is whether the supply of places available is sufficient to meet the requirements of parents and children. The majority of eligible two-, three- and four-year-olds have continued to access free childcare despite the challenges faced throughout the pandemic.
127. Local authorities are not reporting any substantial sufficiency or place supply issues that they are unable to manage locally, nor have we seen a substantial number of parents saying that they cannot secure a childcare place, either this term or since early years settings re-opened fully on 1 June 2020. From this, we assess that local authorities are continuing to manage their local childcare markets effectively despite no longer being required to complete a three-yearly childcare assessment.
128. At time of writing, there have not been any local authorities who have not complied with Section 87 measures (Discharge of authority's duty to secure free early years provision).
129. Section 89 (Childcare costs scheme: preparatory expenditure) allowed HMRC to spend money in preparation for the scheme which provides assistance in respect of the costs of childcare. It is now covered by the Childcare Payments Act 2014 (the Act) and is generally known as Tax-Free Childcare (TFC). A new Act to create TFC had been announced by government, but TFC was not a function of HMRC until the Act made it one. This section allowed HMRC to work with HM Treasury to design the policy and instruct for the drafting of the Act before it had TFC as a function.
130. HMRC has created the TFC scheme, which was opened to the public in April 2017 and is now fully operational.
131. Section 89 of the Children and Families Act 2014 does not give any powers for the making of regulations.
132. TFC and the Act have had their own assessments carried out. A Post Implementation Review of TFC was undertaken and deposited in the House of Commons on 4th February 2021.

Legal Issues

133. There have been no legal challenges to sections 84-89 and secondary legislation referred to above in the section titled "**Secondary legislation.**"

Part 5 - Welfare of children

Chapters 90-106: (90) Child performances; (91-95) Tobacco, nicotine products and smoking; (96-97) Young carers and parent carers; (98) Staying put arrangements; (99) Education achievement of looked after children; (100) Pupils with medical conditions;

(101) Local authority functions: intervention; (102-105) Regulation of children's homes etc (106) Free school lunches

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

134. Section 90 repeals Section 38 of the Children and Young Persons Act 1963 (licenses for performances by children under 14 not to be granted except for certain dramatic or musical performances). The effect of the repeal was to remove restrictions on the circumstances in which a local authority could issue a performance licence to a child under the age of 14.

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

135. **Introduction**
Section 91 makes it an offence in England and Wales for a person aged 18 or over to buy, or attempt to buy, tobacco or cigarette papers or a relevant nicotine product on behalf of a person under the age of 18.
136. If found guilty of an offence, the penalty is a fine not exceeding level 4 on the standard scale. The 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 of this provision, the section provides enforcement officers with powers of entry. In effect, this provision applies various powers conferred by sections 9 and 11 of, and Schedules 1 and 2 to, the Health Act 2006.

Implementation

137. Section 91 has been implemented fully and there are no unused elements.
138. This provision applies to all retailers of tobacco and is enforced by local trading standards.

Secondary legislation

Section	Related legislation	Purpose	Commencement
91	The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015	(For context, section 92(6) of the Children and Families Act contains a Henry VIII power to amend section 91 so as to apply section 91 to nicotine products.)	The regulations came into force on 26 March 2015 for proxy purchasing and 1 October 2015 for all other provisions.
		Regulation 2 amends section 91 to insert references to nicotine products for the purpose of making the proxy purchasing of	

91	The Proxy Purchasing of Tobacco, Nicotine Products Etc. (Fixed Penalty Amount) Regulations 2015	These regulations set the amounts for fixed penalty notices given for alleged offences under section 91(1) of the Children and Families Act.	These regulations commenced on 1 October 2015.
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Assessment

139. The current Tobacco Control Plan for England aims to reduce regular smoking prevalence among 15 year olds to 3% or less by the end of 2022. The latest data in 2018 indicates that regular smoking prevalence among [15 year olds] was at 5.3%, the lowest on record since data collection began in 1982.
140. Smoking prevalence among all pupils aged 11 to 15 has also fallen. 16% of pupils aged 11 to 15 had ever smoked cigarettes, down from 18% in 2014.
141. The offences imposed by these provisions have enabled the reduction of risk in tobacco products being bought on behalf of people under the age of 18, helping protect children and young people from the harms of smoking.

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

142. 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.
143. 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 to make provision in relation to nicotine products of a specified kind or all nicotine products.
144. 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.
145. Regulations made under these powers are 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.

Implementation

146. Section 92 has been implemented fully and there are no unused elements.
147. This provision applies to all retailers of tobacco and is enforced by local trading standards.

Secondary legislation

Section	Related legislation	Purpose	Commencement
92	The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015	To limit the sale of nicotine inhaling products (NIPs) such as e-cigarettes to adults only, with certain limited exceptions for medicinal products To protect children from the risk of nicotine addiction and the impact that nicotine can have on the developing adolescent brain To protect children and young people from any potential 'gateway' effect into smoking tobacco that might come from the use of NIPs	The regulations came into force on 26 March 2015 for proxy purchasing and 1 October 2015 for all other provisions.

Assessment

148. Although youth do experiment with e-cigarettes (25% of 11 to 15 year olds had ever used them), regular use of electronic cigarettes amongst 11-15 year olds remains low, at 2% with occasional use at 4% ([Smoking, Drinking and Drug use among young people in England](#)). However, the government continues to monitor the data in this area and will consider further regulatory measures to protect youth if there is a youth uptick.
149. The [Tobacco Control Survey 2019/20](#) found that of the councils that responded to the survey, 99% of councils undertook at least one type of tobacco control activity. This

included 79% undertaking activities in relation to underage sales of tobacco and 66% undertaking activities in relation to underage sales for nicotine inhaling products.

150. A post implementation review of the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 was published by the Department of Health and Social Care (DHSC) in [January 2021](#). In summary, the review found that considering the available data, it is likely that the implementation of this regulation has not caused significant costs to business and that the health benefits stated in the original impact assessment will be realised. Compliance with the regulation is regarded as good, due to a fall in the proportion of pupils aged 11 to 15 purchasing e-cigarettes from shops it was decided that the regulations should remain in force in their current form.

Section 93: Amendments consequential on section 92 Introduction

151. Section 93 makes consequential amendments to integrate the new age of sale offence for nicotine products into the existing age of sale legislation for tobacco products.
152. 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.
153. The consequential amendment to section 12A enables a magistrates' court to impose restricted premises orders preventing the sale of nicotine products on certain premises for up to one year. A magistrates' court may make such an order only if, in addition to the offence on the premises for which the offender has been convicted, the offender has also committed at least two other tobacco or nicotine offences on the premises within a two year period (whether or not convicted of those other offences).
154. The consequential amendments to section 12B enable a magistrates' court to impose restricted sale orders, which prohibits a person from making any sale of nicotine products to any person. It also prohibits the person from having management functions in relation to such sales.
155. The consequential amendments to 12C allow for enforcement sanctions to be imposed where a person sells nicotine products in contravention of a restricted premises order.
156. 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. In particular, this imposes a duty on every local authority to consider, at least yearly, the extent to which it is appropriate for them to carry out a programme of enforcement action relating to, amongst other provisions, section 92 of the Children and Families Act.

Secondary legislation

Section	Related legislation	Purpose	Commencement
93	The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015	See above	See above

Assessment

157. Local areas are using these extended powers to help deter underage sales. The CTSI Tobacco Control Survey 2019/20 found that of the councils that responded to the survey, on the underage sale of nicotine inhaling products, there were no restricted sales orders and no restricted premises orders issued, however there were 134 written or verbal warnings by councils, 6 prosecutions, and 34 other actions (such as simple cautions, advice visits, license reviews, license objections, closure orders, eviction and warnings). With underage sale of tobacco there were 213 written or verbal warnings by councils, 21 prosecutions, and 22 other actions.

Section 94: Regulation of retail packaging etc of tobacco products Introduction

158. 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.
159. These provisions apply to the whole of the UK. Regulations made under these powers are 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.

Implementation

160. The Standardised Packaging of Tobacco Products Regulations 2015 (**SPoT**) have been made in exercise of the powers conferred by this section (along with the powers conferred by sections 135(2) and (3) of the Children and Families Act 2014 and section 2(2) of the (now repealed) European Communities Act 1972).
161. SPoT standardises the packaging of all cigarettes and hand rolling tobacco for retail sale by:
- Specifying mandatory colours for retail packaging (dull brown for the outside and white for the inside)

- Permitting only specified text (such as the brand and variant name, number of cigarettes, a barcode and the producer's contact details) and ensure any permitted text conforms to particular requirements such as type face and size;
 - Prohibiting embossing or irregular shape or texture on the packaging;
 - Prohibiting the inclusion of any inserts; and requiring that wrappers are clear and transparent and,
 - Allowing required marking such as health warnings and fiscal marks (including covert markings and any future requirements that may be introduced to tackle illicit trade) to remain in place.
162. The regulations came into force on 20 May 2016 and allowed for a 12-month sell-through period for stock that was manufactured before May 2016.
163. All tobacco manufacturers and suppliers in the United Kingdom are required to comply with these regulations.
164. DHSC has also published guidance on the [Tobacco Packaging of Tobacco products](#) for retailers and distributors, enforcement agencies and the public on tobacco packaging in both Great Britain and Northern Ireland.

Secondary legislation

Section	Related legislation	Purpose	Commencement
94	The Standardised Packaging of Tobacco Products Regulations 2015	These regulations aim to protect children and young people from the harms of smoking by introducing standardised packaging of tobacco products. The purpose of such a policy include: discouraging people from starting to use tobacco products encouraging people to give up using tobacco products reducing the appeal or attractiveness of tobacco products, the misleading elements of packaging and the potential for packaging to detract from the effectiveness of health warnings	These regulations came into force on 20 May 2016.

Assessment

165. Youth and adult smoking rates have fallen since the introduction of SPoT in the UK. Many countries around the world have now introduced legislation similar to SPoT and many more plan to do so. A [systematic review](#) published in 2019 found that plain packaging reduced the attractiveness of cigarette packaging. Plain packaging was found to increase the visibility of graphic health warnings, whereby participants perceived plain packs as having more serious health risks and increased the thoughts of quitting among smokers.
166. A Post-Implementation Review of SPoT has been completed and a report of the review will be published shortly.

Section 95: Smoking in private vehiclesIntroduction

167. 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.
168. 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.
169. All regulations made under these powers are subject to the affirmative parliamentary procedure.

Implementation

170. The Smoke-free (Private Vehicles) Regulations 2015 have been made in exercise of powers conferred by the Health Act 2006. As outlined above, section 95 of the

Children and Families Act 2014 amended the Health Act 2006 to give the Secretary of State such regulation-making powers.

171. The Smoke-free (Private Vehicles) Regulations 2015 commenced on 1 October 2015. These regulations made it illegal to smoke in a car (or other vehicle) with anyone under 18, to protect children and young people from the dangers of secondhand smoke.
172. Other than Regulation 5 (Enforcement) which applies to England and Wales, the rest of the Smoke-free (Private Vehicles) Regulations 2015 apply to England only. Wales has its own set of regulations (The Smoke-free Premises and Vehicles (Wales) Regulations 2020).
173. [Guidance](#) was published on 9 July 2015. This guidance includes details on rules about smoking in private vehicles, penalties and why the law has changed.

Secondary legislation

Section	Related legislation/guidance	Purpose	Commencement
Section 5, Health Act 2006	Smoke-free (Private Vehicles) Regulations 2015	These Regulations extend the existing smoke-free legislation by setting out the circumstances when private vehicles are smoke free and go on to: allow the issue of fixed penalty notices for offences in smoke-free private vehicles, designate the police as an enforcement authority for these measures, and set a statutory review of the regulations within 5 years of their coming into force, in order to protect children from the harms of second-	These regulations came into force on 1 October 2015.
		hand smoke in private vehicles.	

Assessment

174. Extension of the existing smokefree legislation in the Health Act 2006 has enabled the Government to further protect children and young people from the harms of second-hand smoke.
175. A [report](#), commissioned by the National Institute for Health Research, showed a 72% reduction in self-reported exposure to tobacco smoke among children following the implementation of these regulations. Key indicator data, such as self-reported exposure amongst 11-15-year olds also showed a decrease since implementation.
176. A post implementation review of the Smoke-free (Private Vehicles) Regulations 2015 was published in [January 2021](#). The review found that the Smoke-free vehicle regulations have met the original objectives; reducing the number of children regularly exposed to second hand smoke in private vehicles.

Young Carers and Parent Carers

Section 96 – 97: (96) Young Carers; (97) Parent Carers Introduction

177. The Young Carer (Section 96) provisions consolidate and simplify the legislation relating to young carers' assessments, making rights and duties clearer to both young people and practitioners. They work in tandem with provisions in the Care Act 2014 to enable whole family approaches to assessment and support. This means that when a child is identified as a young carer, the needs of everyone in the family will be considered, triggering both children's and adults' support services into action.
178. The new section inserted provisions into the Children Act 1989 to require local authorities to: identify young carers in their local area who may need support; to carry out an assessment of need where it appears that a young carer may have support needs or where they receive a request from a young carer or their parent and; decide whether to provide services under section 17 of the Act
179. The assessment must consider whether it is appropriate or excessive for the young carer to provide care for the person in question, in light of the young carer's needs and wishes.
180. Section 97 (Parent Carers) inserted provisions into the Children Act 1989 requires that local authorities take steps to identify parent-carers in their area that may need support and to carry out an assessment of the needs of parent carers when caring for a disabled child, in recognition of the legal identification of disabled children as Children in Need under section 17 of that Act.

181. The assessment must have regard to the impact of the care being provided on the well-being of the parent carer, and must consider whether it is necessary to provide services either to support the parent carer or the disabled child for whom care is being provided. Assessments can be carried out either at the request of the parent carer, or proactively where the local authority identifies a potential need for support.
182. Local Authorities may provide services under section 17 to any child who is in need and also to their family. For many families with a disabled child, the service provided is respite care or a short break.

Implementation

183. Section 96 was fully implemented on 1 April 2015 and Section 97 was fully implemented in May 2014.

Secondary Legislation

184. The Young Carers' (Needs Assessments) Regulations 2015 came into force on 1 April 2015

Legal Issues

185. There have not been any legal challenges to this section.

Assessment

186. This provision enables young carers to receive an assessment of need by their local authority. There is no requirement for local authorities to report on the use of the provision, and an assessment could be offered in a number of ways where section 96 need not be engaged (such as under the local authority's early help offer). It is therefore impossible to accurately assess the impact of section 96. However, being a young carer was recorded, as a factor identified at end of assessment, in 17,520 assessments in the year to end March 2021 (but the majority of assessments record more than one factor at end of assessment so we cannot assume all of these assessments were made under these provisions).
187. Section 97 enables parent carers to receive an assessment of need by their local authority. There is no reporting requirement for local authorities to report on the use of section 97 as a mechanism by which parent carers request an assessment, and an assessment could be offered in a number of ways where section 97 need not be engaged (such as under the local authority's early help offer). It is therefore impossible to accurately assess the impact of section 97.
188. Stakeholder intelligence indicates that some parents have difficulty in accessing an assessment of their needs and/or services such as respite care/short breaks to support them in their caring role. We recognise that there is a paucity of evidence as to the most effective mechanism to make such services available to families. We have

recently (at Spending Review 2021) secured £30 million to develop an innovation fund for the provision of respite care/short break services, to enable the Government to more robustly evaluate the effectiveness of interventions, including assessment mechanisms. The programme will run from April 2022 to March 2025 and a full evaluation will be completed and published.

Staying put arrangements

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

Introduction

189. The Staying Put duty, introduced through the Children and Families Act 2014, is a duty on LAs to support young people to continue to live with their former foster carers once they turn 18. DfE was required to provide annual new burdens funding to LAs as a result of the duty. Guidance published in 2013 sets out the Staying Put process. LAs are allocated a proportion of the national funding based on the number of LAC turning 18 in foster care.
190. 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.
191. 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))

Implementation

192. Section 98 was implemented fully in May 2014.

Secondary Legislation

193. No secondary legislation has been made.

Legal Issues

194. No legal challenges have been made to this section since the introduction of the duty.

Assessment

195. Since the introduction of the Staying Put duty, the number and proportion of 19- and 20-year-olds who ceased to be looked after on their 18th birthday and who were still living with their former foster carers has increased.
196. The latest data for year ending March 2021 shows that 60% (2120 out of 3540) of children aged 18 who were eligible for staying put support remained with their foster carers until at least 3 months after their 18th birthday, up from 58% last year and 55% in 2019.

Educational achievement of looked after children

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

Introduction

197. This section provided that local authorities in England are required to appoint at least one person for the purpose of discharging the local authority's duty to promote the educational achievement of its looked-after children, wherever they live or are educated. This person (commonly known as the Virtual School Head (VSH)) must be an officer employed by the authority or another local authority in England. The VSH role is to champion the educational achievement of the children looked after by the authority, and to monitor and track their educational progress as if they attended a single school.
198. Local authorities also have a statutory duty under 23ZZA of the Children Act 1989 (added by section 4 of the Children and Social Work Act 2017) to promote the educational achievement of previously looked-after children (children who have spent at least 24 hours in local authority care and have left care through adoption, Special Guardianship Order, or Child Arrangements Order (previously known as Residence Order)).

Implementation

199. Section 99 was implemented fully in May 2014.

Secondary legislation

200. Statutory guidance on promoting the educational achievement of looked-after children was published in July 2014. The guidance was issued under section 7 of the Local Authority Social Services Act 1970 and set the framework through which local authorities discharge their statutory duty under 22(3A) of the Children Act 1989 to promote the educational achievement of looked-after children, including those placed out of authority.
201. The guidance was updated in September 2018 to include new duties, under 23ZZA of the Children Act 1989 (as amended by section 4 of the Children and Social Work Act 2017), to promote the educational achievement of previously looked-after children (see below for further information).

Legal issues

202. No legal challenges have been made regarding the requirement to promote the educational achievement of children in local authority care, or of the extended duties of the Virtual School Head to promote the education of those who have left local authority care through permanence.

Assessment

203. All local authorities have appointed a Virtual School Head, as required, and Ofsted's inspection framework for local authorities instructs inspectors to look at the effectiveness and impact of the virtual school on outcomes for children in care, including the use of Pupil Premium Plus funding.
204. There is good evidence that Virtual School Heads have had a significant impact on outcomes for children in care since the role became statutory, bringing expert leadership to the system that has seen a reduction in permanent exclusions and absenteeism, and improved educational progress; in 2019, the permanent exclusion rate for looked-after children was almost the same as for all pupils (0.11% compared to 0.10%), and much lower than Children in Need (0.69%). The rate of permanently excluded looked-after children has dropped from 0.14% in 2013 to 0.11% in 2019, while the rate for children in need are much higher.
205. In Autumn 2019, the persistent absence rate for looked-after children (12 months or more) was lower than the rate for all pupils (12.5% compared to 13.4%), whilst at Key Stage 4, looked-after children with no identified special educational need (SEN), or who receive SEN support), typically progress as well or better than all other pupils in all subjects.
206. Building on this success, their role was extended (from September 2018), to include a strategic role to promote the educational achievement of previously looked-after children (those who have left care as a result of adoption, Special Guardianship Order or Child Arrangements Order).
207. Following a recommendation from the Government's [Children in Need review](#), we have further extended their role (from September 2021 and on a non-statutory basis) giving them strategic leadership for the education of children on Child Protection and Children in Need Plans.

Pupils with medical conditions

Section 100: Duty to support pupils with medical conditions

Introduction

208. 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.

Implementation

209. This duty applies to:
- Governing bodies of maintained schools (excluding maintained nursery schools_
 - Management committees of pupil referral units
 - Proprietors of academies, including alternative provision academies (not including 16-19 academies)

Assessment

210. The department does not monitor compliance with the duty and has not carried out any research on the impact of this duty.

Local authority functions: intervention

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

Introduction

211. This section clarifies the Secretary of State's intervention powers in relation to local authority functions relating to children
212. It specifically relates 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 social services to an adequate standard. Under s.497A(4A) of the 1996 Act, the Secretary of State can direct (where satisfied of inadequate performance) that an local authority's children's social function is to be exercised either by the Secretary of State or his nominee and that the local authority is to comply with any instructions of the Secretary of State/his nominee in relation to the exercise of the function. Section 101 clarifies how references to a local authority and/or the Secretary of State/his nominee are to be read during and following a s.497A(4A) direction.
213. 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.
214. The effect of s.101 is that it put 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.

Implementation

215. At the time of this memorandum the power under s.497A(4A) of the 1996 Act has not been used by the Department for Education.

Secondary Legislation

216. No secondary legislation has been made

Regulations of children's homes

Sections 102- 105: (102) Application of suspension etc powers to establishments and agencies in England; (103) Objectives and standards for establishments and agencies in England; (104) national minimum standards for establishments and agencies in England; (105) Disqualification from carrying on, or being employed in, a children's home)

Introduction

217. Section 102 (Application of suspension etc powers to establishments and agencies in England) provides Ofsted with 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. Previously these powers were only available to Welsh Ministers in respect of establishments or agencies in Wales. The section allows Ofsted to take action if it has serious concerns about the safety and care provided by a regulated setting such as a children's home.
218. Section 103 (Objectives and standards for establishments and agencies in England) added a new subsection (1A) into section 22 of the Care Standards Act 2000. It allows the Secretary of State to make regulations that prescribe objectives and standards that must be met by establishments or agencies regulated by Ofsted, including children's homes.
219. Section 104 (National minimum standards for establishments and agencies in England) inserts a new subsection (1A) into section 23 of the Care Standards Act 2000. It allows national minimum standards for settings regulated by Ofsted (such as children's homes) to explain and supplement the regulations made under section 22 of the Act.

220. Section 105 (Disqualification from carrying on, or being employed in, a children's home) 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. It introduces a time limit for a person to disclose to Ofsted that they have been disqualified from private fostering.

Implementation

221. Section 102 was implemented fully in May 2014 and is used at an operational level by Ofsted.
222. Section 103 was implemented fully in May 2014.
223. Section 104 was implemented fully in May 2014. It provided the statutory basis for the department to publish the "Guide to the Children's Homes Regulations including the Quality Standards" in April 2015. This sits alongside the Children's Homes (England) Regulations 2015.
224. Section 105 was implemented fully in April 2015 and is used at an operational level by Ofsted.

Secondary legislation

Section	Related legislation/guidance	Purpose	Date of issue
103	Children's Homes Regulations (England) 2015	The purpose of the regulations was to drive improvements in children's social care through introducing a set of quality standards that challenged children's homes to provide the very best outcomes for children and to streamline existing administrative and management requirements to reduce bureaucratic burden for providers.	1 April 2015

Assessment

- 225. Section 102 is essential for Ofsted, as they use their suspension powers to ensure that children are kept safe when there are serious concerns raised about the safety and care provided for the children in a regulated children's home.
- 226. Latest data indicates that in 2020-21 there were 44 suspensions across 36 different children's homes. All were suspended under 20B of the Care Standards Act 2000.
- 227. The amendments to section 22 of the Care Standards Act 2000 made by section 103 have been used by the department to introduce specific regulations for children's homes under the *Children's Homes Regulations (England) 2015*.
- 228. The regulations include a set of quality standards, which set out the aspirational, child focused, outcomes and underpinning requirements that homes must meet. The regulations also include a set of administrative and management requirements.
- 229. The regulations form part of the basis upon which children's homes are inspected by Ofsted and have been used to drive up standards in children's residential care.
- 230. Section 104 has been used to develop the "Guide to the Children's Homes Regulations including the Quality Standards" (the Guide). The Guide provides further explanation and information on the Children's Homes (England) Regulations 2015 for everyone involved in the care of children in children's homes. This includes the text of the relevant regulation, an explanation of the specific terms in the regulation and guidance that supplements the regulation.
- 231. When inspecting children's homes, Ofsted will take into account how a provider is following this Guide as a way of determining whether the Regulations are being met.
- 232. Section 105 is used by Ofsted to stop unsuitable people from working in children's homes. The intention was to provide clarification so that there would be no doubt about what a person should do.
- 233. Ofsted have stated that the 28 day notification requirement that this section added is a little unclear as it requires anyone disqualified to notify them within 28 days of disqualification if they want to get permission to work in a home in the future, even if they have no intention of working in a children's home at that point in time.

Free school lunches

Section 106: Provision of free school lunches

- 234. All children in reception, year 1 and year 2 in England's state funded schools, who are not separately eligible for benefits-related free school meals, are eligible to receive a free meal at lunchtime under the Universal Infant Free School Meal policy.

235. All meals served must meet the School Food Standards.

Implementation

236. Section 106 was fully implemented in September 2014.

Secondary Legislation

237. None

Legal Issues

238. There are no legal issues or challenges against this section.

Assessment

239. Universal Infant Free School Meals is a popular policy with consistently high levels of take up. In January 2021, around 1.3 million infants enjoyed a free healthy and nutritious meal, around 88% of those eligible.

Part 6 - The Children's Commissioner
Sections 107-116 and Schedule 5 (Children's Commissioner: minor and consequential amendments)

Introduction

181. Part 6 of the Children and Families Act 2014 (the Act) implemented the recommendations from John Dunford's independent review of the Children's Commissioner (*Review of the Office of the Children's Commissioner (England)*¹¹: December 2010), which concluded that there were strong arguments for retaining the Office of the Children's Commissioner (OCC), but that the legislative framework had prevented the Commissioner from having sufficient impact on children's lives.
182. The provisions in Part 6 (also detailed below is an overview of each Section, from 107-116) of the Act:
- built on the aforementioned review, and amended the Commissioner's primary function to one of promoting and protecting children's rights;
 - made the Commissioner more clearly independent from Government;
 - provided for scrutiny of the Commissioner's impact (through an annual report to Parliament);
 - combined the functions of the Commissioner with activities carried out by the Children's Rights Director; and
 - clarified the Commissioner's powers and remit.
183. Section 107 (Primary function of the Children's Commissioner), replaces section 2 of the Children Act 2004 ("the 2004 Act") with new sections 2 to 2C, and changes the primary function of the Commissioner from one of "promoting awareness of the views and interests of children in England" to one of "promoting and protecting the rights of children in England".
- Under [Section 2A](#) of the Children Act 2004 the Commissioner is required to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) and any Optional Protocols which are in force in relation to the United Kingdom.
 - Under [Section 2B](#) of the Children Act 2004, the Commissioner is required to take reasonable steps to involve children in the discharge of the Commissioner's primary function.
 - [Section 2C](#) of the Children Act 2004 outlines the Commissioner's primary function in relation to reports.
184. Under Section 108 (Provision by Commissioner of advice and assistance to certain children), new section 2D is inserted into the Children Act 2004 and provides for a new power that enables the Commissioner to provide advice and assistance to children and young people defined in section 8A (i.e. children living away from home or receiving social care) and provides that the Commissioner can make representations on behalf of a child in certain circumstances.

¹¹ The Dunford Review is available [here](#).

185. Section 109 (Commissioner's powers to enter premises) inserts a new section 2E into the 2004 Act. This broadly replicates the Commissioner's previous power to enter premises where children are accommodated or cared for, in order to interview children, and applies to the exercise of the primary function and new section 2D.
186. Section 110 (provision of information to Commissioner) places a duty upon persons exercising functions of a public nature to provide the Commissioner with information that the Commissioner requests as long as the request is reasonable, and it is information that the body is able to disclose lawfully to the Commissioner.
187. Section 111 (Advisory Board) inserts a new section 7A into the Children Act 2004 which imposes a requirement on the Commissioner to appoint an advisory board to provide advice and assistance relating to the discharge of their functions.
188. Section 112 (Business Plans) inserts that the Commissioner is required to publish a business plan, before the end of the period covered by the preceding business plan, which sets out the proposed main activities for the period covered by the plan together with the strategic priorities for that period.
189. Section 113 (Annual reports) inserts that the Children's Commissioner is required to keep proper accounting records, prepare a statement of accounts for each financial year, and send a copy to the Secretary of State for Education and the Comptroller and Auditor General. The Comptroller and Auditor General certifies the accounts prior to laying in both Houses.
190. Section 114 (Children living away from home or receiving social care) inserts a new [Section 8A](#) of the Children Act 2004 which provides the definition of a child living away from home or receiving social care.
191. Section 115 (Children's Commissioner: minor and consequential amendments) (and Schedule 5) outlines minor and consequential amendments to the 2004 Act.
192. Section 116 repeals the requirement to appoint a Children's Rights Director.

Implementation

193. **Sections 107-113** were implemented fully in April 2014. There is nothing to be implemented at **Sections 114, 115** and **116**. There are no uncommenced sections in Part 6 of the Children and Families Act 2014.

Secondary legislation

194. No secondary legislation has been made under this part of the Act.

Assessment

195. Outputs from the Children's Commissioner have informed work across Government and the Public Sector and promoted the rights of the child. To provide examples (in addition to a section-by-section assessment of Sections 107-113 below) and as outlined in [the Office of the Children's Commissioner's Annual Report 2021-2022](#):
- The Commissioner has highlighted the needs of vulnerable children, and [CHILDRN](#) local area profiles have provided information to national and local partners about childhood vulnerability at a local level;
 - The Commissioner's report into Early Years, which outlined a strategy for the first years of a child's life, was referenced in the Rt Hon. Dame Andrea Leadsom MP DBE review entitled "the best start for life: a vision for the 1,001 critical days";
 - Annual briefings on children's mental health services are regularly cited by organisations (for example the Education Select Committee);
 - The Commissioner's research on children's experiences of the justice system has been cited in a Justice Select Committee report entitled '[Children and Young People in Custody](#)'; and
 - Research on children in care, such as on children living away from home, and on private provision, has been submitted to the Independent Review of Children's Social Care.
196. A programme of work is in place to champion children's rights in the Office of the Children's Commissioner. For example, the Commissioner has championed children's rights online, including through roundtables with the adult and social media industries. This work has been referenced in [Parliament](#).
197. The provision set out in [Section 2A](#) of the Children Act 2004, which notes that the Commissioner must have due regard to the UNCRC and any optional protocols which are in force in relation to the United Kingdom, has been implemented in full. The UNCRC is used to shape the Commissioner's annual business planning process, and as an example of relevant work, the Office of the Children's Commissioner is currently undertaking work to understand the numbers of children missing from education or severely absent, and to consider measures to support these children in access to their right to education (Article 28 of the UNCRC). Furthermore, implementation is also evidenced through the Commissioner's engagement in the current reporting round to the UN on the United Kingdom's implementation of the UNCRC¹². For example, in 2020, to support this process, the Commissioner and equivalents in Northern Ireland, Scotland and Wales published reports which informed the UN committee of issues related to children's rights, and provided an assessment of how UK Government and Devolved Administrations have implemented the UNCRC.
198. Implementation of involving children in the discharge of the Commissioner's primary

¹² All UK Children's Commissioners (England, Northern Ireland, Scotland and Wales) have submitted [a joint report](#) to inform the UK's reporting to the United Nations on progress made in implementing the UNCRC.

functions ([Section 2B](#) of the Children Act 2004) is demonstrated through 'The Big Ask' survey which gathered the views of over half a million children on their lives today and aspirations for the future, which has been cited by [Government](#). In addition to this, the Commissioner has led further active engagement with children, young people and representative organisations¹³ through site visits to discuss important issues, such as returning to school, online harms, mental health and careers advice. The Commissioner has also involved children and young people in focus groups and workshops, for example to inform a [parents guide](#) on talking to a child about online sexual harassment, and has taken steps to involve children in topics related to their rights through the publication of child-centred guides, including: [A Guide to COP26 for Children](#), [Back to School Guide](#) and [a Children's Guide to Coronavirus](#).

199. The Commissioner has implemented provisions set out in [Section 2C](#) of the Children Act 2004 to publish reports. Through 'The Big Ask' several papers have been published by the Commissioner, which outline policy recommendations on key areas including on [children's health](#), [education](#), and [community](#). Further reports have also been published by the Children's Commissioner which are available [here](#), and cover a range of topics relating to children's rights¹⁴. These reports also evidence implementation of [Section 2B\(3\)](#) of the Children Act 2004, which specifically requires the Commissioner to have regard to children living away from home or receiving social care, as well as children at particular risk of having their rights infringed. For example, the Commissioner published a [report on Children's Social Care](#) which outlined how to put children's voice at the heart of decision making and a vision for the system. 'The Big Ask' and subsequent reports have supplemented the evidence base used to inform Government decisions on the most recent spending review, including investment in family hubs and in residential children's homes.
200. The power to provide advice and assistance to children and young people defined in section 8A (i.e. children living away from home or receiving social care) has been used by the Commissioner. The Commissioner has established a service entitled 'Help at Hand'¹⁵ to discharge this statutory function, and each year this service provides direct support to around 1000 children, and enables the Commissioner to intervene, and escalate, in some of the most complex and serious cases, working with inspectorates such as, Ofsted, the Care Quality Commission and HM Inspectorate of Prisons.
201. The below feedback from Children who have used 'Help at Hand' has been received:

¹³ The Commissioner has taken a number of reasonable steps to engage children and has visited numerous children's social care sites, as well as schools. Visits include, but are not limited to, Luton Sixth Form College, The Centre school, Barnet Youth Zone, Plymouth Local Authority, Feltham YOI, Kinney House Children's Home, Kent refugees Intake unit and hotels, Cardinal Hume Family Centre, Sheffield Futures, and Norwich Primary Academy.

¹⁴ Whilst not exhaustive, the topics covered in reports and policy briefings published by the Office of the Children's Commissioner, include: [Children's Mental Health Services](#), [Children's Social Care](#), [Online peer-on-peer abuse](#), [Children in Custody](#) (during lockdown), [Characteristics of children entering care for the first time as teenagers](#), [Good Schools](#), [School Attendance](#), [Children's experience in mental health wards](#), [Private provision in Children's Social Care](#), [Teenagers falling through the gaps](#), [Advocacy for Children](#), [Exclusions from mainstream schools](#), [Playing out](#), [Children's Voices: The Wellbeing of Children subject to Immigration Controls](#), [Preventing Child Sexual Abuse](#), [Family Hubs: A Discussion paper](#), [UK Commissioners UNCRC report](#) and [Why Rights Matter](#).

¹⁵ A helpline open on weekdays. Further information is available [here](#).

- *"Again, thank you so much for being supportive and empathetic towards this problem I've had, it has made me feel empowered and I'm assured now that my frustration or upset by this situation is valid which has only helped me pursue answers."*
 - *"You were the reason the social workers started to listen to my thoughts, wishes and fears and I am really grateful for your help. Thank you so much for being there for me."*
 - *"It was great to have someone else supporting the child who knew more about the child's rights. The Help at Hand team was amazingly supportive."*
202. The Commissioner has used powers to enter premises to visit children living away from home to understand their experiences, in particular to visit Youth Justice Settings, Mental Health Hospitals, out-of-area Children's Homes, and specialist Children's Homes and Residential Special Schools. The use of this statutory power of entry means that professionals cannot gate-keep 'when' or 'where' the Commissioner visits, which has enabled the Commissioner to visit children they are most concerned about.
203. The provision of information to the Commissioner power set out in Section 110 has been used to support the delivery of work, including the Commissioner's [annual briefing](#) on the state of England's children's mental health services, and to request information from all Local Authorities on the number of children in education settings in their local areas and those missing from education, to inform the Commissioner's research and policy developments for the Government led Attendance Action Alliance. The power to collect data and information on behalf of children enables the Commissioner to form a holistic view of the child, particularly the most vulnerable children.
204. The Children's Commissioner has an [Advisory Board](#) in place and has published a [Business Plan \(2021-2022\)](#). [Annual report and accounts](#) for 2020-21 were laid in both Houses on 15 July 2021.

Part 7 - Statutory rights to leave and pay

Chapters 117-126: (117-118) Shared Parental Leave; (119-120) Statutory shared parental leave; (121-125) Other Statutory rights; (126) Further amendments Introduction

205. 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 was extended to include prospective adopters in the "Fostering for Adoption" system, and parents in a surrogacy arrangement who are eligible, and intend to apply, for a parental order.
206. Section 117 (Shared parental leave) inserts a new Chapter 1B into Part 8 of the Employment Rights Act 1996, giving the Secretary of State the power to make regulations to create an entitlement to shared parental leave. The Shared Parental Leave Regulations 2014 use these powers to prescribe the qualifying requirements that each parent in a working couple would need to meet to enable them to take shared parental leave.
207. Section 118 (Exclusion or curtailment of other statutory rights to leave) amends the Employment Rights Act 1996 to allow regulations to permit an employee to end ordinary maternity leave, additional maternity leave, ordinary adoption leave or additional adoption leave early, in order to 'create' leave from the remaining weeks that can be used as shared parental leave. The Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 set out the requirements for ending maternity or adoption leave early. This section also amends the provisions on paternity leave to prevent an employee from taking paternity leave after any period of shared parental leave.
208. Section 119 (Statutory shared parental pay) inserts a new Part 12ZC into the Social Security Contributions and Benefits Act 1992, giving the Secretary of State the power to make regulations to create an entitlement to statutory shared parental pay. The Statutory Shared Parental Pay (General) Regulations 2014 use these powers to set out the conditions that must be met for a working couple to be entitled to statutory shared parental pay.
209. Section 120 (Exclusion or curtailment of other statutory rights to pay) also amends the Social Security Contributions and Benefits Act 1992 to give powers to stipulate the conditions for when and how statutory maternity pay, maternity allowance and statutory adoption pay periods can be ended early, in order to 'create' the entitlement to statutory shared parental pay. The Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014 and the Maternity Allowance (Curtailment)

regulations 2014 use these powers to enable a mother (or person taking adoption leave) to end pay early in order to create shared parental pay. If the mother (or person taking adoption leave) is only entitled to pay (Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay), they can create Shared Parental Leave in addition to Shared Parental Pay for an employed partner. This is achieved through use of the Shared Parental Leave Regulations and the Curtailment Regulations mentioned above. Section 120 also amends the provisions on statutory paternity pay, to prevent paternity pay being paid to someone receiving shared parental pay, either at the same time, or at a point prior to receipt of shared parental pay.

210. Section 121 (Statutory rights to leave and pay of prospective adopters with whom looked after children are placed) supports the changes being made by Part 1, which will provide swifter placement of looked after children in 'Fostering for Adoption' placements. It amends sections 75A and 80B of the Employment Rights Act 1996 and sections 171ZB, 171ZE, 171ZJ, 171ZL, 171ZN and 171ZS of the Social Security Contributions and Benefits Act 1992, so that rights to adoption leave and pay and paternity leave and pay can apply to approved adopters who have looked after children placed with them as part of the 'Fostering for Adoption' process under section 22C of the Children Act 1989.
211. Section 122 (Statutory rights to leave and pay of applicants for parental orders) makes provision for regulations to be made under which intended parents in surrogacy arrangements, who are or will be entitled and intend to make an application for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008, may be entitled to paternity leave and pay and to adoption leave and pay in respect of the child who is or will be the subject of the order.
212. Section 123 (Statutory paternity pay: notice requirement and period of payment) amends the existing provisions in the SSCBA on statutory paternity pay. It amends the requirement to give notice reflecting the changes to the period of payment of statutory paternity pay, and provides a power for the Secretary of State to set the amount of notice which the person must give. It also gives the Secretary of State power to set the number of weeks of statutory paternity pay in regulations subject to a minimum of 2 weeks and allows regulations which could enable paternity pay to be taken in non- consecutive periods of not less than one week. Section 123(3)-(4), which is not yet in force, provides a power to make regulations in respect of the period of statutory paternity pay. It allows additional flexibility, if required, for secondary legislation to provide for more than two weeks of SPP and to determine how those weeks are taken (i.e. consecutively, non-consecutively).
213. Section 124 (Rate of statutory adoption pay) provides for the rate of statutory adoption pay to be paid at 90% of the claimant's normal earnings for the first 6 weeks and the lower of that rate or a prescribed weekly rate for the remaining weeks of statutory adoption pay.

214. Section 125 (Abolition of additional paternity leave and additional statutory paternity pay) removes the statutory rights to additional paternity leave and additional statutory paternity pay.
215. Section 126 (Further amendments) gives effect to Schedule 7, which contains consequential amendments to primary legislation. It also ensures that existing references in legislation to "ordinary statutory paternity pay" and "statutory paternity pay" are consistent with the changes made following the 2014 Act.
- Implementation**
216. Sections 123(1)-(2)(b) commenced on 30 June 2014. Sections 123(3)-(4) are not yet in force. Sections 124 and 125 commenced on 5 April 2015.

PART 7: STATUTORY RIGHTS TO LEAVE AND PAY

Shared Parental Leave and Pay provisions

- 117 Shared Parental Leave: insertion of new sections 75E-K into Employment Rights Act 1996
- 118 Shared Parental Leave: amendments to ERA 1996 provisions on Ordinary Maternity Leave (OML), Additional Maternity Leave (AML), Ordinary Adoption Leave (OAL), Additional Adoption Leave (AAL), Ordinary Paternity Leave (OPL) to allow for curtailment.
- 119 Statutory Shared Parental Pay: insertion of new sections 171ZU-171ZZ5 into Social Security Contributions and Benefits Act (SSCBA) 1992
- 120 Statutory Shared Parental Pay: amendments to SSCBA provisions on Maternity Allowance (MA), Statutory Maternity Pay (SMP), Statutory Paternity Pay (SPP) and Statutory Adoption Pay (SAP) to allow for curtailment.

Main Regulations

Shared Parental Leave Regulations 2014/3050	Main provisions implementing the right to Shared Parental Leave.	01.12.2014	Expected Week of Childbirth / placement on or after 05.04.2015; detriment / unfair dismissal: acts taking place after 01.12.2014.
Statutory Shared Parental Pay (General) Regulations 2014/3051	Main provisions implementing the right to Statutory Shared Parental Pay.	01.12.2014	Expected Week of Childbirth / placement on or after 05.04.2015
The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014/3134	Provisions dealing with those who have worked abroad, and to mariners	01.12.2014	Ditto
Statutory Shared Parental Pay (Administration) Regulations 2014/2929	Provisions relating to the payment of Statutory Shared Parental Pay recoupment from HMRC, HMRC functions etc.	01.12.2014	n/a

Curtailment Regulations			
The Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014/3052	Provides for curtailment of maternity and adoption leave, in order to create pool of available shared parental leave.	01.12.2014	Expected Week of Childbirth / placement after 05.04.2015
The Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014/3054	Provides for curtailment of Statutory Maternity Pay and Statutory Adoption Pay in order to create available pool of Statutory Shared Parental Pay. Also facilitates ability of partner to claim SPL where the mother / primary adopter was not entitled to maternity / adoption leave.	01.12.2014	n/a
The Maternity Allowance (Curtailment) Regulations 2014/3053	Provides for curtailment of Statutory Maternity Allowance in order to create available pool of Statutory Shared Parental Pay. Also facilitates ability of partner to claim Shared Parental Leave where the mother / primary adopter was not entitled to maternity / adoption leave.	01.12.2014	n/a
Adoptions from abroad			
Employment Rights Act 1996 (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014/3091	Extension of shared parental leave rights to parents adopting children abroad – modification to primary legislation	25.11.2014	n/a
Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations 2014/3092	Extension of shared parental leave rights to parents adopting children abroad – modification to secondary legislation	05.04.2015	Children entering GB on or after 05.04.2015

Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) (Amendment) Regulations 2014/2857	Extension of statutory shared parental pay rights to parents adopting children abroad – modifications to primary legislation	19.11.2014	n/a
Statutory Shared Parental Pay (Adoption from Overseas) Regulations 2014/3093	Extension of statutory shared parental pay rights to parents adopting children abroad – modifications to secondary legislation.	05.04.2015	Children entering GB on or after 05.04.2015.
Parental order parents			
Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014/3095	Extension of shared parental leave rights to intended parents in surrogacy arrangement – modifications to primary legislation	25.11.2014	n/a
Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014/3096	Extension of shared parental leave rights to intended parents in surrogacy arrangement – modifications to secondary legislation	01.12.2014	Expected Week of Childbirth on or after 05.04.2015.
Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014/2866	Extension of statutory shared parental pay rights to intended parents in surrogacy arrangement – modifications to primary legislation	19.11.2014	n/a
Statutory Shared Parental Pay (Parental Order Cases) Regulations 2014/3097	Extension of statutory shared parental pay rights to intended parents in surrogacy arrangement – modifications to secondary legislation	01.12.2014	Expected Week of Childbirth on or after 05.04.2014
Corrections			

Shared Parental Leave and Leave Curtailment (Amendment) Regulations 2015/552	Corrects errors in the Maternity and Adoption Leave (Curtilment of Statutory Rights to Leave) Regulations 2014; and the Shared Parental Leave Regulations 2014 relating to notice.	05.04.2015	n/a
The Statutory Shared Parental Pay (General) (Amendment) Regulations 2015/189		08.03.2015	n/a
Consequential amendments			
The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014/3225	Consequential amendments to secondary legislation	31.12.2014 and 05.04.2015	n/a
Commencement orders			
Children and Families Act 2014 (Commencement No 3, Transitional Provisions and Savings) Order 2014.1640	Commences provisions in the 2014 Act	30.06.2014	n/a
Other			
Paternity and Adoption Leave (Amendment) Regulations 2014/2112	Prevent claiming paternity leave after taking Shared Parental Leave Prevent paternity leave after time off to attend adoption appointment claimed	01.10.2014 and 01.12.2014 and	Various – see regulation 14.

	Remove 26 week qualifying period for adoption leave; Protection from detriment / dismissal for claiming time off for antenatal / adoption appointments; Amend right to return after paternity / adoption leave to take account of Shared Parental Leave	05.04.2015	
The Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Amendment) Regulations 2015/2065	Allows for rounding up of first week of 26 week period used to determine continuity of service.	01.02.2016	n/a
Extension of existing family leave and pay rights to local authority foster parents and surrogate parents			
121 Extension of adoption and paternity leave and pay to 'fostering to adopt' arrangements.			
122 Parental order parents: extension of adoption and paternity leave & pay			
Secondary legislation			
Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014/2866	See above.		
The Paternity and Adoption Leave (Amendment) (No. 2) Regulations 2014/3206	Extending rights to paternity and adoption leave to 'fostering to adopt' arrangements.	05.04.2015	Notification of matching given on or after 05.04.2015.
Statutory Adoption Pay and Statutory Paternity Pay (Parental Orders and	Extending rights to statutory paternity and statutory adoption pay to 'fostering to adopt'	01.12.2014	Notification of matching given on or after 05.04.2015.

Prospective Adopters) Regulations 2014/2934		arrangements, and to intended parents in surrogacy arrangements		
Paternity pay				
123	Change to notice provision; powers taken to specify rate of pay; no of weeks; whether consecutive			
Secondary legislation–				
Statutory Paternity Pay and Statutory Adoption Pay (General) (Amendment) Regulations 2014 (SI 2014/2862)		Provides for the time by which notice of entitlement to payments of Statutory PaternityPay must be given.	01.12.2014	
Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014(SI 2014/2934)		Provides for the time by which notice of entitlement to payments of Statutory PaternityPay must be given in parental order/ prospective adopter cases.	01.12.2014	
Statutory adoption pay				
124	Amends SSCBA 171ZN to Introduce the 90% rate for first 6 weeks etc.			
125	Repeal of ERA and SSCBA provisions on OPL and APL			
126	Consequential amendments – see Schedule 7			
Secondary legislation				
None made under the first two provisions. Section 126 introduces Schedule 7 – consequential amendments to primary legislation.				

Assessment

217. The figures below indicate take up of Statutory Paternity Pay and Statutory Shared Parental Pay (parents taking unpaid Shared Parental Leave are not included).

Year (Apr to Mar unless otherwise stated)	No. of individuals in receipt of Statutory Shared Parental Pay
2015-16	6,200
2016-17	8,600
2017-18	9,200
2018-19	10,700
2019-20	12,600
2020-21	11,200

218. The Shared Parental Leave Impact Assessment (2013) estimated take-up would be in the range of 2% to 8% and the above data on the number of people in receipt of Shared Parental Pay suggests take-up is in line with this estimate.

Legal issues

219. There have been no relevant legal challenges to this legislation.

Part 8 - Time off work: ante-natal care etcIntroduction

220. 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.
221. Provision is also made for paid and unpaid time off work for adopters to attend meetings in advance of a child being placed with them for adoption.
- ### **Chapters 127-130**
222. Section 127 (Time off work to accompany to ante-natal appointments) creates a right for an employee to take time off during working hours to accompany a pregnant woman to an ante-natal appointment made on the advice of a designated health care professional. The right is available to:
- The husband, civil partner or partner of the pregnant woman;
 - The father or parent of the pregnant woman's expected child; and
 - An intended parent in a surrogacy situation who meets specified conditions.
223. The right to take time off can be exercised on up to two occasions for a maximum of six and a half hours on each occasion. An employee is not entitled to take time off unless the employee gives the employer (if the employer so requests) a declaration in the specified form.
224. An employee who is unreasonably refused time off by an employer may present a complaint to an employment tribunal within the designated time limits. If the complaint is substantiated, the tribunal must make an order to this effect and must award compensation of twice the hourly salary of the employee for the period of absence.
225. Certain agency workers can take time off during working hours to accompany a pregnant woman to an ante-natal appointment made on the advice of a designated health care professional.
226. Employees have a right not to be subjected to a detriment and a right not to be unfairly dismissed, as a result of exercising or proposing to exercise a right to time off work to accompany a pregnant woman to an ante-natal appointment. A similar right for an agency worker not to be subjected to a detriment is created in section 129.
227. The calculation date to be used for determining a week's pay for an employee is the date of the appointment in question.
228. Section 128 (Time off work to attend adoption appointments) makes provision for employed adopters and some agency workers to take time off to attend appointments relating to the placement of a child for adoption or for "Fostering for Adoption". The purpose of the appointments is to enable the adopter(s) to bond with the child and to meet with professionals involved in the care of the child, thus increasing the chances of the adoption being successful.

229. Section 129 (Right not to be subjected to detriment: agency workers) gives agency workers a right not to be subjected to a detriment by the temporary work agency or hirer on certain grounds. The grounds are that the agency worker:
- Took or sought to take time off for an ante-natal appointment
 - Received or sought to receive remuneration for time off for pregnant women to attend an ante-natal appointment or for adoption appointments
 - Took or sought to take time off for an adoption appointment
 - Received or sought to receive remuneration for time off to attend an adoption appointment
230. The section allows an agency worker who has been subjected to such a detriment to present a complaint to an employment tribunal. It is for the temporary work agency or the hirer to show the ground on which any act or deliberate failure to act was done. If such a complaint is well-founded, the tribunal shall make a declaration to that effect and may award compensation to be paid to the agency worker by the temporary work agency, the hirer, or both.
231. Section 130 (Time off work for ante-natal care: increased amount of award) increases the amount of compensation that must be ordered by an employment tribunal which finds that a pregnant employee has unreasonably been refused time off work to attend an ante-natal appointment. The amount is increased from the hourly salary of the employee for the period of absence to twice that amount.
232. It also increases the amount of compensation that must be ordered by an employment tribunal which finds that a pregnant agency worker has unreasonably been refused time off work to attend an ante-natal appointment. The amount is increased from the hourly salary of the agency worker for the period of absence to twice that amount.

Implementation

233. These provisions came into force on 30 June 2014 and were implemented fully, apart from the following provisions:
- Right for partner to take time off work to accompany mother to ante-natal appointments: insertion into Employment Rights Act 1996 of new Sections 57ZE-ZF (Sections 57ZG-ZI for agency workers), commenced on 1 October 2014

Right to time off to attend adoption appointments: insertion into Employment Rights Act 1996 of new Sections 57ZJ-ZM (Sections 57ZN-R for agency workers), commenced on 5 April 2015

Secondary legislation

234. There is no relevant secondary legislation

PART 8: TIME OFF WORK FOR ANTE NATAL CARE	
127	Right to time off work for ante natal appointments partners of pregnant woman – new 57ZE-F Partners who are agency workers - new 57G-H
128	Time off work to attend adoption appointments Adopters: 57ZJ-M Extended to agency workers: 57ZN-R Local authority foster parents: 57ZS
129	Detriment provisions re agency workers taking time off under above provisions
130	Doubling the compensation – amends to s57 and 57ZC ERA
Secondary legislation None.	

Assessment

235. This measure has been used by partners of pregnant women and partners who are agency workers to enforce their rights to attend ante natal appointments. It has also been used by adopters (including some adopters who are agency workers) and LocalAuthority foster parents to enforce their rights to attend adoption appointments.

Legal issues

236. There have been no relevant legal challenges to this legislation.

Part 9 - Right to request flexible working Chapters 131-134

Introduction

237. The Children and Families Act 2014 made amendments to the existing Right to Request Flexible Working, as set out in the Employment Rights Act 1996 (ERA).

Section 131: Removal of requirement to be a carer

238. In section 80F(1) of the ERA, the condition that an employee's purpose must be to enable caring for a child or adult was repealed. The Flexible Working Regulations 2014 also made provision for the condition as to the duration of employment which an employee must satisfy in order to make a flexible working application. This requires an employee to have at least 26 weeks of continuous employment in order to make a flexible working application.
239. Overall, these changes mean that all employees who have the necessary period of service with their employer (currently 26 weeks) can make a statutory application for a flexible working arrangement (i.e. to change their terms and conditions of employment in relation to the hours, times or place of work).

Section 132: Dealing with applications

240. Subsection (2) amends section 80G of the ERA to remove the requirement on employers to follow a statutory procedure when considering flexible working requests. The procedures set out in the Flexible Working (Procedural Requirements) Regulations 2002 (S.I. 2002/3207) are revoked. In place of this, subsection (2) introduces a duty on employers to consider requests in a reasonable manner.
241. Subsection (2) amends section 80G to introduce a requirement on the employer to notify the employee of its decision within a certain period of time. Subsection (3) provides that the employer must give its decision within 3 months beginning on the date that the application is made. This period can be extended by agreement between the employer and employee.
242. Subsection (4) sets out the circumstances in which the employer can treat a flexible working request as withdrawn. They are where an employee fails to attend two consecutive meetings to discuss the request or an appeal with their employer without good reason.

Section 133: Complaints to employment tribunals

243. Subsection (2) amends section 80H of the ERA to provide that an employee may make a complaint to an employment tribunal if the employer sought to treat the employee's flexible working request as withdrawn without having grounds to do so.

244. Subsection (5) provides that an employee may make this complaint as soon as the employer has informed the employee that it is treating the request as withdrawn.
245. Subsection (3) amends section 80H of the ERA to provide a change consequential on the addition of a new ground of complaint.
246. Subsection (4) amends section 80H of the ERA to set out the rules on when an employee may make a complaint relating to a flexible working request to an employment tribunal. It provides that an employee cannot make a complaint to an employment tribunal until a final decision has been made by their employer. An employee is required to have exhausted any appeal which is offered by the employer before making a complaint.
247. It also amends section 80H of the ERA to provide that if the employer does not inform the employee of its decision within the required period of time, the employee may make a complaint to an employment tribunal or, if the employer and employee have agreed an extension of time, the employee may make a complaint at the end of the extended period.
248. An employee has a period of three months from the "relevant date" to make a complaint relating to a flexible working request to an employment tribunal. Subsection (6) provides that the "relevant date" will be the date on which the employer informed the employee of its final decision. Or, if the employee is complaining that the employer did not have grounds to treat the request as withdrawn, the "relevant date" will be the date on which the employer informs the employee that it is treating the application as withdrawn.

Section 134: Review of sections 131 to 133

249. The Act committed the Secretary of State to carry out a review of these regulations from time to time (at intervals of no less than seven years), including a published report that:
- sets out the objectives intended to be achieved by the amendments of the Employment Rights Act 1996 made by sections 131 to 133;
 - assesses the extent to which those objectives are achieved, and
 - assesses whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a way that imposes less regulation.

250. The first report to be published under this section was published in September 2021 and can be found here

<https://www.legislation.gov.uk/uksi/2014/1398/resources>.

Implementation

251. These provisions came into force on 30th June 2014 and apply to any flexible working application made on or after 30th June 2014. They have been implemented fully.

Secondary legislation

252. The Flexible Working Regulations 2014 are made under Part VIIA of the ERA. However, they are not made using any of the provisions introduced by the Children and Families Act.

Assessment

253. The Right to Request Flexible Working was extended in 2014 to all employees with 26 weeks continuous service, before this the right was available to parents and carers only. The aims of the extension were:
- to provide more employees with access to contractual flexible working;
 - to help employees to better reconcile their work and non-work lives; and
 - to help employers to secure the business benefits of flexible working.
254. It was anticipated that by extending these rights beyond parents and carers, wider take-up and demand would be encouraged, whilst ensuring businesses have the flexibility to refuse requests on business grounds.
255. The Post Implementation Review (published in September 2021) found that the policy objectives have been achieved to some extent. More employees have more choice over their working patterns since the regulatory extension which provided all eligible employees with the same access to flexible working as was available to parents and carers, whilst ensuring that businesses have the flexibility to refuse requests on business grounds.
256. Most employees report availability of flexible working, however there is variation in availability and flexible working take-up has remained consistent overall since the flexible working regulations were extended to all employees with 26 weeks continuous service. The original impact assessment noted that it could take 10 years to achieve cultural change in this area.
257. We have recently closed on consultation that seeks to make further amendments to the Right to Request Flexible Working. This consultation was committed to in the 2019 Conservative Party manifesto. The Government will respond to this in due course.

Part 10 – General Provisions

Sections 135- 140: (135) Orders and regulations; (136) Consequential amendments, repeals and revocations; (137) Transitional, transitory or saving provision; (138) Financial provision; (139) Commencement; (140) Short title and extent

258. Sections 135-140 are largely technical provisions. These concern financial matters, the CFA being a statutory instrument and enable the Secretary of State, to make provision consequential on the CFA.

March 2022