

This briefing sets out the key changes to the law made by the Children and Families Act 2014 in relation to adoption, children in care and care leavers. It covers adoption, staying put, virtual school heads, children's homes and relevant aspects of reform of the Children's Commissioner for England.

Adoption

All aspects of this Part of the Act apply exclusively to England and Wales, unless otherwise stated.

Section 1: Contact between prescribed persons and adopted person's relatives

This Section inserts a new subsection into Section 98 of the Adoption and Children Act 2002 to allow persons with a prescribed relationship to a person adopted before 30 December 2005 access to intermediary services to facilitate contact between them and the adopted person's birth relatives. The Department of Education will consult on who should be included in the definition of "prescribed relationship", ie for example, direct descendants of the adopted person and spouses.

Section 2: Placement of looked after children with prospective adopters

This Section amends Section 22C of the Children Act 1989 to place a duty on local authorities to consider placing a child with a foster carer who is also an approved prospective adopter. This is a foster placement. The local authority can place the child for adoption only with parental consent or a placement order.

The local authority may begin this process when adoption is the probable outcome, but where rehabilitation with the birth family is still a possibility or prior to having the authority to place the child for adoption. Prior to pursuing adoption in this way, however, the local authority must have investigated the possibility of placing the child with relatives, friends or a connected person, and found this a less suitable option. If a family/friend carer is identified after the child has been placed with dually approved carers, the local authority must assess their suitability to care for the child. If they are found suitable the child must be removed from the dually approved carers and placed with that relative/friend.

Section 3: Repeal of requirement to give due consideration to ethnicity: England

This Section repeals the specific requirement of Section 1(5) of the Adoption and Children Act 2002 for adoption agencies, when placing the child for adoption, to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background. This applies to adoption agencies in England.

There remains a requirement to have regard to this as part of the welfare checklist.

Section 4: Recruitment, assessment and approval of prospective adopters

This Section inserts a new Section 3A into the Adoption and Children Act 2002. Section 3A provides a new power for the Secretary of State to direct one or more named local authorities in England, or one or more descriptions of local authority in England, to make arrangements for all or any of their functions (recruitment, assessment and approval of prospective adopters) to be

carried out on their behalf by one or more other adoption agencies (other local authorities or voluntary adoption agencies).

The new Section 3A also provides a new power for the Secretary of State to require by order, all local authorities in England to make arrangements for all or any of their functions (recruitment, assessment and the approval of prospective adopters) to be carried out on their behalf by one or more other adoption agencies (other local authorities or voluntary adoption agencies). Such an order will be subject to the affirmative resolution procedure (requiring approval of both Houses of Parliament) and cannot be made before 1 March 2015.

Section 5: Adoption support services: personal budgets

This Section inserts a new Section 4A into the Adoption and Children Act 2002 so that where a local authority has agreed to provide adoption support services it would have to prepare a personal budget on request. This aims to enable adoptive parents and adoptees to access support more directly and quicker by allowing them to secure the appropriate adoption support services and information themselves rather than relying on local authorities.

Any adoption support services secured through direct payments from personal budgets will still be treated as a service commissioned by the local authority. Regulations may make provision about the use of personal budgets (including amount, what it can be used for, from where funds are sourced).

The Department for Education will be piloting personal budgets within the prototype of the adoption support fund in ten local authorities between March 2014 and spring 2015. The date of implementation of the Regulations will be decided following the outcome of the pilots.

Both Houses of Parliament must approve the draft Regulations the first time the power to make regulations is used, but not to subsequent amendments to the Regulations.

Section 6: Adoption support services: duty to provide information

This Section inserts a new Section 4B into the Adoption and Children Act 2002 that places a duty on local authorities to provide information to adoptive parents and potential adoptive parents regarding the adoption support services available in the local authority's area. A duty is also placed on local authorities to provide details of all other responsibilities and services offered, such as the right to request a needs assessment, under this and other relevant legislation.

Section 7: The Adoption and Children Act Register

This Section amends the Adoption and Children Act 2002 to allow approved prospective adopters in pilot areas to search and inspect the Adoption and Children Act Register to help them find a child for whom they might be suitable adoptive parents. This aims to streamline and speed up the adoption process.

The Section also widens those children eligible for inclusion in the register from those considered "suitable for adoption" to those "whom a local authority in England is considering for adoption."

Approved prospective adopters will be able to search and inspect only those parts of the register or contents on the register as set out in Regulations.

Section 7 does not apply to Wales, Scotland or Northern Ireland.

Both Houses of Parliament must approve the draft Regulations the first time the power to make regulations is used, but not to subsequent amendments to the Regulations.

Section 8: Contact: children in care of local authorities

This Section amends the Children's Act 1989 to give authorities the power to refuse to allow a child under their care contact with parents, guardians or any other figure with a prior degree of parental responsibility over the child if such contact would not be consistent with safeguarding and promoting the child's welfare.

Section 9: Contact: post-adoption

This Section inserts a new Section 51A into the Adoption and Children Act 2002 to give a court the power to make an order requiring adoptive parents to let children have contact with a named person or prohibiting a named person from having contact with the child. Section 51A(3) sets out who may be named in the order. An application for such an order may be made, at the time the court is making the adoption order or afterwards, by the child, the adoptive parent or any person who has obtained the court's leave to apply.

In considering a post-adoption contact application, a court must consider:

- Any risks there might be of contact disrupting the child's life to such an extent that he or she would be harmed by it (within the meaning of the Children Act 1989)
- The applicant's connection with the child, and
- Representations made to the court by the child, the proposed adopter or the adoptive parents.

When Section 51A applies, an order under Section 8 of the Children Act 1989 (child arrangements order, specific issue order or prohibited steps order) may not make provision about contact between the child and any person named who may be named in an order under Section 51A.

Staying put arrangements

These changes apply to England only

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

This Section inserts a new Section 23CZA into the Children Act 1989, placing on each local authority a duty to provide 'staying put' arrangements for a former relevant child to continue to live together with their former foster carer after the former relevant child has ceased to be looked after.

The local authority will monitor the staying put arrangement and will provide advice, assistance and support to the former relevant child and the former foster parent with a view to maintaining the staying put arrangement. This support includes financial support and should be available until the former relevant child is 21. All arrangements will be made in the best interests of the young person and with consent by all parties.

Virtual School Heads

These changes apply to England only

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

This Section inserts new subsections into Section 22 of the Children Act 1989, placing a duty on each local authority in England to appoint an officer to promote the educational attainment of looked after children.

Many local authorities have already appointed a virtual school head to champion the education of children in the authority's care, as if they all attended the same school.

The provision will have the effect of putting these virtual school heads on a statutory footing and require any local authority who has not already appointed one to do so.

Children's Homes

These changes apply to England only

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

Section 102 extends provisions in the Care Standards Act, which already operate in Wales, to England, allowing Ofsted to suspend a person's registration in relation to a setting caring for children that is regulated under Part 2 of the Care Standards Act. This means a criminal offence would be committed if a registered person continued to operate the setting while their registration was suspended.

In a statement at Report Stage in the House of Lords the Minister, Lord Nash clarified that:

- While this power could apply to any setting regulated by Ofsted under Part 2 of the Care Standards Act, for example a fostering service, its use would almost always in relation to children's homes, where Ofsted assesses that there is a need for urgent action to suspend a person's registration while concerns about a home's care are investigated
- Moves to suspend registration would happen only on rare occasions where there were very serious concerns. For example, where there are allegations of abuse in a home, it might be appropriate to suspend a registration while these are being investigated.¹

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

The Section will amend the current regulation making power in Section 22 of the Care Standards Act so that the Secretary of State can require homes to comply with quality objectives. This change will put beyond doubt the Secretary of State's power to create regulations that set high level objectives and standards that all homes must adhere to.

Government will work with key partners to develop these high level standards, in place of the current requirements on how homes must operate. The Department for Education will formally consult on revised regulations during the next year.²

¹ Hansard Columns 1319-1320, 29 Jan 2014. <http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140129-0003.htm#1401301000099>

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

This Section will amend Section 23 (National Minimum Standards) of the Care Standards Act, so that the National Minimum Standards may explain or supplement requirements in the regulations.

Government propose to publish (in place of the current NMS) a document which explains and amplifies the high standards and objectives set out in regulations.

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

Section 105 introduces a time limit of 28 days for people involved in the running of children's homes to inform Ofsted in the event of being disqualified from private fostering (e.g. due to criminal conviction). Such people are only permitted to continue their involvement in the running of children's home with the written permission of Ofsted and this minor change to the law has been introduced to enable more effective enforcement of this rule.

Functions of the Children's Commissioner for England in relation to children in care and care leavers

These changes apply to England only

Section 108: Provision by Commissioner of advice and assistance to certain children

This Section inserts a new Section 2D into the Children Act 2004, giving the Children's Commissioner for England the power to provide information and advice available to children living away from home or receiving social care, and to make representations on their behalf.

Section 109: Commissioner's powers to enter premises to conduct interviews or observe standards

This Section inserts a new Section 2E into the Children Act 2004, providing the power to enter premises (except private premises) to interview children or workers or observe standards. This applies for the purposes of the Children's Commissioner's Primary Function and the function set out under Section 2D (see Section 108, above)

Section 114: Children living away from home or receiving social care

This Section inserts a new Section 8A into the Children Act 2004 to define children living away from home or receiving social care. The definition includes:

- Children accommodated at a boarding school or college
- Children accommodated at a residential children's home
- Care leavers aged up to 25
- Any other children in relation to which a local authority is exercising their social services functions

² Children's Partnership Summary Briefing: Children and Families Bill amendments to children's homes regulation
<http://thechildrenspartnership-knowledge.org.uk/media/1017/1311-childrens-homes-regulations-final.pdf>

Section 116: Repeal of requirement to appoint Children's Rights Director

This Section repeals Section 120 of the Education and Inspections Act 2006 – the duty on Ofsted to appoint a children's rights director and makes consequential amendments to that Act.

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