



Children Act 2004

2004 CHAPTER 31

PART 1

CHILDREN'S COMMISSIONER

1 Establishment

- (1) There is to be an office of Children's Commissioner.
- (2) Schedule 1 has effect with respect to the Children's Commissioner.

[^{F1}2 Primary function: children's rights, views and interests

- (1) The Children's Commissioner's primary function is promoting and protecting the rights of children in England.
- (2) The primary function includes promoting awareness of the views and interests of children in England.
- (3) In the discharge of the primary function the Children's Commissioner may, in particular—
 - (a) advise persons exercising functions or engaged in activities affecting children on how to act compatibly with the rights of children;
 - (b) encourage such persons to take account of the views and interests of children;
 - (c) advise the Secretary of State on the rights, views and interests of children;
 - (d) consider the potential effect on the rights of children of government policy proposals and government proposals for legislation;
 - (e) bring any matter to the attention of either House of Parliament;
 - (f) investigate the availability and effectiveness of complaints procedures so far as relating to children;
 - (g) investigate the availability and effectiveness of advocacy services for children;
 - (h) investigate any other matter relating to the rights or interests of children;

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- (i) monitor the implementation in England of the United Nations Convention on the Rights of the Child;
 - (j) publish a report on any matter considered or investigated under this section.
- (4) In the discharge of the primary function, the Children's Commissioner must have particular regard to the rights of children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers to be at particular risk of having their rights infringed.
- (5) The Children's Commissioner may not conduct an investigation of the case of an individual child in the discharge of the primary function.

Textual Amendments

F1 Ss. 2-2C substituted for s. 2 (1.4.2014) by [Children and Families Act 2014 \(c. 6\), ss. 107, 139\(5\)](#)

2A United Nations Convention on the Rights of the Child

- (1) The Children's Commissioner must, in particular, have regard to the United Nations Convention on the Rights of the Child in considering for the purposes of the primary function what constitute the rights and interests of children (generally or so far as relating to a particular matter).
- (2) The references in section 2(3)(i) and this section to the United Nations Convention on the Rights of the Child are to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

Textual Amendments

F1 Ss. 2-2C substituted for s. 2 (1.4.2014) by [Children and Families Act 2014 \(c. 6\), ss. 107, 139\(5\)](#)

2B Involving children in the discharge of the primary function

- (1) The Children's Commissioner must take reasonable steps to involve children in the discharge of the primary function.
- (2) The Commissioner must in particular take reasonable steps to—
 - (a) ensure that children are aware of the Commissioner's primary function and how they may communicate with him or her, and
 - (b) consult children, and organisations working with children, on the matters the Commissioner proposes to consider or investigate in the discharge of the primary function.
- (3) The Children's Commissioner must for the purposes of this section have particular regard to children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers do not have adequate means by which they can make their views known.

Changes to legislation: There are currently no known outstanding effects for the Children Act 2004, Part 1. (See end of Document for details)

Textual Amendments

F1 Ss. 2-2C substituted for s. 2 (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. 107, 139(5)

2C Primary function: reports

- (1) This section applies where the Children's Commissioner publishes a report in the discharge of the primary function.
- (2) The Commissioner must, if and to the extent he or she considers it appropriate, also publish the report in a version which is suitable for children (or, if the report relates to a particular group of children, for those children).
- (3) Where the report contains recommendations about the exercise by a person of functions of a public nature, the Commissioner may require that person to state in writing, within such period as the Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.]

Textual Amendments

F1 Ss. 2-2C substituted for s. 2 (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. 107, 139(5)

[^{F2}2D Provision of advice and assistance to certain children in England

- (1) The Children's Commissioner may provide advice and assistance to any child who is within section 8A (children living away from home or receiving social care).
- (2) The Children's Commissioner may in particular under this section make representations on behalf of a child who is within section 8A to a person in England who is—
 - (a) providing the child with accommodation or services, or
 - (b) otherwise exercising functions in relation to the child.]

Textual Amendments

F2 S. 2D inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. 108, 139(5)

[^{F3}2E Powers to enter premises to conduct interviews or observe standards

- (1) This section applies for the purposes of the Children's Commissioner's primary function and the function under section 2D.
- (2) The Children's Commissioner, or a person authorised by the Commissioner, may at any reasonable time enter any premises, other than a private dwelling—
 - (a) for the purpose of interviewing a child, or
 - (b) for the purpose of observing the standard of care provided to children accommodated or otherwise cared for there.
- (3) An interview of a child under subsection (2)(a) may be conducted in private, if the child consents.

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- (4) A person who enters premises under subsection (1) may interview any person present on the premises who works there.
- (5) It is immaterial for the purposes of subsection (4) whether a person's work is paid, or under a contract of employment.]

Textual Amendments

F3 S. 2E inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 109**, 139(5)

[^{F4}2F] Provision of information to Commissioner

- (1) Any person exercising functions of a public nature must supply the Children's Commissioner with such information in that person's possession relating to those functions as the Commissioner may reasonably request for the purposes of the primary function or the function under section 2D.
- (2) The information must be information which that person would, apart from subsection (1), lawfully be able to disclose to the Commissioner.]

Textual Amendments

F4 S. 2F inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 110**, 139(5)

3 Inquiries initiated by Commissioner

- (1) Where the Children’s Commissioner considers that the case of an individual child in England raises issues of public policy of relevance to other children, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
- (2) The Children’s Commissioner may only conduct an inquiry under this section if he is satisfied that the inquiry would not duplicate work that is the function of another person (having consulted such persons as he considers appropriate).
- ^{F5}(3)
- (4) The Children’s Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.
- (5) As soon as possible after completing an inquiry under this section the Children’s Commissioner must—
 - (a) publish a report containing his recommendations; and
 - (b) send a copy to the Secretary of State.
- (6) The report need not identify any individual child if the Children’s Commissioner considers that it would be undesirable for the identity of the child to be made public.
- (7) Where the Children’s Commissioner has published a report under this section containing recommendations in respect of any person exercising functions [^{F6} of a public nature], he may require that person to state in writing, within such period as the

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Children’s Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.

- (8) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section with the substitution for references to the person appointed to hold the inquiry of references to the Children’s Commissioner.

Textual Amendments

- F5** S. 3(3) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 1\(2\)](#)
- F6** Words in s. 3(7) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 1\(3\)](#)

F74 Other inquiries held by Commissioner

Textual Amendments

- F7** S. 4 repealed (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 2\(1\)](#)

5 Functions of Commissioner in Wales

- (1) The Children’s Commissioner has the function of [^{F8}promoting and protecting the rights of children in Wales], except in so far as relating to any matter falling within the remit of the Children’s Commissioner for Wales under section 72B, 73 or 74 of the Care Standards Act 2000 (c. 14).

[^{F9}(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Wales.]

[^{F10}(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children’s Commissioner’s function under subsection (1) as in relation to the Commissioner’s primary function.

(2A) For the purposes of subsection (2)—

- (a) section 2(3)(i) has effect as if for “in England” there were substituted “ in Wales, except in so far as relating to any matter falling within the remit of the Children’s Commissioner for Wales under section 72B, 73 or 74 of the Care Standards Act 2000, ” ,
- (b) sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “ groups of children ” ,
- (c) section 2E(1) has effect as if “and the function under section 2D” were omitted, and
- (d) section 2F(1) has effect as if “or the function under section 2D” were omitted.]

- (3) In discharging his function under subsection (1) above the Children’s Commissioner must take account of the views of, and any work undertaken by, the Children’s Commissioner for Wales.

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- (4) Where the Children’s Commissioner considers that the case of an individual child in Wales raises issues of public policy of relevance to other children, other than issues relating to a matter referred to in subsection (1) above, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
- (5) Subsections (2) to (8) of section 3 apply in relation to an inquiry under subsection (4) above.

^{F11}(6)

^{F12}(7)

Textual Amendments

- F8** Words in s. 5(1) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 3\(2\)](#)
- F9** S. 5(1A) inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 3\(3\)](#)
- F10** S. 5(2)(2A) substituted for s. 5(2) (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 3\(4\)](#)
- F11** S. 5(6) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 2\(2\)\(a\)](#)
- F12** S. 5(7) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 2\(2\)\(a\)](#)

6 Functions of Commissioner in Scotland

- (1) The Children’s Commissioner has the function of [^{F13}promoting and protecting the rights of children in Scotland where those rights are or may be affected by reserved matters].
- [^{F14}(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Scotland.]
- [^{F15}(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children’s Commissioner’s function under subsection (1) as in relation to the Commissioner’s primary function.
- (2A) For the purposes of subsection (2)—
- section 2(3)(i) has effect as if for “in England” there were substituted “in Scotland, in relation to reserved matters,”
 - sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”
 - section 2E(1) has effect as if “and the function under section 2D” were omitted, and
 - section 2F(1) has effect as if “or the function under section 2D” were omitted.]
- (3) In discharging his function under subsection (1) above the Children’s Commissioner must take account of the views of, and any work undertaken by, the Commissioner for Children and Young People in Scotland.
- (4) Where the Children’s Commissioner considers that the case of an individual child in Scotland raises issues of public policy of relevance to other children in relation to a

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reserved matter, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

(5) Subsections (2) to (7) of section 3 apply in relation to an inquiry under subsection (4) above.

(6) Subsections (3) to (5) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) apply for the purposes of an inquiry under subsection (4) above with the substitution of references to the Children’s Commissioner for references to the person appointed to hold the inquiry.

^{F16}(7)

^{F16}(8)

^{F16}(9)

(10) In this section, “reserved matter” has the same meaning as in the Scotland Act 1998 (see section 30 of and Schedule 5 to that Act).

Textual Amendments

F13 Words in s. 6(1) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 4\(2\)](#)

F14 S. 6(1A) inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 4\(3\)](#)

F15 S. 6(2)(2A) substituted for s. 6(2) (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 4\(4\)](#)

F16 S. 6(7)-(9) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 2\(2\)\(b\)](#)

7 Functions of Commissioner in Northern Ireland

(1) The Children’s Commissioner has the function of [^{F17}promoting and protecting the rights of children in Northern Ireland where those rights are or may be affected by excepted matters].

[^{F18}(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Northern Ireland.]

[^{F19}(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.

(2A) For the purposes of subsection (2)—

(a) section 2(3)(i) has effect as if for “in England” there were substituted “ in Northern Ireland, in relation to excepted matters, ”,

(b) sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “ groups of children ”,

(c) section 2E(1) has effect as if “and the function under section 2D” were omitted, and

(d) section 2F(1) has effect as if “or the function under section 2D” were omitted.]

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- (3) In discharging his function under subsection (1) above the Children’s Commissioner must take account of the views of, and any work undertaken by, the Commissioner for Children and Young People for Northern Ireland.
- (4) Where the Children’s Commissioner considers that the case of an individual child in Northern Ireland raises issues of public policy which are of relevance to other children in relation to an excepted matter, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
- (5) Subsections (2) to (7) of section 3 apply in relation to an inquiry under subsection (4) above.
- (6) Paragraphs 2 to 5 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry under subsection (4) above with the substitution of references to the Children’s Commissioner for references to the person appointed to hold the inquiry.
- ^{F20}(7)
- ^{F20}(8)
- ^{F20}(9)
- (10) In this section, “excepted matter” has the same meaning as in the Northern Ireland Act 1998 (c. 47).

Textual Amendments

- F17** Words in s. 7(1) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 5\(2\)](#)
- F18** S. 7(1A) inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 5\(3\)](#)
- F19** S. 7(2)(2A) substituted for s. 7(2) (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 5\(4\)](#)
- F20** S. 7(7)-(9) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(5), [Sch. 5 para. 2\(2\)\(c\)](#)

[^{F21}7A **Advisory board**

- (1) The Children's Commissioner must appoint an advisory board to provide the Commissioner with advice and assistance relating to the discharge of his or her functions.
- (2) The advisory board must consist of persons who (taken together) represent a broad range of interests which are relevant to the Children's Commissioner's functions.
- (3) The Children's Commissioner must from time to time publish a report on the procedure followed and the criteria used when making appointments to the advisory board.]

Textual Amendments

- F21** S. 7A inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 111](#), 139(5)

Changes to legislation: There are currently no known outstanding effects for the Children Act 2004, Part 1. (See end of Document for details)

[^{F22}7B Business plans

- (1) The Children's Commissioner must publish a business plan which sets out, in relation to the discharge of the Commissioner's functions—
 - (a) the Commissioner's proposed main activities for the period covered by the plan (including the matters he or she intends to consider or investigate), and
 - (b) the Commissioner's proposed strategic priorities for that period.
- (2) A business plan must cover a period of at least 12 months beginning with the date of publication.
- (3) The Commissioner must publish a new business plan before the end of the period covered by the preceding business plan.
- (4) Before publishing a business plan under this section, the Children's Commissioner must—
 - (a) take reasonable steps to consult children,
 - (b) consult persons who (taken together) represent a broad range of interests which are relevant to the Children's Commissioner's functions, and
 - (c) consult such other persons as the Commissioner thinks appropriate.
- (5) The Children's Commissioner must for the purposes of subsection (4)(a) have particular regard to children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers do not have adequate means by which they can make their views known.]

Textual Amendments

F22 S. 7B inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. **112**, 139(5)

8 Annual reports

- (1) As soon as possible after the end of each financial year the Children's Commissioner must make a report on—
 - (a) the way in which he has discharged his functions ^{F23}...; [^{F24}and]
 - (b) what he has found in the course of exercising those functions during the year; ^{F25}...
 - (c)
- (2) The Children's Commissioner must in particular under subsection (1)(a) include^{F26}—
 - (a) a summary of the Commissioner's activities and an analysis of the effectiveness of those activities in promoting and protecting the rights of children,
 - (b) an account of what the Commissioner has done in the discharge of his or her functions in relation to children who are within section 8A (children living away from home or receiving social care),
 - (c) an account of the steps taken by the Commissioner to consult children or otherwise involve them in the discharge of his or her functions, and
 - (d) a summary of how the Commissioner has taken into account the results of any such consultation and anything else resulting from involving children in the discharge of his or her functions.]

*Changes to legislation: There are currently no known outstanding effects
for the Children Act 2004, Part 1. (See end of Document for details)*

- (3) Where the Children’s Commissioner makes a report under this section—
- (a) he must send a copy to the Secretary of State; and
 - (b) [^{F27}the Commissioner] must as soon as possible lay a copy before each House of Parliament.
- (4) The Children’s Commissioner must publish a report under this section as soon as possible after [^{F28}laying] it before each House of Parliament.
- [^{F29}(5) If the Children's Commissioner does not consider a report made under this section to be suitable for children, the Commissioner must publish a version of the report which is suitable for children.]
- (6) In this section, “financial year” has the same meaning as in paragraph 8 of Schedule 1.

Textual Amendments

- F23** Words in s. 8(1)(a) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(2)(a)**, 139(5)
- F24** Word in s. 8(1)(a) inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(2)(b)**, 139(5)
- F25** S. 8(1)(c) omitted (1.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(2)(c)**, 139(5)
- F26** Words in s. 8(2) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(3)**, 139(5)
- F27** Words in s. 8(3)(b) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(4)**, 139(5)
- F28** Word in s. 8(4) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(5)**, 139(5)
- F29** S. 8(5) substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 113(6)**, 139(5)

[^{F30}8A Children in England living away from home or receiving social care

- (1) For the purposes of this Part, a child is within this section if he or she is within any of subsections (2) to (5).
- (2) A child is within this subsection if he or she is provided with accommodation by a school or college in England to which section 87(1) of the Children Act 1989 applies.
- (3) A child is within this subsection if he or she is accommodated in an establishment (within the meaning of the Care Standards Act 2000) in respect of which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of that Act.
- (4) A child is within this subsection if functions are being exercised in relation to him or her by an agency (within the meaning of the Care Standards Act 2000) in respect of which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of that Act.
- (5) A child is within this subsection if a local authority in England exercises social services functions (within the meaning of the Local Authority Social Services Act 1970) in relation to him or her.
- (6) For the purposes of this Part, a person who is not a child is to be treated as a child who is within this section if—
 - (a) he or she is aged 18 or over and under 25, and
 - (b) a local authority in England has provided services to him or her under any of sections 23C to 24D of the Children Act 1989 at any time after he or she reached the age of 16.]

Changes to legislation: There are currently no known outstanding effects for the Children Act 2004, Part 1. (See end of Document for details)

Textual Amendments

F30 S. 8A inserted (1.4.2014) by [Children and Families Act 2014 \(c. 6\), ss. 114, 139\(5\)](#)

[^{F31}9 Commissioner's functions in relation to certain young people

- (1) This section applies for the purposes of this Part, other than sections 2A and 8A (and references in this Part to a child who is within section 8A).
- (2) For the purposes of the Children's Commissioner's functions in respect of children in England, a reference to a child includes, in addition to a person under the age of 18—
 - (a) a person aged 18 or over for whom an EHC plan is maintained by a local authority,
 - (b) a person aged 18 or over and under 25 to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16, or
 - (c) a person aged 18 or over and under 25 who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16.
- (3) For the purposes of the Children's Commissioner's functions in respect of children in Wales, Scotland and Northern Ireland, a reference to a child includes, in addition to a person under the age of 18, a person aged 18 or over and under 25—
 - (a) who has a learning disability,
 - (b) who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16, or
 - (c) to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16.
- (4) For the purposes of this section—

“ EHC plan ” means a plan within section 37(2) of the Children and Families Act 2014 (education, health and care plans);

“ learning disability ” means a state of arrested or incomplete development of mind which induces significant impairment of intelligence and social functioning;

a person is “looked after by a local authority” if—

 - (a) for the purposes of the [^{F32} Social Services and Well-being (Wales) Act 2014], he or she is looked after by a local authority in Wales;
 - (b) for the purposes of the Children (Scotland) Act 1995, he or she is looked after by a local authority in Scotland;
 - (c) for the purposes of the Children (Northern Ireland) Order 1995, he or she is looked after by an authority in Northern Ireland.]

Textual Amendments

F31 S. 9 substituted (1.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(5\), Sch. 5 para. 6\(1\)](#) (with [Sch. 5 para. 6\(2\)](#))

F32 Words in s. 9(4)(a) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(No. 413\), regs. 2\(1\), 216](#)

Changes to legislation:

There are currently no known outstanding effects for the Children Act 2004, Part 1.