

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – General Provisions

Section 135: Orders and regulations

709. This section provides that all orders and regulations made by the Secretary of State or the Lord Chancellor under the Act are to be made by statutory instrument. Orders made under section 78(6) (*Order relating to the coming into force of the SEN Code of Practice*), section 137 (*Transitional, transitory or saving provision*) and section 139 (*Commencement*) are not subject to any parliamentary procedure. The first regulations to be made under section 49, an order under section 58(1) or 59(1), regulations under sections 70(3), 92, 93, 94(6), (8), (9) or (10), or under section 94(11) or 136 that amend primary legislation, will be subject to the affirmative resolution procedure. In addition any order made under section 3A of the Adoption and Children Act 2002 (inserted by section 4 of this Act), and the first regulations made under section 4A (inserted by section 5), and section 128A(4) (inserted by section 7) of that Act are subject to the affirmative resolution procedure. All other orders and regulations made under this Act are subject to the negative resolution procedure.
710. This section allows for orders or regulations to make different provision for different purposes (including different areas) and to make provision generally or in relation to specific cases. Other than in relation to orders made under section 78(6) (*Order relating to the coming into force of the SEN Code of Practice*), section 137 (*Transitional, transitory or saving provision*) or section 139 (*Commencement*), a power to make an order or regulations includes power to make incidental, supplementary, consequential, transitional or transitory provision or saving.

Section 136: Consequential amendments, repeals and revocations

711. This section allows the Secretary of State or the Lord Chancellor to make orders that make consequential amendments to other legislation. By virtue of section 135(6), where such orders amend primary legislation, they will be subject to the affirmative procedure.

Section 137: Transitional, transitory or saving provision

712. *Subsection (1)* allows the Secretary of State or Lord Chancellor to make transitional provision in connection with the commencement of the provisions of the Act.
713. *Subsections (2) to (5)* relate to offences contained in the Act which are punishable by the magistrates' court on summary conviction with a fine of £5000. These subsections contain transitional provisions to cater for the situation where section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") comes into force on or before the day on which this Act receives Royal Assent.
714. Once section 85 of the 2012 Act is commenced, offences which are punishable by the magistrates' court on summary conviction with a fine of £5000, will be punishable by an

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

unlimited fine instead. In addition, following the commencement of section 85, powers to create an offence punishable by a fine of £5000 will, instead, be able to be exercised to create an offence punishable by a fine of any amount.

715. *Subsection (3)* operates so as to treat the offences listed within that subsection as offences in respect of which section 85(1) of the 2012 Act removes the maximum fine.
716. *Subsection (4)* applies to the power in the new section 69A(1)(b) to be inserted into the Childcare Act 2006 which allows regulations to create offences relating to things done whilst registration with a childminder agency is suspended. *Subsection (4)* operates so as allow an offence to be created by regulations made under new section 69A(1)(b) which is punishable by a fine of any amount.
717. *Subsection (5)* refers to regulations made under section 85 and to regulations made under section 149 of the 2012 Act (Power to make consequential and supplementary provision etc.) which make provision in relation to section 85. *Subsection (5)* allows such regulations to amend, repeal or otherwise modify a provision of this Act or the Childcare Act 2006.

Section 139: Commencement

718. This section provides for the commencement of the Act. The provisions that relate to family justice and that are mentioned in *subsection (3)* will come into force on a date appointed by the Lord Chancellor. Sections 18 (*Repeal of uncommenced provisions of Part 2 of the Family Law Act 1996*), 90 (*extension of licensing of child performances to children under 14*), 101 (*Local authority functions etc*), and 102 to 104 (*concerning children's homes*) come into force two months after the date on which the Act is passed. Part 6 comes into force on 1 April 2014. Part 10 (*General Provisions*) comes into force on the date on which the Act is passed. The other provisions of the Act will come into force on a day appointed by the Secretary of State by order, except for section 1 over which the Welsh Ministers have commencement powers in relation to Wales. Any order made under this section can appoint different days for different purposes.

Section 140: Short title and extent

719. *Section 126(2) to (4)(statutory rights to leave and pay: further amendments)* and section 134 (*review of sections on the right to request flexible working*) extend to England, Wales and Scotland. In some cases section 126(3) and (4) also extends to Northern Ireland. Section 94 extends to the whole of the United Kingdom. Part 10 (*General Provisions*) extends to the whole of the United Kingdom. Save for the repeal made by section 90, where a provision of the Act amends or repeals other legislation, that amendment or repeal has the same extent as the provision which is amended or repealed. Subject to the above the Act extends to England and Wales only.