

EXPLANATORY MEMORANDUM TO
THE VISITS TO FORMER LOOKED AFTER CHILDREN IN DETENTION
(ENGLAND) REGULATIONS
2010 No. 2797

1. This explanatory memorandum has been prepared by the Department for Education (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 The Visits to Former Looked After Children in Detention (England) Regulations 2010 make provision about visiting requirements for children and young people who were “looked after” by a local authority but who have ceased to be so as a result of being detained in an institution, either having been remanded to prison custody or following conviction and sentencing by a court. A looked after child is a child who is in the care of a local authority by virtue of a care order or a child who is provided with accommodation by a local authority in the exercise of their social services functions (with some exceptions). These Regulations will only apply to children who were formerly looked after by virtue of having been accommodated by the local authority (see paragraph 4.2 below).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Context**
 - 4.1 These Regulations are made under section 23ZA of the Children Act 1989 (“the 1989 Act”), which was inserted by section 15 of the Children and Young Persons Act 2008. Section 23ZA imposes a duty on the local authority to ensure that a child who was looked after by that local authority but who has ceased to be so as a result of prescribed circumstances is visited by a representative of the authority and that appropriate advice support and assistance is made available. The circumstances that are prescribed by these Regulations are that the child is detained in a young offender institution, a secure training centre or a secure children’s home pursuant to an order of court.
 - 4.2 These Regulations will apply to children or young people who lose their looked after status on entering custody, that is those who were provided with accommodation by the local authority under section 20 of the 1989 Act or those who had been remanded to local authority accommodation under section 23(1) of the Children and Young Persons Act 1969 on sentencing. However, they do not apply to children who are “relevant” children for the purposes of

section 23A of the 1989 Act, that is those who are aged 16 or 17 and who prior to detention had been looked after for at least 13 weeks since the age of 14. Relevant children are entitled to local authority support as care leavers under the 1989 Act. In particular, section 23B(1) of the 1989 Act provides that the local authority that last looked after the relevant child must keep in touch with that child, prepare an assessment of their needs and a pathway plan, and appoint a personal adviser for them.

- 4.3 These Regulations set out the duties of the local authority towards this group of children in detention and also the functions and duties of the local authority's representative who has been appointed to visit the child. The provisions ensure that the child is provided with appropriate support during their time in custody and that suitable arrangements can be made to provide support to them on their release, where appropriate.

5. Territorial Extent and Application

- 5.1 This instrument applies in relation to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The majority of looked after children do not get involved in offending but research data indicates that looked after children enter custody at a higher rate than other children. Where a child has been looked after prior to detention in custody, the local authority may have various duties depending on the child's legal status. Where a child is the subject of a care order the local authority shares parental responsibility for the child (until that care order is discharged) and will have ongoing duties to support the child during their detention and plan for their release and resettlement in the community. Where children are voluntarily accommodated under section 20 of the 1989 Act they will no longer be looked after by a local authority if they are remanded to a Youth Offenders Institute, or their sentence is served in a Youth Offenders Institute, in a Secure Training Centre or in a Secure Children's Home. Where these children are "relevant" children, the local authority will have duties (under the leaving care provisions of the 1989 Act) to provide support to them (see paragraph 4.2 above).

- 7.2 However, for those children in custody who lose their looked after status and are not entitled to leaving care support, the local authority formerly responsible for their care do not currently have any continuing duties to be involved in planning for their resettlement and support on release from custody.

- 7.3 These Regulations make provision to ensure that local authorities remain in contact with, and provide support to, this group of children whilst they are in custody. The purpose of the local authority representative's visit will be to make an assessment of the child's needs which will also take into account previous information about their welfare. The assessment will result in recommendations as to how, if necessary, the child should be supported both whilst in custody and on release. Without the necessary support this group of children will be highly vulnerable to homelessness and re-offending on release from custody. The costs of youth homelessness and risks of re-offending are considerable.
- 7.4 There will be a range of options for supporting the child on release from custody, including the child returning to their family, either solely with supervision from the Youth Offending Team or with the local authority also offering additional services to the child and their family using their powers under section 17 of the 1989 Act. In some cases, the child may need to be voluntarily accommodated by the local authority again.
- 7.5 The introduction of these Regulations and related statutory Guidance forms part of Government's wider programme to revise and reform the legal framework for providing services to looked after children that is due to come into force in April 2011. Revised guidance on care planning, placement and case review includes a detailed chapter about support for looked after children who are also involved with youth justice services that explains local authorities' responsibilities to remain in touch with these children and plan with youth justice services, for their resettlement on release. Revised guidance on care leaver support similarly includes a section about how local authorities should support care leavers who are also involved with youth justice services.
- 7.6 These Regulations are necessary so that a relatively small but particularly vulnerable group of children who were formerly looked after do not lose local authority oversight of their welfare simply because they are in custody.

8. Consultation outcome

- 8.1 The Department carried out a web-based 12-week consultation about these Regulations and the accompanying guidance between March and June 2010.
- 8.2 Responses were received from the Youth Justice Board (YJB), the National Offender Management Service (NOMS), local authorities and voluntary organisations with a particular interest in youth justice. These responses indicated broad support for the principles involved, though understandably local authorities wished to avoid disproportionate resource commitments. In response to the consultation, the Guidance has been redrafted to stress the

need to ensure that visits are co-ordinated with other processes that are already established for planning young people's resettlement on release. A detailed analysis of the responses to the consultation is now on the Department's website.

9. Guidance

9.1 These Regulations will be accompanied by statutory Guidance - *Local authority responsibilities to former looked after children in custody* – issued under section 7 of the Local Authority Social Services Act 1970. The Guidance sets out the matters that a local authority will need to take into account when arranging for their representative to visit a formerly looked after child in custody, including:

- timing of visits;
- factors to be included in preparing assessments of detained children's needs;
- timing of assessment reports;
- decision making by management in the local authority in response to the recommendations of the representative; and
- planning for the child's release.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that there will be new requirements on local authorities to provide support to formerly looked after children in custody. These Regulations implement section 23ZA of the 1989 Act inserted by section 15 of the Children and Young Persons Act 2008 in respect of formerly looked after children by making provision for:

- (a) The appointment of a representative to visit children who were formerly looked after and who ceased to be looked after as a result of receiving a custodial sentence.
- (b) Frequency of visits
- (c) Conduct of visits
- (d) Arrangements for offering advice, support and assistance to the child during their time in custody and on release.

10.3 An Impact Assessment is attached to this memorandum.

10.4 The Regulations will come into force on 1st April 2011 which provides sufficient time for local authorities to implement any changes introduced by them. Training materials will be developed to support local authorities in co-ordinating services for looked after children with youth justice services in order to implement these Regulations.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department collects statistics on an annual basis about the status of looked after children and care leavers. This information will be used to monitor the numbers of children who cease to be looked after as a result of being sentenced to custody.

12.2 Ofsted lead a programme of inspecting local authority children's services which involves a strong focus on how local authorities secure positive outcomes for looked after children and care leavers. We will review the outcomes of Ofsted inspections of individual local authorities to establish how far authorities are implementing these Regulations, so that looked after children who are also involved with youth justice services have more consistent and co-ordinated support.

13. Contact

Mark Burrows at the Department for Education (tel: 020 7783 8079 or email: Mark.Burrows@education.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Children, Schools and Families	Title: Visits to Former Looked After Children in Detention (England) Regulations [2010] and related Guidance	
Stage: Consultation	Version: 0.4	Date: 11/03/2010
Related Publications: Care Planning IA		

Available to view or download at:

Contact for enquiries: Mark Burrows

Telephone: 020 778 38079

What is the problem under consideration? Why is government intervention necessary?

Children in custody who came into care as a result of a court-directed care order are currently entitled to ongoing support from the local authority. However, those who were in care through a voluntary agreement between social services and their parents stop being looked after when sentenced. Many of these children require support whilst in custody and their local authority may need to be involved in the planning of their release to plan for their accommodation and support – to avoid their facing homelessness and to divert them from re-offending. Children who were in care through a voluntary agreement have similar needs to other children who were in care and so should get similar treatment.

What are the policy objectives and the intended effects

To ensure that where children from the looked after system (from care) enter custody and so cease to be looked after, a representative from their responsible authority will visit them to assess their need for services on release. This will ensure that, where necessary, a highly vulnerable group can receive continuing support when they return to their community.

What policy options have been considered? Please justify any preferred option. 3 options were considered – (1) To take no further action (2) to create a new duty in primary legislation for LAs to comprehensively assess every formerly accommodated child on release from custody and provide them with services, including accommodation, similar to those provided to care leavers. (3) Imposing a new duty in primary legislation on LAs to appoint a person to visit young people in custody who were previously accommodated underpinned by statutory guidance. Option (3) represents a proportionate and flexible response to the problem under consideration ensuring that only where necessary do children come back into care

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Inspections of the secure estate by HMI/YJB; of youth justice services by YJB and of wider local children's services by Ofsted will indicate the effectiveness of this measure in supporting (former) looked after children who offend so that they have stable accommodation and are diverted from re-offending

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: 

Date 24/3/10

Summary: Analysis & Evidence

Policy Option: Implementation of the CYP Bill	Description: As outlined in the evidence base.			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The IA for Care Matters estimated that the costs of creating a requirement to visit formerly looked after children in custody as £3.3million p.a. This comes from estimating the maximum costs of monthly visits to all 400 (approx) children in custody who were previously in care due to voluntary agreements between their parents and the cost of more comprehensive formal assessment for 300 of these children.	
	One-off (Transition)	Yrs		
	£ 0			
	Average Annual Cost (excluding one-off)			
	£ 2.64 - 3.3 m	Total Cost (PV)		£ £22.7- 28.4 million
Other key non-monetised costs by 'main affected groups' I				
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' It is difficult to monetise the costs of crime by looked after children (LAC) accommodated by voluntary agreements. Providing this group better support on release from custody will result from reduction in offending diverting them from custody. Improved access to suitable accommodation on release with services to establish them in an education/training preventing homelessness and benefit dependence	
	One-off	Yrs		
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£	Total Benefit (PV)		
Other key non-monetised benefits by 'main affected groups'. – The key benefits will result from greater involvement from their responsible LA in custody and on release. This will provide the opportunity for the right kind of multi-agency support on release, including access to supported accommodation, as a result diverting them from social exclusion and re-offending,				
Key Assumptions/Sensitivities/Risks The IA assumes nos. of formerly accommodated children in custody is a constant of the overall population in youth custody and that the numbers in the workforce along with wages and staff related on-costs similarly remains constant. The main risk is that wider pressures in children's services (e.g. safeguarding) prevent local authorities from releasing staff to meet this new duty.				
Price Base Year 2010	Time Period Years	Net Benefit Range (NPV) £ N/A		NET BENEFIT (NPV Best estimate) £ N/A
What is the geographic coverage of the policy/option?				England
On what date will the policy be implemented?				April 2011
Which organisation(s) will enforce the policy?				Local authorities
What is the total annual cost of enforcement for these organisations?				£ N/A
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£ N/A
What is the value of changes in greenhouse gas emissions?				£ N/A
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)		Micro N/A	Small N/A	Medium N/A
Are any of these organisations exempt?		Yes/No	Yes/No	N/A
Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ N/A	Decrease of	£ N/A	Net Impact £ N/A

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background and Summary

Looked after children (children in care) are a changing and diverse population - about 60,000 children are looked after by local authorities on any one day, but during a year about 85,000 children will have been looked after for some time. The majority of children become looked after as a result of abuse or neglect.

Research and data show that children in care enter custody at a higher rate than other children. The most recent research by HMI¹ identified 24% of 15-18 year olds in custody as coming from care (so whilst children looked after by local authorities represent a tiny percentage of the overall child population – they are heavily over-represented in custody). Local authorities will have continuing duties for 12% of this group as they were subject to care orders meaning that their responsible local authorities shared continuing parental responsibility for them. As these children's corporate parent, the local authority must continue to take an active interest in their lives – they should be visiting them in custody and participating in planning for their release.²

However, those who are in care through a voluntary agreement between social services and their parents lose their "looked after" status, and all the benefits which come with it, once they enter custody. Many of these children have similar needs to those in care under a care order³, and meaning that they are likely to require similar support whilst in custody.

The White Paper Care Matters included a commitment to extend the requirement to visit children to those children who had been looked after as a result of a voluntary agreement before entering custody

Outcomes for Children in Care

1. Outcomes for children in care are strikingly poor.

For example, in 2008:

- 14% of children in care gained five GCSEs at grades A*-C, compared to 65% of all children⁴;

- Care leavers are much more likely to be not in education, employment or training (NEET) as compared to young people as a whole. Due to timing and definitional differences the figures are not strictly comparable but at March 2009 37% of care leavers were NEET compared to 17% of young people of similar age.⁵

- Looked after children are twice as likely to be subject to a final reprimand or warning or convicted of a crime as other children⁶.

¹ HMI/YJB Children and Young People in custody 2008-2009

² See Putting Care into Practice [draft] Guidance to the Care Planning, Placement and Case Review Regulations <http://www.dcsf.gov.uk/consultations/index.cfm?action=Search&menu=1&title=Search+Results&metaData=care+planning>

³ ³ Statistical First Release 25/2009 (published 13 October 2009) Children looked after in England year to 31 March 2009, DCSF, SSDA903 return – see Table A1: available at <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000878/index.shtml>

⁴ Statistical First Release 07/2009 (30 April 2009), DCSF, Outcome Indicators for Looked After Children: Twelve Months to 30 September 2008, England available at: <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000842/index.shtml>

⁵ Statistical First Release Year ending 31st March 2009) - Children Looked After in England (including adoption and care leavers) available at: <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000878/index.shtml>

⁶ Statistical First Release, 07/2009 (30 April 2009), DCSF, Outcome Indicators for Looked After Children: Twelve Months to 30 September 2008, England available at: <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000842/index.shtml>

2. The factors that contribute to these poor outcomes are complex, reflecting the children's pre-care experiences and personal needs.

For example:

- 61% of children enter care because of abuse or neglect, which has a profound impact on a child's development⁷;
- 45% of 5-17 year olds in care are assessed as having a mental health disorder – four times higher than for other children⁸;
- 28% of children in care have a statement of special educational needs (SEN), compared with 3% of all children⁹.

3. Government has previously taken action to improve outcomes for all children, including those in care, through the *Every Child Matters* reforms introduced in 2003. Government has also acted specifically to help children in care – in particular via the *Quality Protects* initiative to improve the management and delivery of children's social services (and especially services for children in care); the Social Exclusion Unit's report¹⁰ on the education of children in care; and the Children (Leaving Care) Act 2000. As a result, outcomes overall have improved – e.g. 14% of children in care for at least a year achieved at least five good GCSEs in 2008, compared with only 7% in 2000¹¹. However, improvements are at far too slow a rate to reduce the gap in achievement and life outcomes between children in care and their peers.
4. Indications are, therefore, that Government intervention to date has been too piecemeal to deliver the fundamental change which is necessary; and that a comprehensive intervention across the system is now needed. This is the intention of *Care Matters*, and the Children and Young Persons Act 2008 provides the legislative framework for this. Section 15 of the Act introduces a power for the Secretary of State to make regulations so that certain categories of looked after and other children are visited.
5. We have committed to use this power to make regulations to impose a duty on local authorities to appoint a representative to visit children who were formerly in their care, but who lose their "looked after status" as they have been sentenced to custody.
6. If Government does not now address in a systematic way the problems of children who were in care but who lose their looked after status on entry to custody, then we will be failing to meet the commitment we made in "Care Matters" to improve outcomes for all children from the care system
7. Both the Youth Justice Board (YJB) and the Howard League for Penal Reform¹² have highlighted concerns about planning for this group formerly accommodated children on discharged from custody. YOT resettlement does not have a holistic approach, being primarily concerned with diverting young people from future offending. Further, YOTs do not have any statutory authority to access accommodation for this group of young people, who may not necessarily be able to return to the care of their families. YJB and the Howard

⁷ Statistical First Release 25/2009 (published 13 October 2009) Children looked after in England year to 31 March 2009, DCSF, SSDA903 return, available at <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000878/index.shtml>

⁸ *The Mental Health of Young People Looked After by Local Authorities in England*, Meltzer et al (2002)

⁹ Statistical First Release 07/2009 (30 April 2009), DCSF, Outcome Indicators for Looked After Children: Twelve Months to 30 September 2008, England available at: <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000842/index.shtml>

¹⁰ *A Better Education for Children in Care*, Social Exclusion Unit, Cabinet Office (2003)

¹¹ Statistical First Release, 30 April 2009, DCSF, Outcome Indicators for Looked After Children: Twelve Months to 30 September 2008, England available at: <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000842/index.shtml>

¹² Chaos, neglect and abuse: The duties of local authorities to provide children with suitable accommodation and support services <http://www.howardleague.org/publications-youngpeople/>

League have indicated that local authorities may be reluctant to offer assessments as they only see this group as young offenders for whom YOTs should be responsible, rather than also as “children on need”, who are, therefore eligible for assessments that that may offer a gateway to services, as required by section 17 of the Children Act. As a result opportunities are missed to intervene with this very vulnerable group of ex-prisoners meaning that they may be left homeless. Accommodation is a key issue for young people in the criminal justice system. Tackling this issue not only improves the young person's life chances but is an effective crime prevention measure. Providing stable housing can reduce re-offending rates by 20 per cent.¹³

Visits to Former Looked After Children in Detention (England) Regulations in context of the Children and Young Persons Act

8. These draft Visits to Former Looked After Children in Detention Regulations that we now wish to consult on contribute to the implementation of the Children and Young Persons Act 2008¹⁴. The Act aims to reform the statutory framework that governs how local authorities, as their “corporate parents”, plan for and support looked after children. Children who were looked after but who lose their status when they enter youth custody will be an especially vulnerable group. These Regulations contribute to the wider package of reforms aiming to improve outcomes for children in care and set out in the White Paper *Care Matters: Time for Change*. The White Paper built on responses to the earlier Green Paper *Care Matters: Transforming the Lives of Children and Young People in Care* and the conclusions of four working groups established to advise the Government on best practice in supporting those in care.
9. An impact assessment for the Act has been published¹⁵. This builds on the two previous assessments which accompanied the Green and White Papers. An equalities impact assessment was also done, which considered the implications for disability, ethnicity and gender equality at the Bill stage. This built on previous equality impact assessments completed for the Green and White Papers.¹⁶
10. This assessment has been done on the basis: firstly that the profile of need in the population of looked after children will remain constant¹⁷ and secondly that the children's services workforce has the necessary skills and experience to deliver the service required to this category of young people from care in custody. The wider *Care Matters* programme should help ensure this is the case; in particular the workforce reform programme¹⁸ and the revision of the National Minimum Standards for both Children's Homes and for Fostering Services which highlights the importance of carers having the skills to support positive behaviour, to prevent looked after children's involvement in offending.¹⁹

¹³ <http://www.communities.gov.uk/youthhomelessness/widerneeds/offenders/>

¹⁴ http://www.opsi.gov.uk/acts/acts2008/ukpga_20080023_en_1

¹⁵ Available in the IA library at Dept for Business Enterprise and Regulatory Reform
<http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=aad9464ad0114f66b2ee37cfc4ad4a1a>

¹⁶ Available at http://www.dfes.gov.uk/publications/timeforchange/docs/timeforchange_IA.pdf,

http://www.dfes.gov.uk/publications/timeforchange/docs/timeforchange_EIA.pdf and

<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1406>

¹⁷ The report of the working group on the Future of the Care Population (available at <http://www.dfes.gov.uk/publications/timeforchange/docs/7132-DfES-Beyond%20Care%20Matters.pdf>) considers further the impact of the *Care Matters* proposals on the population of children in care.

¹⁸ For more information on the workforce reform see pages 125-129 of the *Care Matters* White Paper.

¹⁹ <http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&external=no&consultationId=1662&menu=3>

11. The provision in the Act which is covered by this consultation draft of Regulations is Section 15:

Duty of local authority to ensure visits to looked after children and others

23ZA Duty of local authority to ensure visits to, and contact with, looked after children and others

(1) This section applies to—

(a) a child looked after by a local authority;

(b) a child who was looked after by a local authority but who has ceased to be looked after by them as a result of prescribed circumstances. {i.e. *in this case that they have been sentenced and as a result are no longer looked after*}

(2) It is the duty of the local authority—

(a) to ensure that a person to whom this section applies is visited by a representative of the authority (“a representative”);

(b) to arrange for appropriate advice, support and assistance to be available to a person to whom this section applies who seeks it from them.

Funding for Care Matters

12. Alongside the publication of the *Care Matters* White Paper, the Government announced that a total of approximately £300 million would be provided over the period of the Comprehensive Spending Review 2008-11 to take forward the White Paper commitments.²⁰ The total funding package included a dedicated change fund of £22.5m (£5/7.5/10m between 2008-2011) to support local authority implementation of *Care Matters*.
- 13; The costs of implementing all the provisions in the Act were summarised in the impact assessment for the Bill/Act²¹. These amount to £2.8m (transitional) and £22.06m (average annual costs over three years. Costs of this visiting requirement were estimated at £3.0 million pa (excluding travel and subsistence costs). Allowing for these costs we estimate that annual costs will be between £2.64 and £3.3 million (see paragraph 26 below). Therefore, we expect that the costs of these regulations to local authorities will be offset by the increase in funding for *Care Matters*.
14. Our calculations have assumed that current funding levels are, for the most part, adequate for local authority services and that the numbers of children in care will not increase significantly over this period.²²

Local Authority Implementation of the Legislative and Regulatory Changes

15. Since 2004-05, local government has made significant inroads in delivering better value for money and using resources more effectively to improve outcomes for children and young people, including through improved service delivery for looked after children, care leavers and children on the edge of care. The reforms set out in the *Care Matters* White Paper and in part, implemented through the Act, will play a significant role in supporting local authorities to achieve better value from existing programmes over the next Comprehensive Spending Review period.
16. Whilst much of the answer is not about new resources, we recognise that implementing reforms may require investment upfront, and that some local authorities will face particular barriers or issues implementing these changes.

²⁰ The total figure included £63m to implement the children's social care workforce measures outlined in 'Options for Excellence' and £66.15m to support improved educational outcomes for children in care.

²¹ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=aad9464ad0114f66b2ee37cfc4ad4a1a>

²² See the report of the working group on the Future of the Care Population.

Embedding change requires local authorities to take a longer term view on budgets, rather than basing decisions on short term funding pressures.

17. Where there are additional costs associated with provisions in the Act specific resources have been made available to fund them. However, in a number of instances we are not requiring local authorities to undertake activities additional to their existing statutory duties and therefore will not be providing additional funding.
18. We have set aside money for a change fund which has been allocated to Government Offices to distribute in order to support local areas through particularly difficult transitions.

Consultation

19. The Care Matters Green Paper and a young people's version were published for consultation in October 2006. We received more than 2000 responses from groups and individuals to the consultation and many more responded through an extensive programme of consultation events. Over 12,000 young people in care saw copies of the Green Paper and over 5,000 gave us their views. In April 2007 we published a summary of the responses we had received and a separate summary of the responses from young people.²³ Stakeholders from the youth justice sector highlighted the vulnerability of children who cease to be looked after because they receive custodial sentences.
20. The proposals in the Care Matters White Paper and the Bill were developed in response to an extensive consultation process. This included other government departments and public service providers including DH, HMT, DCLG, Home Office/Ministry of Justice, DWP, YJB, Social Exclusion Task Force OfSTED, the LGA and ADCS and with voluntary organisation involved in promoting the interests of children in care and providing current services including NCB, NCH, Voice, A National Voice, The Children's Society and the Howard League for Penal Reform
21. In developing the Visits to Former Looked After Children in Detention Regulations and Guidance we have had close engagement with stakeholders from the youth justice sector – the YJB and the National Offender Management Service (NOMS) responsible for Youth Offender Institutions (YOIs).

OPTIONS CONSIDERED ABOUT PRODUCING REVISED REGULATIONS

22. We considered three options to tackle the concerns about support for children who lose their looked after status because they have received a custodial sentence:
 1. **Do nothing** - The problem of lack of support for formerly looked after children in custody was identified as a serious concern during the development of the Care Matters programme, which led to the White Paper commitment to extend the requirement to visit children to this group of children. As a result, it would not have been possible to simply do nothing. There is a strong rationale for government intervention: providing support for all formerly looked after children now in detention ought to lead to better outcomes for children when they leave custody, in particular due to lower instances of homelessness. Also, given that many children who were formerly in care due to a voluntary agreement between social services and their parents will be faced by the same challenging circumstances as other formerly looked after children, it is unfair to treat them differently and give them less support

²³ Available at <http://www.dfes.gov.uk/consultations/downloadableDocs/Care%20Matters%20Response.pdf>

2. –Option 2 Using primary legislation to create an express duty on LAs to assess and provide services to all formerly accommodated children on release from custody (or while they are in custody) so that they would receive support from children’s services similar to that provided to care leavers, so that, in every case, when any young person was released from custody, children’s services would have a duty to draw up a plan to provide them with services, particularly accommodation. This would, without exception, impose the full care and leaving care costs of every formerly accommodated child released from custody, even where an assessment of the individual’s needs did not necessarily require such a level of service to support them.

3 - Imposing a new duty in primary legislation on LAs to appoint a person to visit young people in custody who were previously accommodated by them, under-pinned by statutory guidance setting out that-

- The person visiting should if practicable be the social worker previously allocated to the child (However, ultimately the local authority would have discretion about this appointment)
- The frequency of the visits and the duty to keep in touch. The visit should take place within 10 days of sentence, whether more than one visit is necessary will be determined by the representative’s assessment of the young persons needs; and
- The purpose of the visit is to advise/ assist and support the young person and to assess needs so that where in appropriate cases a plan can be prepared for services to be offered on release.

23. Option 3 was selected as the way forward as it best achieves the objective that local authorities must maintain contact with formerly accommodated children so that they are not forgotten; through the visits, the LA should be informed/ aware of children who need further assessment, and those for whom the LA should start planning for release. Whilst it makes it clear which local authority is responsible for delivering the service,

24. Option 3, therefore will be the most cost effective and flexible means of meeting the commitment in the White Paper unlike Option 2, it does not impose a duty on the authority in every case and allows the local authority to respond proportionately depending on their assessment of the vulnerability of the individual concerned. The option allows limited children’s services resources to be targeted on the most vulnerable young people with the highest level of assessed needs. This option does not specify a particular service package for formerly looked after children on release. It therefore represents the most proportionate approach for delivering continuing support to formerly accommodated children in custody. The option does not risk the local authority children’s services duplicating functions that would be better carried out by the youth offending services responsible for release planning and supervision in every case.

25. However, in all cases where there is a possibility that a young person will be homeless and without sufficient reliable adult support, then the duty to visit will make sure that the LA is alerted to the young person needs in good time, and be able to put plans in place so that the child can be provided with accommodation by children’s services, meaning that they will become looked after again. Ensuring that early consideration is given to the young person’s likely needs on release will also enable a more co-ordinated response from both LA children’s services and the YOT.

COSTS

26. This section details the costs associated with each of the requirements specified in the draft regulations – based on the costs established by the Loughborough cost calculator (see below)

a. The costs of creating this requirement in the CSR period were calculated as £3m p.a.

b. Average cost of visiting = £125 per social worker per day (& £75 travel and subsistence) x 3 = £0.24m

- Maximum costs of visiting = £125 per social worker day (& £75 travel and subsistence) x 12 visits per year x 400 children in custody = £0.96m

c. Calculation of assessment: 300 young people X £8000 per assessment = £2.4m

Made up of: £2.4 (assessments costs) + £0.24 million/0.96 million (costs of visiting) = 2.64/£3.3 million (max.)

27. The actual cost of visits will in fact be less, as the most frequent custodial disposal for a young offender will be a six month Detention and Training Order (DTO). As children only serve half their sentence in custody this means that most children will be detained for 12 weeks, which means that they will only be visited 3 times under the requirements set out in the Regulations that we are consulting on. These costs then allow for an average figure and an absolute maximum one. Where the assumption is that one visit takes place every month (i.e. 12 visits a year) this gives the highest possible maximum figure for the costs of the additional social work time needed to visit young people formerly accommodated who are in custody. In practice costs will be lower than this – as the majority of children included under these Regulations will at most be visited 3 times in custody, with some of these only needing to be visited once.

28. Assumptions:

- a. A full day visit is required because of distance of the secure establishment from the local authority then the average cost per visit would be £125 based a full social worker day (+ costs of transport and subsistence) A monthly visiting frequency (because typically these individuals have relatively short sentences). But many young people will not require monthly visits with some only requiring an initial assessment following one visit to determine that no additional input from children's services is required
- b. Costs of a formal assessment are £ 8,000 (based on Loughborough cost calculator for Children's Services (CCfCS))²⁴. This CCfCS uses local authority data on looked after children's characteristics and placements that are collected for national returns and brings these together with the unit costs of social care activities, based on eight identified processes and the allowances or fees paid for individual placements as a basis for working out costs. Calculations take account of the numerous variations in costs engendered by differences in children's needs, placement type and local authority procedures. Because the model utilises unit costs that have all been developed using the same, standardised approach, it introduces greater consistency into comparing costs of looked after children's services within and between local authorities.
- c. There are approximately 400 young people sentenced to custody each year who had been looked after by the local authority but who were neither subject to care orders or entitled to care leaving services²⁵ (based on HMI/YJB report (see footnote 3)). Not all of these young people will require further services beyond a visit. We are therefore assuming a need for 400 young people to be visited; but that 300 will require more detailed input, to assess their needs in more depth with children's services liaise with other services to participate in planning the young person's resettlement on release from custody.

29. There are also likely to be additional costs to local authorities as these assessments will probably identify an unmet need for their services. In particular, a number of children may need to become looked after again if they do not have suitable accommodation arranged for when they leave custody. However, it must be made clear that local authorities have a pre-existing obligation to look after these children and so this is not a new burden. Also, providing children leaving custody with interventions to help them to access employment, education and training and not re-offend would cause additional costs, though it is reasonable to expect that these

²⁴ <http://www.ccfcs.org.uk/>

²⁵ This is based on the HMI/YJB report, which found that 12% of 3,000 children in custody (360) were of this group. This also fits with the figures for *Children Looked After in England (including adoption and care leavers) year ending 31 March 2009* found at <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000878/index.shtml>, which found 350 children in custody from this group. Therefore, 400 children in custody who were formerly looked after is a conservative estimate.

costs would be outweighed by the benefits of reduced offending. We are unable to estimate the scale of this pressure at this stage.

BENEFITS

30. The key benefits from this policy are expected to be gains to individuals and society as a whole from reduced numbers of children leaving custody going on to re-offend, be homeless and be NEET. This requirement will provide continuous support for former looked after children who enter youth custody so that they are better supported when they are released, which will involve identifying stable accommodation with the right support for each young person. For some young people this will mean that they will become looked after again. Children's services will need to assist them to become re-established in education or training and, in partnership with the relevant YOT, will provide them with supervision intended to prevent them from re-offending.
31. The youth crime action plan IA estimates the costs to society of offenders in custody at £80k pa and 80% of young offenders were NEET at the time of their offence²⁶. The costs of being NEET aged 16-19 have been estimated at £100,000 per year in terms of reduced productivity and increased use of services (particularly mental health) and benefits²⁷. People who are NEET at this age are likely to drift in and out of employment over the course of their lives²⁸.
32. The Youth Crime Action Plan Impact Assessment provides information about interventions with adolescent offenders contribute to reducing youth crime, Some of the more effective of these are summarised in the table below

Intervention	Crime Impact ²⁹
Social skills training	19%
Intensive Supervision	39%
Reparation and restorative justice	45%

32. Visiting to assess the support that formerly looked after children require on release from custody will enable young people to be offered the right interventions based on the assessment of their needs to divert them from offending. The most vulnerable young people may require intensive supervision and structure which has the potential to make a significant impact on reducing their offending behaviour [measured by the numbers and seriousness of offences].

33. Similarly the proposal will ensure that all formerly looked after children requiring support will be provided with suitable accommodation on release from custody. The prevention of homelessness in itself makes an important contribution to reducing social exclusion and its related costs to society and in diverting young people from offending; providing stable housing can reduce re-offending rates by 20 per cent³⁰. Because YOTs do not have the authority to access accommodation for young people this is a gap that needs to be filled to improve outcomes for these children.

34. Therefore, we can see that the 3 outcomes of being NEET, being homeless and re-offending are inter-related and lead to substantial costs to society. We would expect that by providing more support to children in custody and directing them towards services that can help them upon leaving custody, we can improve outcomes in a range of areas.

RISKS

²⁶ <http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/>

²⁷ The Prince's Trust (2007) *The Cost of Exclusion: counting the cost of youth disadvantage in the UK* (London: Prince's Trust)

²⁸ Bradshaw et al. (2002) *Estimating the costs of being NEET aged 16-18* (York: Social Policy Research Unit)

²⁹ Crime impact is percentage reduction in crime rate compared to control – YCAP IA p. 8

<http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/>

³⁰ ³⁰ <http://www.communities.gov.uk/youthhomelessness/widerneeds/offenders/>

35. There are risks related to capacity in the availability of children and families social workers in children's services. This is mitigated by the draft Regulations requiring that the new duty has to be fulfilled by a representative of the local authority. Whilst this officer should be familiar with the young person's circumstances, the function does not necessarily have to be carried out by a qualified social worker in every case.
36. There is a risk too that some YOTs and children's services will not be sufficiently aligned with each other in order to efficiently meet this requirement. As a consequence local authority children's services may perceive that any increase to their costs has not been offset by the additional funding provided as part of the CSR to deliver this proposal; nor may children's services appreciate how expenditure on this proposal has offset reductions in costs for local authority YOT services – given the anticipated reduction in offending and accommodation crises, as a result of providing better support through children's services for a very vulnerable group of young people. However we are working closely with the YJB to help to improve these links between local youth offending and children's services. These are also reinforced in all the other Guidance being produced as part of the wider Care Matters programme³¹

EVALUATION PLANS

37. These Regulations are a small but significant aspect of the delivery of our wider Care Matters programme to transform outcomes for looked after children. We intend to construct a partnership-based approach to implementation across the statutory and voluntary sectors, developing a shared vision for change and establishing a joint delivery partnership with the key organisations delivering services to children. It will not be possible to evaluate the effectiveness and impact of these Regulations in the context of the overall evaluation of the Care Matters programme in the very short term. The effective operation of these Regulations and their related guidance require changes in working arrangements with stronger partnerships between youth offending and children's services. We will use our strategic relationship with the Joint Youth Justice Unit in DCSF, with the Youth Justice Board and Government Offices to review the impact of these Regulations. In particular we will collect information about the numbers of young people who were formerly looked after who lose this as a result of being in custody and who return to care as a result of these assessment. **In these cases the young people concerned will only become looked after again as a result of the assessment of their needs demonstrating that they meet the established legal commotions for being accommodated by the local authority.**
38. The effective implementation of these Regulations will depend on close partnership working at strategic and operational levels between central and local government (DCSF and local authorities) and youth justice services (The Youth Justice Board (YJB), National Offender Management Service (NOMS) and local Youth Offending Teams (YOTs)
39. The progress of the Care Matters reforms designed to transform outcomes for looked after children and care leavers will be evaluated through an annual Ministerial stocktake of the quality of services provided to this very vulnerable group of children and young people. The first ever stocktake report took place in November 2009 and we are developing plans for future ones. The stocktake report included views from children and young people, from LAS and the voluntary sector. The report was published in November 2009³². Future reports could report back on the quality of support offered to children from care in the youth justice system.

³¹ Cf [draft] *Care Planning, Placement and Case Review Guidance* and [draft] *Planning Transition to Adulthood for Looked After Children Guidance*
<http://www.dcsf.gov.uk/consultations/>

³²

<http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&>

40. Ofsted is the independent body that is responsible for inspecting the effectiveness and quality of local authority children's services – including services for looked after children and care leavers. Regular reporting of Ofsted inspections in each local authority area then will provide information about local authority effectiveness in delivering their statutory responsibilities to looked after children and care leavers, including the new responsibilities legislated for by the Children and Young Persons Act 2008 – for example, on the effectiveness of local authorities in resettling children from care back into their communities, so that they are provided with the services and support necessary to divert them from offending and enable them to reach their potential
41. Her Majesty's Chief Inspector of Prisons conducts regular inspections of the juvenile secure estate which includes identifying vulnerable inmates – such as formerly looked after young people whose needs are the focus of these Visits to Former Looked After Children in Detention Regulations and related Guidance. HMI annual inspection reports of the juvenile secure estate provide an evidence base about the numbers and needs of young people from care in custody. They might also provide information about the rates of re-offending by formerly looked after children whom we intend to support by issuing these Regulations and related guidance.
42. These sources of information will enable us to build up a reliable data set about the numbers of formerly looked after children in custody. Over time this data will enable us to measure whether this provision in conjunction with our wider Care Matters reforms has contributed to a reduction in the numbers of children from the care system being sentenced to custody; and in the incidence of re-offending by formerly looked after children released from custody.

DEVOLVED ADMINISTRATIONS

43. These Regulations apply to England only.

SPECIFIC IMPACT TESTS

Equalities impact

A combined equalities impact assessment was completed at Bill stage. This concluded among other things that improved care and pathway planning coupled with improving the choice, standard, and commissioning of placements will ensure that children are better matched to placements that suit their needs. This will ensure the full spectrum of needs, including those related to the equality issues, can adequately be provided for. This will benefit all children and will ensure that they are provided with the right level of personalised care and support taking into account their ethnic, cultural and religious identities.

Children from black and ethnic minority groups are over-represented in the prison population and they are more likely to report being isolated in custody and experience difficulties with release planning. Whilst the overall number of young woman in custody is relatively small, those that are sentenced have very complex needs and are more likely to have been in care before sentence.³³ The draft Regulations and Guidance that we wish to consult on are designed to improve the quality of release planning the group of children from care who lose their looked after status when sentenced contribute to better support for this group whilst they are detained. Given the over-representation of black and ethnic minority groups in custody and the high level of complex needs of sentenced young women, the measures set out in our draft Regulations and related guidance will contribute to combating the marginalisation and social exclusion of these groups of especially vulnerable young people in custody.

Environmental and greenhouse gases impact

The Regulations and Guidance will have no significant environmental impact including on emissions of greenhouse gases and no significant impact on sustainable development. Neither will they have a differential impact in rural areas or an adverse impact on rural circumstances and needs.

³³ HMI/YJB Children and Young People in custody 2008-2009 pps.48-49; 55.

Small Firms Impact Test

A small firms impact test for the Children and Young Persons Act 2008 (including s15) was completed at Bill stage; this concluded that it will not have an adverse impact on small businesses.

Health Impact Assessment

Looked after children have poorer health outcomes than other young people and are less likely to be in good health as adults. Securing the health and wellbeing of children in care is of fundamental importance and we outlined in the Care Matters White Paper a package of measures to promote these outcomes. By placing considerable emphasis on the requirements that local authorities must visit former looked after children in custody and if necessary make plans for their resettlement in the community with the right kind of personal support, promoting their re-engagement in education, training and employment, the Regulations and Guidance package will actively support the positive health and wellbeing of this vulnerable group of young people,

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	Yes	No