

EXPLANATORY MEMORANDUM TO
THE CHILDREN'S HOMES AND LOOKED AFTER CHILDREN
(MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2013

2013 No. 3239

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument amends the Children's Homes Regulations 2001 ("the CHR") and the Care Standards Act 2000 (Registration) (England) Regulations 2010 ("the Registration Regulations"). These amendments will improve the safeguarding of children accommodated in children's homes, the quality of care that homes provide and the monitoring and reporting on that care. They also improve transparency by increasing the range of information about a home that members of the public can obtain.

2.2 It also makes amendments to the Care Planning, Placement and Case Review (England) Regulations 2010 ("the CPPCRR"), and the Fostering Services (England) Regulations 2011 ("the FSR"), to introduce new safeguards aimed at preventing children from going missing from placements, and supporting children who go missing, or are at risk of going missing.

3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None.

4. **Legislative Context**

Changes to the CHR

4.1 The CHR are made under powers contained in Part 2 of the Care Standards Act 2000 ("the CSA 2000"). A children's home is defined in section 1 of the CSA 2000 as an establishment that provides care and accommodation wholly or mainly for children. Persons who carry on or manage a children's home must be registered with Ofsted in accordance with the requirements of, principally, Part 2 of the CSA 2000, the CHR and the Registration Regulations. As such, the CHR and the Registration Regulations are key planks of the regulatory regime for children's homes.

4.2 This instrument amends the CHR in order to define the qualifications that managers of children's homes and persons working in care roles in children's homes must have and to set out the date by which they must attain or hold these qualifications. These amendments also require persons who are registered with respect to a children's home to give notice, containing specified

information, to the local authority when a child is admitted to or discharged from the home. The amendments require children's homes to have a policy regarding missing children and to consult with local services before implementing that policy. The instrument amends the provisions of the CHR on the suitability of premises used for the purposes of a children's home and provides for an annual review in relation to the location of those premises. The instrument provides for visits to, and reporting on, the children's home by an independent person and makes provision for the appointment of that person. The instrument also amends the matters to be included in a children's home's statement of purpose and the matters to be monitored and reported on by the person who carries on or manages the home.

Changes to the CPPCRR

4.3 When a local authority is responsible for the care of a looked after child, the authority must place the child in the most appropriate placement available (section 22C(5) of the Children Act 1989). The local authority must ensure, so far as is reasonably practicable, that the placement allows the child to live near his home. The CPPCRR make provision about care planning for looked after children. This instrument inserts a definition of a placement of a looked after child "at a distance", that is, the placement of a child outside both the area of the local authority looking after him, and the area of any adjoining local authority. It introduces new requirements that the decision to put a child in such a placement must be approved by the local authority's director of children's services, and it introduces consultation and notification requirements in relation to such placements.

4.4 In relation to looked after children who go missing, or are at risk of going missing from a placement, the instrument amends the CPPCRR so that whenever a child has been persistently absent from their placement, or where there are concerns that the child may be at risk of harm, or where, in certain circumstances, the child requests it, the child's local authority must hold a review of a child's case.

4.5 Where a looked after child is placed in foster care, in a children's home or in another setting, the local authority must draw up a "placement plan" with the placement's provider. This plan must describe the arrangements for the child's day to day care. Schedule 2 of the CPPCRR details the matters that must be dealt with in these plans. This instrument introduces an amendment to Schedule 2 requiring that in any case where the local authority has assessed that there are child protection concerns relating to a child, or the where there is a risk of the child going missing from their placement, the placement plan must include information agreed between the local authority and the placement provider about the arrangements to keep the child safe.

4.6 It also inserts a provision into the CPPCRR requiring that, where a child aged 16 or 17 is looked after, other than by virtue of a care order, the local authority's decision to stop looking after the child must be approved by their director of children's services.

Changes to the Registration Regulations

4.7 The instrument makes minor but important amendments that increase the range of information about a children's home that a member of the public

can obtain from Ofsted's registers. Similarly, the instrument makes a minor amendment to Schedule 1 so that as part of the process of registering an establishment (most likely to be a children's home) with Ofsted the applicant must supply information about the suitability of its location.

Changes to the FSR

4.8 This instrument also makes amendments to the FSR to require that every fostering service provider must have a policy, agreed with the local police, setting out the measures to be followed to prevent children placed with foster parents from going missing from their placement, and setting out the procedure to be followed when a child is missing without permission.

4.9 It further requires the fostering service provider to notify the police and the local authority in whose area the child is placed, where a child is suspected of being a victim of "sexual exploitation". This replaces the present outdated requirement specifying that these services must be notified where a child is suspected of involvement in "child prostitution".

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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

- *What is being done and why*

7.1 These changes take forward the recommendations in the report of the Expert Group on Children's Homes Quality, which included conclusions from the Out of Area Placement Task and Finish Group, published on 23 April 2013. These groups were established in July 2012 following the conclusion of the high profile Rochdale child sexual exploitation trial and reports from the Office of the Children's Commissioner (OCC) and the Joint All Party Parliamentary Group (APPG) Inquiry on, respectively, child sexual exploitation in gangs and groups and children who go missing from care.

7.2 Children in children's homes tend to be amongst the most vulnerable of all looked after children. 75% of all residents are aged 14-18. The majority of children spend less than a year in any one single home. Children who live in children's homes can have high levels of emotional and behavioural difficulties and are subject to great placement instability - more than a quarter of children in children's homes have had at least five previous placements. This suggests that the majority of children are only placed in a children's home after alternative placement options have not worked out. Whilst 47% of children in children's homes live within the local authority and less than 20 miles from home, 30% live outside the LA and more than 20 miles from home. This compares with 58% and

10% respectively for children in foster care. Children placed out of authority are generally placed in homes provided by the private sector.

7.3 The reports referred to in 7.1 above found that children in children's homes, especially those placed a long way outside the authority responsible for their care, were highly vulnerable to going missing from their placements and could be targeted for exploitation. They could be "out of sight, out of mind", unknown to the local children's safeguarding services in the area where their home was located, and could, at the same time, be deprived of sufficient oversight and support from the distant authority responsible for their care.

7.4 The changes set out in this instrument are needed to improve collaboration and partnership between children's homes and services in their local communities to improve the effectiveness of safeguards for looked after children in children's homes. They set explicit requirements for children's homes providers to consult and share information with appropriate local services – for example to coordinate the response where a child goes missing. The instrument also requires each children's home to provide a more explicit and detailed "Statement of Purpose", describing the services the home provides and how it measures that these are effective.. Similarly "responsible individuals" appointed by children's homes providers (which are often private companies) are required to have more formal involvement, monitoring how the home safeguards and promotes children's welfare.

7.5 Given the impact of placing a child out of authority, changes to the CPPCRR also introduces more senior scrutiny of decisions to place looked after children at a distance from the authority responsible for their care.

7.6 The introduction of a measure into the CPPCRR requiring the director of children's services to approve decisions that 16 or 17 year old children should cease being looked after, is intended to prevent children from being prematurely discharged from local authority care before they have been properly prepared and are ready for this significant step.

- ***Consolidation***

7.7 The Children's Homes Regulations have been amended several times since 2001. Government has recently introduced an amendment to the Children and Families Bill, currently making its way through Parliament. This amendment will enable the Secretary of State to create further Regulations that specify high objectives and standards for regulated establishments or services to achieve. This step represents the next stage in Government's children's homes reform programme. The creation of further regulation making power provides the opportunity for reviewing all existing regulations that apply to children's homes which may lead to consolidating the regulations amended by this instrument.

8. Consultation outcome

8.1 Formal consultation took place between 28 June and 17 September 2013. Over 250 professionals attended the consultation events and 254 written responses were received. The wide range of organisations responding to the consultation (including local authorities, children's homes providers and voluntary organisations representing children) were broadly in favour of changing the CHR, CPPCRR, Registration Regulations and FSR.

8.2 There was general agreement around the need to introduce more effective safeguarding arrangements for looked after children in residential care and for improving the process that should be in place when children are placed outside of the authority responsible for their care. A number of the proposals commanded strong support, including requiring children's homes to notify the area authority of the admission and discharge of children from the home; requiring more explicit and detailed "Statements of Purpose" and for ensuring that the provider's strategy for keeping a looked after child safe is included as a significant part of their placement plan.

8.3 Respondents to the consultation wanted to see more details about how some of the proposals would work in practice. They raised issues about how the liaison between children's homes and services in their area, such as the police, would operate in practice and about how the suitability of premises and their locations might be assessed. In response to these concerns we are delaying the commencement of changes to the Registration Regulations whilst we carry out further work with interested parties - local authorities children's homes providers and Ofsted – to develop a consistent approach to how the suitability of home's locations should be assessed, to ensure that, as far as possible children live in safe areas; where, though, risks relating to homes' locations are identified as part of this assessment process, homes' management would be responsible for developing specific strategies for mitigating these.

9. Guidance

9.1 We plan to amend Children Act Guidance (volume 2): Care Planning, Placement and Case Review to take into account future requirements for more senior scrutiny whenever consideration is being given to the placement of a child in a distant out of authority placement. Similarly, minor revisions will be made to this volume and to volume 3 of Children Act Guidance: Planning Transition to Adulthood for Care Leavers, to take into the account the arrangements we are introducing for the director of children's services to approve that local authorities cease looking after 16-17 year olds.

9.2 National Minimum Standards (NMS) for Children's Homes will also be revised and updated to take into account the changes to the regulatory framework introduced by this instrument. Revised NMS will include guidance about area assessment of homes' locations.

9.3. We plan to complete the revisions outlined above by April 2014

10. Impact

10.1 Children's homes are provided by the private and voluntary sectors and by local authorities. We have carried out an Economic Impact Assessment concerning these proposals. Annual monetised costs to private, voluntary, and local authority providers are estimated at £3,567,463.

10.2 Changes to the CPPCRR will affect local authority practice when children are placed in distant out of authority placements. An assessment as to any "new burdens" has been completed and is being discussed with officials in CLG.

10.3 The Impact Assessments relating to these proposed changes to the Children's Homes Regulations 2001 and to the Care Standards Act 2000 (Registration) Regulations 2010 are attached with this memorandum.

11. Regulating small business

11.1 Some children's homes are small businesses and this legislation will apply to them

11.2 We do not believe that small providers should be exempt from these regulatory proposals. The measures seek to ensure that the regulatory framework adequately protect the welfare of a highly vulnerable group in society. It would not be possible to meet the stated policy objectives if there were any exemptions for smaller providers to engage in the required activities brought about by the amendments

12. Monitoring & review

12.1 Children's homes are inspected by Ofsted twice a year. Ofsted inspection always takes into account the effectiveness of homes arrangements for complying with the regulatory framework that imposes duties for them to safeguard and promote the welfare of children in their care. Ofsted also inspects local authority children's service. Its framework for these inspections takes into account the quality of services provided to their looked after children placed out of area and the quality of support for the authority's care leavers.

13. Contact

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