

EXPLANATORY MEMORANDUM TO

THE CHILDREN'S HOMES (ENGLAND) (AMENDMENT) REGULATIONS 2018

2018 No. 540

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend the exception in the Children's Homes (England) Regulations 2015 ("the CHR 2015") which prevents a 16 to 19 Academy from being considered a children's home so that it can be a children's home under the Care Standards Act 2000 ("the CSA 2000") where it is also approved for providing accommodation for the purpose of restricting the liberty of children. This amendment is necessary to enable secure schools, set up as academies, to be approved as secure children's homes, (SCHs) that restrict the liberty of children serving their sentence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 1 of the CSA 2000 defines a children's home as being an establishment that provides care and accommodation wholly or mainly for children. This definition is subject to certain exceptions in section 1. The CSA 2000 permits the Secretary of State to make exceptions to what would otherwise be a 'children's home' within the meaning of section 1. Regulation 3 of the CHR 2015 sets out these exceptions. Regulation 3(1)(b) of the CHR 2015 excepts 16 to 19 academies from being a children's home within the meaning of the CSA 2000.
- 4.2 This instrument removes 16 to 19 academies which are also approved for providing accommodation for the purpose of restricting the liberty of children (secure accommodation) from the exception. The Secretary of State approves children's homes to be used as secure accommodation under regulation 3 of the Children (Secure Accommodation) Regulations 1991.
- 4.3 The amendment is to facilitate the establishment of secure schools. The intention is for secure schools to be dual-registered as both a 16-19 academy and a secure children's home.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

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 In his review of the youth justice system, Charlie Taylor recommended that to help address the current problems that exist in the youth estate, Young Offender Institutions (YOIs) and Secure Training Centres (STCs) should be replaced with secure schools. Although the ethos of secure schools will differ from that of YOIs and STCs, the amendment to the CHR 2015 will equip secure schools with the same powers to detain children.
- 7.2 The exemption in regulation 3(1)(b) of the CHR 2015 will still apply to all other 16-19 academies that have not been approved for providing accommodation for the purpose of restricting the liberty of children. By bringing secure schools within the definition of a children’s home, they must be registered in accordance with the CSA 2000 and the Care Standards Act 2000 (Registration)(England) Regulations 2010. Secure schools will need to comply with the CHR 2015.
- 7.3 By using the CHR 2015, we are signalling the intended shift in proposed ethos and environment, to what we believe is a model of best practice for vulnerable young people. The academies approach will send a clear message to providers and the children’s sector that we want to create a new type of child-focussed custodial provision, with education at its heart, led by a workforce who are skilled and specifically interested in working with and caring for children. The academies approach enables higher-levels of autonomy and accountability for leaders.
- 7.4 The proposed model for secure schools draws on evidence for what works in youth custody (MoJ published evidence on ‘What works in managing young people who offend’ in 2016) and in alternative provision schools. Key aspects are: high standards and expectations that build aspirations; small schools, small class sizes and high staff/learner ratios; needs-led programmes (including therapeutic programmes) that are flexible and customisable to individuals; high quality ‘caring and knowledgeable’ staff as well as ongoing professional development and support for all staff; family and community involvement. In addition, the relevant children’s homes requirements to maintain a high standard of care will also have to be met in respect of secure schools.
- 7.5 The secure schools model is being developed to respond to the need to overhaul the approach to youth custody. Over the past decade there has been a significant drop in the average youth custodial population. In 2006/07, the average population was over 3,000 young people but by 2016/17, the average number of young people in custody had fallen to less than 1,000.
- 7.6 However, the remaining youth custodial population represents a concentrated mix of extremely challenging young people who have complex needs, with around 7 in 10 of

young people in custody currently held in four large young offender institutions. From April 2014 to March 2016, 61% of young people admitted to custody had not been engaging with education and 45% had substance misuse concerns. Around one in three young people had concerns relating to self-harm or suicide, one in three had mental health concerns, and one in three had learning difficulties. It is, therefore, right that we now consider how the youth custody estate can best meet the complex needs of the children placed in it.

8. Consultation outcome

- 8.1 A formal consultation was not undertaken for this instrument. As the amendment to the CHR 2015 is a technical change specific to secure schools, it was not required.

9. Guidance

- 9.1 The secure schools model will be established subject to the ‘How to Apply Guidance’ (HTAG) which will be issued for the benefit of prospective providers, setting out all the detail of the proposed model. We will be engaging with parliamentarians via written correspondence to provide them with an explanation of how the new model operates and encourage their feedback on the HTAG.

10. Impact

- 10.1 There is no significant impact on business, charities or voluntary bodies relative to the current sector arrangements.
- 10.2 There is no significant impact on the public sector relative to the current sector arrangements.
- 10.3 An Impact Assessment has not been prepared for this instrument as it was not required for the purpose of laying this SI.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 We will closely monitor the success of secure schools in delivering against the key principles. We expect providers to offer creative solutions to any issues they face and will support them in doing so.

13. Contact

- 13.1 Shangeetha Sivananthan at the Ministry of Justice. Telephone: 07989 660218 or email: shangeetha.sivananthan@justice.gov.uk can answer any queries regarding the instrument.