

EXPLANATORY MEMORANDUM TO
THE CARE LEAVERS (ENGLAND) REGULATIONS 2010

2010 No. 2571

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 These Regulations revoke, and in part replace with amendment, the Children (Leaving Care) (England) Regulations 2001 (the 2001 Regulations). They make provision about the advice, assistance and support local authorities provide to children and young people aged 16 and over who are no longer “looked after” - that is, children who were looked after by a local authority, whether or not they were in the local authority’s care by virtue of a care order.

- 2.2 The Regulations include provision for local authorities’ assessment of the needs of these young people, about the preparation of the local authorities’ plan (“pathway plan”) to provide them with advice, assistance and support, and prescribe the functions of the personal advisers appointed for the young people.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 The 2001 Regulations made provision about the advice, assistance and support local authorities provide to certain classes of children, namely “eligible children” (that is, children who are still looked after by a local authority, are aged 16 or 17, and have been looked after for a minimum prescribed period), and “relevant children” and “former relevant children” (that is, broadly, children who were eligible children, are aged 16 or above, and are no longer looked after by a local authority).

- 4.2 The Regulations replace the provisions in the 2001 Regulations relating to relevant children and former relevant children. Provisions relating to eligible children are now in the Care Planning, Placement and Case Review (England) Regulations 2010 (S.I. 2010/959) which come into force on 1st April 2011, and those Regulations are therefore linked to these Regulations to that extent.

4.3 The Regulations are made under powers in the Children Act 1989. Section 23CA is inserted into that Act by the Children and Young Persons Act 2008 and describes a new class of former relevant child who is entitled to further assistance from their local authority to pursue education and training. There are consequential amendments to section 23E of the Children Act 1989 to extend regulation making powers in relation to pathway plans and assessments of need to cover young people falling within section 23CA. To that extent, the powers in section 23E(1B), (1C) and (2) are being used for the first time.

5. Territorial Extent and Application

5.1 The Regulations apply 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 Unlike young people who can rely on their families to support them through the transition into adult life, young people who cease to be looked after by a local authority (often referred to as ‘leaving care’) are likely to be required to make an accelerated and compressed transition to adult responsibilities, as they can no longer be cared for as children by local authorities once they have reached legal adulthood age 18.

7.2 In 2009, 8,700 children aged between 16 and 18 ceased to be looked after by local authorities and local authority expenditure on care leaving services in 2007-08 was £200 million (excludes expenditure on accommodation for care leavers aged 18+).

7.3 Robust personalised “pathway planning” and support for this vulnerable group is essential to make sure that this money is spent effectively. Outcomes for care leavers have improved considerably since the amendments to the Children Act 1989 introduced by the Children (Leaving Care) Act 2000 were commenced in 2001, however there continues to be great local authority variability in the quality of “leaving care services” and the trend to premature discharge from care has continued for the most vulnerable children who will be those least ready to manage independently in the community.

7.4 Evidence gathered to inform the White Paper *Care Matters* (2007) and research on costs and outcomes of care leaving services suggested that, though there has been significant improvement since legislation requiring local authorities to support care leavers up to age 21 was introduced in 2001, the following problems persist:

- The most vulnerable children are expected to move to greater independence with limited preparation, often at age 16 or 17, before they are legally adult.

- Stability in the aftermath of care is crucially important and care leavers can not always access suitable accommodation with the right housing related support.
- Care leavers, especially those who become looked after in adolescence, will have had a fractured and disrupted experience of education and will require continuing support to access further education beyond statutory school leaving age if they are to catch up and achieve the same level of success as other young people.

7.5 Many of the concerns about the suitability of care leavers' accommodation and about the quality of their support are related to inconsistent pathway planning, that does not respond effectively when care leavers face crises such as being threatened with eviction from accommodation.

7.6 These Regulations specify the requirements on local authorities to support care leavers aged 16 and 17 ("relevant children") and care leavers who have reached legal adulthood ("former relevant children"). They are intended to support good quality professional practice so that care leavers are provided with the necessary support to achieve positive outcomes in adulthood – e.g. stable accommodation and the help necessary so that they are supported into education, training or employment so that they achieve their potential as young adults.

7.7 These Regulations complement changes introduced by the Care Planning, Placement and Case Review (England) Regulations 2010 which specify how local authorities are required to manage the review of looked after children's cases, so that young people aged 16+ who are not able to return to their families, should cease being looked after before legal adulthood only if they have been properly prepared and ready for this significant step in their lives.

7.8 The objective of the Regulations therefore is to improve local authority practice in providing support to care leavers, so that the authority's pathway plan offers a genuine response to each individual's needs that is adaptable to changes in their circumstances. These Regulations also provide for the implementation of section 23CA of the Children Act 1989 so that where care leavers resume education or training from age 21 up to age 25 they can rely on support from a personal adviser appointed by their responsible local authority to help them achieve their ambitions.

Consolidation

7.10 Not necessary. These Regulations revoke the Children (Leaving Care) (England) Regulations 2001.

8. Consultation outcome

8.1 As consultation on care planning and the management of leaving care was part of the consultation on the Care Planning, Placement and Case Review (England) Regulations 2010 and related guidance – the consultation on these Regulations and related guidance was shorter than usual involving 3 regional events over 8 weeks. The leaving care events were attended by 360 practitioners and 130 formal responses were received, demonstrating the strong interest from the sector in improving support for care leavers.

8.2 The overwhelming majority of respondents supported the principles set out in the Regulations and guidance. In fact, the majority of respondents requested more prescription and detail about the provision of support to care leavers. However, local authority service managers wanted to be assured that revised guidance would permit scope for developing flexible approaches to supporting care leavers based on individual need and local circumstances and this is the steer that has been followed in revising the guidance. A detailed analysis of the responses to the consultation is now on the DfE website.

9. Guidance

9.1 These Regulations are being accompanied by statutory Guidance *Planning Transition to Adulthood for Care Leavers* – this is statutory guidance in relation to the relevant provisions of the 1989 Act and these Regulations. This guidance will be the revised Volume 3 of the Children Act 1989, replacing Guidance to the Children (Leaving Care) Act 2001 issued in 2001. The new Guidance sets out the categories of children entitled to support as care leavers and how this support should be planned and kept under review, with particular reference to the responsibilities of local authorities for making sure that care leavers are provided with suitable accommodation and supported to engage in education, training and employment.

10. Impact

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

10.2 The impact on the public sector is that the requirements on local authorities to support care leavers is set out in the Regulations as follows:

- (a) Provision of a personal adviser to advise and assist care leavers coordinating plans for their support – extending this provision up to age 25 where care leavers resume a programme of education or training
- (b) Stipulating the tasks involved in carrying out this Personal Adviser function, which include that Personal Advisers are required to visit care leavers in their accommodation.
- (c) Assessing the needs of care leavers and as a result preparing a pathway plan for each young person that should be regularly reviewed.
- (d) Requiring local authorities to have regard to the suitability of the accommodation provided for care leavers

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 for leaving care services, to support local authorities to understand how their leaving care operations may need to adapt in order to put these Regulations into practice.

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 range of accommodation occupied by care leavers and their participation in education, training and employment.

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 authority to establish how far authorities are putting these Regulations into practice, so that care leavers have better, more personal, support.

12.3 Local authorities have been asked to develop Children in Care Councils, so that looked after children and care leavers can be consulted on the development of services affecting their care. These Councils offer a mechanism so that young people can have regular contact with senior officers and lead councils members of the authority responsible for their care, so that are able to provide them with first-hand views about the quality of the services and the support that they receive

13. Contact

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