

**EXPLANATORY MEMORANDUM TO**  
**THE CARE PLANNING, PLACEMENT AND CASE REVIEW (ENGLAND)**  
**(AMENDMENT) REGULATIONS 2021**

**2021 No. 161**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This Instrument amends the Care Planning, Placement and Case Review (England) Regulations 2010 (“the 2010 Regulations”) to prohibit the placement of looked after children under the age of 16 in “other arrangements” settings as provided for under [s.22C\(6\)\(d\) of The Children Act 1989](#) (“the 1989 Act”).
- 2.2 The aim of the amendment is to ensure that looked after children under the age of 16 are only placed in children’s homes or foster care. Limited exemptions have been included for alternative regulated settings that can meet the needs of children under 16. A single exception allows an unaccompanied asylum-seeking child (UASC) who has a claimed age of 16 or above to be placed in ‘other arrangements’ settings pending the outcome of an age assessment.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 The parent Act is the 1989 Act, which describes (amongst other things relating to the welfare of children) the way in which a looked after child is to be accommodated and maintained by a local authority (in Sections 22A to 22D of the 1989 Act). As set out in Section 22(1) of the 1989 Act a looked after child is a child who is under the care

of the local authority by virtue of a care order made by the court or otherwise accommodated by the local authority for a continuous period over 24 hours. Section 22(3) of the 1989 Act sets out the general duty of the local authority looking after a child to safeguard and promote the welfare of the child. Section 22G of the 1989 Act sets out the statutory responsibility of the local authority to take steps, as far as reasonably practicable, to secure sufficient accommodation for all looked after children in their local authority area which meets their needs.

- 6.2 Section 22C of the 1989 Act sets out the range of accommodation placements for a looked after child:
- a placement with a parent or other person with parental responsibility for the child but where that is not consistent with child's welfare or reasonably practicable any of the following options which is the most appropriate available under s.22C(3);
  - a placement with a relative, friend or other connected person who is also a local authority foster parent under s.22C(6)(a);
  - any other local authority foster parent under s.22C(6)(b);
  - in a children's home that is registered in accordance with the Care Standards Act 2000 (the 2000 Act) under s.22C(6)(c); or
  - in other arrangements provided the child's case has been reviewed in accordance with requirements in section 22D of the 1989 Act and this is in accordance with any relevant regulations made under s.22C(11).
- 6.3 The 2010 Regulations set out the general duties of the responsible local authority including what they need to be satisfied of before placing a child in other arrangements. Regulation 27 and Schedule 6 to the 2010 Regulations set out the requirements that must be complied with in accordance with section 22C(6)(d) of the 1989 Act. They include things such as the need for the local authority to be satisfied of matters like safety and support available in the accommodation.
- 6.4 'Other arrangements' is not defined as a specific setting; it can be any type of setting that the local authority deems appropriate for the looked after child in meeting their needs but is not registered as a children's home and is not a foster care placement in England or Wales. Both the 2010 Regulations and the accompanying guidance (The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review) refer to an 'other arrangements' placement as an 'unregulated setting'.
- 6.5 Under section 22C of the 1989 Act local authorities are able to place a child in Wales with foster carers as authorised in accordance with either legislation made under the 1989 Act or under the Social Services and Well-being (Wales) Act 2014 or in a children's home in Wales regulated under the Regulation and Inspection of Social Care (Wales) Act 2016. All placements of children by local authorities in Scotland would be 'other arrangements' placements in accordance with section 22C(6)(d) of the 1989 Act.
- 6.6 The Government's view is that other arrangements were always mainly intended to permit placement in independent and semi-independent settings for older children transitioning to independence. This is supported by the Explanatory Notes to the *Children and Young Persons Act 2008* which inserted the provisions into the 1989 Act. Paragraph 40 of the explanatory notes say the following in relation to other arrangements:

Placements under *section 22C(6)(d)* may include, for example, supporting young people to live independently in rented accommodation, residential employment, or in supported lodgings/hostels.

The supporting guidance gives examples of ‘other arrangements’ which include ‘supported accommodation’, ‘supported lodgings’, and ‘independent accommodation’.

- 6.7 We are amending the 2010 Regulations to prohibit placement of a child under the age of 16 in ‘other arrangements’ settings with limited exceptions. The effect of the amendments will be that looked after children under 16 can no longer be placed in unregulated settings while continuing to allow ‘other arrangements’ placements in alternative regulated settings by exemption. Unregulated independent and semi-independent settings cannot meet the needs of looked after children under the age of 16 who are very vulnerable and often have complex needs which require the care and support provided by regulated settings.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Most looked after children live in settings regulated by Ofsted such as foster care and children’s homes (80% at 31 March 2020). However, an increasing number of looked after children are being placed in ‘other arrangements’ under 22C(6)(d) of the 1989 Act. These placements are often in independent and semi-independent settings that are not required to register with Ofsted. However, ‘other arrangements’ settings can include placements in other regulated settings such as residential schools or hospitals.
- 7.2 The latest data shows that, as of 31 March 2020, there were 80,080 looked after children of which 6,490 (8%) were placed in ‘other arrangements’ that are unregulated semi-independent or independent settings, the same percentage as the previous year. This compares with 5% of looked after children in this type of accommodation as of 31 March 2010 and as of 31 March 2015. The vast majority of these children were aged 16 and 17. The latest data release shows that on 31 March 2019 there were c100 children aged under 16 placed in this provision.
- 7.3 Such placements are intended to prepare young people to transition to adulthood ahead of leaving the care system only where they are ready to live with the level of independence that these settings afford. We do not believe ‘other arrangements’ placements in semi-independent or independent settings to be appropriate for children under 16 as such placements do not meet the needs of this age group. The secondary legislation is required to address this concern now before it becomes a large-scale issue.
- 7.4 The ban on placing children under the age of 16 in unregulated settings is in no way intended to create an arbitrary point at which children and young people move into semi-independent or independent provision once they reach 16 years of age. Local authorities must continue to make placement decisions based on meeting the individual needs of the child in line with their existing statutory duties.
- 7.5 The intention of the ban is to ensure that looked after children under 16 are placed in children’s homes or foster care instead of unregulated settings. Fostering and children’s homes placements in Wales are specifically provided for by section 22C of the 1989 Act but any placement of a looked after child in such settings in Scotland

would be a placement under the ‘other arrangements’ provision. We know such cross-border placements happen and do not want this legislation to prevent these regulated placements continuing where it is appropriate for the child. We are, therefore, specifically exempting other arrangements placements in “residential establishments” which are the equivalent of children’s homes and foster placements provided by the Scottish Public Fostering Service from the ban.

- 7.6 While the majority of looked after children under 16 will be placed in children’s homes or foster care, we do not want to prevent looked after children accessing placements in alternatively regulated settings that might better suit their needs. Such settings would be considered other arrangement placements for the purposes of section 22C of the 1989 Act. The SI includes specific exemptions for these other regulated settings in England and, where such equivalent settings exist, in Wales and Scotland also. Exemptions are provided for care homes, hospitals, residential family centres, residential schools (which are not also registered as children’s homes) and residential holiday schemes for disabled children. The equivalent of residential holiday schemes for disabled children in Wales that are regulated as a care home service is also exempted through the exemption for care home settings in Wales. The Scottish Care Inspectorate does not regulate any equivalent of residential family centres and residential holiday schemes for disabled children as specific settings in Scotland therefore these have not been included as specific exemptions in Scotland.
- 7.7 In addition to the exempted settings, the SI provides a time limited exception to the ban where an unaccompanied asylum-seeking child (UASC), whose age is not certain or documented, is claiming to be aged 16 or above at the time of placement. If that child is subsequently found to be under 16 following an age assessment the SI provides that local authorities have 10 working days to find a suitable alternative placement following completion of the assessment that determined the child to be under 16. This allows local authorities to have the same placement options for an UASC who have a claimed age of 16 or 17 as other looked after children who are 16 or 17.
- 7.8 The government consulted on the implementation of a ban on the placement of children under the age of 16 in unregulated provision as part of a broader package of reforms in this area. This ran for 16 weeks from February to June 2020. Over three-quarters of respondents to the consultation agreed that the practice of using independent and semi-independent provision for children under the age of 16 should be banned (188 of 233 respondents). There was also broad support from care-experienced young people who were consulted directly, in addition to the public consultation. Most of the children and young people felt that under 16 was the right age for a ban.
- 7.9 We have considered the view expressed by some stakeholders in the consultation that the ban should be extended for all looked after children; we do not believe this would be the correct approach to take. Although this provision is not suitable for children under the age of 16 and for many older children who may have more complex needs that would be better met in a children’s home or foster care placement, there is a place for independent and semi-independent provision where it is of high quality and such a placement is desired by the older child and would be consistent with their welfare.
- 7.10 We recognise local authorities will need time to respond to ensure they have suitable alternative provision for those under 16s who are currently in such settings and ensure appropriate placement planning can take place. With this aim the Instrument will

come into force on Thursday, 9 September 2021 allowing local authorities 6 months to prepare.

- 7.11 The Children’s Commissioner called for an outright ban on unregulated provision in her consultation response. Her [report on unregulated provision](#) published in September 2020 confirmed that, while fully supportive of banning under 16s from unregulated provision, she remained committed to the ban extending to under 18. Her most recent policy briefing published in November 2020 ([The children who no one knows what to do with](#)) further qualified her call for a ban on placing under 18s in unregulated provision, stating that while she believes that all children under 18 should receive care, what care looks like for 16-17 year olds might look different to under 16s. The Government has committed to introducing national standards for unregulated settings that will ensure older children who are ready to live with the level of independence that these settings are able to afford, have access to safe and secure provision that meets their needs.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Not applicable.

## **10. Consultation outcome**

- 10.1 The 16 week consultation ‘[Reforms to unregulated provision for children in care and care leavers](#)’ which ran from February to June 2020 covered a range of new measures to ensure that unregulated provision for children in care and care leavers is used appropriately and is of good quality, including banning the use of unregulated provision for under 16s. The Government’s response to the consultation was published on 19 February 2021.
- 10.2 The proposal to ban placement of looked after children under 16 in unregulated provision was supported by 81% (188 of 233 respondents) of the respondents to the consultation, including 81% of local authorities (54 of the 67) who responded to the consultation.
- 10.3 The Children’s Commissioner’s response to the consultation expressed support for both the decision to ban the use of other arrangement placements ‘in independent and semi-independent provision for under 16s’ and for ‘a transition period to the new regulatory regime’. While the Commissioner supported a ban for under 18s, she noted that ‘16-17 year olds should not be refused opportunities to make steps towards independence. What care looks like will be different for a 16 or 17 year old than for younger children. It may include activities that are currently associated with support rather than care under the Care Standards Act 2000.’
- 10.4 Over 160 care-experienced young people were also consulted through virtual meetings led by partner organisations. There was broad support for the proposal, for example in one charity’s consultation with 53 care experienced young people, 43 young people (81%) agreed that banning the placement of children under the age of 16 into unregulated services would be a positive change for those in care.

10.5 Officials in all the devolved administrations were also consulted via online meetings and advised their administrations would not object to such a ban.

## **11. Guidance**

11.1 We are not publishing separate guidance for the SI and, instead, will be making amendments to [The Children Act 1989: care planning, placement and case review guidance](#). We will publish the updated guidance in due course before the SI comes into force on 9 September 2021.

## **12. Impact**

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

12.2 The impact on the public sector is that local authorities will have a six-month grace period in which to find children under 16 placed in unregulated independent and semi-independent provision alternative placements in either a children's home, foster care or one of the limited exemptions should such a setting be consistent with the child's welfare. On or after 9 September 2021 (the coming into force date) it will no longer be lawful for local authorities to place children under 16 in other arrangement settings other than those specifically exempted where it is consistent with the child's welfare.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant impact on business, charities or voluntary bodies is foreseen.

## **13. Regulating small business**

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

## **14. Monitoring & review**

14.1 Ofsted will continue to monitor local authorities through the 'Inspecting Local Authority Children's Services' (ILACS) framework and the Department for Education collects data on local authority placements.

14.2 This Instrument does not include a statutory review clause. The measures do not regulate business activity and are not in relation to a qualifying activity within the meaning in section 29 of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

15.1 Callum Worsnop at the Department for Education, email: [callum.worsnop@education.gov.uk](mailto:callum.worsnop@education.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Jonathan Bacon, Deputy Director for Looked After Children Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Vicky Ford MP, Parliamentary Under Secretary for Children and Families at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.