

EXPLANATORY MEMORANDUM TO

THE CARE STANDARDS ACT 2000 (EXTENSION OF THE APPLICATION OF PART 2 TO SUPPORTED ACCOMMODATION) (ENGLAND) REGULATIONS 2022

2022 No. 808

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 The Government is introducing national standards and Ofsted registration and inspection arrangements for providers of supported accommodation for looked after children and care leavers aged 16 and 17.
- 2.2 Before the Government can develop, consult on and lay the Regulations to deliver these reforms, it must first extend various powers to enable it to do this. This is the purpose of these Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 duties on local authorities (“LAs”) to accommodate looked after children (“LAC”) and care leavers are set out in different parts of the Children Act 1989 (“the CA 1989”). The following section of this explanatory memorandum covers both groups but separates these for clarity.
- 6.2 These Regulations apply to the accommodation of 16- and 17-year-old LAC and care leavers by LAs under their relevant statutory duties.
- 6.3 These Regulations will apply certain regulation making powers in Part 2 of the Care Standards Act 2000 (“the CSA 2000”) to the provision of supported accommodation for looked after children accommodated by a local authority in accordance with section 22C(6)(d) of the CA 1989 and care leavers accommodated by the local authority in accordance with section 23B(8)(b), with the modifications set out in the Schedule.

- 6.4 These Regulations define supported accommodation by reference to the power under which the accommodation is provided, with a number of settings being excluded from the definition.

Looked after children

- 6.5 LAs have a duty to provide accommodation to children in their care (i.e. those children who are subject to a care order made by a family court under s.31 CA 1989) in accordance with s.22A CA 1989 and a duty to accommodate certain other children usually through s.20 CA 1989. In both cases (children in care and accommodated children – collectively known as looked after children as defined in s.22(1) CA 1989) the LA must place a child in accordance with s.22C CA 1989. If they cannot be placed with a parent or other person with parental responsibility, they must be placed in the most appropriate placement available from those set out in s.22C(6) CA 1989 – with preference for placement with a LA approved foster carer who is a relative, friend or other connected person where possible. For most young people, this will mean they are placed in a foster care placement or in a children’s home. However, some young people may be deemed to be better suited to a placement which affords them a greater level of independence and this placement can be made in accordance with ‘other arrangements’ under section 22C(6)(d) which must comply with Regulations made under section 22C. The relevant Regulations are the Care Planning, Placement and Case Review (England) Regulations 2010 (“the Care Planning Regulations”).
- 6.6 ‘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 which is neither registered as a children’s home nor is a foster care placement in England or Wales. This category is used to support LAC to live more independently (as confirmed by paragraph 40 of the Explanatory Notes to the Children and Young Persons Act 2007 which inserted these provisions into the CA 1989).
- 6.7 Provision that supports LAC to live more independently is often referred to as ‘unregulated’ provision because it is not required to register and be inspected by Ofsted nor is it subject to any particular requirements or standards that must be met in the way that children’s homes are. These settings are not required to register with Ofsted as they do not provide the level of care that is required in a children’s home – instead they provide support with accommodation. Currently LAs are required to check provision is suitable and meets the needs of young people and to be satisfied of the matters set out in Chapter 3 of Part 4 of the Care Planning Regulations. However, there are no statutory requirements on providers to meet particular standards.
- 6.8 In addition to supported accommodation, LAs can use their power to place young people in ‘other arrangements’ that we do not intend to capture in the scope of these Regulations. These are settings that are already regulated through other means, such as residential special schools and hospitals and are settings that we do not consider to be supported accommodation and therefore should not be regulated as such.

Care leavers

- 6.9 When LAC turn 18, they are discharged from care and become ‘care leavers’. Some young people are discharged from care earlier, aged 16 or 17.
- 6.10 LAs have a duty to safeguard and promote the welfare of care leavers who are aged 16 or 17 where they were looked after for a minimum of 13 weeks from the age of 14 and where they ceased to be looked after from the age of 16 (described as “relevant

children” in s.23A CA 1989). This would include support by providing them with or maintaining them in suitable accommodation in accordance with s.23B(8)(b) CA 1989 unless the LA is satisfied that the child’s welfare does not require it. Section 23B(10) sets out that that the Secretary of State may by regulations make provision about the meaning of “suitable accommodation”. This has been done via the Care Leavers (England) Regulations 2010.

Care Standards Act 2000

- 6.11 The CSA 2000 was introduced to reform the regulatory care services in England and Wales including children’s homes, fostering agencies and voluntary adoption agencies. Part 2 of the Act makes provision for a regulatory scheme in respect of the establishments and agencies which come within the scope of the CSA 2000 (as provided in s.4(8)). It also allows the Secretary of State to set out requirements that apply to establishments and agencies and to issue national minimum standards applicable to all services, to which the registration authorities and providers must have regard.
- 6.12 Section 42 CSA 2000 gives the Secretary of State the power to extend the provisions of Part 2 of the CSA 2000 to persons prescribed in Regulations. The power to make Regulations can be exercised in relation to all cases or cases subject to specified exceptions (s.118 CSA 2000). Prescribed persons are those who provide services in exercise of LA social services functions as relate to persons under the age of 18 or other persons providing services similar to those which LAs may or must provide as social services. Social services that are in scope are those mentioned of the s.135(1)(e) Education and Inspections Act 2006 which includes functions conferred on or exercisable by the LA under the CA 1989 and would include the function of accommodating LAC and 16- and 17-year-old care leavers.
- 6.13 The specific relevant social services that we want to cover in respect of the two separate cohorts of children/young people are:
 - a) The placement of LAC in accordance with ‘other arrangements’ as provided for by s.22C(6)(d) CA 1989; and
 - b) Provision of suitable accommodation by local authorities to children who are 16/17-year-old care leavers who were looked after by the LA for at least 13 weeks from the age of 14 and who ceased being looked after any time from the age of 16 (“relevant children”) in accordance with s.23B(8)(b) CA 1989 – a duty to accommodate where the young person’s welfare requires it.
- 6.14 The Secretary of State is making these Regulations using the power conferred on him by s.42 of the CSA 2000 to extend certain provisions of Part 2 to cover supported accommodation and to define what we mean by supported accommodation for these purposes. These Regulations prescribe a person who carries on or manages a supported accommodation undertaking (whether or not for profit) for the purposes of s.42(1) of the CSA 2000.
- 6.15 Supported accommodation is defined by regulation 2 of these Regulations. The specific provisions which are applied are listed in regulation 3(2) of these Regulations, with the modifications set out in the Schedule and these predominantly consist of applying the various further regulation-making powers in Part 2 CSA 2000. Once these Regulations are in force, the Department will have the power to make and intends to make a second set of regulations. This will be a substantive set of regulations setting out: requirements

that must be met by supported accommodation undertakings; registration and inspection requirements; and, national standards for supported accommodation. That second set of regulations will apply the remainder of Part 2 of the CSA 2000 as appropriate to accommodation providers and will make consequential amendments to a number of other regulations which will include prohibiting LAs from placing or arranging accommodation for LAC and 16/17 year old care leavers in accommodation that is not registered as supported accommodation or otherwise permitted through exceptions. That second set of regulations will be made in late 2022/early 2023.

- 6.16 There are a number of types of accommodation for which LAs exercise the same powers, as set out at paragraph 6.10 above, to place or arrange accommodation for LAC and care leavers that we intend to exclude from the scope of these Regulations. These are specified at paragraphs (a) to (g) in the definition of supported accommodation in Regulation 2. These types of accommodation are already regulated through other means, and they would not be considered to be supported accommodation and therefore should not be regulated as such.

7. Policy background

What is being done and why?

- 7.1 Most LAC live in settings regulated by Ofsted such as foster care and children's homes. On 31 March 2021, there were a total of 80,850 looked after children: 57,330 (71%) of these children were placed with foster carers and 7,230 (9%) were placed in children's homes. However, an increasing number of LAC are being placed in 'other arrangements' under 22C(6)(d) of the 1989 Act. As of 31 March 2021 there were 5,980 LAC aged 16 to 17 living independently or in semi-independent living accommodation. This is down 7% from 2020 where the total was 6,430 but an increase of 87% since 2012 when the total was 3,200. These independent and semi-independent settings, called supported accommodation in the Regulations, are not required to register with Ofsted – and consequently are often referred to as 'unregulated' settings. Because supported accommodation settings are not required to be registered by Ofsted, they are not inspected. There are no national standards or shared understanding of best practice principles for this type of setting. While LAs are required to ensure that accommodation is 'suitable' there are no requirements on providers.
- 7.2 As children grow up and become young people, they gradually gain more independence from their parents. The care system seeks to replicate this transition to independence: beginning at 16, a young person can leave care (becoming a 'care leaver') or could move to supported accommodation. This provision can be appropriate for some older children where it is part of a carefully managed transition to independence and aligned with their care and pathway plans, which are the responsibility of the LA.
- 7.3 Placements in supported accommodation can 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. However, our research and consultation has shown that in the absence of any regulatory framework for this type of provision, its quality is highly variable and too often children are placed in settings that do not meet their needs or keep them safe.
- 7.4 The Department is introducing mandatory national standards and Ofsted regulation for providers of supported accommodation that accommodate 16- and 17-year-old LAC or care leavers. The Department is of the view that this is becoming increasingly

important as demand on the care system is increasing and we are seeing a rapidly growing number of looked after children and care leavers placed in supported accommodation.

- 7.5 The regulation of supported accommodation will mean that, for the first time, all provision offering accommodation and support for LAC and certain care leavers aged 16 and 17 will be registered and inspected by Ofsted. This will promote consistency and security to all children, right up to the age of 18. These changes will increase the quality of supported accommodation and ensure that Ofsted can take action where needed.
- 7.6 We are delivering these reforms via two statutory instruments. This first statutory instrument (SI) will confer on the Secretary of State (SoS) the powers to make regulations or prescribe matters in regulations. This will enable us to draft and consult on more substantive regulations later this year.

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 Government has consulted extensively on introducing national standards and Ofsted regulation of supported accommodation for LAC and care leavers aged 16 or 17. These Regulations are the first step in the process to enable the Secretary of State to develop and consult on the relevant standards and requirements in respect of supported accommodation.
- 10.2 Following research in 2019 into the drivers behind increasing use of these settings, the Government published a 16 week consultation '[Reforms to unregulated provision for children in care and care leavers](#)' which ran from February to June 2020.
- 10.3 In February 2021, the Government published its [consultation response](#) setting out that it would:
- a) Ban the placement of children aged under 16 in unregulated supported accommodation. (This was delivered through The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 and the ban came into force in September 2021).
 - b) Consult on national standards and Ofsted-led registration and inspection for providers of unregulated provision that accommodates 16- and 17-year-old LAC and care leavers to improve the quality of provision and better meet their needs.
- 10.4 On 24 May 2021, the Government launched the consultation: [Introducing national standards for independent and semi-independent provision for LAC and care leavers aged 16 and 17](#). This included a main version of the consultation which was aimed at local authorities, providers, and other stakeholders and [a version specifically intended to be answered by children and young people](#). Alongside these consultations, the government also commissioned independent qualitative research with care experienced

young people aged 16 and over to seek their views on the consultation proposals. These consultations asked for views on a proposed suite of national standards for providers of semi-independent provision for LAC and care leavers aged 16 & 17, how these settings should in future be regulated by Ofsted and for views on indicators used to determine whether a provider offers ‘care’ or ‘support’. The [Government’s response](#) to the consultations was published on 15 December 2021.

- 10.5 A total of 219 respondents completed the main consultation questionnaire, and 45 care-experienced children and young people completed the online questionnaire specifically designed for them. The consultation and focus groups gave clear support for the introduction of the proposed national standards, and for pursuing Ofsted-led registration and inspection at provider-level.
- 10.6 On the national standards, respondents to the main consultation were asked whether the proposed set of standards covered all the right issues and whether there were missing elements. Around forty percent of respondents thought the standards were not missing anything. This view is shared by respondents to the children and young people’s consultation. Of those young people who responded to this question, sixty-five percent felt they could not see anything missing in the proposed standards.
- 10.7 For the Ofsted regime, respondents to the main consultation gave views on the advantages and disadvantages of a provider level and individual-setting level Ofsted registration and inspection regime. Advantages of the provider-level model were noted to be the ability for inspectors to get a holistic understanding of services, less administrative complexity and cost effectiveness. Disadvantages of this model were identified as less detailed quality assurance and accountability (compared with a setting-level model), the possibility of missing poor practice and fewer opportunities for the voice of the service users to be heard. For the individual-setting level model, the advantages were noted as being improved quality in all settings and increased consistency of provision across multiple settings run by larger providers. The disadvantages identified by respondents include the need for additional resources and costs for providers, the practicality of the proposed scheme and concerns that this model could reduce the number of available providers.
- 10.8 The consultation aimed at children and young people asked respondents whether Ofsted should inspect this type of provision. Of those that responded to this question, the overall majority were supportive of an Ofsted inspection regime. In the focus groups with young people, views were mixed about Ofsted inspecting accommodation. Those who liked the idea thought it would make providers deliver a good service to avoid being punished for poor quality accommodation.

11. Guidance

- 11.1 No additional guidance is being produced at this stage as there is nothing for which guidance is required at this stage. The Department will develop and consult on new statutory guidance alongside the next set of Regulations in 2022. LAs are still required to be guided by statutory guidance on [CA1989: care planning, placement and case review](#).

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies. This is because this Statutory Instrument only provides for powers to be conferred on the SoS to make regulations.

12.2 There is no, or no significant, impact on the public sector. This is because this Statutory Instrument only provides for powers to be conferred on the SoS to make regulations.

12.3 An Impact Assessment has not been prepared for this instrument because this SI only makes provision for the SoS to make regulations.

13. Regulating small business

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

14. Monitoring & review

14.1 This Instrument does not include a statutory review clause as it only makes provision for powers to be conferred on the SoS to make regulations and the specific measures included in this SI do not regulate business activity.

15. Contact

15.1 Callum Worsnop at the Department for Education, email: 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 The Rt Hon James Cleverly MP, Secretary of State for Education, can confirm that this Explanatory Memorandum meets the required standard.