

**EXPLANATORY MEMORANDUM TO  
THE CHILDREN'S HOMES (ENGLAND) REGULATIONS 2015**

**2015 No. 541**

**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 Regulations**

2.1 These Regulations introduce a new regulatory framework for children's homes – one no longer focused on minimum standards and detailed processes but on aspirational quality standards (“the Quality Standards”) which are underpinned by requirements that homes must achieve to meet each Quality Standard. The aim is to drive up the quality of care in children's homes, ensuring professionals working with the children in their care tailor support to their individual needs and that the care provided is firmly centred on achieving high expectations and positive outcomes for each child.

2.2 The Regulations also include provision intended to help modernise management and administrative processes.

**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**

4.1 The Regulations revoke and replace the Children's Homes Regulations 2001 (“the CHR 2001”, as amended). The Regulations, like the CHR 2001, 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 which provides care and accommodation wholly or mainly for children. Certain establishments are excepted from being a children's home; these exceptions are set out in the CSA 2000 and in the Regulations.

4.2 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 Care Standards Act 2000 (Registration) (England) Regulations 2010 and the CHR 2001.

4.3 The Children and Families Act 2014 amended sections 22 and 23 of the CSA 2000. The amendment to section 22 provides for regulations to prescribe objectives and standards which must be met in relation to children's homes. Accordingly, the Regulations prescribe the Quality Standards under this new power.

4.4 Under section 23 of the CSA 2000, the Secretary of State may prepare and publish a statement of national minimum standards for children's homes. From 1 April 2015, a

new statement will come into effect called “Guide to the Children’s Homes Regulations including the Quality Standards” (“the Guide”). The amendment to section 23 of the CSA 2000 provides that the Guide may explain and supplement requirements imposed by regulations made under section 22 of that Act. Accordingly, the Guide explains and supplements this instrument. The instrument requires persons who are registered in respect of a children’s home to have regard to the Guide. Under section 23 of the CSA 2000, Her Majesty’s Chief Inspector (Ofsted) must, in particular, take the Guide into account when making decisions under Part 2 of the CSA 2000 in relation to a children’s home.

## **5. Territorial Extent and Application**

5.1 The Regulations apply to England only.

## **6. European Convention on Human Rights**

6.1 As the Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement in relation to Human Rights is required.

## **7. Policy background**

7.1 The Regulations are part of a broader programme of reform for children’s homes<sup>1</sup> which has been introduced by the Government since 2012. Reports published that year by the Deputy Children’s Commissioner and the All Party Parliamentary Groups for Runaway and Missing Children and Adults and for Looked After Children and Care Leavers<sup>2</sup> identified serious failings in children’s residential care. The reports showed that too many children were being cared for in placements that were not safe or that did not meet their needs.

7.2 Regulatory change was introduced in 2014 to strengthen children’s safeguarding<sup>3</sup>. However, if improvements in outcomes for all children were to be secured, a fundamentally different regulatory regime which would encourage homes to have high aspirations for their children and to deliver high quality care was essential. This is the purpose of the new Regulations and the Guide.

7.3 The principal features of the new regulatory framework are:

- introduction of the Quality Standards which specify the outcomes that children must be supported to achieve while living in children’s homes. Each standard has an aspirational, child-focused statement followed by a clear set of underpinning requirements that homes must meet to achieve the standard;
- replacement of the current National Minimum Standards with the Guide; and

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<sup>1</sup> [Urgent reforms to protect children in residential care from sexual exploitation.](#)

<sup>2</sup> [Accelerated report on the emerging findings of the OCC’s Inquiry in to Child Sexual Exploitation in Gangs and Groups](#) and the [Report From The Joint Inquiry into Children Who Go Missing From Care.](#)

<sup>3</sup> [The Children’s Homes and Looked After Children \(Miscellaneous Amendments\) \(England\) Regulations 2013.](#)

- modernised requirements on management and administrative processes, including new provision for the use of electronic records.

7.4 The Quality Standards provisions of the Regulations replace and update a number of the regulations in the CHR 2001. Requirements relating to essential management and administrative processes have been retained with some up-dating. Other provisions have been revised and up-dated to ensure they:

- align with the new Quality Standards;
- reflect current practice and changing models of delivery; and
- remove burdens and unnecessary prescription so that providers are trusted and encouraged to use their professional judgement and discretion in children's interests.

- **Consolidation**

7.5 The CHR 2001 have been amended several times since 2001. These Regulations replace the CHR 2001, ensuring a clearer and more coherent legal framework and a firm basis for securing the significant changes in approach and the improvements for children that are intended.

## **8. Consultation outcome**

8.1 An on-line consultation on the proposed regulatory changes and the Guide took place between 19th September and 14<sup>th</sup> November 2014. 185 written responses were received. In addition, a total of 396 people attended 9 consultation events held across the regions.

8.2 Overall both providers and local authorities welcomed the improved focus on children, the move away from minimum standards and the coherence offered by the new regulatory framework. However, there were some shared concerns, including on the need to clarify and define more precisely terms used in the Regulations, to offer further explanation on key points within the Guide and to make clearer how the Regulations and the Guide work for children with disabilities and special educational needs.

8.3 These points have been taken into account in preparing the final versions of the Regulations and the Guide. Changes as a result of the consultation include, for example, greater specificity about which serious events will always need to be notified to Ofsted; more explicit focus on the actions required following the manager's review of the quality of care; and a new and clearer requirement about ensuring that children's wishes and feelings are balanced with decisions made in their best interests.

8.4 The strongest area of concern was about inspection and how Ofsted would interpret compliance with the regulations once processes were less prescribed and judgements on quality were more focused on whether care succeeds in meeting the needs of individual children.

8.5 The Government recognises that the new framework will require a shift in practice across many homes and a new Ofsted inspection framework reflecting the Regulations and the Guide will be part of that. The Government remains firm in its view that such changes are essential if the objectives underpinning the new Regulations are to be achieved and outcomes for children radically improved. Nonetheless, to help embed the changes and ensure all parts of the sector are able to respond successfully to the new requirements, the Government has commissioned a new programme of information, support and training which will be rolled out across the sector from April 2015.

## **9. Guidance**

9.1 As outlined above, a new Guide will be issued to support and supplement the Regulations and will come into effect, along with the Regulations on 1 April 2015.

## **10. Impact**

10.1 Children's homes are managed and run by the private and voluntary sectors and by local authorities. We have carried out an Economic Impact Assessment of the proposed regulatory changes. The equivalent annual net cost to business, derived in line with the guidance laid out in the Better Regulation Framework Manual, is £0.53m. The Regulatory Policy Committee has agreed the Impact Assessment. A copy is attached and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

10.2 Around a third of homes are provided by local authorities; and it is local authorities who purchase places on behalf of the children they look after. A new burdens assessment has been completed. The Department for Communities and Local Government has confirmed that this does not constitute a new burden because the policy applies the same rules to local authorities and to private sector bodies and there is no disproportionate effect on local government.

## **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 protects and promotes 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.

## **12. Monitoring & review**

12.1 The Department for Education will undertake a formal review of the regulations by 31 March 2020. Research to evaluate the early impact of the Regulations on the care offered by homes is also planned. Subject to final decisions by Ministers, the research will be commissioned by summer 2015 and report in 2016.

### **13. Contact**

13.1 Claire Owens at the Department for Education can answer any queries related to the Regulations and the Guide. She can be contacted by telephone on 0114 2742712 or by emailing: [Claire.Owens@education.gsi.gov.uk](mailto:Claire.Owens@education.gsi.gov.uk).