

EXPLANATORY MEMORANDUM TO
THE VISITS TO CHILDREN IN LONG-TERM RESIDENTIAL CARE REGULATIONS

2011 No. 1010

1. 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 Under sections 85 and 86 of the Children Act 1989 (“the 1989 Act”) when children are accommodated in residential special schools, hospitals or care homes in England and Wales for consecutive periods of three months or more, the relevant local authority must be notified of the fact. They are then under a duty to take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while they are accommodated, and to consider whether they should exercise any of their functions under the 1989 Act with respect to the child. The local authority must make arrangements for the child to be visited by their representative, and for that representative to advise and assist the local authority in the performance of their duty.

2.2 These Regulations make provision about those visits - their frequency, the need for the representative to see the child on his own where possible, and about reports of visits.

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 Sections 85 and 86 of the 1989 Act provide that when children in England and Wales are accommodated by health authorities or by local authorities exercising education functions (section 85) or, when they are accommodated in a care home or independent hospital (section 86) for a consecutive period of at least three months, this must be notified to the relevant local authority. The notification requirement in section 85 is different to the requirement in section 86. Section 85 provides that the authority to be notified by the NHS body, or by the local authority in the exercise of education functions that places the child, is the local authority for the area where the child is ordinarily resident (or, where it appears that the child was not ordinarily resident in any local authority area, the local authority in whose area the accommodation is situated). Where a child is placed by a local authority exercising their education functions, notification will only be required where the child is placed outside the local authority’s area. Section 86

provides that the authority to be notified by the establishment accommodating the child is the authority within whose area the establishment is situated. The notification must be made in each case to “the appropriate officer”. In relation to a local authority in England, that means the director of children’s services and, in relation to a local authority in Wales, their lead director for children and young people’s services.

4.2 When a local authority have been notified in accordance with section 85 or 86, they are under a duty to take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while the child is accommodated, and to consider whether they should exercise any of their functions under the 1989 Act in relation to the child. New section 86A (inserted by the Children and Young Persons Act 2008 and to come fully into force on 1 April 2011) requires the responsible local authority to ensure that arrangements are made for the child to be visited by a representative of the authority. The function of the representative is to advise and assist the local authority in carrying out their duty under section 85 or 86. The Children and Young Persons Act 2008 (“2008 Act”) inserted a new regulation-making power (at section 86A(4)) in order to allow the Secretary of State and the Welsh Ministers, acting jointly, to make provision as to how that duty should be performed. These Regulations are the first to be made using that new power and set out the requirements in relation to the frequency of visits, the need to speak to the child in private and reports of each visit.

4.3 The responsible local authority’s duty to make arrangements for the child to be visited, at new section 86A, must be performed “in accordance with regulations”. Although section 86A is to come into force on 1 April 2011, the Department and the Welsh Ministers do not anticipate that the coming into force of these Regulations on 25 April 2011 will cause significant difficulties for local authorities or the children in respect of whom they have been notified.

5. Territorial Extent and Application

5.1 This instrument applies in relation to England and Wales.

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 Children who spend long periods of time living away from home in residential settings, sometimes at some distance from their families, are vulnerable to abuse, to a range of poor outcomes and to dwindling contact with their own families. In 2005, a report commissioned by the then Department for Education and Skills estimated that about 13,000 children with complex disabilities were living away from home in England.

Most of them have learning and communication impairments which increase their vulnerability. Some have little or no verbal speech.

7.2 The report found that residential placements play a valuable role in the spectrum of provision, offering the highly specialised support required to meet some children's needs and enabling others to spend time away from a damaging home environment. Research indicates that in many cases, young people and their families are pleased with their placements which are often made after a difficult time at school or at home. However there were a number of concerns about such placements, including the impact of living away from family and home community and vulnerability to abuse and neglect. There were indications that the arrangements to ensure that children's welfare was not safeguarded were not being rigorously implemented and that there remained unacceptable risks to the welfare of these children living away from their families.

7.3 The *Care Matters: Time for Change* White Paper in June 2007 proposed that children accommodated in educational and health settings should be visited by a local authority representative to help ensure that they are safeguarded and supported throughout the placement. The amendments made by the 2008 Act to the 1989 Act require that local authorities must satisfy themselves that the representative has the necessary skills and experience to undertake the task. Statutory guidance, issued under section 7 of the Local Authority Social Services Act 1970, is being developed to accompany the Regulations will make it clear that the representative should be a qualified social worker.

7.4 Voluntary sector organisations supporting the well-being of disabled children have a strong interest in these Regulations, as will the parents of the children in long-term residential placements.

8. Consultation outcome

8.1 Consultation on the draft Regulations and guidance ran from 19 March to 18 June in England and 26 March to 19 June in Wales.

8.2 In England, 10 responses were received. Three were from local authorities – a low number given their responsibility to visit children in long-term residential placements. Local authorities were notified of the consultation in the Department's then weekly email to them. Five responses were from voluntary sector organisations with an interest in disabled children and children's rights. The others were from the National Association of Non-Maintained Special Schools and the Royal College of Nursing.

8.3 In Wales, 17 responses were received, 10 of them from the 22 Welsh local authorities. Wales is a 'net importer' of children accommodated in long-term placements. Two responses were from Welsh Health Boards and two from voluntary sector organisations and one each from a Local Safeguarding Children's Board, the Royal College of General Practitioners (Wales) and the Children's Commissioner for Wales.

8.4 Overall the responses were positive, especially from the voluntary organisations, who welcomed the new measures. Respondents said they continued to find the legal requirements relating to notifying local authorities of children being placed in accommodations set out in sections 85 and 86 of the 1989 Act confusing and not well understood. Some helpful suggestions were made of how these could be clarified in the guidance and these will be taken on board.

8.5 Some of the responses expressed concern about the frequency of visits, and suggested that a minimum of visits at six-monthly intervals and that the timing of the first visit within three months after notification (if the child had already undergone an assessment before notification) was insufficient. The Department and the Welsh Assembly Government have given careful consideration to these concerns but have concluded that more frequent mandatory visits are not necessary. These children, in the main, will not have looked after status and we do not consider that that they should be visited as frequently as looked after children do. The requirements in the Regulations to carry out more frequent visits if the child requests it or if circumstances require the child to be visited more frequently in order to safeguard and promote their welfare should suffice. We will, however, ensure that this is given due prominence in the guidance.

9. Guidance

9.1 We are developing brief statutory guidance to help local authorities and the providers of long-term residential placements understand the notification process that triggers the first visit and the visits themselves. This will be published as soon as possible after the Regulations are laid. The guidance will be placed on the Department for Education and the Welsh Assembly Government websites. Copies of the guidance will be sent to the libraries of both Houses.

10. Impact

10.1 No impact on the private or voluntary sector is foreseen and, therefore, no Impact Assessment has been prepared for this instrument.

10.2 The Regulations will have an impact on the public sector since local authorities will, for the first time, be specifically required to visit children in respect of whom they are notified, in the manner and with the frequency prescribed by the Regulations.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of the duty to visit will be reviewed in 2014, three years after coming into force.

13. Contact

13.1 Chris Hirst at the Department for Education, Tel: 020 7783 8262 or email: chris.hirst@education.gsi.gov.uk can answer any queries regarding the instrument.