

EXPLANATORY MEMORANDUM TO
THE ARRANGEMENTS FOR PLACEMENT OF CHILDREN BY VOLUNTARY
ORGANISATIONS AND OTHERS (ENGLAND) REGULATIONS 2011

2011 No. 582

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. These Regulations make provision for children who are not looked after by a local authority under the Children Act 1989 (“the 1989 Act”) but who, instead, are provided with accommodation by a voluntary organisation or in a private children’s home. They impose duties on the voluntary organisations and the persons who carry on private children’s homes to plan for, manage and review the placements in order to ensure that these children’s welfare is safeguarded and promoted.

2.2. These Regulations consolidate secondary legislation relating to such children and mirror, as appropriate, the provisions made for looked after children in the Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) which will come into force on the same date.

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

3.1. None.

4. Legislative Context

4.1 These Regulations are being made in order to consolidate and update secondary legislation which applies in relation to two categories of children who are not looked after by a local authority: first, children who are provided with accommodation by voluntary organisations and secondly, children who have been placed in a private children’s home by a person other than a local authority or a voluntary organisation.

4.2 When voluntary organisations provide accommodation for a child, they may do so by placing that child with a family, a relative of the child or any other suitable person. The voluntary organisation must ensure that it safeguards and promotes the child’s welfare in accordance with the requirements of Part 7 of the 1989 Act.

4.3 Children may be placed in a private children’s home by a person other than a local authority or a voluntary organisation. Part 8 of the 1989 Act places an obligation on the person carrying on the private children’s home to safeguard and promote all those children’s welfare. The home will also be subject to registration and regulation under the Care Standards Act 2000 and the Children’s Homes Regulations 2001 (SI 2001/3967).

4.4 These Regulations bring together in one single instrument for the first time provisions about the placement of such children. They make provision in respect of the planning of their care and about the review of their cases which were previously dealt with in the Arrangements for Placement of Children (General) Regulations 1991 (SI 1991/890) and the Review of Children’s Cases Regulations 1991 (SI 1991/895) (“the two 1991 Regulations”). The Regulations revoke the two 1991 Regulations. The two 1991 Regulations also made provision for children who are looked after by a local authority under the 1989 Act and the Care Planning, Placement and Case Review (England)

Regulations 2010 replace the two 1991 Regulations in so far as they applied to children who are looked after.

- 4.5 Where a voluntary organisation places children with foster parents, that placement was subject to regulations 33 to 41 of the Fostering Services Regulations 2002 (SI 2002/57). These Regulations replace regulations 33 to 41 in respect of children who are not looked after. The Fostering Services Regulations 2011 (SI 2011/), which are due to come into force on 1 April 2011, will replace and revoke the provisions of the 2002 Regulations in so far as they apply to such children.

5. Territorial Extent and Application

- 5.1. This instrument applies in relation 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 These Regulations consolidate the two 1991 Regulations which made provision relating to both children who are looked after under the 1989 Act and children who are not looked after. They are replaced, with respect to children who are looked after, by the new Care Planning, Placement and Case Review (England) Regulations 2010 which come into force on 1 April 2011. However, simply revoking the two 1991 Regulations would leave no provision for the arrangements for placement and case review for children who are not looked after but are nevertheless placed by voluntary organisations or in private children's homes.

- 7.2. There are not many such children but the Department for Education wishes to ensure that their welfare is adequately safeguarded and promoted and, accordingly, these Regulations replace, with some modification, the requirements of the two 1991 Regulations.

- 7.3 The Department for Education carried out a consultation on draft Regulations for placement of children who are not looked after, about whether such Regulations are still required and whether provisions should be kept or changed. Responders confirmed that it was appropriate to continue to have Regulations in place. Following consultation, a few of the provisions in the two 1991 Regulations have been excluded as unnecessary.

8. Consultation Outcome

- 8.1. The Department consulted publicly from 1 November 2010 to 24 January 2011. The outcome of the consultation is set out in more detail on the DfE consultation website <http://www.education.gov.uk/consultations>.

9. Guidance

- 9.1. No separate guidance is being produced. Many of the principles for working with these children are the same as for looked after children, which are set out in the guidance on Care Planning, Placement and Case Review (Children Act 1989 Guidance, Volume 2).

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies – the Regulations replace the two 1991 Regulations and regulations 33 to 41 of the Fostering Services Regulations 2002

without adding new requirements on those bodies.

- 10.2 The impact on the public sector is for the most part the same as in 10.1. There is only one requirement that was not previously explicit in legislation: for the local authority to visit children who are accommodated by a voluntary organisation (other than with foster parents), or who are placed in a private children's home (other than by a voluntary organisation or local authority), within a prescribed period of time, and, if the local authority have any concerns about the responsible authority that placed the child, to report those concerns to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("HMCI").
- 10.3 No impact assessment is necessary.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 The Regulations do not add any requirements on small businesses that were not already in the two 1991 Regulations and regulations 33 to 41 of the Fostering Services Regulations 2002.
- 11.3 The basis for the final decision on provisions affecting small business was the consultation.

12. Monitoring and review

- 12.1 HMCI, which is independent from the Department, inspect children's homes. The purpose of inspection is to assess the quality of provision and the care provided to children and young people. The inspection process is designed to check that providers are complying with the relevant regulations and with the national minimum standards that underpin these.
- 12.2 HMCI publishes inspection reports of individual providers on its website. Ofsted also published thematic reports which draw on findings aggregated from individual inspection reports. These reports offer an objective assessment of the performance of providers as a service designed to promote high quality care for children, so that children are provided with the support required to achieve positive outcomes and reach their potential.
- 12.3 Inspection data and feedback from HMCI to the Department helps inform the Department's monitoring and review of these Regulations and understand where there may be concerns or issues with the regulatory framework which mean it may need revision.

13. Contact

- 13.1 Contact Andrew Dalton at the Department for Education, Tel: 020 7340 7352 or e-mail: Andrew.Dalton@Education.gsi.gov.uk with any queries regarding the instrument.