

EXPLANATORY MEMORANDUM TO

THE CARE PLANNING, PLACEMENT AND CASE REVIEW (ENGLAND) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 706

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 amendments to the Care Planning, Placement and Case Review (England) Regulations 2010 (“the 2010 Regulations”) (and consequential amendments to a number of other Regulations), following the commencement of Part 3, Chapter 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 3 December 2012 (“the LASPO Act”) (remands of children otherwise than on bail).

2.2 As a result of the changes made by the LASPO Act, children who are remanded by a criminal court to youth detention accommodation (“YDA”) will be “looked after” children within the meaning of the Children Act 1989 (“the 1989 Act”), and the 2010 Regulations will apply to them. Children who are remanded to local authority accommodation continue as now to be looked after children.

2.3 These Regulations make amendments to the care planning regime to be followed by local authorities in relation to children who are remanded both to local authority accommodation and those who are remanded to youth detention accommodation to reflect the particular circumstances of their looked after and remand status.

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

3.1 None

4. Legislative Context

4.1 The LASPO Act introduces a new remand framework for 10-17 year olds who are charged with, or convicted of, a criminal offence or concerned in extradition proceedings. Section 92 of the LASPO Act provides for remands to local authority accommodation. Such children are looked after (by virtue of the amendment made to the Local Authority and Social Services Act 1970 by schedule 13 paragraph 13, to the LASPO Act). Section 104(1) of the LASPO Act provides that a child who is remanded to YDA is to be treated as looked after by their designated local authority.

4.2 YDA comprises a secure children’s home, a secure training centre, a young offender institution and accommodation specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for the purpose of detention and training order provisions) (see section 102 of the LASPO Act).

- 4.3. The 1989 Act places duties on local authorities in relation to children looked after by them (i.e. children who are the subject of a care order, or children who are accommodated by the local authority in the exercise of their social services functions). The 2010 Regulations set out in detail how these duties should be put into practice.
- 4.4. As a result of the new remand framework introduced by the LASPO Act, there is a need to amend the 2010 Regulations to take the circumstances of remanded children into account. The decision to remand such children which, in the case of those who are not already looked after, leads to their becoming looked after, will be taken by a court in criminal proceedings. Local authorities may only have very short term relationships with this group of children, lasting only for the period of the remand. Furthermore, where children are remanded into YDA, these placements will not be commissioned by the local authority that will be responsible for their care, but by the Youth Justice Board, acting on behalf of the Secretary of State for Justice.
- 4.5 The existing care planning framework will largely continue to apply where children are remanded to local authority accommodation. However, where the child was not looked after before the remand, and becomes looked after purely by virtue of their remand, the main change to the application of the care planning framework is that the local authority is not required to prepare a “plan for permanence” for the child.
- 4.6 Where children are remanded to YDA, however, the local authority does not make the placement. Where a child is looked after before their remand to YDA, the main modification is that instead of a placement plan, the responsible local authority will be required to prepare a detention placement plan (“DPP”) for the child. Since the authority has not commissioned the child’s secure placement, its responsibility will be to satisfy itself that day to day arrangements for the child are of sufficient quality to be able to offer an appropriate response to the range of the child’s individual needs. The authority’s assessment and the resulting DPP will be focused on two key questions, (i) how will the child be safeguarded and their welfare promoted whilst they are detained in the YDA; and (ii) will the child have somewhere to live with appropriate support when they are no longer detained. The DPP must be agreed with, and signed by, the governor or registered manager (as the case may be) of the YDA.
- 4.7 A new Schedule 2A to the 2010 Regulations sets out the issues that must be included in each child’s DPP. These include (i) how on a day to day basis the child will be cared for and his welfare will be safeguarded and promoted by the staff of the YDA; (ii) arrangements for contact between the child and his family; (iii) the arrangements made by the YDA for meeting the child’s health needs (including physical, emotional and mental health) and dental care (see paragraph 4.8 below); (iv) the arrangements made by the YDA staff for the child’s education and training; (v) information about the arrangements put in place by the YDA for meeting the child’s religious, cultural or linguistic needs; and details of arrangements for the responsible authority to visit the child and to review the DPP. Where a child is not looked after prior to their remand to YDA, their responsible authority will not be required to prepare a full care plan for them, due to the likely short-term nature of their looked after status, instead they will be required to prepare a DPP.

- 4.8 Access to twenty four hour health care must be provided by YDA establishments that take children directly from court. An assessment of their health care needs by a suitably qualified practitioner from the establishment's healthcare team is carried out when children are admitted to custody. This forms the basis of the individual health care plan that the YDA must prepare for each child. YDA healthcare teams are provided by local NHS services to the establishments and will include doctors, nurses and allied professional staff, with access to specialist expertise where required in individual cases. In preparing the DPP, the local authority responsible for each remanded looked after child detained in YDA must take all reasonable steps to ensure that the child is provided with appropriate health care services.
- 4.9 In drawing up and maintaining the DPP, the responsible authority must consider the need to provide continuing support for the child when the remand ceases whether they receive a custodial sentence or return to the community. For example, such support could include continuing to look after the child when they are no longer detained. Where children who become looked after as a result of the remand provisions in the LASPO Act are aged 16 + and are looked after for a period of more than thirteen weeks from the age of fourteen they will become entitled to continuing support from the responsible authority as "care leavers". (This thirteen week period does not have to be continuous. It could include periods when the child was looked after prior to becoming remanded. A child who was remanded for thirteen or more weeks would also be entitled to care leaving support.) Local authorities have a range of duties towards care leavers. All care leavers must be allocated a personal adviser (PA) by their responsible authority, whose role is to keep in touch with each young person and co-ordinate the range of services specified in their "pathway plan". This should set out the support that will be offered to the young person so they are enabled to make a positive transition to the responsibilities of adulthood. The responsible authority must accommodate and maintain care leavers up to the age of eighteen where the welfare of the child requires it. Once they reach legal adulthood, the PA must still visit the young person regularly to offer advice and assistance, including practical and financial support. This should continue up to age twenty one, or longer if the young person remains in education or training.
- 4.10 These Regulations also make amendments which are consequent on the commencement of the LASPO Act and/or on the amendments made to the 2010 Regulations to: the Refuges (Children's Homes and Foster Placements) Regulations 1991, the Children's Homes Regulations 2001, the Care Standards Act 2000 (Registration) (England) Regulations 2010, the Care Leavers (England) Regulations 2010 and the Visits to Former Looked After Children in Detention (England) Regulations 2010.

5. Territorial Extent and Application

- 5.1 These Regulations apply in relation to England only.

6. European Convention on Human Rights

- 6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation no statement is required.

7. Policy background

- 7.1 The proposal to create a single remand framework for youth which would result in all remanded children being looked after and therefore being provided with support from local authorities was included in the Green Paper *Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders* issued by the Ministry of Justice in 2010. This proposal was intended to simplify the previous remand framework and to offer a consistent standard of support to children on remand who are likely to be a very vulnerable group. Responses to the consultation on the Green Paper indicated that there was broad stakeholder support for this measure.
- 7.2 The remand framework introduced by the LASPO Act sets a high threshold before a child can be remanded to YDA. The intention of this is that children should only be subject to custodial remands, i.e. only be securely remanded, where this is absolutely necessary to prevent further offending and/or for public protection.
- 7.3 The new framework requires local authority involvement to provide support to children who, as a result of being remanded, will become looked after. This will include paying for the costs of remand. This policy is intended to offer an incentive for local authority children's services to support individual children including to prevent their offending from escalating, as well as to encourage local children's services and youth offending services to work in a more joined up way to invest in community initiatives designed to prevent re-offending.

8. Consultation outcome

- 8.1 Consultation on proposals to amend the 2010 Regulations in light of the LASPO Act took place over a period of eight weeks, and consisted of an online consultation process and four consultation workshops. 114 people representing local authorities, youth justice services, YDA providers and the voluntary sector attended four consultation workshops and over 50 written consultation responses were received (some were joint responses by children's/youth justice services in the same authority). There was an overwhelming recognition by all respondents that the 2010 Regulations must be modified for children who will be looked after as a result of the LASPO Act.
- 8.2 There was general agreement that where children are remanded to local authority accommodation there only needed to be slight change to care planning arrangements to take into account the short period over which children are likely to be remanded. There was recognition that more modification would be required to take into account the circumstances of children securely remanded in YDA.

- 8.3 There was general consensus that there should be a single DPP setting out the needs of young people in YDA and that the role of the responsible authority should be to establish that the day to day arrangements for the child's care are providing an appropriate response to their individual needs. There was also agreement that DPPs should be reviewed by Independent Reviewing Officers (IROs) in the same way as plans for any other looked after child.
- 8.4 Respondents wanted to see a more explicit focus in the DPP on resettlement after remand ceases. In response to this concern the new Schedule 2A requires that the DPP should include details of how the child's welfare should be adequately safeguarded and promoted when the child ceases to be remanded to YDA, in particular (a) whether the child will be provided with accommodation by the responsible authority or another local authority, and (b) whether any other services to support the child should be provided by the responsible authority or by another local authority.
- 8.5 This consultation process raised a wide range of complex policy and practice issues that are not just the responsibility of the Department for Education. This information has been shared with interested parties including representatives of local authorities, the Youth Justice Board (YJB), Ministry of Justice and providers of YDA, to support their activities in operating the new remand framework.

9. Guidance

- 9.1 We plan to amend Children Act Guidance (volume 2): Care Planning, Placement and Case Review to take into account the amended care planning framework for children who become looked after solely as a result of being remanded.
- 9.2 We plan to issue revised guidance by summer 2013. Other government departments, the YJB, providers of YDA and local authorities will be involved in this work, to ensure that revised guidance is as helpful as possible for the range of services who are required to work together in order to deliver an effective youth justice system that provides each child with the support necessary to promote their welfare and to divert them from re-offending.

10. Impact

- 10.1 The provision made by this instrument solely impacts on the services provided by local authorities to meet their duties towards children who are looked after as a result of being remanded.

11. Regulating small businesses

- 11.1 The legislation does not apply to small businesses.

12. Monitoring & review

- 12.1 The Department for Education publishes an annual statistical collection with comprehensive data on children looked after in England. This will allow us to monitor the future numbers of children who are remanded to youth detention accommodation

and who will be treated as looked after children following the commencement of the LASPO Act on 3 December 2012. These statistics also include wider information about looked after children in custody.

- 12.2 The YJB also collects information about the numbers and patterns of children on remand.

13. Contact

- 13.1 Contact **Mark Burrows** at the Department for Education, Tel: 020 7783 8079 or email: mark.burrows@education.gsi.gov.uk with any queries regarding this instrument.