

**EXPLANATORY MEMORANDUM TO
THE CHILDREN AND YOUNG PERSONS ACT 2008 (RELEVANT CARE
FUNCTIONS) (ENGLAND) REGULATIONS 2014**

2014 No. 2407

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 This instrument extends the range of children’s social care functions that a body corporate may discharge on behalf of a local authority. It also prevents bodies corporate which are profit-making from being party to an arrangement for the discharge of the extended functions.

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

3.1 None.

4. Legislative Context

4.1 Part 1 of the Children and Young Persons Act 2008 (“the 2008 Act”) enables a local authority in England to enter into arrangements with a body corporate for the discharge by that body, on behalf of the authority, of specified social care functions. Part 1 of the 2008 Act was brought fully into force on 12 November 2013.

4.2 Under section 1 of the 2008 Act, the social care functions of a local authority which may be discharged by a body corporate are the authority’s social services functions in relation to individual children who are looked after by the authority and the authority’s functions in relation to former looked after children (under sections 23B to 24D of the Children Act 1989).

4.3 This instrument extends the social care functions which may be discharged in this way by a body corporate (pursuant to section 1(6)(a) of the 2008 Act, “the extended functions”) and restricts the type of body corporate that may be a party to an arrangement for the discharge of these extended functions (pursuant to section 1(7) of the 2008 Act). The instrument also specifies that a local authority’s functions under Part 1 of the 2008 Act are not functions that can be discharged by a body corporate.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State (Edward Timpson) has made the following statement regarding the European Convention on Human Rights:

In my view the provisions of the Children and Young Persons Act 2008 (Relevant Care Functions) (England) Regulations 2014 are compatible with Convention rights.

7. Policy background

7.1 The Government wishes to enable local authorities to have freedom to delegate a wider range of children's social care functions to third party providers. This is to enable local authorities to have greater flexibility in the way they manage their functions and to improve the quality of provision. It will also enable a wider pool of bodies to be responsible for managing children's social care functions, so services to children will be enhanced through their additional expertise. The instrument extends the existing functions which may be delegated.

7.2 Local authorities will remain ultimately accountable for decisions taken by the third parties to which they delegate functions. As with the present arrangements, it will be entirely for local authorities to decide whether or not to delegate functions. Third party provision will be inspected by Ofsted alongside local authority provision.

7.3 The instrument restricts the type of body corporate that may discharge the extended functions: only those bodies which operate on a not-for-profit basis may discharge these functions. The overwhelming concern raised in the consultation related to profit, suggestions that the policy was about privatisation, and the risk of conflicts of interest (see following section). A change was therefore made which added in this restriction. This aligns the regulations more closely with the primary policy intention, which was always to encourage the development of mutuals, voluntary sector partnerships and similar arrangements. It should not impede the plans of those local authorities which are currently driving forward work in this area.

7.4 The regulations will not prevent an otherwise profit-making company from setting up a separate non-profit making subsidiary to enable them to undertake such functions. The regulations have no impact on the current situation where profit-making bodies may undertake or deliver services, including in relation to the discharge of such functions, but are not carrying out functions on behalf of a local authority.

7.5 The regulations do not extend the not-for-profit restriction to the functions which may already be delegated under the 2008 Act.

8. Consultation outcome

8.1 A consultation exercise was conducted between 17 April and 30 May 2014. As well as being published openly on the Department's consultation website, the consultation was flagged directly with key interested parties.

8.2 A summary of the consultation outcomes together with the government response was published on 20 June 2014, and may be found at <https://www.gov.uk/government/consultations/delegating-childrens-social-care-functions>.

8.3 The provision in the regulations as explained in 7.3 above has been added in direct response to the consultation concerns about profit-making, privatisation, conflict of interest and related issues. The other consultation concerns primarily related to accountability, fragmentation of services, loss of social worker expertise, the evidence base, lack of providers and bureaucracy/procurement issues. These concerns are answerable in other ways. For example, there is no change in accountability, as local authorities remain accountable overall. Local authorities also have an ongoing duty to ensure appropriate joint working. Ofsted will report on local authorities' management of delegated functions through the leadership judgment as part of its framework of local authority inspection.

8.4 A few consultees also raised concerns about the consultation process, some for example suggesting that it was too short. However, the very healthy response to the consultation, including in terms of the number of responses and the range of comments received, suggests a real engagement with the process.

9. Guidance

9.1 No statutory guidance on this provision is currently planned. The Department will bear the need for guidance or other information in mind.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 Not applicable.

12. Monitoring and review

12.1 The purpose of this instrument is to enable local authorities to delegate a wider range of children's social care functions. Currently five local authorities are delegating children in care and/or care leaver functions. We intend to continue to monitor the extent to which local authorities delegate functions to providers under the 2008 Act, including through analysis of Ofsted inspection reports.

13. Contact

13.1 Helen Walker at the Department for Education (tel: 020 7340 8298 or email: helen.walker@education.gsi.gov.uk) can answer any queries regarding the instrument.