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Guidance

Children's homes and health care: registration with Ofsted or CQC

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Introduction

This guidance clarifies the registration arrangements for:

- children's homes that provide healthcare
- children's healthcare settings, if the main function is care and accommodation rather than acute health interventions

This guide will also help inspectors and providers to decide whether:

- the provider of a children's home that is registered by the Office for Standards in Education, Children's Services and Skills (Ofsted) provides regulated activities that must be registered with the Care Quality Commission (CQC)
- a provider regulated by CQC needs to register a location with Ofsted as a children's home

The guidance is not intended to cover other forms of children's services that may be affected by the [Health and Social Care Act 2008 \(HSCA 2008\)](#), such as

determining if a children's home should be registered with CQC

Process for determining if a healthcare location should be registered as a children's home

When a change of, or additional, registration is required

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fostering services and domiciliary care.

What Ofsted registers and regulates

Ofsted is responsible under the [Care Standards Act 2000 \(CSA 2000\)](#) for regulating establishments and agencies that provide children's social care services.

There are six types of establishments and agencies that provide social care services for children that require registration with Ofsted:

- children's homes (including secure children's homes)
- independent fostering agencies
- voluntary adoption agencies
- adoption support agencies
- residential family centres
- residential holiday schemes for disabled children

Ofsted has a range of enforcement powers that it can use when a regulated service fails to meet the requirements of the CSA 2000 and the relevant regulations.

Any person carrying on or managing a children's home that provides care and accommodation must register with Ofsted in respect of that individual children's home. Failure to do so is an offence under section 11 of the CSA 2000.

Ofsted also regulates the providers of childcare under the Childcare Act 2006.

What Ofsted inspects (and does not regulate)

Ofsted inspects other children's social care provision or services under the [Education and Inspections Act 2006](#), including secure training centres and the Children and Family Court Advisory and Support Service (CAFCASS).

Since April 2007, Ofsted has inspected local authority children's services under section 136 of the Education and Inspections Act 2006 under various frameworks. The current framework is the Inspection of Local Authority Children's Services (ILACS). Since 2005, Ofsted has carried out joint area reviews of children's services in local authority areas under section 20 of the [Children Act 2004](#). Since 2016, multi-agency inspections under section 20 of the Children Act 2004 are carried out in the form of joint targeted area inspections (JTAs).

Ofsted inspects the welfare of children in residential special schools, some boarding schools, residential further education colleges and independent specialist colleges under section 87 of the [Children Act 1989](#).

Ofsted also inspects schools, colleges, initial teacher training, work-based learning and skills training, adult and community learning, and education and training in young offender institutions.

What the CQC regulates

CQC is the independent regulator of health and adult social care. This includes the regulation of most types of healthcare for children, as well as care homes and domiciliary care agencies, some of which may provide services to children.

Until 1 October 2010, CQC registered independent healthcare and adult social care under the CSA 2000. The Act required providers to register in respect of establishments or agencies.

Under the HSCA 2008, a single set of fundamental standards of quality and safety were gradually introduced across health and adult social care. They replaced the Regulations under the CSA 2000 and are set out in the [HSCA 2008 \(Regulated Activities\) Regulations 2014 \(the 2014 Regulations\)](#).

The HSCA 2008 requires providers who carry on 'regulated activities' to register with CQC. This includes all NHS Trusts and providers of independent health care. Individual locations where providers carry on those regulated activities, such as care homes or hospitals, appear on providers' registration certificates as conditions of registration. To be registered, providers must meet the fundamental standards of quality and safety set out in the 2014 Regulations: these are the requirements set out in Regulations 4–20A. If CQC is not satisfied that the regulations are being met or will be met, the HSCA 2008 puts CQC under a duty to cancel or refuse registration.

If an activity involves the carrying on of an establishment or agency within the meaning of the Care Standards Act 2000, for which Her Majesty's Chief Inspector of Ofsted is the registration authority under that Act, then this is not a 'regulated activity' under HSCA 2008 and does not require the provider to register this with CQC. For example, a home registered with Ofsted as a children's home is exempt from registering with CQC as a care home, even if some of the residents are adults. However, the provider may need to register with CQC in respect of any 'regulated activities' under HSCA 2008 being carried out there, for example, personal care (see [Annex 4](#) for definition of personal care), nursing and/or medical treatment.

It is important to note that Section 8 of the HSCA 2008 does not place a blanket exemption on children's social care providers that offer health activities from registering with CQC. Rather, when providers are registering with CQC, they will

need to consider any health activities that are not part of the standard social care functions of their establishment that are overseen by Ofsted.

Regulated activities are set out in Schedule 1 of the 2014 Regulations and are summarised on page 5 of 'The scope of registration' published by CQC in March 2015 (please see [Annex 3](#) for further information).

Definition of a children's home

Section 1(2) of the CSA 2000 states that 'an establishment in England is a children's home (subject to the following provisions of this section) if it provides care and accommodation wholly or mainly for children'. A child is defined in section 121 of the CSA 2000 as a person under the age of 18 years. 'Wholly or mainly' means that most of the people who stay at a home must be children. Young adults aged 18 and over who live or stay at the home must be in the minority.

There are circumstances when it may be appropriate to be registered as a care home with CQC rather than as a children's home with Ofsted. If a child is placed in accommodation because of their need for nursing care or personal care, it is likely this will be a care home that should register with CQC. This may be a circumstance where it is a continuing care arrangement beyond their 18th birthday and registration with CQC is sufficient. Whereas, if the primary reason for placing a child in that accommodation is care that is not nursing care or personal care it is likely this will be a children's home that should register with Ofsted.

Types of residential services for children that are not children's homes

Section 1(4A) of the CSA 2000 says 'an establishment is not a children's home if it is:

- a hospital (within the meaning of the [National Health Act 2006](#))
- a residential family centre
- or a description excepted by regulations'

Section 1(5) includes schools as establishments that are not children's homes. This exemption is qualified by section 1(6) of the CSA 2000.

Section 1(6) of the CSA 2000 provides that a school is a children's home if it has accommodated children for more than 295 days in each of the preceding two years or if it intends to accommodate children for more than 295 days in any year.

How the HSCA 2008 affects children's homes that also provide healthcare services

If a children's home that is registered with Ofsted provides healthcare services to children and that healthcare is a regulated activity as set out in Schedule 1 to the 2014 Regulations, the provider will also need to register with CQC. They must provide the healthcare to a level that meets the requirements of the fundamental standards of quality and safety.

A small number of providers will therefore need to register with Ofsted as a children's home and with CQC for the health care services that they provide under the HSCA 2008.

Regulated activities offered by children's homes that are likely to require registration with CQC include:

- accommodation for persons who require treatment for substance misuse
- surgical procedures
- treatment of disease, disorder or injury
- diagnostic and screening procedures
- nursing care

The flowcharts in [Annex 1](#) will help inspectors and providers decide if a children's home should register with CQC.

Criteria for determining health activities that need to be registered under the HSCA 2008

The majority of children's homes provide some form of health service, ranging from basic first aid to high-level healthcare. The purpose of registration with CQC is to ensure that services offering high-level healthcare are inspected and regulated appropriately as with any other healthcare provision to properly safeguard children and young people.

Ofsted and CQC take the view that any healthcare activities that must be performed by a qualified healthcare professional, and which cannot be delegated to a competent lay person, require registration with CQC.

Therefore, the distinction lies between those health activities that, with appropriate instruction, a competent lay person could administer, and those that must be performed by a qualified healthcare professional.

By way of an example, the provider should consider if the healthcare task is one that:

- requires routine and easily acquired skills such as assisting a child with eating/drinking or following a simple physiotherapy programme (most likely Ofsted)
- is regularly carried out and requires specific skills training from medical professionals such as tracheostomy care or bolus feeds (most likely Ofsted)
- is a more complex and higher risk medical procedure usually carried out by a medical professional, such as programming of syringe drivers or re-insertion of gastrostomy tubes (most likely CQC registration required, possibly in addition to registration with Ofsted)

The guidance in [Annex 4](#) sets out the healthcare activities that must be performed by a registered healthcare professional and which may not be delegated to a competent lay person. The guidance is issued by the Royal College of Nursing and is being used by Ofsted and CQC as a useful tool for helping inspectors and assessors to determine whether a service needs to register with CQC or not. Each situation must be considered on its merits and alignment with this guidance does not in itself determine conclusively when registration with CQC is required and when it is not.

Other matters considered in determining if a children's home should be registered with CQC

If a provider needs to clarify whether they should apply for registration with either regulator, they can contact either regulator. When necessary, the regulators will discuss and agree options and advise the provider appropriately. In making this decision, the regulators will consider who provides the healthcare and who retains overall clinical responsibility. The provider, Ofsted and CQC should refer to the decision trees in [Annex 1](#) to help to determine what registration the provider may require.

Process for determining if a healthcare location should be registered as a children's home

From 1 October 2010, the HSCA introduced registration requirements for health and adult social care services. The NHS, independent health services and social care services are now registered with CQC under a single set of legislation and

standards.

When a provider applies to register with both CQC and Ofsted, the inspectorates will coordinate their approach to the setting and agree the most appropriate registration arrangement. Each inspectorate will still need to follow their individual legal processes to register or refuse the applicant.

If either CQC or Ofsted find a setting that they believe is incorrectly registered, they will determine what is the most appropriate registration in consultation with the provider. CQC and Ofsted will confirm their decision to the provider.

If a provider is not registered with either regulator but provides services that need to be registered with one or both regulators, the providers should obtain the necessary registrations before providing the services in question. If a provider is registered with one regulator but provides services that only need to be registered with the other regulator, the provider will need to contact each regulator to discuss how their registration status will be managed. It is the provider's responsibility to apply to register to ensure that they are registered with the correct regulator. If services are being provided before the registration application has been determined, this is in contravention of the requirements of the CSA 2000 or HSCA 2008 (whichever applies). In these situations, CQC and Ofsted will keep in close contact while they determine any action by either or both regulators and to ensure that the welfare of service users is taken into account while the registration application is being determined. The provision of services without the necessary registration is an offence under both CSA 2000 and the HSCA 2008. Ofsted and CQC have powers to take enforcement action in these circumstances.

When a change of, or additional, registration is required

If a change or a new registration is required, CQC and Ofsted will work together to agree the appropriate registration status and registration arrangements. Each regulator will identify a lead person (an inspector or assessor) for this process.

The leads from each regulator will establish early and regular liaison between the regulators and provider to ensure that the process runs as smoothly as possible.

CQC and Ofsted's leads may decide that they need to make a joint visit to a location to clarify with the provider which activities and services are being carried on, their scope, frequency and the numbers of children involved. Both CQC and Ofsted have powers, under the CSA 2000 and the HSCA 2008 respectively, to enter and inspect premises at which they reasonably believe that activities within their regulatory remit are being performed.

When registration is decided, CQC and Ofsted will confirm arrangements for future regulation, including any arrangements for future inspection or monitoring of

compliance.

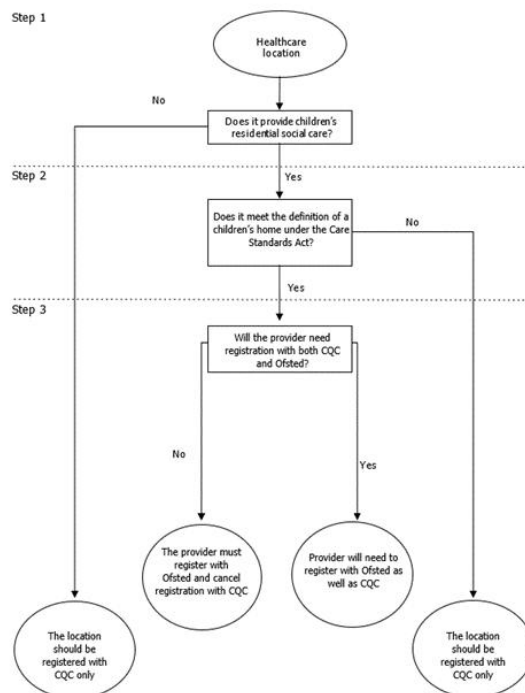
Contact and liaison arrangements between CQC and Ofsted

CQC and Ofsted are committed to working closely with each other when their responsibilities overlap. CQC and Ofsted have a Memorandum of Understanding that sets out how they will work together and can be accessed at [Annex 2](#).

Annexes 1 to 4

Annex 1: steps to flowcharts

Flowchart 1: Registration of healthcare locations as children's homes



Step one – does the setting provide care and accommodation to children and young people?

If yes, proceed to the next step in the flowchart above.

If no, proceed to the end of the flowchart, with the decision that the location should

be registered with CQC only, if it carries on any regulated activity.

Step two – does the care and accommodation provided at the location meet the definition of a children’s home?

Identify whether the location’s care and accommodation meet the definition of a children’s home under the CSA 2000. Is the location already registered with Ofsted as a children’s home?

If yes, proceed to the next step in the flowchart.

If no, the location will not require registration with Ofsted. Proceed to the end of the flowchart, with the decision that the location only needs to be registered with CQC

Step three – will the location require dual registration with both Ofsted and CQC?

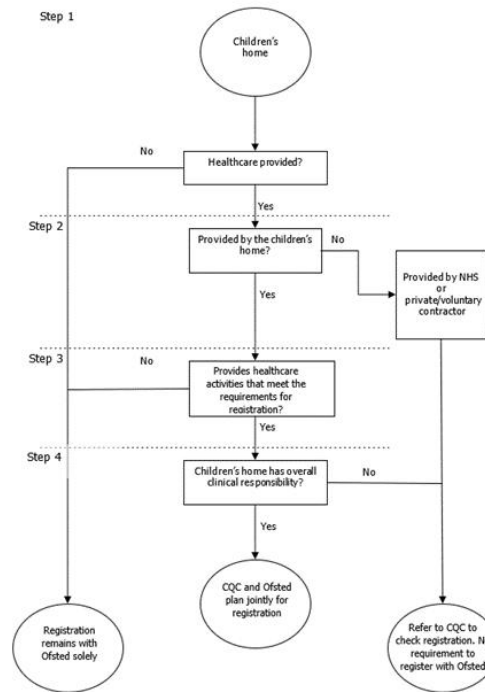
Identify whether the location is offering health services that meet the requirements for registration

It is important to note that some health activities will be exempt from registration with CQC, even though they are required to be delivered by a person with medical training. This includes, for example, psychotherapy and art therapy. Further information on this is available in CQC’s registration guidance, available at [Annex 2](#)

If a children’s home location is offering healthcare that meets CQC’s registration criteria, they are likely to need to register with both Ofsted and CQC - proceed to the end of the flow chart, with the decision that the location needs to register with both Ofsted and CQC

If a location is not providing healthcare that meets CQC’s registration criteria, they will not need to register with CQC - proceed to the end of the flowchart, with the decision that the location must cancel their registration with CQC and register with Ofsted instead.

Flowchart 2: Registration of health activities provided in children’s homes



Step one – does the children’s home provide healthcare?

Identify whether the home involves the provision of healthcare to children and young people.

If no, proceed to the end of the flowchart, with the decision that no CQC registration is required.

If yes, proceed to the next step.

Step two – who provides the regulated activity?

Key options are that:

- the provider of the home is also the provider of some or all of the healthcare, for example, a children’s home employs a nurse to provide primary care, or a children’s home employs a nurse who assesses children when they enter the home and devises a care plan
- a subcontractor is contracted to provide healthcare
- the NHS provides healthcare, which the children’s homes facilitates, for example, the children’s home arranges with the NHS for a GP to visit for one-to-one sessions
- if the NHS or a subcontractor provides healthcare, they may need to be registered with CQC - proceed to the end of the flowchart, with the decision that CQC register or check the existing registration of the healthcare separately
- if the provider of the home also provides some, or all, of the healthcare, proceed to the next step in the flowchart

Step three – do the healthcare activities meet the requirements for registration?

Identify whether the provider is offering health services that meet the requirements for registration as outlined in question 7 of the guidance.

It is important to note that some health activities may fall outside of the scope of registration with CQC, even though they are required to be delivered by a person with medical training - this includes, for example, psychotherapy and art therapy (further information on this is available in CQC's registration guidance, available in [Annex 3](#)).

If a provider is meeting CQC's registration criteria, they are likely to need to register with CQC - proceed to the next step of the flowchart.

If a provider is not providing healthcare that meets CQC's registration criteria, they will not need to register with CQC - proceed to the end of the flowchart, with the decision that the provider does not need to register with CQC.

Step four – is the healthcare provided under the clinical responsibility of the children's home?

Identify whether the home is 'standalone', with clinical staff within the home taking ultimate clinical responsibility for episodes of care, or whether it is 'supplementary' to another healthcare professional who has ultimate clinical responsibility for episodes of care.

Examples of a supplementary service include a local GP or a consultant at the local mental health trust who has overall clinical responsibility for the child's treatment. Nurses at the children's home may carry out some assessment or administer medications within the treatment plan, which is ultimately supervised by the GP or the consultant.

Examples of a standalone service include: clinical staff employed by the children's home to assess and make diagnosis of illness. They not only devise a care plan but may prescribe for it. They are responsible for supervising the implementation of the care plan and are able autonomously to decide changes to it, because it is not part of a broader plan that another clinician is responsible for.

If it is a supplementary service, proceed to the end of the flowchart, with the decision that registration with CQC is not required.

If it is a standalone service, proceed to the end of the flowchart, with the decision that the provider may need to be registered with both Ofsted and CQC.

Annex 2: reference documents and links

The key reference documents for Ofsted are available and include:

- [Introduction to Children's Homes](#) – this defines a children's home and Ofsted's registration requirements
- [guidance on children's homes with accommodation for adults](#)
- [guide to registration for children's social care services](#)
- [changes to children's social care services that are registered by Ofsted](#)
- [Children's Homes Regulations, including the quality standards: guide](#)

The key reference documents for CQC are available on [CQC's website](#) and include:

- [scope of registration](#)
- [general information on registration](#)
- [guidance for providers on meeting the regulations](#)

The relevant legislation includes:

- [The Care Standards Act 2000 \(Registration\)\(England\) Regulations 2010](#)
- [Children's Homes \(England\) Regulations 2015](#)

Legislation relevant to CQC functions is available in [continuously updated versions](#). These include:

- [The Health and Social Care Act 2008](#)
- [The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#)
- [The Care Quality Commission \(Registration\) Regulations 2009](#)

Joint Ofsted and CQC documents include:

- [Memorandum of understanding between Ofsted and CQC](#)

Note that it is for the reader to ensure that they have the correct and up-to-date version.

Annex 3: scope of registration

The guidance referred to in “What are the criteria for determining health activities that need to be registered under the HSCA 2008” is: [‘Meeting health needs in educational and other community settings; a guide for nurses caring for children and young people’](#), specifically Appendix 1.

This was published by the Royal College of Nursing in January 2018 and their permission was given in April 2019 for it to be included in this guidance. It is the property of the Royal College of Nursing and may be updated by them. CQC and Ofsted will always refer to the most up-to-date version of this guidance. You should check with the Royal College of Nursing to ensure that you have the current version.

Enquiries can be made to: Fiona Smith, Adviser in Children and Young People's Nursing Department, Royal College of Nursing.

Annex 4: definition of personal care and when it becomes a regulated activity requiring registration with CQC

Personal care is defined in Regulation 2 of the 2014 Regulations:

'Personal care' means:

- physical assistance given to a person in connection with:
- eating or drinking (including the administration of parenteral nutrition)
- toileting (including in relation to the process of menstruation)
- washing or bathing
- dressing
- oral care
- the care of skin, hair and nails (with the exception of nailcare provided by a registered chiropodist or podiatrist)
- the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed [above], where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision.

Is personal care a 'regulated activity'?

'Personal care' becomes a regulated activity when in it involves the provision of personal care for persons who, by reason of old age, illness or disability, are unable to provide it for themselves, and which is provided in a place where those persons are living at the time that the care is provided. This is set out in Schedule 1, paragraph 1, 'personal care', of the 2014 Regulations.

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