



Department
for Education

Launch date 25 June 2013
Respond by 17 September 2013
Ref: Department for Education

**Improving safeguarding for looked after
children: consultation on changes to the
Care Planning, Placement and Case Review
(England) Regulations 2010**

Improving safeguarding for looked after children: consultation on changes to the Care Planning, Placement and Case Review (England) Regulations 2010

To Local authority Directors of Children's Services (DCS), local authority commissioners of placements for looked after children, Education service providers, Health service providers, children's home providers, voluntary organisations, independent fostering agencies, young people in care and care leavers.

Issued 25 June 2013

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288

e-mail: careplanningregs2010.amendments@education.gsi.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the Department's [Contact us](#).

1 Executive Summary

- 1.1** This is a consultation by the Department for Education on proposals to amend the Care Planning, Placement and Case Review (England) Regulations 2010 (the “Care Planning Regulations”).
- 1.2** In view of the vulnerability of children placed a long way from the local authority that acts as their “corporate parent”; we want to ensure that there are effective arrangements in place, so that children are only placed at a distance once there has been sufficient scrutiny to establish that this option represents an appropriate response to their needs.
- 1.3** The Care Planning Regulations already include requirements for responsible authorities to notify area authorities¹ whenever children are placed out of authority. We are aware that notification processes are not always followed. Even where notification systems work well, there will always be delay between a child being placed and an area authority being notified. This is a matter for concern as local authorities’ safeguarding duties cover all the children living within their area. Local authorities and partner agencies, such as the police, are unable to consider the protection of vulnerable children if they are unaware that a child has moved into an area. This is why we are proposing to amend these arrangements to require placing authorities to consult with the authority where the child will be placed, prior to placement.

¹ The local authority within which the placement is located

- 1.4** Unless the placement is made in an emergency, notification should follow after a process of genuine consultation. We want to improve the effectiveness of notification arrangements and are proposing to include more detail in regulations as to the matters that must be notified. We want to see an effective notification process that ensures that all agencies in the area where a child will be living have an awareness of the child’s needs and, where appropriate, understand their contribution to supporting the child. Effective information sharing between

services in the area where the child is living and the staff in the child's responsible local authority is essential for safeguarding and promoting the welfare of any child relying on out of authority care.

- 1.5** We are also proposing to introduce amendments to the Regulations concerned with the timing of statutory care plan reviews to make it explicit that the child's care plan must be reviewed whenever there is evidence that the child is at risk – e.g. if they have been persistently absent from their placement or if there are indications that they are at risk of being targeted for sexual exploitation.
- 1.6** We also plan to amend Part 7 of the Care Planning Regulations in regard to 16 and 17 year old looked after children.
- 1.7** The number of children ceasing to be looked after at aged 16 has reduced in recent years, but too many are still “leaving care” before they reach the age of 18, with insufficient preparation and support. The majority of young people of this age can access and rely on support from their families into their mid-twenties, or older.
- 1.8** Care leavers themselves think a change in the law to amend the age at which children could no longer be looked after would be a step too far, as for some children, in rare cases, leaving care at 16 may be an appropriate decision. We, however, intend to build on recent successful actions to accelerate further the trend to delay leaving care until legal adulthood at 18 by requiring that the Director of Children's Services (DCS) who is responsible for the corporate parenting of all looked after children, agrees and signs off such decisions.
- 1.9** We anticipate that imposing a new requirement for the DCS to agree and sign off decisions for 16-17 year olds to cease being looked after, will encourage rigorous scrutiny of plans for children to leave care before legal adulthood at age 18. This is to ensure that children can only leave care in these circumstances once they have been thoroughly prepared and support is in place.
- 1.10** In summary, we want to amend the Care Planning Regulations to reinforce the protection offered to children placed outside of their responsible authority. Corporate parenting cannot stop at the borough boundary. Local authorities responsible for looked after children's care must keep them “in mind” wherever they are placed.

- 1.11** At the same time that we are consulting on the amendments to the Care Planning Regulations, described in this consultation document, we are also consulting on changes to the Children's Homes Regulations 2001 (as amended) and to the Care Standards Act 2000 (Registration) (England) Regulations 2010. Respondents to this consultation, particularly local authorities responsible for looked after children who are in out of authority placements and placement providers, will have a strong interest in responding to both consultations.
- 1.12** In taking forward our programme to reform children's homes, we are reviewing the framework concerning the powers of Her Majesty's Chief Inspector of Education, Children's Services and Skills (HMCI) to regulate and inspect children's homes. We want to ensure that HMCI has the powers necessary to set high standards and to take vigorous enforcement action when children are being failed. As a first step, we plan to consult on amending Regulations, so that, whenever a children's home is taken over as a going concern and is "re-registered" by a new provider, HMCI must inspect the quality of the new provider's care as soon as possible after re-registration. We will be consulting on introducing this change as part of our consultation on revising the HMCI (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2013 in October 2013. Respondents to the current consultation will wish to respond to this consultation too.

2 Background and Context

- 2.1** On 9 May 2012, following the child sexual exploitation trial in Rochdale, the Secretary of State asked the Deputy Children's Commissioner, Sue Berelowitz, to provide an accelerated report of her two year inquiry into Child Sexual Exploitation in Gangs and Groups. He asked her to focus in particular on the risks to children living in children's homes.
- 2.2** On 3 July 2012 her report was published and DfE Ministers announced urgent action to reform children's residential care in response to both that report and to the report of the Joint All Party Parliamentary Group Inquiry into Children Who Go Missing from Care (APPG) (published in June 2012).
- 2.3** These reports highlighted the specific vulnerability of children relying on out of authority placements, most frequently placed in children's homes. They included a number of recommendations concerning this significant issue.

*“Consideration should be given to amending Regulation 11(2) (d) of the Care Planning, Placement and Case Review (England) Regulations 2010. Currently this requires authorities to notify the area authority where the child is to be placed. This could be strengthened by requiring the placing authority to **consult** with the area authority to assist their assessment that the placement is the most appropriate placement available and that it will meet the child’s needs identified in the care plan. This would enable the placing authority to establish, for example, if there is known intelligence locally of sexual exploitation associated with the children’s home or local area. (OCC Report)*

The Care Planning, Placement and Case Review Regulations 2010 and related Guidance should be amended to ensure that a child’s Independent Reviewing Officer (IRO) should be informed when children run away and consider bringing forward the review.....(OCC Report)

Before placing a child in another local authority, the home local authority should, in collaboration with the receiving local authority, make an assessment of the geographical area to determine whether or not it is safe for the child based on what is known about the risks facing the child. (APPG Report)”

2.4 Three DfE-chaired expert groups (one on data, one on out of area placements and one on overall quality), with wide-ranging representation and expertise (children’s services leaders, the Office of the Children’s Commissioner, children’s charities, providers, HMCI and others) were established to develop proposals.

2.5 The report of the Expert Group on Children’s Homes Quality was published in April 2013. Ministers made an announcement in the press to coincide with this that included a number of commitments to make regulatory changes.

“... we will consult on introducing new responsibilities for councils so that by December 2013 a decision to place a child in care far from their home can only be made by a senior official. They will have to be satisfied that the placement is in the child’s best interest and will meet their identified needs. These new rules will also set out a requirement for the placing authority to consult with the local area authority before they place a child in a home.”

Consultation Question

Q1. Do you accept that amendments are required to the Care Planning Regulations, to improve information sharing between placing authorities and area authorities, to effectively safeguard and promote the welfare of looked after children placed in distant out of authority placements?

3

Care Planning, Placement and Case Review Regulations 2010 -Regulation 11 (Placement Decision)

- 3.1** Regulation 11(1) of the Care Planning Regulations requires that a “nominated officer” from the responsible authority must approve a decision to place a looked after child outside of their area.
- 3.2** Whilst such an arrangement is likely to be adequate for decisions where children are simply placed across a boundary in adjacent authorities, evidence from the reports of the OCC, APPG and the Expert Group suggest that extremely vulnerable children are placed at a considerable distance from their homes, where they can become “out of sight, out of mind”. At March 2012, 44% of children and young people in residential care were placed “out of area” and 28% of children placed in children’s homes were more than twenty miles from their area local authority. Distance in itself can be a “pull factor” leading to children going missing. Therefore, in view of the serious implications of the decision, we are proposing that when a child is to be placed both out of authority and “at a distance” then the decision to place the child must be approved by the DCS
- 3.3** Before approving any decision we would expect that the DCS is satisfied that wherever the child is placed, there are clear arrangements in place to ensure that the child will be effectively safeguarded. The DCS will also have to be satisfied that the services provided by the placement, or other services in the area where the child will be living, such as schools and health services, will provide a suitable response to the child’s needs. These processes should, of course, also take the child’s own wishes and feelings into account.

Consultation Question

Q2. Do you agree with our proposal to amend Regulation 11 of the Care Planning Regulations so that the decision to place a child in a distant out of authority placement has to be approved by the responsible authority's Director of Children's Services?

Q3. We do not want to place a barrier to a child being placed in an adjacent authority that may remain close to the child's community or be even closer than a placement within the same authority dependent on borders. Therefore we would value your views as to how "distance" should be defined in this context.

Should distance be based on mileage from the child's home address (20/25+ miles); travelling time or on some other formula – e.g. where a child is placed within a region of co-terminus LAs where information is shared and resources are pooled, they would be deemed to be in a "local" placement?

- 3.4** Regulation 11(d) of the Care Planning Regulations currently requires that, before the nominated officer approves a placement decision, the area authority is notified. We are proposing to amend this regulation so that before the DCS approves a decision to place a child in a distant out of authority placement, the area authority has to be **consulted**. This proposal is intended to ensure that placing authorities are fully informed about the issues in the area where the child is to be placed - for example, whether there is evidence of children from children's homes being targeted for sexual exploitation in the area where the home is located; that the home collaborates in local safeguarding arrangements; and whether services in the area have the capacity to respond to the specific needs of the child concerned. We recognise that in order to implement our proposal, local authorities will need to have contingencies in place for emergency placements. These could be modelled on procedures that must already be followed by local authorities to permit the DCS to authorise the detention of children in secure accommodation for seventy-two hours on welfare grounds, pending application for a Secure Accommodation Order.

Consultation Question

Q4. Do you agree with the proposal that area authorities must be consulted before the DCS can approve a decision to place a child in a distant out of authority placement?

Q5. When a placement has to be made in an emergency, what should be the minimum expectation for consultation with the area authority?

- 3.5** We are proposing that, in future, the process for notifying an out of authority placement should involve the placing authority sharing the child's care plan with the area authority (see paragraph 4.2. below). This information should be shared at the consultation stage so that there can be an informed discussion about whether plans for the child's out of authority placement are appropriate in view of the responsible authority's assessment of the child's needs.

Consultation Question

Q6. Apart from that listed in 3.5, what additional arrangements (if any) will area authorities and placing authorities need to have in place so that there is a meaningful and constructive consultation between authorities when an out of authority placement is being considered? For example, a named contact or dedicated mailbox to alert authorities to incoming placements.

Q7. Apart from local children's services, are there other services that should be consulted prior to the DCS being able to approve the placement of a looked after child in a distant out of authority placement – e.g. local health services; the virtual headteacher; local youth justice services; other, please specify.

Q8. Would any of the proposals in Section 3 incur any new resource requirements for your organisation? If your answer is "yes" – please describe the additional resources involved.

4 Care Planning, Placement and Case Review Regulations 2010 - Regulation 13 (Notification of Placement)

- 4.1 Regulation 13 requires that the responsible authority must give written notification to a number of persons of the arrangements for the child's placement before this placement takes place. If the placement is made in an emergency then notification should take place within five working days of the start of the placement, unless it is not reasonably practicable to do so. We know that currently this system is flawed and many placements are taking place without adequate notification being given. Local authorities responsible for safeguarding may be unaware that very vulnerable children have been placed in their area by the child's responsible local authority. In response to this difficulty, we are proposing to require responsible authorities to consult with the area authority prior to placement.
- 4.2 We are further proposing to amend Regulation 13 to specify the information that must be included in notification from placing authorities to area authorities. For the future, we are proposing that inter-authority notifications must include the following information:
- The child's care plan (if this has not already been provided as part of the consultation in a 'distance' placement) giving details of the responsible authority's assessment of the child's needs and the reasons why the placement in the area authority is the most suitable for responding to these. This should also include details of the child's education and health needs and how the placing authority expects these to be met whilst the child is placed out of area.
 - Whether the child is subject to youth justice supervision requirements that will need to be delivered by Youth Offending Services in the area authority.

Consultation Question

Q9. Do you agree that arrangements for notifications should be strengthened as outlined above so that they include specific regulatory requirements as to the information (which includes the care plan for the child concerned) that must be provided to the area authority by the placing authority?

Care Planning, Placement and Case Review Regulations

5 2010 - Schedule 2 Matters to be Included in the Placement Plan

- 5.1** We are proposing to amend Schedule 2 of the Care Planning Regulations so that where there are child protection concerns (including concerns about a risk of sexual exploitation; risks of other forms of abuse; or where the child has gone missing or run away from previous placements) the Placement Plan must include the day to day arrangements put in place by the placement provider (the registered manager of a children's home or foster carer) to keep the child safe. This is intended to ensure that the plan to keep the child safe is integral and inseparable from how the placement responds to the child's needs on a day to day basis.

Consultation Question

Q10. Do you agree that Schedule 2 should be amended so that the provider's strategy for keeping the child safe must usually be included as a significant feature of the Placement Plan for a looked after child?

Care Planning, Placement and Case Review Regulations

6 2010 - Reviews of the Childs Case Care Planning Regulations Part 6

- 6.1** The responsible authority has a statutory duty to review the case of a looked after child and is required to have a written policy about review arrangements that provides for the full participation of the child and, usually, their parents and carers. A review should take place as often as the circumstances of the case require. Such changes would include any safeguarding concerns involving the child (*Children Act Guidance vol2: 4.7*).
- 6.2** Independent Reviewing Officers (IROs) play a pivotal role in ensuring the corporate parenting function of the responsible authority is properly carried out. As described above, however, the reports of the OCC and APPG suggest that the placing authorities have not effectively carried out their corporate parenting function for children placed in distant out of authority placements who have been

persistently missing from placement or who have been vulnerable to sexual exploitation in the area where they have been placed. We are proposing to strengthen regulations concerning reviews so that it is absolutely clear that a statutory review of a care plan must take place in circumstances where there are concerns about a looked after child's safety.

- 6.3** We propose to amend Regulation 33(3) of the Care Planning Regulations to make it explicit that the responsible authority should carry out a review when contacted by the area authority, by the registered manager of a children's home, a foster carer, or by a parent, where there has been a serious incident that raises concerns for the child's safety. For example, if there are concerns that the child is at risk of sexual exploitation; or where there have been safeguarding concerns prompting the area authority to consider a "section 47 enquiry"; or in other circumstances where the area authority request a review should be held, due to its concerns that the placement is unsuitable for the child.
- 6.4** We propose to amend Schedule 7 of the Care Planning Regulations describing the considerations that the responsible authority must take into account when reviewing a child's care plan, so that it is clear that in reviewing all the circumstances surrounding the child's placement (e.g. day to day placement arrangements; placement location; child's behaviour) the review meeting must address the question as to whether the child is being effectively safeguarded. It is already good practice for the safety of each child to be considered at every review but we consider it essential to make this an explicit requirement.

Consultation Question

Q11. Do you agree that a review meeting should be convened in circumstances where any or all of those listed below request that a review is needed, in response to concerns that a child is at risk in their placement?

- ***area authority***
- ***registered manager of a children's home or fostering service***
- ***foster carer***
- ***parent***

Q12. Do you agree that Schedule 7 of the Care Planning Regulations should be amended as outlined in 6.4?

7 Directors of Childrens Services to sign off pathway plans for voluntarily accommodated 16 and 17 year olds who leave care (Part 7)

7.1 Since the Children (Leaving Care) Act 2000 commenced, the trend to discharge young people from care when they are as young as 16 has been reversed - the majority of looked after children now cease to be looked after on attaining legal adulthood on their 18th birthday. However there is still a significant number of young people leaving care at 16/17 (in 2012, 1,710 & 1,720 respectively) which accounts for 34% of all care leavers. Given that most young people can rely on support from their families well into early adulthood, it must be a concern that, for example, 19% of care leavers are 16 year olds. The trend of 16 year olds leaving care is:

2007	2008	2009	2010	2011	2012
2,120	2,040	1,920	1,930	1,900	1,710

7.2 Young people who leave care at 16 and 17 become 'relevant children' and are entitled to support including accommodation, general financial support and education and training support until age 21 or beyond. Evidence from various sources, including the Children Right's Director surveys on care leavers and Children in Care Council meetings, suggest that too many young people are still expected to leave care too soon and are left isolated and living in unsuitable accommodation. Evidence shows that looked after children in long-term care perform better than their peers when comparing Key Stage 4 attainment by the length of time in care. It is also the case that the older a person leaves care the more likely they are to be in education at aged 19. (40% of 18 year olds compared to 28% of those aged 16).

7.3 Where a child is looked after as a result of being subject to a care order, this continues in force until the child reaches 18 (section 91(12) CA 1989) unless it is brought to an end sooner. The child, a person with parental responsibility or the local authority can apply to the court to discharge the care order before the child reaches 18 (section 39). But before the court can discharge the order, it has to be satisfied that this will be in the child's best interests.

- 7.4** We know that for a significant number of 16 year olds their final placement is in a children's home. More than half of the children in children's homes cease to be looked after before they turn 18, compared with around a third of children in foster care.
- 7.5** There is still a significant concern that young people are leaving care too early. The 'After Care' report published by the Children's Rights Director looked at views from 308 young people who had recently left care and those still in care but preparing to leave. The main messages from care leavers were that nearly half (46%) of those surveyed felt they left care too early and were not prepared well enough to leave.

- 7.6** We propose to amend regulation 3, Part 7 of the Care Planning, Placement and Case Review (England) Regulations 2010, in regard to 16 and 17 year old looked after children so that a decision to cease looking after this group of children is not put into effect until it has been approved and signed off by the Director of Children's Services.

Consultation Question

Q13. Do you agree with the proposal that Directors of Children's Services should approve and sign off the pathway plans for voluntarily accommodated 16 and 17 year olds whenever there is a proposal for them to leave care?

Q14. Do you agree that such a change in legislation would help prevent young people leaving care prematurely, so that they only cease to be looked after once they have been properly prepared and provided with a package of support to enable them to make a successful transition to adulthood?

Q15. Please add any final comments concerning the effectiveness of the measures on which we are consulting to effectively safeguard and promote the welfare of looked after children, particularly, those placed outside their responsible authority.

Q16. Do you agree that these proposals will improve collaboration between placing authorities and services in the areas where children are placed to improve the effectiveness of safeguarding arrangements and therefore be in children's best interests?

8 How to Respond

- 8.1 Consultation responses can be completed online at www.education.gov.uk/consultations ; by emailing careplanningregs2010.amendments@education.gsi.gov.uk or by downloading a response form which should be completed and sent to:

FAO Lydia Affie,
Department for Education
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Great Smith Street
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London
SW1P 3BT

9 Additional Copies

- 9.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: <https://www.education.gov.uk/consultations>

10 Plans for making results public

- 10.1 The results of the consultation and the Department's response will be published on the Department for Education e-consultation website by Autumn 2013