

**EXPLANATORY MEMORANDUM TO THE CHILDREN ACT 1989 (VISITS TO
FORMER LOOKED AFTER CHILDREN IN DETENTION) (WALES)
REGULATIONS 2011**

This Explanatory Memorandum has been prepared by the Directorate of Children's Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Children Act 1989 (Visits to Former Looked After Children in Detention) (Wales) Regulations 2011 and I am satisfied that the benefits outweigh any costs.

Gwenda Thomas

Deputy Minister for Social Services

8 March 2011

1. Description

These regulations relate to children (who were voluntarily accommodated under section 20 of the Children Act 1989) who lose their looked after status on entering custody in England and Wales.

The regulations place duties on local authorities in Wales to ensure that children who were looked after by them prior to being detained in a custodial setting (Youth Offending Institutes, Secure Training Centres or Secure Children Homes) and who are “not relevant” children are visited by a representative of the local authority.

Currently, local authorities have ongoing duties to a child / young person (subject to a care order) whilst they are in custody and plan for their release and resettlement into the community. Currently children / young persons voluntarily accommodated prior to remand or sentence lose their entitlement to local authority support as care leavers and consequently local authorities do not have ongoing duties to this group whilst they are in custody.

The regulations will align the treatment of looked after children (accommodated either under a care order or voluntarily arrangements) and place ongoing duties on local authorities to support them whilst in custody (through visits etc) and to plan for their release.

Regulations require the local authority in which the child / young person resides prior to being detained to ensure that its representative visit within 10 working days of the child / young person first being detained. The regulations also require the representative to speak to the child in person unless it is inappropriate, and to make subsequent visits whenever reasonable or as requested by the institute (STC, YOI, SCH etc), the parent (or any person with parental responsibility for the child) or young person.

Local authorities are required to provide a written report of each visit including details of their assessment, care for the child/young person’s welfare and provision of accommodation following the child or young person’s release from the custodial setting.

2. Matters of special interest to the Constitutional Affairs Committee

None.

3. Legislative background

These Regulations are made under section 23ZA of the Children Act 1989, as amended by the Children and Young Persons Act 2008 (s. 15).

Parallel regulations apply in England and will come into force in April 2011. This will ensure that ongoing duties (to visits etc) apply also to English authorities in respect of those looked after children previously in their care prior to entering a custodial setting in Wales.

4. Purpose & intended effect of the legislation

29% of the looked after children population are voluntary accommodated and at any one time there are some 130 children from Wales in the secure care estate (YOI, STC, SCH) across England and Wales. HMI report around 24% of 15 -18 year olds were looked after before entering custody.

Many children who were previously looked after before entering a custodial setting will have limited or no links with families and friends and are unable to keep in contact with them whilst in custody. Similarly, they may not be able to return to the care of a stable family. Older looked after children (15 - 17 years of age) who are voluntary accommodated represent around 29% of the total LAC in that age group (1,204). These young people are particularly vulnerable and it is important that whilst in a custodial setting they can maintain links with the local authority (as their corporate parent) and the local authority can ensure they are visited to ensure their welfare needs are met and to make the necessary preparations for their release and rehabilitation within their local communities or possibly back into care depending on the age and the individuals' circumstances.

5. Process

These Regulations will be supported by statutory guidance issued to local authorities, and the secure care estate which set out detailed arrangements required by the regulations and best practice requirements.

The guide covers; the role / duties of the local authority, Youth Offending Teams ("YOT"), visiting, assessment and planning process, decision making, actions to be taken when there are concerns for a child's safety or welfare, children / young persons serving long term sentences, planning for release, support in the community. The guidance also outlines a framework of matters that partner agencies may wish to consider in developing a protocol between their local authority, YOT and Local Safeguarding Children Board.

6. Implementation

It is intended that these Regulations come into force on 1 April 2011 to coincide with parallel legislation in England being introduced from April 2011. To ensure parity of treatment across the secure care estate in England and Wales similar regulations, guidance and protocols with YOT and others have been developed jointly with Department of Education.

7. Consultation

Consultation has been undertaken from 01 October 2010 to 24 December 2010. The 11 responses were received supported the proposed approach. A copy of the response report will be made available on the Welsh Assembly Government website <http://wales.gov.uk/consultations/?lang=en&status=closed>

Since the consultation, the Regulations have been technically refined.

Regulatory Impact Assessment (RIA)

8. Options

Two options have been considered.

Option One: Making no policy change.

Option Two: Implementing The Children Act 1989 (Visits to Former Looked After Children in Detention) (Wales) Regulations to extend local authorities' duties to children (who were formerly looked after under a voluntary arrangements prior to remand or sentence) in custodial settings.

9. Costs & benefits

Option One: There are no benefits. Potentially it will lead to worse outcomes for children who were formerly looked after and supported under the care system.

Option Two: We expect the following benefits from Option 2:

- Equity of treatment for children who were looked after prior to their remand or sentence irrespective of the legal status;
- Improved safety and welfare systems for these children / young people;
- Re-enforcement of the local authorities' corporate parenting responsibilities for looked after children, ensuring there are robust arrangements in place to exercise ongoing duties irrespective of the legal status of their care;
- Ensuring there is a support system around more vulnerable young people to further safeguard and maintain their welfare whilst in custody and to improve planning for their discharge;
- Improving discharge and life opportunities for these children where local authorities will be required to assess their specific education, housing, health and other needs as well as their ability to care for themselves and / or live independently.
- Supporting reduced recidivism through improved assessment, planning support, and rehabilitation.

10. Costs

There are financial implications arising from these regulations. The main costs falls to local authorities in discharging their duties to visit, maintain links and plan for children / young persons' release. The cost are estimated to be minimal as the number of children in custodial estate affected by these changes are approximated to be 20 at any one time. It is recognised that local authorities' visits to those young people in custodial settings in England will be more costly than those in the Welsh custodial estate of Parc Prison (Bridgend) or Hillside (Neath) .

A total of £4.5m (recurring) has been made available to local authorities in Wales for the implementation of the Children & Young Persons Act 2008 which includes the visiting provisions in these Regulations. For more information on resource to local authorities see;

<http://wales.gov.uk/topics/childrencyongpeople/publications/grantfunding/?lang=en>

11. Competition Assessment

No impact on competition was identified and as such it was not considered necessary to carry out a detailed assessment.

12. Post implementation review

The Welsh Assembly Government will monitor the effectiveness of these Regulations through inspection and performance arrangements with local government. HMI will also monitor the new arrangements.