

2011 No. 583

CHILDREN AND YOUNG PERSONS, ENGLAND

The Children's Homes (Amendment) Regulations 2011

Made - - - - *3rd March 2011*

Laid before Parliament *10th March 2011*

Coming into force - - *1st April 2011*

The Secretary of State for Education, in exercise of the powers conferred by sections 1(4A), 22(1), (2)(c), (d) and (f), (5)(a) and (c), (7)(a), (c), (d) and (j) and 118(5) to (7) of the Care Standards Act 2000(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Children's Homes (Amendment) Regulations 2011 and come into force on 1st April 2011.

Amendment to the Children's Homes Regulations 2001

2. The Children's Homes Regulations 2001(b) are amended as follows.

Amendment to regulation 2

3. In regulation 2 (interpretation)—

- (a) after the definition of "children's guide" insert the following definition—

““designated teacher” means the member of staff at a maintained school who has been designated by the governing body for the purposes of section 20(1) of the Children and Young Persons Act 2008(c);
- (b) omit the definition of "Commission";
- (c) for the definition of "general practitioner" substitute the following definitions—

““general medical practitioner” means a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983(d);

“HMCI” means Her Majesty's Chief Inspector of Education, Children's Services and Skills(e);”;

(a) 2000 c.14. Section 1(4A) was inserted by the Health and Social Care Act 2008 (c.14), Schedule 5, paragraph 2(1) and (3). See section 121 for the definitions of "prescribed" and "regulations".

(b) S.I. 2001/3967, amended by S.I. 2002/865, 2002/2469, 2004/664, 2004/865, 2004/3168, 2005/1541, 2006/1738 and 2009/1895.

(c) 2008 c.23.

(d) 1983 c.54. Section 34C was inserted by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234).

(e) HMCI is the registration authority in relation to England under section 5 of the Care Standards Act 2000.

- (d) in the definition of “placement plan” for “12(1)” substitute “12 or 12A”;
- (e) in the definition of “Primary Care Trust” for the words “established under section 16A of the National Health Service Act 1977” substitute “continued or established under section 18 of the National Health Service Act 2006(a)”;
- (f) in the definition of “registered dental practitioner” after the words “dentists register under” insert “section 14 of”; and
- (g) after the definition of “responsible individual” insert—
 - ““secure children’s home” means a children’s home used for the purpose of restricting liberty and approved for that purpose in respect of which a person is registered under Part 2 of the Act;”.

Amendment to regulation 3

- 4. In regulation 3 (excepted establishments)—
 - (a) in paragraph (1)(c)—
 - (i) for “day care” substitute “childcare”; and
 - (ii) for “Part XA of the 1989 Act” substitute “section 18 of the Childcare Act 2006(b)”;
 - and
 - (b) in paragraph (3) for “day care” substitute “childcare”.

Substitution of “HMCI” for “the Commission”

- 5.—(1) In regulations 4(2), (3)(c) and (5), 5(b), 6(2)(c)(i), 7(2), 10, 15(2)(f), 16(2)(c), (f)(iii) and (g), 24(4)(a) and (b) and (7), 27(3), 33(5)(a), 34(2), 36(2)(b) and (3), 37(1), (2), (4) and (5), 38, 39(1)(a) and (c), 40(1), (2) and (4) for “the Commission” in each place where it occurs substitute “HMCI”.
- (2) In regulation 24 (complaints and representations)—
 - (a) in sub-paragraph (7) for “its” substitute “HMCI’s”; and
 - (b) in sub-paragraph (4)(b) for “it” substitute “HMCI”.
- (3) In regulation 36(2)(b) for “its” substitute “HMCI’s”.

Amendment to regulation 12

- 6.—(1) For the heading before regulation 12 (child’s placement plan) substitute “Placement plan for a child who is not looked after”.
- (2) For paragraph (1) substitute—
 - “(1) Where a child who is not looked after by a local authority is placed in a children’s home by a voluntary organisation, the registered person must co-operate with the voluntary organisation in agreeing and signing the placement plan prepared for the child in accordance with regulations 4 and 5 of the Arrangements for the Placement of Children by Voluntary Organisations and Others (England) Regulations 2011(c) (“the 2011 Regulations”).
 - (1A) Where a child who is not looked after by a local authority is placed in a private children’s home other than by a voluntary organisation, the registered person must prepare

(a) 2006 c.41.
 (b) 2006 c.21. Section 18 was amended by the Health and Social Care Act (Consequential Amendments No. 2) Order 2010 (S.I. 2010/813) and the Children and Young Persons Act 2008 (c.21), Schedule 1, paragraph 19(1), (2), (3)(a) and (b) (not yet in force).
 (c) S.I. 2011/582.

a placement plan for that child in accordance with regulations 4 and 5 of the 2011 Regulations.

(1B) In all other cases the registered person shall, before providing accommodation in a children's home for a child who is not looked after by a local authority, or if that is not reasonably practicable, as soon as possible thereafter, prepare in consultation with the child's placing authority a placement plan for the child setting out, in particular—

- (a) how, on a day to day basis, the child will be cared for, and the child's welfare safeguarded and promoted by the home;
 - (b) the arrangements made for the child's health care and education; and
 - (c) any arrangements made for contact with the child's parents, relatives and friends.”;
- and

(3) At the end insert—

“(5) In this regulation “private children's home” means a children's home in respect of which a person is registered under Part 2 of the Act which is not a community home or a voluntary home.”.

Insertion of regulation 12A

7. After regulation 12 (child's placement plan) insert—

“Placement plan for looked after child

12A.—(1) In the case of a child who is looked after by a local authority the registered person must co-operate with the child's placing authority in agreeing and signing the plan for the child's placement prepared in accordance with the provisions in regulation 9 of the Care Planning, Placement and Case Review (England) Regulations 2010(a).

(2) The registered person must comply with requests by the child's placing authority to—

- (a) provide it with information relating to the child; and
- (b) provide a suitable representative for any meetings it may hold concerning the child.”.

Amendment to regulation 16

8. In regulation 16(4)(b) (arrangements for the protection of children) after “absent without permission” insert “which has regard to any relevant local authority or police protocols on missing children”.

Replacement of regulation 17

9. For regulation 17 (behaviour management, discipline and restraint) substitute—

“Behaviour management and discipline

17.—(1) No measure of control or discipline which is excessive, unreasonable or contrary to paragraph (2) shall be used at any time on children accommodated in a children's home.

(2) Subject to paragraph (3), the following shall not be used as disciplinary measures on children accommodated in a children's home—

- (a) any form of corporal punishment;
- (b) any punishment involving the consumption or deprivation of food or drink;

(a) S.I. 2010/959.

- (c) any restriction, other than one imposed by the court or in accordance with regulation 15, on—
 - (i) a child’s contact with parents, relatives or friends;
 - (ii) visits to the child by the child’s parents, relatives or friends;
 - (iii) a child’s communications with any of the persons listed in regulation 15(2); or
 - (iv) a child’s access to any telephone helpline providing counselling for children;
 - (d) any requirement that a child wear distinctive or inappropriate clothes;
 - (e) the use or withholding of medication or medical or dental treatment;
 - (f) the intentional deprivation of sleep;
 - (g) the imposition of any financial penalty, other than a requirement for the payment of a reasonable sum (which may be by instalments) by way of reparation;
 - (h) any intimate physical examination of the child;
 - (i) the withholding of any aids or equipment needed by a disabled child;
 - (j) any measure which involves—
 - (i) any child in the imposition of any measure against any other child; or
 - (ii) the punishment of a group of children for the behaviour of an individual child.
- (3) Nothing in this regulation shall prohibit—
- (a) the taking of any action by, or in accordance with the instructions of, a registered medical practitioner or a registered dental practitioner which is necessary to protect the health of the child;
 - (b) the taking of any action immediately necessary to prevent injury to any person or serious damage to property; or
 - (c) the imposition of a requirement that a child wear distinctive clothing for sporting purposes, or for purposes connected with the child’s education or with any organisation whose members customarily wear uniform in connection with its activities.

17A Restraint

(1) Subject to paragraph (2), a measure of restraint may only be used on a child accommodated in a children’s home for the purpose of—

- (a) preventing injury to any person (including the child who is being restrained);
- (b) preventing serious damage to the property of any person (including the child who is being restrained); and
- (c) in the case of a child accommodated in a secure children’s home, preventing the child from absconding from the home,

and then only where no alternative method of preventing the event specified in subparagraphs (a) to (c) is available.

(2) Where a measure of restraint is used on a child accommodated in a children’s home—

- (a) the measure of restraint must be proportionate, and
- (b) no more force than is necessary should be used.

17B Policies and records

(1) The registered person must prepare and implement a written policy (in this regulation referred to as the “behaviour management policy”) which sets out—

- (a) the measures of control, discipline and restraint which may be used in the children’s home; and
- (b) the means whereby appropriate behaviour is to be promoted in the home.

(2) The registered person must—

- (a) keep under review and where appropriate revise the behaviour management policy; and
- (b) notify HMCI of any revision within 28 days.

(3) The registered person must ensure that within 24 hours of the use of any measure of control, discipline or restraint in a children’s home, a written record is made in a volume kept for the purpose which must include—

- (a) the name of the child concerned;
- (b) details of the child’s behaviour leading to the use of the measure;
- (c) a description of the measure used;
- (d) the date, time and location of the use of the measure;
- (e) the name of the person using the measure, and of any other person present;
- (f) the effectiveness and any consequences of the use of the measure;
- (g) a description of any injury to the child concerned or any other person and any medical treatment administered;
- (h) confirmation that the person authorised by the registered provider to make the record has spoken to the child concerned and the person using the measure about the use of the measure; and
- (i) the signature of the person authorised by the registered provider to make the record.

(4) Where a measure of restraint is used on a child the record under paragraph (3) must include—

- (a) the duration of the measure of restraint; and
- (b) details of any methods used to avoid the need to use that measure.”.

Amendment to regulation 18

10. In regulation 18(1) (education, employment and leisure activity)—

- (a) for “attainment” substitute “achievement”;
- (b) in sub-paragraph (b) after “including” insert “regular attendance at school and participation in school activities of children of compulsory school age, regular attendance at college where applicable and”;
- (c) in sub-paragraph (c) after “any schools” insert “or colleges”; and
- (d) at the end insert—

“(4) In this regulation “college” means an institution within the further education sector as defined in section 91 of the Further and Higher Education Act 1992(a).”.

Amendment to regulation 20

11. In regulation 20 (health needs of children)—

- (a) in paragraph (1) after “and protect the” insert “physical, emotional and mental”; and
- (b) in sub-paragraph (2)(a) for the words “registered with a general practitioner” substitute “is a registered patient with a general medical practitioner who provides primary medical services under Part 4 of the National Health Service Act 2006”.

(a) 1992 c.13. Section 91 was amended by the Learning and Skills Act 2000 (c.21), Schedule 9, paragraph 42 and Schedule 11 and the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), Schedule 8, paragraph 13(1), (2) and (3).

Amendment to regulation 21

12. In regulation 21(4)(a)(i) (medicines) for “1977” substitute “2006”.

Amendment to regulation 22

- 13.—(1) Renumber regulation 22 (use of surveillance) as paragraph (1) of that regulation.
- (2) At the end of paragraph (1) as so renumbered insert “, subject to paragraph (2),”.
- (3) After paragraph (1) as so renumbered insert—
- “(2) The conditions in paragraphs (1)(a) to (c) above do not apply to a secure children’s home.”.

Amendment to regulation 23

14. In regulation 23 (hazards and safety)—
- (a) in paragraph (a)—
- (i) after “hazards to their” insert “health or”; and
- (ii) at the end insert “and”; and
- (b) omit paragraph (c) and the words from “and shall make” to the end of the regulation.

Amendment to regulation 24

15. In regulation 24 (complaints and representations) at the end insert—
- “(9) The procedure mentioned in paragraph (1) and any written record made under paragraph (5) may be kept in electronic form, provided the information so recorded is capable of being reproduced in a legible form.”.

Amendment to regulation 28

16. In regulation 28 (children’s case records) at the end insert—
- “(4) The record mentioned in paragraph (1) may be kept in electronic form, provided the information so recorded is capable of being reproduced in a legible form.”.

Amendment to regulation 31

17. In regulation 31 (fitness of premises)—
- (a) omit paragraphs (2)(a) and (c);
- (b) for paragraphs (3) to (8) substitute—
- “(3) The registered person shall provide suitable washing, kitchen and laundry facilities for use by staff and, where appropriate, by the children accommodated in the home.
- (4) The registered person shall ensure the children’s home is suitably furnished with adequate living, storage and communal space to—
- (a) meet the needs of the children accommodated; and
- (b) achieve the aims and objectives set out in the statement of purpose.
- (5) The registered person shall ensure that—
- (a) having regard to their need for privacy, each child is provided with sleeping accommodation which is appropriate for their needs, and
- (b) there are, within the children’s home, for the use by children accommodated in conditions of appropriate privacy, a sufficient number of lavatories, wash basins, baths and showers for the number and sex of children accommodated.”.

Amendment of regulation 32

18. In regulation 32 (fire precautions) omit paragraph (1)(c).

Amendment to regulation 33

19. In regulation 33(4)(b) (visits by registered provider) omit “, its daily log of events”.

Amendment to regulation 34

20. In regulation 34(2) (review of quality of care)—

- (a) omit the words “children accommodated in the home, their parents and”; and
- (b) at the end insert “where the placing authority is not the parent of a child accommodated in the home”.

Omission of regulation 41

21. Omit regulation 41 (offences).

Insertion of regulation 42A

22. After regulation 42 (compliance with regulations) insert—

“Application of these Regulations with modifications for short breaks

42A.—(1) In the circumstances set out in paragraph (2), these Regulations apply in relation to a child accommodated in a children’s home with the modifications set out in paragraph (3).

(2) The circumstances are that—

- (a) the child is not in the care of the local authority, and
- (b) the child is placed in a series of short term placements within children’s homes (“short breaks”), where—
 - (i) no single placement is intended to last for more than 17 days,
 - (ii) at the end of each placement the child returns to the care of the child’s parent or a person who is not the child’s parent but who has parental responsibility for that child, and
 - (iii) the short breaks do not exceed 75 days in total in any period of 12 months.

(3) The modifications are that regulations 15(1)(a), 18(1) and 20(2)(a) and (d) do not apply in relation to that child.”.

Amendment to Schedule 1

23. In Schedule 1 (matters to be included in the statement of purpose)—

- (a) omit paragraph 10;
- (b) in paragraph 16, after “arrangements made for” insert “promoting appropriate behaviour, and for”;
- (c) in paragraph 18 for “unauthorised absence of a child” substitute “incident where a child goes missing”; and
- (d) omit paragraph 24.

Amendment to Schedule 3

24. In Schedule 3 (information to be included in the case records of children accommodated in children's homes)—

- (a) in paragraph 10 for “absences of the child from the home, including whether the absence was authorised and” substitute “incidents where a child accommodated in the home goes missing from the home, including”;
- (b) omit paragraph 11;
- (c) in paragraph 15 at the end insert “and where the school has a designated teacher, the name and phone number of that designated teacher”;
- (d) for paragraph 20 substitute—

“20. The name of the general medical practitioner with whom the child is a registered patient, the address of the premises at which the primary medical services are usually provided and the name and address of the child's registered dental practitioner.”.

Amendment to Schedule 4

25. In Schedule 4 (other records with respect to children's homes) omit paragraphs 10 and 12.

Amendment to Schedule 5

26. In the table in Schedule 5 (events and notifications)—

- (a) in the heading to Column 2 for “Commission” substitute “HMCI”; and
- (b) in Column 1 for “Absconding by a child accommodated in the home” substitute “A child accommodated at the home goes missing”.

Amendment to Schedule 6

27. In Schedule 6 (matters to be monitored by the registered person)—

- (a) omit paragraph 3;
- (b) for paragraph 11 substitute—

“11. Any incident where a child accommodated in the home goes missing.”; and

- (c) omit paragraph 17.

3rd March 2011

Tim Loughton
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which are made under the Care Standards Act 2000 (“the Act”) amend the Children's Homes Regulations 2001 (“the Principal Regulations”).

Amendments are made to regulations 2, 3, 20 and 21 of the Principal Regulations to update a number of outdated references.

Regulation 5 makes a number of amendments to replace references to “the Commission” with a reference to “HMCI” defined in regulation 3 as Her Majesty's Chief Inspector of Education, Children's Services and Skills who is now the registration authority for children's homes.

Regulation 6 amends regulation 12 of the Principal Regulations (child's placement plan) so that the regulation does not apply to any child being looked after by a local authority and to reflect the provisions in the Placement of Children by Voluntary Organisations and Others (England) Regulations 2011.

Regulation 7 inserts regulation 12A into the Principal Regulations to provide that, in the case of a child that is looked after by a local authority, the registered provider is under a duty to co-operate with the child's placing authority in agreeing and signing the plan for the child's placement prepared in accordance with the provisions in regulation 9 of the Care Planning, Placement and Case Review (England) Regulations 2010.

Regulation 9 substitutes regulations 17, 17A and 17B for regulation 17 of the Principal Regulations (behaviour management, discipline and restraint). Regulation 17A provides that measures of restraint should only be used to prevent injury to any person (including the child being restrained) and serious damage to property and only where no alternative method of preventing that injury or damage is available. The regulation also provides that restraint can be used in a secure children's home to prevent a child absconding from the home. The regulation also sets out that the use of a measure of restraint must be proportionate and that no more force than is necessary should be used.

Regulation 11 amends regulation 20 of the Principal Regulations (health needs of children) to provide that the registered person shall promote the physical, emotional and mental health of the children accommodated in the home.

Regulation 13 amends regulation 22 of the Principal Regulations (use of surveillance) to provide that certain criteria set out for the use of electronic and mechanical surveillance devices do not apply in secure children's homes.

Regulation 17 amends regulation 31 of the Principal Regulations (fitness of premises) to omit unnecessary regulation and set out the registered persons duties with regards to the premises and accommodation.

Regulation 21 omits regulation 41 of the Principal Regulations (offences) with the effect that it is no longer an offence to contravene or fail to comply with those Regulations. This offence provision is no longer needed as HMCI are able to serve a notice on the registered provider or manager of an establishment or agency under section 22A of the Act when they are failing to comply with the Principal Regulations.

Regulation 22 inserts regulation 42A into the Principal Regulations (application of these regulations with modifications to short breaks) to provide that where the child is not in the care of the local authority and is being placed in the home as part of a series of short term placements certain regulations do not apply to that child.

Further amendments are made to the Principal Regulations to update wording in line with current practice and procedure and to omit unnecessary regulation.

An impact assessment has not been prepared for this instrument as impacts on business, charities, voluntary bodies and the public sector will be minimal.

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STATUTORY INSTRUMENTS

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