



## BRIEFING PAPER

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# Looked after children: out of area, unregulated and unregistered accommodation (England)

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## Summary

This briefing provides information on two separate but related topics concerning looked after children in England:

- Sections two and three cover out of area placements
- Sections four to six cover unregulated and unregistered accommodation.

### Out of area placements

Under the Children Act 1989, accommodation provided by local authorities for looked after children must be “within the local authority’s area” unless this is “not reasonably practicable.”

There is, however, no provision in legislation that prohibits a local authority from placing a child out of its area (an “out of area” placement) and guidance published by the Department for Education (DfE) states that an out of area placement may sometimes be most appropriate for the child.

The number of looked after children placed outside their home local authority increased by around 28% between 2010 and 2020, rising from 37% of all placements to 41% over the period. When questioned about the increase in out of area placements, the Government has stated that they should be “a last resort, unless it is in the child’s best interests”. This can be the case, the Government has said, if the child is at risk of exploitation or needs specialist provision.

In his independent review of residential care, published in July 2016, Sir Martin Narey argued that the issue of out of area placements is not “remotely as straightforward as often suggested” and local authorities should “be cautious about following any hard and fast rule about placement distance.”

Reports by Ofsted, the Children’s Commissioner for England, and the APPG for Runaway and Missing Children and Adults have raised concerns about the increase in the number of out of area placements. The concerns raised include:

- Children are being placed out of area because of a lack of suitable provision closer to home.
- That being placed so far away can be traumatic for children who already have had difficult upbringings.
- The vulnerability of children living far away from home means that they are at greater risk of going missing.
- Children can feel isolated and often do not see loved ones often enough when placed out of area.

### Unregulated and unregistered accommodation

A local authority can place a looked after child in one of a number of settings, including a residential children’s home.

The Care Standards Act 2000, as amended, states that “an establishment in England is a children’s home [subject to some additional provisions] if it provides care and accommodation wholly or mainly for children” (children are defined as people aged under 18). Unless they meet criteria for an exemption, all children’s homes in England must register with Ofsted and meet quality standards set in regulations.

An establishment which meets the definition of a children's home under the Care Standards Act 2000 (and does not meet the criteria for an exemption) but is not registered with Ofsted is referred to as unregistered provision. This is illegal – it is an offence to operate a children's home without the appropriate registration.

Some establishments which provide accommodation to looked after children do not meet the criteria of a children's home and are thus not required to register with Ofsted. These are referred to as "unregulated settings" or "other arrangements." They may include, for example, accommodation where children (usually aged 16 or 17) are provided with support to live independently rather than full-time care.

It is the responsibility of local authorities to make sure any placements in unregulated accommodation are suitable for the children concerned.

The number of looked-after children living in unregulated accommodation increased by 89% between the end of March 2010 and the end of March 2020, from 3,430 to 6,480.

Concerns have been raised by some stakeholders about the increasing number of children, including some under the age of 16, being placed in unregulated accommodation. In September 2020, a report published by the then Children's Commissioner, Anne Longfield, called for a ban on the use of unregulated settings for all children aged under 18.

## Government reforms

In February 2021, the Government published its [response to a consultation on unregulated settings](#). The response stated that the Government would ban the placement of children under-16 in independent and semi-independent settings. [Regulations providing for this ban](#) come into force on 9 September 2021.

The consultation response additionally stated that:

- The Government would seek to introduce new national standards for independent and semi-independent provision which will be overseen by an Ofsted-led registration and inspection regime. Further consultation with the sector will be conducted in 2021.
- The Government would seek to legislate "at the earliest opportunity" to give Ofsted new powers to take enforcement action against illegal unregistered providers.

# 1. Introduction

Under section 22C of the Children Act 1989, local authorities must arrange for a looked after child to live with one of the following people unless it would not be reasonably practicable or not consistent with the child's welfare:

- Their parent.
- A person who is not a parent but who has parental responsibility for the child.
- Where there was a child arrangements order in force immediately before the child was taken into care, the person named in the order as the person with whom the child was to live.<sup>1</sup>

Where it is not possible for the child to live with one of the above people, the local authority must place the child in "the most appropriate placement available."<sup>2</sup> "Placement" for these purposes is defined as living:

- With a "relative, friend or other person connected with [the child] and who is also a local authority foster parent."
- With a local authority foster parent who is not connected to the child.
- In a children's home.
- In "other arrangements" in accordance with regulations.<sup>3</sup>

This briefing paper provides information on situations where a looked after child is placed in accommodation outside of the local authority area and/or in unregulated accommodation (classed as "other arrangements" under section 22C). It also provides information on illegal unregistered accommodation – settings that meet the definition of a children's home but do not have the required registration with Ofsted.

The final section of the briefing provides information on Government reforms in this area.

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<sup>1</sup> Children Act 1989, section 22C(2)-(4).

<sup>2</sup> As above, section 22C(5).

<sup>3</sup> As above, section 22C(7)(a).

## 2. Out of area placements

### 2.1 Current legislation

Under the section 22C of the Children Act 1989, a placement for a looked after child must be such that they are provided with accommodation “within the local authority’s area” unless that is “not reasonably practicable”.<sup>4</sup>

Local authorities must also, “so far as is reasonably practicable in all the circumstances of the [child’s] case”, ensure that the placement:

- Allows the child to live near their home.
- Does not disrupt the child’s education or training.
- Allows the child to live together with a sibling whom the local authority is also providing accommodation for.
- Is suitable to the child’s particular needs if they are disabled.<sup>5</sup>

Section 22G of the Children Act 1989 additionally requires that, where it is consistent with their welfare, local authorities must “so far as is reasonably practicable” ensure that accommodation for looked after children is “within the authority’s area...and meets the needs of those children.” This does not include children who are placed with a parent or connected person under section 22C(2) of the Act (see introduction above).<sup>6</sup>

The local authority that takes a child into care is responsible for supporting them, whether they are placed in that authority or outside it.<sup>7</sup>

#### **Box 1: The definition of a “looked after child”**

A child is classed as a “looked after child” in the following two circumstances:

- They are in the care of a local authority pursuant to a care order made by the court (including interim care orders). A local authority has (often shared) parental responsibility for the child and a “right and duty to provide accommodation.”
- They have been provided with accommodation by a local authority under section 20 of the Children Act 1989 for a continuous period of more than 24 hours (with the voluntary agreement of the child’s parents – no court order is required). The child is not in care and the local authority does not have parental responsibility for them. The authority “may, and sometimes must, provide accommodation but, save in certain circumstances, has no right to do so.”<sup>8</sup>

Chapter three of statutory guidance published by the Department for Education (DfE), [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), last updated in June 2015, provides further information on the placement of looked after children. Among other things, the guidance states that an out of area placement may sometimes be most appropriate for the child, for example where they have complex treatment needs or to ensure they are effectively safeguarded. It adds that that such placements require

<sup>4</sup> Children Act 1989, sections 22C(7) and 22C(9).

<sup>5</sup> As above, sections 22C(7) and 22C(8).

<sup>6</sup> As above, sections 22G.

<sup>7</sup> [PQ261236](#), 13 June 2019.

<sup>8</sup> Hershman and McFarlane, *Children Law and Practice*, para F146.

effective planning and information sharing among the services likely to be responsible for meeting the child's needs in the future.<sup>9</sup>

### **Box 2: "Out of area" and "distant placements"**

Where a child is placed in a home outside the local authority's area it is called an "out of area placement". In addition, The Care Planning, Placement and Case Review Regulations 2010, as amended, define placements "at a distance" (i.e. distant placements) as placements "outside the area of the responsible authority and not within the area of any adjoining local authority."<sup>10</sup> The definition of a distant placement was introduced following a [consultation](#) in 2013 and the change came into force on 27 January 2014.<sup>11</sup> Any references in this briefing to out of area placements should be taken to include distant placements.

## **2.2 Process for arranging out of area placements**

The general duties of local authorities towards looked-after children apply to all placements, including those that are out of the responsible authority's area.

There are, however, a number of additional requirements relating to out of area placements. These are set out in the Care Planning, Placement and Case Review (England) Regulations 2010, as amended. Further information is included in the [DfE's statutory guidance on the Children Act 1989](#).

As the DfE's guidance explains, the additional requirements for out of area placements include (but are not limited to):

- A decision to place a child "out of area" must be approved by a nominated officer. "Distant placements" must be approved by the Director of Children's Services. These requirements do not apply where the placement is with the parent, a connected person or a foster carer approved by the local authority.
- Where the responsible authority is considering making a distant placement, it must consult with the authority for the area of the proposed placement and provide a copy of the child's care plan. (This does not mean that the authority where the child is to be placed has a veto).
- The child's wishes and feelings should be taken into account and, where appropriate, the child's relatives or parents should be consulted.
- The responsible authority must make sure that the appropriate persons and services in the receiving authority area are notified.<sup>12</sup>

<sup>9</sup> Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, para 3.31.

<sup>10</sup> Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) as amended, regulation 11(5).

<sup>11</sup> Department of Education, [Improving safeguarding for looked-after children](#), June 2013; [Children's Homes and Looked after Children \(Miscellaneous Amendments\) \(England\) Regulations 2013](#), SI 2013/3239, regulation 18.

<sup>12</sup> Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) as amended, regulations 11 and 9; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, paras 3.31-3.40.

## Emergency placements

An emergency placement occurs when a placement is necessary without any forewarning. The statutory guidance notes that in such circumstances it will not be possible to complete all the prescribed actions. However, as a minimum, the nominated officer/Director of Children's Services must be satisfied of the following before approving a decision:

- The child's wishes and feelings have been ascertained and given due consideration.
- The placement is the most appropriate available consistent with the care plan.

The remaining requirements to consult the area authority etc must be undertaken within five working days.<sup>13</sup>

## Placements in Wales

The statutory guidance notes concerns from the Welsh Government about the "high number of children from England placed in out of authority placements in Wales." It adds that the "evidence suggests that many of these placements lack effective planning and information sharing to determine the availability of local education, health, social and other services to meet the child's needs." A protocol has been developed by the Welsh Government for notifying the local authority and the local health board when a child has been placed there from outside the area. This is attached as an annex the statutory guidance.<sup>14</sup>

## Placements outside England and Wales

A local authority may only arrange for a child in care to live outside England and Wales with the approval of a court.<sup>15</sup> This may only be given if the court is satisfied that:

- Living there would be in the child's best interests
- Suitable arrangements have been made for the reception and welfare of the child in the new country
- The child, if they have sufficient understanding, has consented to living in the new country
- Every person who has parental responsibility for the child has consented.<sup>16</sup>

When placing a child outside England and Wales, the responsible authority must also take steps to ensure that requirements equivalent to those under the Care Planning, Placement and Case Review (England)

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<sup>13</sup> Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) as amended, regulations 11 and 9; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, paras 3.41-3.45.

<sup>14</sup> Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, paras 3.46-3.47.

<sup>15</sup> For a child whom the local authority is providing accommodation under a voluntary agreement, they may arrange accommodation outside England and Wales with the approval of every person who has parental responsibility for the child.

<sup>16</sup> Children Act 1989, Schedule 2, paragraph 19.

Regulations 2010 have been met (the regulations do not apply outside England and Wales).<sup>17</sup>

### Placing children in secure children’s homes in Scotland

There have been reports of English children in care being placed in secure children’s homes in Scotland. In its [2019-20 annual report](#), published in December 2020, Ofsted stated that “there is a serious shortage of secure children’s homes” and that around 20 children “are placed by English local authorities in Scottish secure units due to the lack of available places in England.”<sup>18</sup>

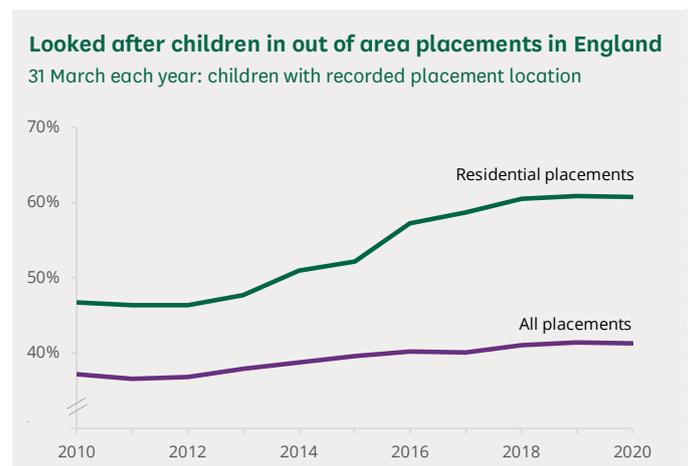
At Spending Review 2020, the Government announced £24 million of funding to “start a new programme to maintain capacity and expand provision in secure children’s homes.” Further information on the funding was provided in response to a parliamentary question in December 2020.<sup>19</sup>

## 2.3 Number of out of area placements

The number of looked after children placed outside their home local authority increased by around 17,800 (28%) between the years ending March 2010 and March 2020, rising from 23,000 (37% of all placements) to 32,850 (41% of all placements).<sup>20</sup>

The issue of out of area placements is most pronounced for residential placements – i.e. children’s homes, secure accommodation and semi-independent living. Over the past decade the proportion of out of area residential placements increased from 47% in the year ending March 2010 to 61% in the year ending March 2020.

The table below shows that the number and proportion of children in residential placements more than 20 miles from their home has also increased, almost doubling in number from 2,100 in 2010 to 4,080 in 2020.



Source: DFE [Looked after children statistics \(various years, table A5\)](#)

<sup>17</sup> Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, para 3.49

<sup>18</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2019/20](#), 1 December 2020, p25.

<sup>19</sup> HM Treasury, [Spending Review 2020](#), CP330, November 2020, p63.

<sup>20</sup> Department for Education, [Looked after children statistics \(various years, table A4\)](#)

## Looked after children in England by distance between home and residential placement

Secure units, children's homes and semi-independent living accommodation

As at 31 March:	20 miles or less from home			20 miles or more from home		
	Inside LA boundary	Outside LA boundary	Total	Inside LA boundary	Outside LA boundary	Total
<b>2010</b>						
number of placements	2,600	1,000	<b>3,680</b>	320	1,700	<b>2,100</b>
% of placements	45%	17%	<b>64%</b>	6%	29%	<b>36%</b>
<b>2020</b>						
number of placements	3,180	2,010	<b>5,190</b>	470	3,620	<b>4,080</b>
% of placements	34%	22%	<b>56%</b>	5%	39%	<b>44%</b>

Source: DFE [Looked after children statistics \(various years, table A4\)](#)

In [response to a parliamentary question in January 2020](#) regarding the increasing number of out of area placements, the Minister, Michelle Donelan, stated that “moving a child out of placement is a last resort, unless it is in the child’s best interests.” She added, however, that “out of area placements can be in a child’s best interests if they are at risk of exploitation or they need specialist provision.”<sup>21</sup>

In its February 2021 [report on the seventh phase of its safeguarding pressures research](#), the Association of Directors of Children’s Services (ADCS) noted that the Covid-19 pandemic had impacted on the availability of placements, with “many out of authority residential settings...not accepting any, or fewer placements during lockdown to comply with restrictions.”<sup>22</sup> Further information concerning pressures on the availability of placements for looked after children more generally is provided in the Library Briefing: [Children’s social care services in England](#).

<sup>21</sup> [HC Deb 20 January 2020](#), cc2-3

<sup>22</sup> ADCS, [Safeguarding Pressures Phase 7: Research report](#), February 2021, p53.

## 3. Reports on out of area placements

### 3.1 Independent review of children's residential care

In July 2016, the former chief executive of Barnardo's, Sir Martin Narey, published the [report of a government-commissioned independent review of children's residential care](#).

The report stated that a number of those who provided evidence to the review had "stressed the importance of a child in residential care being located close to their home." It also noted that the Education Committee had said in 2014 that it could "see the attraction of adopting a rule which prohibits the placement of children more than twenty miles from home unless there is a proven need to do so" (see box five below).

However, while noting the increase in the proportion of children living out of area, Sir Martin said that that he was "not at all convinced of the practicality, or the desirability, of imposing a geographical limit on a child's placement (whether of 20 miles or a greater distance)."

While acknowledging that closeness to home "will carry some advantage" in a large number of cases, the report concluded that the location of the home should be secondary to ensuring that a child is placed in the home that can best care for them:

There will be particular cases when remaining close to home is genuinely vital. And in a larger number of cases, closeness to home will carry some advantage, when, for example, a child is preparing to leave care when local authority influence over services such as housing, health, education, adult and mental health services may be key to a successful transition to adulthood. But, generally speaking, and after visiting homes, talking to staff, to children and to care leavers, I have concluded that the priority should be getting a child in the home that can best care for them, with the location of that home being a secondary consideration.

While location does matter, the issue is not, the report stated, "remotely as straightforward as often suggested." It added that "most of those who commission places know this and search for the right home before the right location." The report recommended that local authorities should "be cautious about following any hard and fast rule about placement distance and to recognise that the right placement for a child is more important than location."

The report said that the goal should be "to have the right home and situated reasonably close to a child's home." Noting the disparity in the location of homes, with an over-supply in the north-west and an under-supply in the south-east, Sir Martin stated that he "saw very little evidence of market management, that is commissioners encouraging or persuading providers to set up the right type of home in the right location." More should be done, he said, "to influence the development

of the market for children’s homes.” The report recommended that local planning authorities should include a clear statement in their Local Plans “of the housing need for children in children’s homes, so providers understand whether or not additional homes are required.”<sup>23</sup>

### Box 3: Education Committee report on residential children’s homes

In its March 2014 report, [Residential Children's Homes](#), the Education Committee said that it could “see the attraction of adopting a rule which prohibits the placement of children more than 20 miles from home unless there is a proven need to do so”. While acknowledging this could be a “blunt instrument” – because of the need to sometimes place in specialist accommodation some way away – the Committee recommended that “the Government commissions a study, assessing the impact of a rule prohibiting local authorities from placing a child more than 20 miles from home, unless there is a proven need to do so”.<sup>24</sup>

In its [response to the report](#), the Government said that it understood the Committee’s concerns but did “not believe that conducting a separate study on the implications of a 20-mile radius cap, in isolation from other factors, would help to resolve the core issues affecting the quality of local authority placement commissioning and social work support”. Instead, it said, “the solution we and the sector continue to work towards is ensuring sufficient local provision to accommodate the needs of the children in care”.<sup>25</sup>

## Government response

The then Government responded to the independent review in December 2016. The response did not explicitly refer to the report’s doubt about the desirability of imposing a geographical limit on a child’s placement.

Regarding the commissioning of care more broadly, the Government stated that it was committed to using the [Children’s Social Care Innovation Programme](#) “to support local areas to develop commissioning arrangements that could lead to significant savings, wider placement choice and better outcomes for children.”<sup>26</sup>

## 3.2 Ofsted annual report 2018-19 (January 2020)

In its [2018-19 annual report](#), published in January 2020, Ofsted noted that the number of children’s homes “continues to rise” but that the increases “are not spread evenly across the country.” The north west of England, for example, saw an increase of 60 homes over the year, while the south east saw a decrease of nine homes. The report stated that this “uneven distribution of children’s homes around England can mean that some children are placed in children’s homes far from their original

<sup>23</sup> [Residential Care in England: Report of Sir Martin Narey’s independent review of children’s residential care](#), July 2016, pp24-7.

<sup>24</sup> Education Committee, [Residential Children's Homes](#), 2013–14 HC 716, 12 March 2014, pp25–26, paras 77–82.

<sup>25</sup> Education Committee, [Residential Children's Homes: Government Response to the Committee's Sixth Report of Session 2013–14](#), 2014–15 HC 305, 16 June 2014, pp9–10.

<sup>26</sup> Department for Education, [Government response to Sir Martin Narey’s Independent Review of Residential Care](#), December 2016, pp17-8.

home.” For some, the report said, this can be “wholly appropriate as part of the child’s care plan”, but for others “it is an area of concern.”<sup>27</sup>

In her commentary on the report, the Chief Inspector, Amanda Spielman, stated that there are “not enough children’s homes in the right places across the county.” She added that “without purposeful planning and an injection of capacity into the system, the children’s home market will continue to grow in a way that does not necessarily meet children’s needs.”<sup>28</sup>

### 3.3 Children’s Commissioner for England report on out of area placements (December 2019)

In December 2019, the then Children’s Commissioner for England, Anne Longfield, published a report on out of area placements: [Pass the Parcel: children posted around the care system](#).

While acknowledging that out of area placements can happen for legitimate reasons, including the need to be kept safe from criminal gangs or sexual predators, the report stated that children are often placed out of area “because there is nowhere suitable for them to live locally.” “Many children”, it said, “end up going to live in children’s homes run by private companies, often operating in cheaper and less ‘desirable’ parts of the country.”

The report stated that children placed out of area are more likely to have complicated and fragmented histories, and more likely to have experienced multiple moves. Being so far away from their hometowns can, it said “be another trauma for children who have already had difficult upbringings.” This trauma could, the report suggested, be why children living far away from home are “at much higher risk of going missing.”

The report added that the vulnerability of children living far away from home means that they are “easy targets for exploitation for criminal gangs, who are expanding drugs markets though ‘county lines’ activity into semi-rural areas.” This exploitation and the fact that many go missing means, the report said, that these children can pose challenges for services – “the difficulties for the police, health and education services of having a constant flux of very vulnerable children concentrated in one area.”<sup>29</sup>

Based on visits to fifteen children’s homes, the report noted ten things highlighted by children involved in out of area placements:

- 1 They are moving home too often.

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<sup>27</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19](#), 21 January 2020, pp39-40

<sup>28</sup> As above, pp16-7

<sup>29</sup> Children’s Commissioner, [Pass the parcel: children posted around the care system](#), December 2019, pp2-3

- 2 They want to feel like normal children, but often they do not. This is sometimes because they are living in children's homes, which is more common for out of area children.
- 3 They feel isolated and often do not see loved ones enough.
- 4 They feel they have no voice, no choice and no freedom.
- 5 Some children believe that being placed far away from home is a form of punishment for past misdemeanours.
- 6 They don't feel social workers are there for them, finding them largely unreliable and unresponsive to their wishes and feelings.
- 7 They are often waiting weeks and months for school after moving homes.
- 8 Some children in need of therapy are not getting it, with some losing their place on long CAMHS waiting lists when they moved.
- 9 The complaints are not universal. Some children recognise the advantages of being placed away from home.
- 10 Some children are getting the right help, but this seemed more common for younger children.<sup>30</sup>

## Recommendations

The report made a number of recommendations, including:

- The Government should make children in care outside of their local areas a specific subject in its upcoming review of the care system (see section 7 below).
- The DfE should:
  - "Urgently review the current proficiency of the residential care market for children."
  - Provide "a capital injection for future commissioning arrangements and consider financial incentives for local authorities which place children locally."
  - Put in place a range of measures aimed at ensuring that children can "easily relay their views and wishes about their care arrangements."
- Ofsted should ensure that children's services inspections "effectively capture the experiences of children living away from their hometowns."<sup>31</sup>

### 3.4 APPG report on children who go missing from out of area placements (September 2019)

In September 2019, the All Party Parliamentary Group (APPG) for Runaway and Missing Children and Adults published [No Place at Home](#), the final report of its inquiry into the risks facing children and young people who go missing from out of area placements.

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<sup>30</sup> As above, pp3-4

<sup>31</sup> Children's Commissioner, [Pass the parcel: children posted around the care system](#), December 2019, pp5-6

## 15 Looked after children: out of area, unregulated and unregistered accommodation (England)

The report noted that previous inquiries carried out by the APPG, in 2012 and 2016, had raised concerns that “children who go missing from care were not receiving the support they need to keep them safe.” One of the biggest concerns highlighted by the earlier inquiries, it said, “was about the high number of vulnerable children placed outside their local authorities.”

Despite changes to national policy and guidance since the earlier inquiries, the report stated, “the evidence suggests children going missing from care and in particular children going missing from out of area placements remains an issue of great concern.”

The report’s key findings included:

- The number of children placed outside their local authorities continues to grow.
- Children continue to be placed out of area “due to a lack of suitable local provision and the uneven distribution of children’s homes across the country.”
- Data suggests that the number of children going missing from out of area placements continues to increase.
- Factors that make children and young people vulnerable to going missing from out of area placements are not addressed and when they do go missing they are at risk of sexual and criminal exploitation.
- Children are not consulted before out of area placements, which causes additional stress and can contribute to why they go missing.

The APPG recommended that the DfE should develop “an Emergency Action Plan to significantly reduce the number of out of area placements.” The plan, it said, should be backed by funding and “should address the supply and the distribution of children’s homes nationally.” The report added that the Government “must take responsibility for ensuring that there are sufficient local placements to meet the needs of looked after children.”

The APPG’s other recommendations included:

- Every out of area placement decision must be supported by evidence to demonstrate that the decision to place a child at a distance will keep that child safe and will meet their long term needs.
- A new requirement should be placed on children’s services to demonstrate that children and young people have been consulted and informed in advance and supported to prepare for any out of area moves. Contact with family and friends must be supported and planned for.
- The Department for Education and the Home Office should develop a cross departmental strategy on tackling child criminal exploitation and County Lines, specifically focusing on the risks to looked after children placed out of area.<sup>32</sup>

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<sup>32</sup> APPG for Runaway and Missing Children and Adults, [No Place at Home: Risks facing children and young people who go missing from out of area placements](#), September 2019, pp5-10

A [Westminster Hall debate](#) on the report, focused on the exploitation of missing looked after children, was held on 23 October 2019. On the issue of out of area placements, the then Minister, Michelle Donelan, stated:

No child should be placed outside their area when that is not in their best interests, and I am grateful to hon. Members for their sustained interest in that issue. Moving a child away from their home is not a decision that any authority takes lightly, and we have strengthened legislative safeguards regarding children who are placed outside their local area.

Directors of children's services are required to sign off each individual decision, and Ofsted can challenge them if it believes that an incorrect decision has been made. It can sometimes be right to place a child outside their local area if there is the risk of sexual exploitation, trafficking or gang violence, but those are the only circumstances in which local authorities should consider such a move. Similarly, such a decision could be made to access provision for children who have complex needs, if such provision is not available locally. The welfare of the child must lie at the heart of this issue, and I am sure hon. Members agree that the child's needs and future must always come first. The needs of the child are paramount, and I will continue working to ensure that our decision-making is based on that.<sup>33</sup>

In response, Anne Coffey, then chair of the APPG on runaway and missing children and adults, stated that a lack of places was preventing local authorities from basing their decisions on the best interests of the child, and urged the Government to take a lead on the issue.<sup>34</sup>

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<sup>33</sup> [HC Deb 23 October 2019, cc48-9WH.](#)

<sup>34</sup> [HC Deb 23 October 2019, c49WH.](#)

## 4. Unregulated and unregistered accommodation

### 4.1 Background

As set out in section 1 above, a local authority can place a looked after child in one of a number of settings, including a residential children's home.

The Care Standards Act 2000, as amended, states that "an establishment in England is a children's home [subject to some additional provisions] if it provides care and accommodation wholly or mainly for children" (children are defined as people aged under 18).<sup>35</sup> The Act additionally specifies certain types of accommodation that are not children's homes. This includes, for example, a place where children live with their parents, relatives or foster carers; schools (unless they provide accommodation for more than 295 days a year); hospitals; and further education colleges.

The Children's Homes (England) Regulations 2015 prescribe nine quality standards which children's homes must meet, with further information provided in guidance published by the DfE.<sup>36</sup>

Unless they meet criteria for an exemption, settings that provide both care and accommodation for children in England must register with Ofsted as a children's home.<sup>37</sup>

### Unregulated provision

Some establishments which provide accommodation to looked after children do not meet the criteria of a children's home and are thus not required to register with Ofsted. These fall into the category of "other arrangements" under section 22C of the Children Act 1989 (see section 1 above) and under the Care Planning, Placement and Review (England) Regulations 2010. They are also, and more commonly, referred to as "unregulated settings"<sup>38</sup> Unregulated settings can include:

- Accommodation for children (usually over the age of 16) who need support to live independently rather than full time care. This comprises:
  - 'Independent living' (e.g. a flat, bedsit or with friends) with or without formal support
  - 'Semi-independent living accommodation' (e.g. hostels, foyers and YMCAs lodgings). Such accommodation is not subject to the children's homes regulations but staff are

<sup>35</sup> Care Standards Act 2000, section 1; Children Act 1989, section 105(1).

<sup>36</sup> Department for Education, [Children's homes regulations, including quality standards: guide](#), 6 March 2015.

<sup>37</sup> As above, section 11. For more information, see Ofsted, [Introduction to children's homes: A children's social care guide to registration](#), July 2018

<sup>38</sup> Children Act 1989, section 22C(6); The Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) as amended, regulation 27; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp74-5.

specifically employed to provide advice and support to residents (they do not have to live in the premises)

- Temporary care and accommodation for children in mobile settings (e.g. boats, holiday cottages or static caravans). This exemption from registration is for leisure, cultural or educational activities and is about the purpose/intent of the placement.<sup>39</sup>

Under regulation 27 of The Care Planning, Placement and Case Review (England) Regulations 2010, local authorities are responsible for ensuring that any placements in unregulated accommodation are suitable for the child concerned. Schedule 6 of the regulations sets out a range of factors that a local authority must consider in determining whether accommodation is suitable.<sup>40</sup> DfE guidance explains that suitable accommodation is accommodation:

- which, so far as reasonably practicable, is suitable for the child in light of his/her needs, including his/her health needs;
- in respect of which the responsible authority has satisfied itself as to the character and suitability of the landlord or other provider;
- which complies with health and safety requirements related to rented accommodation; and
  - in respect of which the responsible authority has, so far as reasonably practicable, taken into account the child's:
    - wishes and feelings; and
    - education, training or employment needs.<sup>41</sup>

## Unregistered provision

An establishment which meets the definition of a children's home under the Care Standards Act 2000 (and does not meet the criteria for an exemption) but is not registered with Ofsted is referred to as unregistered provision. This is illegal – it is an offence to operate a children's home without the appropriate registration. A blog published by Ofsted in July 2019 provided some further discussion of what 'care', which is not defined in law, means in this context:

What does 'care' mean? It is not defined in law. It is not just about the age of the child, although that's a factor. It is about a child's vulnerability and the level of help that they need. If a child does need care, then the service they're getting is very likely to

<sup>39</sup> Department for Education, [Use of unregulated and unregistered provision for children in care: Research report](#), February 2020, p5; [Unregistered and unregulated provision - what's the difference?](#), Ofsted: developments in children's social care blog, 8 July 2019.

<sup>40</sup> The Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) as amended, regulation 27; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp74-5; [Unregistered and unregulated provision - what's the difference?](#), Ofsted: developments in children's social care blog, 8 July 2019.

<sup>41</sup> Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, para 3.119; The Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) as amended, Schedule 6.

need registration as a children's home. Certainly, if children are under constant supervision then this is likely to be 'care'.

It's also not about how long the child lives there. There is an all too common myth that if you only provide care for 28 days you do not need to register – this is not true! It does not matter how long you provide accommodation for. If you're providing care as well as accommodation, then you need to register.<sup>42</sup>

In its [2019-20 annual report](#), published in December 2020, Ofsted provided information on its work investigating potentially unregistered children's homes:

Alongside our regulatory work, we receive and investigate notifications about potential unregistered children's homes. In 2019/20, we undertook 250 investigations.

Just over a third of cases are still in progress. A further third of the settings did not need to be registered; many of these were providers of semi-independent living placements and similar unregulated placements.

Around a quarter should have been registered with us. Most of these (50 settings) have been sent a 'cease and apply' letter, encouraging them to apply to register with Ofsted as a children's home. Most others have ceased to operate, either after realising they had made a mistake, or because the placement was short term and has now ended.<sup>43</sup>

### 4.2 Number of children in unregulated settings

The number of looked-after children living in unregulated accommodation increased by 89% between the end of March 2010 and the end of March 2020, from 3,430 to 6,480.<sup>44</sup> The proportion of looked-after children in these settings also increased; between 31 March 2015 and 31 March 2020, the proportion of looked-after children in semi-independent accommodation increased from 2% to 5%.<sup>45</sup>

In February 2020, the DfE published [an ad hoc analysis](#) of the characteristics of children living in independent and semi-independent living accommodation in England. The key points included:

- A higher proportion of children in independent or semi-independent accommodation at 31 March 2019 were unaccompanied asylum-seeking children (43% and 36% respectively) compared to all looked-after children (6%).
- The vast majority of children in unregulated accommodation are aged 16 and over (98% at 31 March 2019). However, at 31 March 2019 there were 100 children aged under 16 in unregulated accommodation.

<sup>42</sup> [Unregistered and unregulated provision - what's the difference?](#), Ofsted: developments in children's social care blog, 8 July 2019

<sup>43</sup> Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2019/20](#), 1 December 2020, p82.

<sup>44</sup> Department for Education, [Children looked after in England including adoption: 2019 to 2020](#), 15 January 2020; Department for Education, [Looked-after children in independent or semi-independent placements](#), 12 February 2020, p4

<sup>45</sup> Department for Education, [Looked after children statistics \(various years, table A2\)](#).

- The majority of children living independently or in semi-independent accommodation were in a voluntary agreement under section 20 of the Children Act 1989 (72% living independently and 70% in semi-independent accommodation compared to 18% of all looked-after children at 31 March 2019).
- The proportion of children placed inside the local authority boundary is slightly higher for children living independently (62% at 31 March 2019) compared to all looked after children (58%). The proportion is slightly lower for children living in semi-independent accommodation (55%). The proportion of children living independently placed within the local authority boundary has decreased since 2010 (from 68%).
- A high proportion of looked-after children at 31 March 2019 moved into unregulated placements within one week of being looked after (37% of those living independently and 39% for those in semi-independent accommodation). This indicates that the placements could be temporary and may be the child's first placement.
- The East of England and London were responsible for the highest proportion of looked after children aged 16 and over living in unregulated accommodation at 31 March 2019.<sup>46</sup>

In February 2021, the DfE published a [further report](#) focused on looked after children in independent and semi-independent living accommodation under the age of 16. The report's findings included:

- Across 2018-19 there were 660 looked after children placed in independent or semi-independent living accommodation who were under the age of 16 when their placement started.
- Around a quarter of looked after children aged under 16 in these placements were unaccompanied asylum seeking children (compared to 1% of all looked after children under 16).
- The majority of the placements were for less than 3 months and the average duration was 35 days.
- Following their first placement in independent or semi-independent accommodation during the year, 23% of children moved into a different placement in independent or semi-independent accommodation, 18% into a children's home and 13% to a foster placement. Around a quarter of children were still looked after in the same independent or semi-independent placement at 31 March 2019.<sup>47</sup>

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<sup>46</sup> Department for Education, [Looked-after children in independent or semi-independent placements](#), 12 February 2020, pp4-14.

<sup>47</sup> Department for Education, [Looked after children aged under 16 in unregulated placements](#), February 2021, p4.

## 5. Reports and debates

This section provides brief information on recent reports and debates relevant to the issue of unregulated and unregistered accommodation.

### 5.1 Ofsted annual report 2019-20 (December 2020)

In her commentary on [Ofsted's 2019-20 annual report](#), the then Chief Inspector, Amanda Spielman, highlighted "growing concerns about unregistered children's homes" and stated that sufficiency issues "may be leading to greater use of unregistered provision."

In the absence of a clear definition of 'care', the report stated, some providers operate children's homes without realising they are doing so. It added that other providers misuse exemptions intended for holidays and sport trips to "accommodate children in a succession of short placements, denying them stability." Explaining the purpose of the exemptions more clearly in guidance would help the sector, the report said.

The report additionally stated that a small number of companies are "purposely setting up short-term arrangements to avoid registering as children's homes." "Whatever their intentions", the report added, "they are filling a gap in current provision [and] without further investment in the sector, this gap will remain."<sup>48</sup>

#### **Box 4: Education Committee inquiry on children's homes**

In February 2021, the Education Committee launched an inquiry into children's homes, as part of its work examining the issues faced by "left behind groups."<sup>49</sup> The terms of reference for the inquiry, along with a call for written evidence, were published on 15 March 2021. Among other things, the terms of reference invited submissions addressing "the use and appropriateness of unregulated provision." The deadline for submissions is 23 April 2021.<sup>50</sup>

### 5.2 Children's Commissioner report on unregulated accommodation (September 2020)

In September 2020, the Children's Commissioner for England published a report – [Unregulated: Children in care living in semi-independent accommodation](#).

The report stated that it aimed to build on previous research conducted by the DfE (see section 5.3 below) by focusing on the experiences of children themselves. Noting the increase in the number of children placed in unregulated accommodation, the report stated that

<sup>48</sup> Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2019/20](#), 1 December 2020, p22.

<sup>49</sup> Education Committee, [Children in care homes: Education Committee to launch new inquiry](#), 18 February 2021.

<sup>50</sup> Education Committee, [Children in care homes: Education Committee launches call for written evidence](#), 15 March 2021.

“pressures on council budgets, an increase in the number of teens entering care and a lack of suitable placements for them are creating a perfect storm which means that local authorities are overly reliant on poor quality unregulated accommodation.” This, it added, “is closely related to a lack of capacity in children’s homes.”<sup>51</sup>

While it tends to be older teenagers (aged 16-17) who are placed in unregulated accommodation, the report said, “a small but significant majority are under 16.”<sup>52</sup>

“Government data”, the report stated, “suggests serious concerns about the experiences of children in unregulated provision, with high proportions placed out of area, experiencing repeated placement moves and recorded as going missing.” It added that the following two themes had emerged in conversations with children about their experiences of unregulated accommodation:

1. The quality of unregulated accommodation is highly variable and a significant proportion is very poor quality.
2. Even with high quality provision, unregulated accommodation is not right for the majority of children.<sup>53</sup>

Other issues raised by the report included:

- The distinction between care and support is “misleading and unhelpful” and “does not reflect the reality of children’s needs in the real world.”
- There are concerns that the unregulated sector allows for high-profit making and that “some providers are abusing the system, at the expense of children.”<sup>54</sup>

The report made a number of recommendations, including that:

- The use of semi-independent and independent provision should be made illegal for all children in care under the age of 18.
- Urgent action should be taken to increase capacity across the care system.
- New national standards should be introduced to improve the quality for care leavers aged 18-25 placed in semi-independent and independent accommodation.<sup>55</sup>

The subject of unregulated accommodation was also discussed in the Children’s Commissioner’s November 2020 report: [The children who no-one knows what to do with](#).<sup>56</sup>

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<sup>51</sup> Children’s Commissioner, [Unregulated: Children in care living in semi-independent accommodation](#), September 2020, p8.

<sup>52</sup> As above, pp9-11.

<sup>53</sup> As above, pp12-19.

<sup>54</sup> As above, pp20-3.

<sup>55</sup> As above, p24-6.

<sup>56</sup> Children’s Commissioner, [The children who no-one knows what to do with](#), 11 November 2020.

### 5.3 Government research report on unregulated and unregistered provision (February 2020)

On 12 February 2020, the DfE published the [report](#) of research it had commissioned to better understand the increase in the use of unregulated and unregistered provision, and concerns about quality. The research was based on a review of DfE statistics on looked-after children (see section 4.2 above) and in-depth telephone interviews with Ofsted and local authorities.

The key findings from interviews with local authorities included:

- All local authorities involved in the research used unregulated provision and for most it was used as a positive choice to support young people transition to independence.
- Several local authorities use unregulated providers with bespoke packages designed to cater for young people with multiple issues, often as a short-term measure while suitable registered provision is found.
- Some local authorities were not clear on the distinction between unregulated and unregistered provision. As a result, provision described by some local authorities as unregulated may, in fact, be unregistered.
- The growth in the use of unregulated and unregistered provision is driven by two factors:
  - Demand for registered places is outstripping supply
  - Registered children's homes becoming increasingly reluctant to accept children with highly complex needs and challenging behaviours because of the impact it may have on their Ofsted rating.
- A majority of local authorities felt that the quality of unregulated provision is highly variable, with some expressing concerns about the ease with which providers could set up.
- A majority of local authorities believed that some form of regulation is required to ensure the quality of unregulated provision. But this regulation would have to be light touch.<sup>57</sup>

### 5.4 APPG report on children going missing from out of area placements (September 2019)

In its September 2019 report on children who go missing from out of area placements (see section 3.4 above), the APPG on Runaway and Missing Children and Adults cited evidence of an increasing number of children being placed in unregulated accommodation out of area.<sup>58</sup>

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<sup>57</sup> Department for Education, [Use of unregulated and unregistered provision for children in care: Research report](#), February 2020, pp7-10.

<sup>58</sup> APPG for Runaway and Missing Children and Adults, [No Place at Home: Risks facing children and young people who go missing from out of area placements](#), September 2019, pp16-7 & 7

The report set out a number of concerns that had been raised with the inquiry regarding unregulated accommodation, including around the quality of care and the lack of oversight of such settings.<sup>59</sup> It recommended that that “the law must be changed to ensure that unregulated semi-independent accommodation for children is regulated and inspected.”<sup>60</sup>

## 5.5 Adjournment debate on unregulated accommodation, 15 October 2019

On 15 October 2019, Andrew Selous led an adjournment debate on unregulated accommodation for 16 and 17 year olds. In a briefing prepared for the debate, the Local Government Association (LGA) set out its key messages on the issue, including:

- “Where unregulated provision is of high quality, it can provide important flexibility and support young people towards independence.” It must not be confused with illegal unregistered provision.
- “While unregulated settings are the right accommodation for some young people, rising use is partly driven by shortfalls in places in registered children’s homes, often for young people with more complex needs.”
- Financial pressures are “limiting councils’ efforts to develop and maintain the right provision locally. It can mean they are forced to place children out of area or in placements that are not best suited to their needs.”
- The LGA is “concerned by recent reports around some unregulated provision, in particular increasing issues about the vulnerability of young people in unregulated accommodation to organised crime, including county lines.”<sup>61</sup>

### Box 5: County lines

The National Crime Agency describes County Lines as a term used “when drug gangs from big cities expand their operations to smaller towns, often using violence to drive out local dealers and exploiting children and vulnerable people to sell drugs. These dealers will use dedicated mobile phone lines, known as ‘deal lines’, to take orders from drug users. Heroin, cocaine and crack cocaine are the most common drugs being supplied and ordered. In most instances, the users or customers will live in a different area to where the dealers and networks are based, so drug runners are needed to transport the drugs and collect payment.”<sup>62</sup>

In response to the adjournment debate, Michelle Donelan, the then Parliamentary Under-Secretary of State for Education, stated that she shared the “concerns and fears about the current state of affairs” and that “it is completely unacceptable for a child to be placed in a setting that does not meet their needs and keep them safe.” She was, she said, considering the checks and inspections needed.”

<sup>59</sup> As above, pp17-8

<sup>60</sup> APPG for Runaway and Missing Children and Adults, [No Place at Home: Risks facing children and young people who go missing from out of area placements](#), September 2019, p10.

<sup>61</sup> Local Government Association, [Local Government Association Briefing 16-17 year olds in unregulated accommodation House of Commons](#), 15 October 2019

<sup>62</sup> [County Lines](#), National Crime Agency, last accessed 19 February 2020.

While there is a place for unregulated provision, the Minister said, not all provision of this type is being used correctly and “the quality across the board is simply not good enough.” She added that the DfE had received reports about some younger children living in unregulated, semi-independent provision. She did not, she said, “want children under the age of 16 to be living in an environment without care.”

Noting that some local authorities “are genuinely unclear about what is permissible in relation to the use of unregulated and unregistered provision”, Ms Donelan stated that she was working to “ensure that there is new statutory guidance so that everyone involved in providing care to looked-after-children and care leavers is absolutely clear about what is required of them.”<sup>63</sup>

## 6. Government consultation and reforms on unregulated provision

### 6.1 Review of the care system

The Conservative Party manifesto for the 2019 general election included a commitment to “review the care system to make sure that all care placements and settings are providing children and young adults with the support they need.”<sup>64</sup>

Following delays as a result of the coronavirus outbreak, the review, which is being led by Josh MacAlister, was launched on 15 January 2021.<sup>65</sup> Further information on the review is provided in section 6.2 of Library Briefing 8543, [Children's social care services in England](#).

### 6.2 Consultation on unregulated provision

In a written statement on 12 February 2020, after providing information on the review of the care system (see above), the Education Secretary stated that unregulated provision was an issue “that cannot wait and require[s] immediate action.” He would, he said, publish a consultation that day “on a set of new measures to ensure appropriate use of these placements.”<sup>66</sup>

The introduction to the consultation document, published on 12 February 2020, provided more information on why the Government was looking into the issue of unregulated provision:

A growing number of children, particularly older children and Unaccompanied Asylum-Seeking Children, are being placed in independent and semi-independent settings, which are not registered or inspected by Ofsted.

These placements form a vital part of the care system in meeting the needs of older children who are ready to live with an increased level of independence. However, we are concerned that independent and semi-independent settings are not always good enough, and that some children are being placed at risk and/or in settings that cannot meet their needs. We are particularly concerned that increasing numbers of children under the age of 16 are being placed in situations where either the provider is only offering support and not care, or care is being provided but the provider is operating illegally (an unregistered setting). It is unacceptable for any child or young person to be placed in a setting that does not meet their needs and keep them safe, for any amount of time.

Whilst there is a place for independent and semi-independent provision in the care system, to support young people to transition to living independently, it is clear that reform is needed to ensure

<sup>64</sup> Conservative Party, [Get Brexit Done: Unleash Britain's Potential: The Conservative and Unionist Party Manifesto 2019](#), p14

<sup>65</sup> DfE, [Education Secretary launches review of children's social care](#), 15 January 2021; [PQ125246](#), 4 December 2020.

<sup>66</sup> As above.

it is being used appropriately and meets the needs of the young people placed there.<sup>67</sup>

The consultation set out a number of proposed changes, including:

- Banning the use of independent and semi-independent placements for children under the age of 16.
- Introducing a new requirement on local authorities to consult with local police forces when they place a child out of area in unregulated provision.
- Amending legislation to define 'care' in order to provide clarity on the distinction between unregulated and unregistered provision.
- Introducing new national standards for providers of unregulated provision. The consultation seeks views on how the standards should be introduced and enforced.
- Legislate to increase Ofsted's enforcement powers "so that robust action can be taken quickly where providers are found to be acting illegally."<sup>68</sup>

The consultation was originally set to close on 8 April 2020 but, as a result of operational pressures, the deadline was extended to 3 June 2020.<sup>69</sup> The deadline was further extended to 23 June to allow people aged 14 to 30 currently in care or with previous experience of the care system to submit their views.<sup>70</sup>

## Government response and proposed reforms

The Government published [its response to the consultation](#) on 19 February 2021.

The response stated that the Government would ban the placement of children under-16 in independent and semi-independent settings. It explained that the Government would amend the Care Planning, Placement and Case Review (England) Regulations 2010 "to make it a condition of placing in "other arrangements settings" (i.e. independent and semi-independent settings) under section 22C(6)(d) of the Children Act 1989 that the child is aged 16 or over". It added that placements that fall under 'other arrangements' but which are not semi-independent or independent, and are regulated (e.g. registered schools and registered residential care homes) would be exempt from the ban. The response stated that the ban would come into effect in September 2021.<sup>71</sup>

As well as noting that there was "broad support" for a ban on unregulated placements for children aged under 16, the response addressed two concerns raised in responses to the consultation:

- **Calls that unregulated placements should be banned for all children aged under 18.** The response stated that the Government did not agree with this position and that unregulated

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<sup>67</sup> Department for Education, [Reforms to unregulated provision for children in care and care leavers: Government consultation](#), 12 February 2020, p3.

<sup>68</sup> As above, pp8-19.

<sup>69</sup> As above, 12 February 2020, p20.

<sup>70</sup> Children & Young People Now, [CARE EXPERIENCED YOUNG PEOPLE TO GIVE VIEWS ON UNREGULATED SUPPORTED ACCOMMODATION](#), 3 June 2020.

<sup>71</sup> DfE, [Reforms to unregulated provision for children in care and care leavers: Government consultation response](#), February 2021, p9.

provision “when it involves high quality tailored support for older children, is an important part of the care system and is vital in ensuring that there is a range of placement options that reflect the diverse needs of the children in care and care leaver cohort aged 16 and 17.” It did, however, add that “provision needs to be more consistently good” and set out proposals in this area [see section below].

- **The sufficiency issues “that drive the demand for independent and semi-independent placements for under-16s.”** The response stated that the Government recognised “that local authorities sometimes find themselves in positions where the most appropriate placement is difficult to access” and would be “developing plans supported by additional investment to support local authorities to create more places in children’s homes.” It added that further information on this would be set out “in due course.”<sup>72</sup>

## Other changes

As well as banning the use of unregulated accommodation for children aged under 16, the consultation response stated that:

- Recognising the “increasingly important role” of unregulated provision for 16 and 17 year olds, the Government would seek to **introduce new national standards for independent and semi-independent provision** which will be overseen by an Ofsted-led registration and inspection regime. The response added that the Government will “develop national standards and the approach to regulation through further consultation with the sector in 2021”.<sup>73</sup>
- The Government would seek to **legislate to give Ofsted new powers to take enforcement action against illegal unregistered providers**. It added that the Government would “be legislating at the earliest opportunity to give Ofsted these powers” but did not set out a specific timeframe.<sup>74</sup>
- The Government would not be proceeding with the remaining proposals in the consultation as it believed the proposed reform programme “diminishes the need for and potential impact of these additional measures.”<sup>75</sup>

## Response to the reforms

The Local Government Association welcomed the Government’s reform announcements as “positive steps” and stated that the commitment to funding to increase children’s homes provision was “a helpful recognition of the pressures on placements.” It added, however, that the funding would not be available immediately and that the LGA remained “convinced of the need for wider regulatory reform to deliver the homes children need, alongside investment in workforce and support services.”<sup>76</sup>

<sup>72</sup> As above, pp9-10.

<sup>73</sup> As above, pp12-13.

<sup>74</sup> As above, p15.

<sup>75</sup> As above, pp16-18.

<sup>76</sup> LGA, [LGA responds to announcement that unregulated accommodation for vulnerable children under 16 will be banned](#), 18 February 2021.

The Association of Directors of Children's Services stated that banning unregulated provision for under 16s was "a simple solution to a complex set of problems" and that "regulatory reform is essential in addressing these issues." It added that the ban "will have wider implications in terms of placement sufficiency which local authorities have long been grappling with" and called for clarity on how the proposed reforms will be funded.<sup>77</sup>

The Children's Commissioner also welcomed the ban on unregulated provision for under-16s but stated that it needed "to go further and include all under-18s." The Commissioner additionally welcomed the proposals for national standards and Ofsted inspections of unregulated provision, but stated that this "must be done quickly." "A chronic shortage of residential provision" is "at the heart of these problems", the Commissioner said, and must be something that the care review rectifies.<sup>78</sup>

The Children's Rights Charity Article 39 stated that the proposed ban on unregulated accommodation for under 16 year olds would entrench "a two-tier system". It additionally noted that the proposed new standards for unregulated accommodation will not include providing care for children, as establishments that provide care are already required to register as children's homes and adhere to quality standards.<sup>79</sup>

### **Implementation of ban on unregulated accommodation for under 16 year olds**

Regulations providing for the ban on the use of unregulated settings for children aged under 16 – [The Care Planning, Placement and Case Review \(England\) \(Amendment\) Regulations 2021](#) – were laid before Parliament on 19 February 2021. They come into force on 9 September 2021. The regulations were subject to the negative resolution procedure.

In a [report](#) published on 4 March 2021, the House of Lords Secondary Legislation Scrutiny Committee drew special attention to the amendment regulations on the ground that they are "politically or legally important and gives rise to issues of public policy likely to be of interest to the House."

The report added:

Given the serious concerns raised by the Children's Commissioner about unregulated settings, the vulnerability of looked after children at the age of 16 to 17 and the risk of low-quality provision as a consequence of the significant financial pressures on many local authorities, we urge the House to seek assurance from the Minister that any legislation needed to introduce the

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<sup>77</sup> ADCS, [Comment on DfE's announcement on unregulated accommodation for...](#), 19 February 2021.

<sup>78</sup> Children's Commissioner, [Response to the DfE's announcement on unregulated accommodation for children in care](#), 19 February 2021.

<sup>79</sup> Article 39, [Education Secretary gives green light to two-tier care system](#), 19 February 2021.

additional protections for older children to which the Government have committed is introduced at the earliest opportunity.<sup>80</sup>

The regulations were debated in the House of Lords on 22 March 2021. Opening the debate, Lord Watson of Invergowrie, Labour's education spokesperson in the Lords, stated that the regulations were subject of a take note motion because of the concerns raised by the Secondary Legislation Scrutiny Committee and also because "we are extremely concerned by the decision contained in the regulations to prohibit the use of unregulated accommodation only for looked-after children aged 15 and younger, and not for children aged 16 and 17." Lord Watson added that the regulations would "legitimise the absence of care for 16 and 17 year-olds" and "create a two-tier care system, which could lead to a situation where provision to children is based on age rather than need." "In effect", he said "it will reduce the leaving care age to 16."<sup>81</sup>

In response, Baroness Berridge, Parliamentary Under-Secretary at the DfE, reiterated that the Government did not agree that unregulated accommodation should be banned for 16 and 17 year olds. She stated:

We have more older children in the care system and coming into the care system at an older age. We must ensure that there is an option to facilitate development of their independence as they prepare for adult life and leaving care

She added that unregulated placements can sometimes be the best option, including for "older children who have come into care much later and do not want to live in a family-based environment any more." She also insisted that the proposed national standards "will not be minimal" and would be "the same type of regime that regulates schools, boarding schools et cetera."<sup>82</sup>

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<sup>80</sup> House of Lords Secondary Legislation Scrutiny Committee, [47<sup>th</sup> Report of Session 2019-21](#), 4 March 2021, pp1-4.

<sup>81</sup> [HL Deb 22 March 2021, c692](#).

<sup>82</sup> As above, [cc700-2](#).

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