

Explanatory Memorandum to the Visits to Children in Detention (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Visits to Children in Detention (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services
21 October 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the Act) brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities. Section 97 of the Act places a duty on local authorities to visit looked after children and other children to assess any needs that they may have whilst they are in detention.

Section 97 of the Social Services and Well-being (Wales) Act 2014 imposes a duty on a local authority to ensure visits to, and contact with, looked after children and other children. The Regulations make clear who is to be visited and give effect to the provisions contained within section 186 of the Act concerning children and young persons detained in the secure estate in youth detention accommodation, prison or bail accommodation etc.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum for The Care Leavers (Wales) Regulations 2015, The Care Planning, Placement and Case Review (Wales) Regulations 2015 and the code of practice relating to Part 11 of the Social Services and Well-being (Wales) Act 2014 in relation to those detained in the secure estate.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these regulations to be made are contained in Section 97 of the Social Services and Well-being (Wales) Act 2014. The Act creates a right to a visit for all children who are detained in the secure estate in Wales and who are not entitled to ongoing care and support under the Care Leavers (Wales) Regulations 2015, or equivalent English legislation for looked after children, care leavers, or visits for former looked after children in detention.

This instrument is subject to the annulment procedure by the National Assembly for Wales (the negative procedure).

The Regulations will come into force in April 2016.

Current legislation

Regulations made under powers within the Children Act 1989 specify the circumstances where a child in the care of a local authority must be visited by the responsible local authority. Those provisions were extended to children who had been voluntarily accommodated by an amendment to the Children Act 1989 made by the Children and Young Persons Act 2008. Regulations and guidance to give force to those provisions were made in Wales through the Visits to Former Looked after Children in Detention (Wales) Regulations 2011. This ensured that local authorities visited children who had been looked after but who were not care leavers by virtue of never having been subject to a formal care order and who had lost their looked after status when they were convicted and detained in the secure estate.

Proposed Legislation

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The Social Services and Well-being (Wales) Act 2014 will ensure that all Welsh children, detained in the secure estate and certain English children detained in the secure estate in Wales will be visited by a representative of an appropriate local authority (specified within the Regulations) and, where necessary, arrange for appropriate advice and other support to be made available.

The Regulations do not supersede the duties placed on local authorities in England or Wales in respect of looked after or former looked after children but complement them in order to ensure that all children detained in Wales are visited. The Regulations extend the provisions currently made in the Children Act 1989 to all Welsh children in the secure estate, and English children in the secure estate in Wales who are not in receipt of services from local authority social services by virtue of a care order or who had been accommodated voluntarily and retain a right to a visit and support under the Visits to Former Looked After Children in Detention Regulations 2010.

Purpose and intended effect of the legislation

Children and young people detained in the secure estate have the same rights and entitlements under the 2014 Act as anyone else living in the community, unless the 2014 Act specifies otherwise.

Local authorities **must** meet the care and support needs of a child (up to 18 years of age) accommodated in the secure estate, as they would for any child living within the community, and to help them towards self support. However, the responsibility of the local authority is twofold:

- For children from Wales in secure accommodation, whether in Wales or in England, it is the Welsh 'home' local authority that is responsible for their care and support needs. The rationale for this is that this will retain the continuity of care and support arrangements.

- For children from England in the secure estate in Wales the local authority's responsibility will differ depending on the individual child's past involvement with social services:
 - ❖ if, prior to detention, the child had either no involvement with social services, or had 'children in need' status as defined in section 17 of the Children Act 1989, the responsibility will fall to the Welsh local authority in which they are detained
 - ❖ if the child had either section 20 status (voluntarily accommodated under section 20 of the 1989 Act) or section 31 status (subject to a care order under section 31 of the 1989 Act), then the responsibility will fall to the English local authority in which they were ordinarily resident prior to being sentenced.

The Children Act 1989, and the Regulations made under it, notably the Care Planning, Placement and Review of Cases (England) Regulations 2010 and the Visits to Former Looked After Children in Detention (England) Regulations 2010 and the Care Leaver (England) Regulations 2010 are the basis upon which the English 'home' LA retains responsibility for these children.

The Welsh 'home' local authority must consider how it will meet its obligations for young people in the secure estate as the way in which care and support arrangements are operated in the community setting may need to be adjusted to meet the needs of the secure estate.

4. Consultation

A 12 week consultation on the regulations ran between 5 May 2015 and 31 July 2015. Further details on the consultation are set out in the Regulatory Impact Assessment attached at Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care Leavers (Wales) Regulations 2015 and The Care Planning, Placement and Case Review (Wales) Regulations 2015.

Current legislation places a duty on local authorities to visit looked after or former looked after children in their care. The proposed legislation will widen that duty so that **all** Welsh children who are detained in the secure estate are visited by a representative of the local authority where they were normally resident prior to being sentenced to detention in the secure estate. Additionally the local authority where the secure accommodation is situated will have to visit those children from England who are detained in Wales and who are not currently visited by their local authority representative under existing English regulations – i.e. those who are not looked after or were formerly looked after children.

We have identified two options:

- **Option 1:** Do the minimum and retain the current approach to visiting [Welsh] looked after children and former looked after children in the secure estate.
- **Option 2:** Ensure that all Welsh children detained in the secure estate, and those children from England who are in the secure estate in Wales and where there is no statutory duty on the 'home' local authority to visit, are visited and have their needs for advice and support assessed and met where necessary.

Option 1: Do the minimum and retain the current approach to assessment

Under this option the current approach to visiting will remain. This will mean that there will be a number of children in the secure estate (from Wales and from England) who will not be visited by a local authority representative, and whose needs for appropriate advice and other support may therefore not be met. This runs counter to our policy intention, which is that all children from Wales who are held in the secure estate, and all children held in the secure estate in Wales, should be visited so that they can receive the advice and support they need.

Costs

Currently, there are approximately 50 Welsh-resident children in youth detention accommodation. The majority of young people placed in the secure estate are placed in the two Welsh secure establishments: Parc Young Offenders Institute (YOI) in Bridgend and Hillside Secure Children's Home (SCH) in Neath.

Table below shows the children and young people’s secure facilities in Wales as at May 2015

	Type	Population	Local Authority
YOI Parc	Young persons’ unit	Hold young people aged 15 to 17 years – 64 beds	Bridgend
Hillside	Secure Children’s Home	Young people up to 18 years – 22 beds 10 of which available to YJB	Neath

There are 74 Youth Justice beds available in the secure estate in Wales split between two institutions.

Hillside Secure Children’s Home (SCH)

Hillside is an integral part of social services provision for children in Wales. It accommodates up to 22 children and young people of either gender between the ages of 12 – 17 years. As at May 2015, 10 of the 22 beds were commissioned by the Youth Justice Board.

Girls are no longer accommodated in YOIs and are placed in SCHs or secure training centres (STCs).

Parc Young Offender Institution (YOI)

Parc YOI in Bridgend contains 64 beds and accommodates boys aged 15 to 17 years.

Werrington Young Offender Institute (YO) (England)

Werrington YOI in Stoke on Trent accommodates boys aged 15-17 years from North Wales. The YJB has commissioned a service from Werrington specifically to support the needs of young men from Wales.

A small number of children and young people from Wales are accommodated elsewhere in England.

The non-financial costs are that the needs of some particularly vulnerable young people will not be identified and met, and that certain groups of young people will be excluded from provision which their peers receive even though they may have similar needs. Pursuing this option would mean that the Welsh Minister’s policy intention, that all children held in the secure estate, would not be met.

The main risk is that some children in the secure estate will not have their need for advice and support identified and met. If needs are not identified and met while a young person is in custody, this may lead to an increased likelihood of re-offending upon release.

Benefits

If the system remains the same, local authorities will not need to change any of their processes and procedures, nor require any further training of staff of those already working in the social care system and who visit looked after and former looked after children who are serving custodial sentences in the secure estate. No further benefits have been identified under this option.

Option 2: Ensure that all Welsh children detained in the secure estate, and those children from England who are in the secure estate in Wales but where there is no statutory duty on the 'home' local authority to visit, are visited.

This is our preferred option. Under this option all Welsh children in the secure estate, and those English children detained in the secure estate in Wales, will be visited to have their needs for advice and support assessed and, where necessary, met.

Costs

Currently the maximum number of children that can be held in the secure estate in Wales is 74 although Welsh children are also accommodated outside Wales. At any one time approximately 50 Welsh children are serving custodial sentences in the secure estate.

At 31 May 2015, Parc Young Offenders Institute (YOI) was accommodating 55 children. 13 of these were on remand and therefore became looked after as a result of the provisions in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO). The remaining 42 had been convicted of an offence and were serving a custodial sentence.

In the year to 31 May 2015, Parc YOI had a total of 166 admissions of children from Welsh and English local authorities. 90 were from Welsh local authorities and of those 50 (56%) were looked after or former looked after children (6 on a full care order and the remaining 44 remanded and therefore looked after as a result of LASPO). At 31 May 2015, 28 were from Welsh local authorities, with the remaining 27 being from English local authorities. In total, aside from those on a full care order, a further 15 (72%) of the young people from Wales in custody in Parc YOI were either care leavers or former looked after children and were therefore owed a duty by their local authority to visit them.

At 31 May 2015, Hillside Secure Children's Homes was accommodating 15 children, 7 of whom had been placed by the Youth Justice Board and 8 of whom were placed by their local authority. Of the 7 children in YJB beds, 4 were from Wales, and 3 from England. Of the 8 children in local authority placements, 2 were from Wales and 6 were from England.

In the year up to 31 May 2015, there were 56 admissions to Hillside Secure Children's Home. 22 were admitted by the Youth Justice Board, and 34 were local authority placements. Of the 22 children admitted to YJB beds, 17 were from Wales, and 5 from England. Of the 34 children placed by their local authority, 13 were from Wales and 21 from England.

If these figures translate across England and Wales then it can be seen that the extended duty on the local authority where the YOI or SCH is sited will only extend to a limited number of children each year.

There will be some additional costs to local authorities as a result of extending visits to additional groups of children in the secure estate. The provision of any care and support for these children while they are in custody, or upon release, will be made under the new framework for meeting the social care needs of prisoners under Part 11 of the Social Services and Well-being (Wales) Act – and the cost implications of implementing that framework are dealt with in the Regulatory Impact Assessments under that part of the Act.

There may be long term cost savings to local authorities (and to society as a whole) through a reduction in future offending of young people due to the increased support the young person will receive during their time spent in secure accommodation. If a young person's needs for advice and support are assessed and met whilst they are in custody they are more likely to feel that society values them as an individual and therefore they will feel as though they have not been alienated from their communities by virtue of being detained in the secure estate. These longer term benefits may prove to be a worthwhile investment in improved longer term outcomes for those young people.

Benefits

The proposed regulations will bring greater clarity, consistency and improved quality of care and support for all Welsh children and young people who are detained in the secure estate, and English children who are detained in the secure estate in Wales.

Individuals will be provided with an opportunity to exercise greater voice and control over their care and support arrangements whilst they are detained within the secure estate.

Children and young people are likely to benefit from improved consistency and equality to access advice and support, and quicker proportionate assessments of their needs.

The key benefit is the expectation that there will be fewer individuals who re-offend, due to the advice and support they receive whilst detained within the secure estate. This, however, is difficult to quantify.

Summary and preferred option

Option 1 – retaining the current model – is not sustainable and runs counter to the policy intention behind the Social Services and Well-being (Wales) Act. It effectively excludes potentially vulnerable children from receiving the advice and support they need while they are held in the secure estate and upon release. It does not meet the new model of social care in Wales, which is based on assessing and meeting the needs of all citizens rather than certain specific groups (e.g. those children who are formally in care).

Option 2 is the preferred option, because it fits our policy intention that all people in Wales have equal access to the care and support they need, proportionate to their need and vulnerability.

Consultation

The Welsh Government undertook a 12 week consultation on the draft regulations between 4 May 2015 and 31 July 2015, as part of a wider consultation on the regulations and code of practice under Part 6 of the Act.

The responses were supportive of the proposed extension of visits to these further categories of children, but recommended that further guidance be included in the code of practice. Chapter 3 of the code, on 'keeping in touch', has been expanded to include a section on visits to children in detention, which clearly sets out who is responsible for these visits and on what basis.

A detailed consultation response report has been published on the Welsh Government's website.

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

Additionally, the Welsh Government will continue to monitor the impact of the regulation on areas such as the Welsh language, the UN rights of the child and Older People and Equality.