

Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales

Introduction

1. This Practice Guidance is being issued to explain the registration and regulation structure applicable in England and, separately, in Wales for residential care facilities for children and young people. The number of applications made for a court in family proceedings to authorise a residential placement of a young person in circumstances where their liberty may be restricted has increased markedly in recent times. Often the court is invited to exercise its inherent jurisdiction to approve a particular placement at an 'urgent' hearing. Where a residential unit is registered as a 'children's home' in England, or a 'care home service' in Wales, the placement will be regulated and inspected by Ofsted (England) or the Care Inspectorate Wales. The primary focus of this Guidance is to ensure that, where a court authorises placement in an unregistered unit, steps are immediately taken by those operating the unit to apply for registration (if the unit requires registration) so that the placement will become regulated within the statutory scheme as soon as possible. The Guidance requires the court to monitor the progress of the application for registration and, if registration is not achieved, to review its continued approval of the child's placement in an unregistered unit.
2. England and Wales operate separate legal regimes in relation to the regulation and registration of children's homes. As such, this note makes specific reference to the governing legislation in each jurisdiction. It deals with matters that apply to both jurisdictions and with those which are unique to England or Wales.
3. Where application is made to the High Court under its inherent jurisdiction to authorise the deprivation of liberty of a child, it is highly likely the place at which the child is to be accommodated will meet the definition of a children's home or, in Wales, a care home service.

Children's Homes in England

4. The definition of a children's home in England is in section 1(2) of the Care Standards Act 2000 ("CSA")¹.
5. The definition in section 1(2) is subject to the exceptions set out in section 1 and in regulation 3 of the Children's Homes (England) Regulations 2015. The exemption under the regulation 3(2) is aimed at recreation and holidays for less than 28 days so as not to limit the ability of children in care to go on holiday as other children do.

¹ 1(2) An establishment in England is a children's home (subject to the following provisions of this section) if it provides care and accommodation wholly or mainly for children.

6. Section 11 of the CSA requires that any person who provides or manages a children's home in England must be registered in respect of that children's home. Carrying on or managing such provision without registration is an offence.
7. A secure children's home in England is a children's home which is required to be registered under the CSA and approved by the Secretary of State under the Children (Secure Accommodation) Regulations 1991. Placements in secure children's homes are made by an order under section 25 of the Children Act 1989. This guidance is not applicable to the procedure under section 25 of the Children Act 1989.

Care Home Services in Wales

8. In Wales, section 2 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("RISCA") sets out the meanings of regulated services in Wales, which includes "a care home service" in s.2(1)(a). Schedule 1 to RISCA further defines a care home service as the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need. The definition in paragraph 1 of Schedule 1 to RISCA is subject to the exceptions in regulation 2 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.
9. Provision about the requirements for Welsh local authorities making placements in secure accommodation are contained in the Children (Secure Accommodation) (Wales) Regulations 2015. Placements in secure accommodation in Wales are authorised by an order under section 119 of the Social Services and Well-being (Wales) Act 2014. This guidance is not applicable to placements authorised under that section.
10. In Wales, section 5 of RISCA provides that it is an offence for a person to provide a regulated service without being registered in respect of that service. A provider of a care home service that is not properly registered as such would be in breach of section 5 and liable to prosecution by CIW. This includes both those services that are unregistered and those which are registered with CIW to provide a different regulated service.

Registration in England and Wales

11. Registration under both the CSA and RISCA ensures registered persons and service providers are fit to carry on, or manage, the provision, both in terms of their suitability to work with children and the ability to provide care to the required legal standards. In addition, and very importantly, it ensures provision is inspected by Ofsted or Care Inspectorate Wales ("CIW") and action can be taken to respond to shortfalls in the provision of services to children accommodated in the children's home or, in the case of Wales, the care home service.
12. Ofsted and CIW each has powers under the CSA and RISCA respectively to enter and inspect any premises which are used, or which they have reasonable cause to believe are being used as a children's home, or care home service. Where Ofsted or CIW find

that an unregistered children's home or care home service is being carried on and managed without the necessary registration, they have the power to prosecute.

13. Local authorities and providers and managers of unregistered children's homes or care home services will be aware the requirement to register under section 11 of the CSA and section 5 of RISCA remain, despite the making of an order by the court authorising the deprivation of the liberty of a child and placement at an unregistered children's home or care home service.

Best practice

Confirmation of Registration Status

14. When making an application to the court for an order under its inherent jurisdiction to authorise the deprivation of the liberty of a child, the applicant should make the court explicitly aware of the registration status of those providing or seeking to provide the care and accommodation for the child.
15. Local authorities can contact Ofsted or CIW to obtain confirmation as to whether a person is registered in respect of a children's home or secure accommodation service. Every local authority in England can request access to the register of children's homes from Ofsted; while in Wales every local authority can access CIW's online register of regulated services. In addition, confirmation as to the registration status of a person/setting can be obtained by the local authority contacting Ofsted and speaking to the Senior HMI (Social Care) assigned to their region. In Wales, a local authority can contact CIW and speak to the Senior Manager – Local Authority Inspection, assigned to their area.

Not registered: Is registration required?

16. If those providing, carrying on and managing the service are not registered, this must be made clear to the court. The Court should be made aware of the reasons why registration is not required or the reasons for the delay in seeking registration. Registration may not be required because the provision falls within the terms of "unregulated provision" such as supported living which falls outside Ofsted and CIW's scope of registration, or that a statutory exemption applies². In such cases the applicant must make the court aware of the steps it is taking (in the absence of the provision falling within Ofsted or CIW's scope of registration) to ensure that the premises and support being provided are safe and suitable for the child accommodated³. If care rather than support is being provided, then the provision is

² It must be noted that the exemption from registration found in regulation 3(2) of the Children's Homes (England) Regulations 2015 is very unlikely to be applicable in situations where an order is being sought under the Court's inherent jurisdiction.

³ In England, the Care Planning, Placement and Case Review (England) Regulations 2010 set out the steps a local authority must take before placing a child in 'other arrangements' i.e. unregulated settings – Regulation

likely to require registration as a children's home or, in the case of Wales, a care home service.⁴

If registration is required: Next steps

17. Due to the vulnerability of the children likely to be subject to an order authorising a deprivation of their liberty, when a child is to be provided with care and accommodation in an unregistered children's home or unregistered care home service the court will need to be satisfied that steps are being taken to apply for the necessary registration. The court will wish to assure itself the provider of the service has confirmed they can meet the needs of the child. In addition, the court will need to be informed by the local authority of the steps the local authority is taking in the meantime to assure itself that the premises, those working at the premises and the care being given are safe and suitable for the accommodated child.
18. Where an application for registration has been submitted to Ofsted or CIW, the court should be made aware of the exact status of that application.

Court to monitor application for registration and review placement

19. If an order is granted and no application for registration has been made, then the court order should provide that the application for registration should be submitted to Ofsted or CIW within 7 working days from the date of the order. The provider must ensure that application to Ofsted or CIW for registration is complete. Providers should refer to the Ofsted or CIW guidance on applications for registration. The court will need to be advised by the local authority within 10 working days of the order being made that the application for registration has been received by Ofsted or CIW, confirmed as complete, the necessary fee paid where applicable and is capable of determination by Ofsted or CIW.
20. Once the court is satisfied that a complete application has been received by Ofsted or CIW, the court will review the situation regarding the registration status of those carrying on and managing the children's home or care home service in a further 12 weeks. Such review (which may be on paper) will be in addition to any review the court requires to ascertain whether the deprivation of liberty should continue. If the court has not received confirmation from the local authority within 10 working days of the initial order that a complete application for registration has been received by Ofsted or CIW, the court should list the matter for a further immediate hearing.
21. If registration is refused or the applications for registration are withdrawn, the local authority should advise the court of this as a matter of urgency. The court will take this into account when deciding whether the placement of the child in the unregistered

27 and Schedule 6. In Wales, the equivalent provisions are Regulation 30 and Schedule 7 of the Care Planning, Placement and Case Review (Wales) Regulations 2015.

⁴ For guidance on how 'care' is distinguished from 'support' in England refer to Ofsted's Introduction to Children's Homes: a children's social care guide to registration July 2018, Annex A (page 12). For Wales, refer to CIW's registration guidance, Regulation and Inspection of Social Care (Wales) Act 2016 - Registration Guidance (Annex 1 page 32)

children's home or unregistered care home service continues to be in the child's best interests.

Guidance issued by
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