

Appendix 3: Children’s social care placements working group



Legal Framework

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Children Act 1989

1. Councils’ duties in relation to the placement of children in care are outlined in the [Children Act 1989](#) and [associated guidance](#).
2. Sections 20 and 21 in the Act allow for the accommodation of children either voluntarily, for their own protection or by virtue of an order made in criminal proceedings.
3. The Care Planning, Placement and Case Review statutory guidance outlines issues that a council must consider when placing a child:
 - Preference should be given to a placement with a connected person (e.g. a friend or relative)
 - Placements should be close to home, should not disrupt education (especially at key stage 4), enable siblings to live together, be suitable to a child’s needs if they are disabled, and is within the local authority area.
4. [Section 22G](#) of the Act places a duty on councils to take steps to ensure that they are able to provide sufficient accommodation within the authority’s area to meet the needs of looked after children

Unregulated settings

5. Unregulated settings are those which are not regulated by Ofsted and are often referred to as semi-independent accommodation or supported lodgings. They provide support to children, rather than care, and are generally considered a stepping stone to independence. “Unregulated” is different to “unregistered” provision, which is illegal as this is provision that provides care and therefore should be inspected by the regulator. Ofsted issued [this blog](#) in 2019 explaining the difference between unregulated and unregistered.

6. The [Care Planning, Placement and Case Review \(England\) \(Amendment\) Regulations 2021](#) came into force on 9 September 2021. These regulations banned the placement of children under the age of 16 in unregulated settings.
7. Further regulations will come into force in 2023 to regulate what are currently unregulated settings. All providers will be expected to register with Ofsted and meet national minimum standards. A [consultation](#) was launched on 5 December 2022 on the quality standards and inspection regime,
8. The LGA has been supportive of both of these moves, which should improve the consistency and quality of care and support provided to children. However, the LGA has also highlighted the likely impact on availability and cost of placements and subsequently, the potential negative impact on children in care if these issues are not mitigated.
9. Councils continue to report exceptional difficulty in trying to find appropriate registered placements for children in care with very complex needs. This is resulting in councils having to take cases to the family court to ask judges to approve placing children in unregistered settings as the only option to ensure they receive care. Since the introduction of the 2021 regulations, these settings have anecdotally become far harder to access as they are in breach of legislation, and are far more expensive than prior to the regulations. Directors of Children's Services have also been threatened with prosecution by Ofsted where they are accommodating children in unregistered provision.
10. Councils are concerned that when the 2023 regulations are introduced, requiring providers of unregistered accommodation to register with Ofsted, placements will similarly become more difficult to access and more expensive. Ofsted and the Department for Education have been working with providers to identify the likely impact of the regulations, and have also committed to providing councils with new burdens funding in recognition of the likely price increase.