

# **Guidance on supporting disabled children in residential educational settings**

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## Contents

1. Introduction and Purpose .....	1
2. Relevant Legislation .....	2
3. Making the decision about Section 17 or Section 20 (Child Looked After) – guidance for social workers and managers.....	4

## 1. Introduction and Purpose

1.1 Some children with complex disabilities and/or health conditions will require education provision in a specialist residential setting. This provision usually falls in to one of three categories:

- Weekly boarding (returning home at weekends and school holidays)
- 38-week placements (termly with time at home during school holidays)
- 52-week placements (remaining in the provision all year round)

1.2 Central Government guidance and legislation does not set out clear expectations regarding whether children in specialist residential settings should be supported under section 20 of the Children Act (i.e., be looked after by the Local Authority) or under S17 of the Children Act. This guidance sets out the options which the Local Authority (LA) should consider when agreeing how children in these circumstances should be supported.

## 2. Relevant Legislation

2.1 Section 17 of the Children Act 1989 sets out that a child should be considered to be in need if:

- *he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;*
- *his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- *he is disabled*

2.2 For the purposes of this guidance, all children who are disabled are a child in need.

2.3 Section 20 of the Children Act 1989 sets out the circumstances under which LAs (Local Authorities) should provide accommodation for a child:

*Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—*

*(a) there being no person who has parental responsibility for him;*

*(b) his being lost or having been abandoned; or*

*(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.*

2.4 Where a child is accommodated under S20 of the Children Act, legislation sets out a range of support and monitoring which the local authority must put in place. This is usually referred to as being 'looked after'.

[The Children Act 1989 guidance and regulations \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

2.5 Children can be provided with support in the form of accommodation under Section 17 of the Children Act 1989. In this circumstance, the child is not considered to be looked after and therefore is not subject to the regulations referred to above. Instead, the child and family will be supported via S17 Child in Need processes, including Child in Need reviews, visits and updating assessments and Education, Health and Care Plan (EHCP) reviews (if applicable).

[Somerset Children's Services Procedures Manual \(proceduresonline.com\)](http://proceduresonline.com)

- 2.6 There are a small number of children who access specialist residential educational provision who are not in receipt of support from the Local Authority Children's Social Care. Section 85 of the Children Act 1989 sets out the role of the Local Authority in monitoring and supporting these children. See guidance below for further details.

[The Children Act 1989 guidance and regulations \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

- 2.7 The Care Standards Act 2000 sets out when accommodation provided by an educational setting should be considered a children's home, and therefore be regulated by Ofsted. Chapter 14 of the Care Standards Act 2000, Part 1:

*(6) A school is a children's home at any time if at that time accommodation is provided for children at the school and either –*

*(a) in each year that fell within the period of two years ending at that time, accommodation was provided for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days; or*

*it is intended to provide accommodation for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days in any year; and in this subsection "year" means a period of twelve months. But accommodation shall not for the purposes of paragraph (a) be regarded as provided to children for a number of days unless there is at least one child to whom it is provided for that number of days; and paragraph (b) shall be construed accordingly.*

- 2.8 The above indicates that if only one child is to be accommodated for over 295 days, the school must register the accommodation as a children's home. It is silent on the status of the children who live there. The definition of a children's home is that 'it provides care and accommodation wholly or mainly for children'. It therefore follows that children placed in such settings can be considered looked after under Section 20 of the Children Act, or not looked after, and supported under Section 17 of the Children Act.

- 2.9 When Ofsted inspect a children's home, they will review the experiences and progress of all children living there, irrespective of their placement status, and will inspect against the children's homes regulations and any conditions associated with their registration.

### 3. Making the decision about Section 17 or Section 20 (Child Looked After) – guidance for social workers and managers

- 3.1 For a child to be supported under Section 17 or Section 20, parents/carers or those with parental responsibility must consent to receiving services. In most cases, consent will be freely given but it is important to keep this in mind.
- 3.2 Working with families: when considering decision making in this area, it is crucial that you consult closely and regularly with the child and parents/carers.
- 3.3 The wishes and feelings of the child should always be considered within our decision making. Where children are non-verbal, their views should be gained via the use of creative and bespoke direct work, including observations, communication tools (e.g. PECS, EyeGaze, Somerset Total Communication, British Sign Language) as appropriate to the child's needs and ability.
- 3.4 The key focus in decision making is the welfare of the child. In most cases, parents and those with parental responsibility will continue to exercise their parental rights and remain engaged with the child in the setting, including visiting, monitoring their progress, engaging with staff, ensuring that the child's health, education, and care needs are being met. In these circumstances, it is likely that providing support under Section 17 will be the most appropriate intervention.
- 3.5 Some parents and carers may value the additional support and oversight that the CLA (Children Looked After) status provides for their child. It is important that parents and the child understand what being a Child Looked After involves. Such as CLA reviews, having an Independent Reviewing Officer (IRO), having a Personal Education Plan, and CLA Health Assessments.
- 3.6 If the Local Authority has an Interim or full Care Order for the child at the time they enter the accommodation, then the child will continue to hold CLA status. Disabled children living away from home are more vulnerable than other children, particularly when they are not easily able to communicate. The child's social worker should be confident that the parents or carers are fully engaged in supporting and monitoring the child in the setting through regular contact with the provider and visits to the child.

3.7 Due to their level of need, it is likely that disabled children living away from home will benefit from an extensive professional network of support. This network should be involved in decision making and their views should be considered through ongoing consultation and the usual review processes.

3.8 For all children in Residential Educational Settings, their legal status (i.e., supported under S17 or under S20) should be discussed at key review points to ensure the continued appropriateness of the plan, considering any changing circumstance for the child and parents/carers.

3.9 For all children in Residential Educational Settings, where concerns arise regarding their welfare, then the Local Authority must consider what action is needed to ensure that child is safe, and their needs are met.