**Unregulated accommodation and under 16s: quick guide to the 2021 amended regulation**

**Introduction**

The [**Care Planning, Placement and Case Review (England) (Amendment) Regulations**](https://www.legislation.gov.uk/uksi/2021/161/contents/made)**came into force on 9 September 2021**. They amend the [Care Planning, Placement and Case Review (England) Regulations 2010/959](https://www.ccinform.co.uk/legislation/the-care-planning-placement-and-case-review-england-regulations-2010-as-amended-statutory-instrument-2010959/) (referred to in this guide as “the care planning regulations”) to prohibit the placement of looked-after children under the age of 16 in “other settings” (sometimes referred to as “unregulated accommodation”). The aim of the amendment regulations is to ensure that the majority of looked-after children under the age of 16 are placed in foster care or regulated children’s homes.

**Policy background**

Most looked-after children live in settings regulated by Ofsted such as foster care and children’s homes (80% according to the [official statistics](https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2020)). However, an increasing number of looked-after children are being placed in “other arrangements” under 22C(6)(d) of the Children Act 1989. “Other arrangements” settings can include placements in other regulated settings such as residential schools or hospitals. However these placements are often in independent and semi-independent settings that are not required to register with Ofsted or any other regulator.

The government’s view is that “other arrangements” were always mainly intended to permit placement in independent and semi-independent settings for older children transitioning to independence. This might include, for example, supporting young people to live independently in rented accommodation, residential employment, or in supported lodgings/hostels. Government policy is that unregulated independent and semi-independent settings cannot meet the needs of looked-after children under the age of 16 who are very vulnerable and often have complex needs which require the care and support provided by regulated settings.

The intention of the 2021 amendment regulations is therefore to ensure that the majority of looked-after children under 16 are placed in children’s homes or foster care instead of unregulated settings. Limited exemptions have been included for alternative regulated settings that can meet the needs of children under 16. A single exception allows an unaccompanied asylum-seeking child who has a claimed to be aged 16 or above to be placed in ‘other arrangements’ settings pending the outcome of an age assessment (see below).

The Children’s Commissioner and other organisations have [called for](https://www.communitycare.co.uk/2020/11/16/government-showing-deep-rooted-ambivalence-vulnerable-childrens-needs-says-commissioner/) a ban on placing **all**under 18s in unregulated provision. The Government does not believe that the ban should be extended to include 16 and 17-year-old looked-after children. In its view there is a place for independent and semi-independent provision for older children and is instead looking to introduce [national standards](https://www.communitycare.co.uk/2021/08/05/sector-split-unregulated-placements-overhaul-16s-ban-looms/) for these settings.

**Legal background**

The [Children Act 1989](https://www.ccinform.co.uk/legislation/children-act-1989-14/) sets out the way in which a looked-after child is to be accommodated and maintained by a local authority (sections 22A to 22D). A looked-after child is a child who is under the care of the local authority by virtue of a care order made by the court or otherwise accommodated by the local authority for a continuous period over 24 hours (section 22(1)).

Section 22(3) sets out the general duty on the local authority looking after a child to safeguard and promote their welfare. Section 22G sets out the statutory responsibility of the local authority to take steps, as far as reasonably practicable, to secure sufficient accommodation for all looked-after children in their local authority area which meets their needs.

Section 22C sets out the range of accommodation placements for a looked-after child:

* a placement with a parent or other person with parental responsibility for the child. Where that is not consistent with child’s welfare or reasonably practicable, any of the following options, depending which is the most appropriate available;
* a placement with a relative, friend or other connected person who is also a local authority foster parent;
* any other local authority foster parent;
* in a children’s home that is registered in accordance with the [Care Standards Act 2000](https://www.ccinform.co.uk/legislation/the-care-standards-act-2000-6/);
* in “other arrangements” provided the child’s case has been reviewed in accordance with requirements in section 22D of the 1989 act and this is in accordance with the relevant regulations.

The 2010 care planning regulations set out the local authority’s general duties, including what they need to be satisfied of, before placing a child in “other arrangements”. Regulation 27 and schedule 6 set out the requirements that must be complied with such as the need for the local authority to be satisfied about the safety and support available in the accommodation.

The relevant statutory guidance is ‘[The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review](https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review)’. This has been updated to reflect the 2021 amendment regulations.

**What changes are made by the 2021 amendment regulations?**

“Other arrangements” is not defined as a specific setting. Previously, it could be any type of setting that the local authority considered appropriate for the looked-after child in meeting their needs but is not registered as a children’s home and is not a foster care placement in England or Wales (including unregulated settings).

Now, the new regulation 27A provides that a child under 16 must not be placed in “other arrangements” in England unless the accommodation is:

* a care home;
* a hospital;
* a residential family centre;
* a school providing accommodation that are not registered as a children’s home, or
* an establishment providing care and accommodation for children as residential holiday scheme for disabled children.

Before placing the child in “other arrangements” accommodation, under regulation 27 the local authority must:

* be satisfied that the accommodation is suitable for the child;
* unless it is not reasonably practicable, arrange for the child to visit the accommodation, and
* inform the independent reviewing officer (IRO).

Schedule 6 of the 2010 care planning regulations sets out factors that must be considered in determining whether an “other arrangements” placement is suitable for a child aged 16 and over.

In respect of the accommodation, these are:

* (a)  facilities and services provided;
* (b)  state of repair;
* (c)  safety;
* (d)  location;
* (e)  support;
* (f)  tenancy status;
* (g)  the financial commitments involved for the child and their affordability.

In respect of the child, these are the child’s:

* (a)  views about the accommodation;
* (b)  understanding of their rights and responsibilities in relation to the accommodation;
* (c)  understanding of funding arrangements.

The issues that the local authority should take into account when considering these factors is set out in the [statutory guidance](https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review) (see paras 3.128 onwards).

**Cross border placements in the UK**

Under section 22C of the 1989 act, local authorities in England are able to place a child in Wales with foster carers as authorised in accordance with either legislation made under the 1989 act or under the [Social Services and Well-being (Wales) Act 2014](https://www.ccinform.co.uk/legislation/social-services-well-wales-act-2014/) or in a children’s home in Wales regulated under the [Regulation and Inspection of Social Care (Wales) Act 2016](https://socialcare.wales/hub/regulation-and-inspection). All placements of children by local authorities in Scotland would be “other arrangements” placements in accordance with section 22C(6)(d) of the 1989 Act.

In relation to placements in Wales, the 2021 amendments to the care planning regulations prohibit placing a child under 16 in “other arrangements”, unless the accommodation is: accommodation provided by a care home service, a hospital, a family residential service, or a school providing accommodation with nursing or care that is not a care home service.

In relation to placements in Scotland, a child under 16 can only be placed in “other arrangements” if the accommodation is: a residential establishment, a hospital or provided by the Scottish public fostering service, a care home service, or a school care accommodation service.

**Unaccompanied asylum seeking children**

There is one exemption to the prohibition on placements in “other settings” in regulation 27A. This is where a local authority is placing unaccompanied asylum seeking child whose age is uncertain and who claims to be 16 or 17. If that child is later assessed as being under 16, the local authority can keep the child in that accommodation for up to 10 days, whether or not that accommodation is specified in regulation 27A.