

Explanatory Memorandum to:

**Social Services and Well-being (Wales) Act 2014: The Part 6 Code of Practice
(Looked After and Accommodated Children)**

This Explanatory Memorandum has been prepared by the Health and Social Services Department 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:

Social Services and Well-being (Wales) Act 2014: Part 6 Code of Practice (Looked After and Accommodated Children)

Huw Irranca-Davies
Minister for Children and Social Care

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Part 1 – OVERVIEW

1. Description

Part 6 of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') sets out the duties of local authorities in relation to looked after children, including the ways in which they are to be accommodated and maintained, contact and visits, review of cases, leaving care and secure accommodation. Regulations made under this Part include The Care Planning, Placement and Case Review (Wales) Regulations 2015, the Children (Secure Accommodation) (Wales) Regulations 2015, The Visits to Children in Detention (Wales) Regulations 2015, and The Care Leavers (Wales) Regulations 2015. These were supplemented by the Code of Practice on the exercise of social services functions in relation to Part 6. This code was issued in December 2015 and came into effect from 6 April 2016.

This Explanatory Memorandum relates to amendments to the Part 6 Code of Practice (Looked After and Accommodated Children) ('the Part 6 Code'), which will come into force on 2 April 2018.

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

No specific matters have been identified.

3. Legislative background

The Part 6 Code is issued under section 145 of the 2014 Act.

4. Purpose & intended effect of the legislation

The amendments to the Part 6 Code are intended to do three things:

Firstly, the amendments reflect the changes being introduced by the Care Planning, Placement and Case Review (Wales) (Amendment) Regulations 2018 and the Children (Secure Accommodation) (Wales) Regulations 2018, which also come into force on 2 April 2018. These changes are explained in their respective Explanatory Memorandums.

In summary, the key changes are:

- Reducing the notification period for emergency out-of- area placements from five working days to 24 hours. Arrangements for out-of-area placements, including emergency placements and notifications, are covered in chapter 2 of the Part 6 Code, on placements).
- Amending the definition of secure accommodation to include secure accommodation in Scotland, so that placements of a child by a Welsh local authority in secure accommodation in Scotland are subject to the same

safeguards which apply to placements in England and Wales. Placements in secure accommodation in England and Scotland under section 25 of the Children Act 1989 are covered in chapter 7 of the Part 6 Code of Practice, on secure accommodation.

Secondly, the amendments update the Part 6 Code to reflect a change relating to 17 year olds detained under the Police and Criminal Evidence Act 1984. This change was made in 2015, allowing 17 year olds detained under that Act to be treated as children, so that the police can request local authority accommodation for them, rather than holding them in police cells. Although the Children (Secure Accommodation) (Wales) (Amendment) Regulations 2015 were amended to reflect this, the change could not be reflected in the Part 6 Code of Practice because it had already been laid before the National Assembly for Wales. This change is covered in chapter 7 of the (revised) Part 6 Code, on secure accommodation.

Thirdly, the Part 6 Code is being amended to give local authorities the discretion to make long-term placements outside the British Islands where this is in a child's best interests. This change reflects a High Court judgment (February 2017) which challenged the requirements for such placements to be made only for a definite and limited period. The amendment to the Part 6 Code removes the requirement that such placements can only be made a definite or limited period and gives a local authority discretion to allow placements where adequate arrangements are in hand to safeguard and promote the child's welfare including arrangements to supervise and review the placement and continue contact arrangements.

5. Consultation

The amendments to the Part 6 Code of Practice were subject to a formal 12 week consultation between 4 September and 27 November 2017, alongside consultation on the Care Planning, Placement and Case Review (Wales) (Amendment) Regulations 2018 and the Children (Secure Accommodation) (Wales) (Amendment) Regulations 2018.

15 responses were received overall. No further changes were required to be made to the Part 6 Code of Practice as a result of feedback from respondents. A summary of the comments that were made and the Welsh Government's response to these is set out in the consultation summary report published on the Welsh Government website¹ in February 2018.

6. Regulatory Impact Assessment (RIA)

The code is not subordinate legislation made by statutory instrument and for that reason a RIA is not required under 4.2 of the Welsh Ministers Regulatory Impact Assessment Code.

¹ <https://consultations.gov.wales/consultations/secure-accommodation-and-placements-children-out-area>