Short Breaks: Statutory guidance on how to safeguard and promote the welfare of disabled children using short breaks

Frequently asked questions

Introduction

*Short Breaks: Statutory guidance on how to safeguard and promote the welfare of disabled children using short breaks* (Short Breaks Statutory Guidance) is issued as part of a suite of statutory guidance to support implementation of the Care Planning, Placement and Review Regulations which are intended to improve outcomes for looked after children.

In February and March 2011 the Department for Education, the Council for Disabled Children and Together for Disabled Children held a number of regional events to disseminate the new Care Planning, Placement and Case Review (England) Regulations 2010 and related statutory guidance and to discuss their application to short breaks.

This document provides answers to the questions raised at these events.

**Before reading the FAQs please read the [Short Breaks Statutory guidance](#).** This is essential because these FAQs build on and explain aspects of the Statutory Guidance.

If in doubt local areas should consult their own legal advice.
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1. Assessment - See paragraphs 3.1 to 3.15 of the Short Breaks Statutory Guidance

*Which assessment process is appropriate for local offer services and which process is appropriate for providing family support services under section 17?*

The important question is which approach will ensure that those providing a service to the child have sufficient information to meet the needs of the child and promote the outcomes for that child which have been agreed with the family. Paragraphs 3.3 to 3.15 outline in broad terms how the different levels of assessment fit together. It is not possible or desirable for central Government to describe in detail which form of assessment is appropriate for each situation. The principles underpinning the Short Breaks Statutory Guidance are that assessment should be proportionate to apparent need, sufficient information should be available to ensure that the child’s welfare is promoted and safeguarded through the provision of services, and that there is no unnecessary bureaucracy or intrusion into family life.

*Can carers request a separate assessment of their own needs?*

Yes, under certain circumstances carers have a right under the Carers and Disabled Children Act 2000 to an assessment of their needs. The Short Breaks Statutory Guidance makes clear that while there has to be a discrete focus on the needs of the carers the outcome of this assessment should be integrated with the broader assessment of the needs of disabled children and their families. Carers’ assessments should not be conducted in isolation.
2. Direct payments - see paragraphs 5.1 to 5.4 of statutory guidance.

Is there further guidance about direct payments?

Chapter 5 of the Short Breaks Statutory Guidance addresses direct payments and refers to the DH/DCSF guidance on direct payments published in 2009. There is no substantial new guidance because there are no new legislative requirements regarding direct payments.

At the regional Short Breaks events in February 2011 there was concern about how to safeguard children effectively with the increased use of direct payments and the development of individual budgets. In the 2009 Direct Payments Guidance paragraphs 143 to 156 and 162 to 168 in particular contain important information about safeguarding.

As part of the Individual Budget pilots, the Council for Disabled Children has been working with SQW (SQW) the programme evaluators and local authorities to address concerns in regard to personalised approaches and safeguarding. As a result of this some practical materials are being developed which will support local authorities in their decision making. These will be available through the CDC website in June 2011.

What if parents wish to buy overnight care with their direct payment?

Direct payments are provided under section 17A of the Children Act 1989 and local authorities have the same duties to safeguard and promote the welfare of children in need as they do when they are providing or commissioning services. (Section 20 deals with the local authority providing accommodation and therefore is not relevant to direct
Paragraph 163 of the 2009 Direct Payments Guidance states, ‘Where a parent opts for direct payments, councils remain responsible under the 1989 Act for assessing and reviewing the needs of the child and their family in the normal way.’ Where the child’s needs are being met through direct payments there should be a child in need plan which should show how the service provided will safeguard and promote the welfare of the child. If there are grounds to believe that the overnight accommodation or any other service purchased through a direct payment will not safeguard and promote the welfare of the child the local authority should not proceed with the direct payment.

*Can parents purchase overnight care from childminders with their direct payment?*

Yes. It is good practice for families to purchase their short breaks from registered providers as this provides a level of safeguard. The details of the arrangement should be recorded in the children in need plan which will describe the services to be purchased by the direct payment and how these services will meet the assessed needs of the child and family. The plan should also say how the direct payments are to be reviewed. [Please see section 8 for a question about the rationale for local authorities not providing overnight accommodation through childminders.]

*Is it acceptable for a local authority to charge for services and/or direct payments?*

The new Short Breaks Statutory Guidance does not affect the law on charging as outlined in section 17 of the 1989 Act,. Local authorities have a power to charge for services. They must have regard to the means of the family and cannot make charges when families are in receipt of certain benefits [*see below*. They should not just make
charges for direct payments and not for services provided or commissioned by the council. This would not be giving people a fair choice between direct payments and receiving services. Local authorities will have to consider whether the income received by charging will exceed the outgoings resulting from setting up the charging system. (Some LAs have found that the cost of setting up the charging system has been greater than the sum of money brought in by charging, resulting in a net loss to the Council.) It is unlawful for a local authority to set up a charging system for services for disabled children only which does not extend to other children in need.

[* income support under Part VII of the Social Security Contributions and Benefits Act 1992, of any element of child tax credit other than the family element, of working tax credit, of an income-based jobseeker’s allowance or of an income-related employment and support allowance].

3. Will the provision of short break accommodation under section 17(6) or under section 20(4) of the 1989 Act best safeguard and promote the child’s welfare?

See Chapter 2 of the Short Breaks Statutory guidance.

Is there a limit on how long or how frequently local authorities can provide short break accommodation to a child under section 17(6)?

In making the decision to provide short break accommodation under section 17(6), a number of factors should be considered. These are listed in paragraph 2.8 of the Short Breaks Statutory Guidance. In most circumstances where substantial packages of overnight care are provided, it is envisaged that children will be provided with accommodation under section 20(4). Local authorities and families should be aware that a child who is provided with accommodation under section 20(4) for a continuous period
of 24 hours or more will be looked after for the purposes of the 1989 Act\(^1\). Following consultation responses on the draft Short Breaks Statutory Guidance the Government decided not to impose an upper limit on the number of days where a local authority could provide accommodation under section 17(6). This was because length of time away from home is one of a number of important considerations and should not in itself determine the outcome of the local authority’s consideration of the full range of factors in paragraph 2.8.

The Short Breaks Statutory Guidance also says that if the child is placed for a weekend short break which lasts from Saturday morning until Sunday evening, this should count as two placement days.

**Can accommodation be provided under section 17(6) if the child has short breaks in more than one overnight setting, for example a residential unit and a family link scheme?**

Paragraph 2.8 of the Short Breaks Statutory Guidance states that ‘where the child spends short breaks in different settings…it is more likely to be appropriate to provide accommodation under section 20(4)’. A local authority may decide to provide accommodation in more than one setting using section 17(6) and justify this decision, for example, by saying that there are no concerns about the parent’s abilities to ensure that their child’s welfare is safeguarded, and that this particular child is able to articulate any concerns he or she may have about the care provided.

The number of settings is an important factor in the local authority decision making but it is not necessarily the determining factor. The quality of the local authority assessment of the range of factors is the key to ensuring best outcomes for disabled children.

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\(^1\) See section 22(2) of the 1989 Act.
How does a child’s placement in a residential special school affect decisions about whether to provide short breaks under section 17(6) or section 20(4)?

In this question there are two stages when the question of the child’s accommodation will be considered.

First the local authority will consider whether the child should be provided with accommodation under section 20(4) (thus acquiring looked after status) when the child is placed in a residential school. The relevant guidance is in LAC (2003) 13 ‘Children should not normally be maintained in schools by social services departments unless they are looked after, whether under section 20 or section 31. This will ensure their progress is regularly reviewed and their welfare safeguarded. However it will not be necessary or desirable for all children known to/funded by social services and placed in residential schools to be looked after. This judgment should be made following a thorough assessment of the needs of the child and family. It will consider whether the child needs the local authority to take responsibility for the provision of accommodation, with attendant looked after status. In particular it will need to take into account the length of time spent away from the child’s family, the degree of contact between the child and his family, the quality of the child’s primary attachments and any particular vulnerabilities of the child. Where this assessment concludes that section 20 criteria are not met, the local authority may then consider providing financial support for the placement under section 17.’

This part of LAC (2003) 13 is not changed by the new short breaks statutory guidance.

The second point at which the child’s accommodation will be considered is when it is decided to provide short breaks while the child is at home during school holidays.

The considerations in paragraph 2.8 of the Short Breaks Statutory Guidance should determine the local authority’s decision whether to provide short breaks under section
17 or section 20. Where a child is spending substantial amounts of time in a residential setting and requires additional short breaks while at home it is most likely that this child’s needs will be most effectively met through the arrangements for looked after children. In these circumstances it will be important for the local authority to take a holistic view of the child’s current and future needs and satisfy itself that effective multi-agency plans are in place.

*What if parents do not agree with a decision to provide accommodation under section 17 or section 20?*

Social workers will be working in partnership with disabled children and their families in providing short breaks. The views of both children and parents are essential considerations in deciding how best to safeguard and promote the welfare of children. Parents have the right to remove their children from accommodation which has been provided under section 17 or section 20 of the 1989 Act. Where a parent refuses, or removes a child from, accommodation provided under section 17 or section 20, the local authority will only be able to provide accommodation for that child by seeking a care order from the court. It is for the local authority to come to a view about how best to safeguard and promote a child’s welfare, having given due consideration to the view of the parents and wherever possible the child.

It is important that parents understand the practical implications of a decision to provide short break accommodation under section 17(6) or section 20(4) of the 1989 Act, and, in particular, the differences in planning requirements, frequency of visits, reviews, and the involvement of Independent Reviewing Officers (IROs). In some areas many parents are insistent that their child using short breaks should be looked after because this is the way parents see that their child receives sufficient attention from the local authority. It should not be necessary for a child to be looked after to receive an appropriate level of planning and review.
Can medical responsibilities be delegated when short break accommodation is provided under section 17 or section 20?

The child in need plan (when accommodation is provided under section 17(6)) and the short breaks care plan (when accommodation is provided under section 20(4) and regulation 48 of the Care Planning, Placement and Case Review (England) Regulations 2010 applies), must address the particular needs of the child including any needs arising from any disabilities or illnesses the child may have. These plans should use broadly the same headings and both should address the extent, if any, that the parents wish others to act for them in the case of medical emergencies. Where children have invasive care needs, these should be recorded clearly alongside the agreed protocols for their management.

Can the local authority devolve the decision to provide accommodation under section 20 or section 17 to a voluntary agency which is providing overnight care on the local authority’s behalf?

Where a local authority commissions the provision of a broad range of short breaks services for disabled children including referral and assessment of need to a voluntary organisation, it is likely that the initial decision about the appropriate way of ensuring the child’s welfare is safeguarded and promoted will be a matter for the voluntary organisation. However the final decision making responsibility lies with the local authority. A local authority will wish to consider this issue in the service level agreement. The agreement should recognise that the ultimate responsibility lies legally with the local authority and set out the framework for how the voluntary organisation should safeguard and promote the welfare of children.

What if children are provided with accommodation in a hospice or
Many disabled children are accommodated in hospital wards, hospices or other health administered facilities. They are accommodated by NHS staff following agreement with parents. Local authorities are often not involved and therefore such children are not provided with accommodation under sections 17(6) or 20(4) of the 1989 Act.

If such children are referred to the local authority as children in need the local authority will have a duty to consider whether to use any of its powers and duties under Part 3 of the 1989 Act to safeguard and promote their welfare.

In some authorities there is an integrated approach to all overnight short break provision across health and children’s services. This facilitates fairer access to the full range of local short break provision according to need.

**Will the new Care Planning, Placement and Case Review (England) Regulations 2010 ensure that the local authority is informed about short breaks in health settings and hospices?**

These Regulations apply to children provided with accommodation by the local authority. In the context of short breaks this usually means children who are provided with overnight short breaks by the local authority through their powers under section 20(4) of the 1989 Act. They do not impose duties to share information on the NHS.

In many areas Children’s Trusts provide the framework for a multi-agency approach to short breaks. The guidance on the new duty on local authorities to provide short breaks makes clear that effective local partnerships are essential to ensure there is an appropriate range of provision to meet local needs. Sections 10 and 11 of the Children Act 2004 impose duties on health bodies to co-operate with local authorities and to promote and safeguard the welfare of children.
4. A series of placements in the same setting being treated as one placement (regulation 48 of the Care Planning, Placement and Case Review (England) Regulations 2010) see paragraphs 2.16 to 2.28 of Short Breaks Statutory guidance

_Is there flexibility in time limits and settings for the application of regulation 48?_

Regulation 48 allows for easements to planning requirements for children receiving a series of short breaks in the same setting under section 20(4) of the 1989 Act as long as no single placement lasts longer than 17 days and there are no more than 75 placement days in a period of 12 months. These time limits are required by the Care Planning, Placement and Case Review (England) Regulations 2010 and there is no flexibility in that respect. The easements only apply where the series of placements is in the same setting.

5. Independent Reviewing Officers

See [paragraph 2.28 of the Short Breaks Statutory Guidance](#) and the [IRO Handbook](#).

_Do an IRO have to be part of the decision to provide short break accommodation for a disabled child under section 17(6) of the 1989 Act, where accommodation had previously been provided under section 20(4)?_

Yes. A decision to cease to provide short break accommodation for a disabled child under section 20(4) of the 1989 Act will mean that the child’s looked after status will cease. This is a significant change to a child’s care plan. It should therefore be
What is the current role of IROs?

The role of IROs was expanded by the Children and Young Persons Act 2008. From 1 April 2011 the IRO’s responsibilities are extended from monitoring the local authorities functions in relation to a child’s review to monitoring the local authorities functions in relation its broader conduct of the child’s case.

What is the competence and knowledge of IROs in relation to disabled children?

An IRO Handbook is available as part of the suite of guidance aimed at improving outcomes for looked after children. This handbook includes some information on page 33 about the IRO functions in relation to short breaks for disabled children. There will be further information for IROs as part of the web based training material accompanying these FAQs.

Where short breaks cease to be provided under section 20(4) of the 1989 Act and are provided, instead, under section 17(6), the child is no longer looked after and so does not automatically have the benefit of an IRO. What can be done to ensure disabled children have an independent voice when necessary?

When a child is looked after they must have an IRO. If a child is provided with accommodation under section 17(6) of the 1989 Act, that child may still need an independent advocate and that could be provided by an IRO, following consultation with the child and his family. In some cases it will be good practice for the IRO to continue a
level of involvement. However in such a situation the person speaking up for the child’s point of view would not have the statutory responsibilities of an IRO. He or she would be acting more as an advocate.

It is not appropriate that a disabled child using short breaks should be looked after primarily because that child would benefit from having an IRO. Alternative means should be found to ensure that there is proper advocacy for that child.

6. Reviews (see paragraphs 3.19 to 3.26 of the statutory guidance)

Is there a time scale for completing the reviews of children using short breaks whose legal status may be changed as a result of the new guidance?

It is reasonable that this process should be completed as soon as possible and at the latest by October 2011. All children provided with accommodation should be reviewed at least every six months and more frequently when circumstances require. Bearing in mind the reduced requirements of providing accommodation under section 17(6) of the 1989 Act local authorities might find it more cost effective to bring forward these reviews.

Do those children currently receiving fewer than 120 but more than 75 placement days a year in one setting under section 20(4) of the 1989 Act have to be subject to more rigorous planning requirements?

Yes. The Arrangements for Placement of Children (General) Regulations 1991, which were in force before 1 April 2011, allowed for up to 120 days in any 12 months in a
pre-planned series of placements in one setting to qualify for easements in planning requirements. Following widespread consultation with the field the limit of days which could count as a series of short breaks was reduced from 120 to 75. It was reported that this change would affect very few children. The clear majority of respondents thought that if a child was living away from home for nearly a third of the year he should be seen as a looked after child without the easements in planning requirements which apply to children using short breaks.

**Who is responsible for the reviews of children provided with services under section 17?**

The local authority. The Short Breaks Statutory Guidance summarises the requirements of the Assessment Framework regarding the conduct of reviews.

**Does a review of services provided under section 17 of the 1989 Act always have to be a meeting?**

No. Paragraphs 3.23 and 3.24 outline circumstances where a specific review meeting may not be required. For example, short break arrangements might be reviewed alongside other aspects of a child’s educational or health development, when the same people are gathered together. Or the social worker might review the case through a visit the child, phone calls to key people and recording the outcome. A face to face review should take place at least once a year.

**How can health and education professionals be linked into reviews?**

While the details of inter-agency co-operation have to be decided locally the guidance is clear that ‘the review should be multi-agency and take a holistic approach to the needs of the child.’ Families with disabled children are often acutely aware of how much
fragmented reviews waste their time and the time of the professionals involved.

7. Integrated Children’s System and recording

*Will the ICS software be updated in the light of the new regulations?*

In 2009 the Government accepted the recommendation that the future of ICS should be as a locally owned system and that ICS should not mandate a particular approach to front line social work. The Munro review is also encompassing ICS and final recommendations have recently been published. Local authorities are updating their use of ICS software in response to local practice in the light of new statutory requirements. There will be no centrally mandated revision of ICS. It would be more efficient for local authorities to act in consortia in updating their software.

*Is there a model short breaks care plan?*

A model short break care plan is currently in development.

8. Settings for short breaks

Use of residential activity centres

*Parents of a disabled child have heard about a residential activity holiday centre which provides short breaks for one week. What steps should the local authority take to ensure that such a facility is suitable?*

The local authority should check that the activity centre is on Ofsted’s voluntary register. They should make enquiries to ensure that such a facility can meet the needs identified in the local authority’s assessment. If possible the local authority and the child and
his parents should visit the centre before the week’s placement and find out about experiences from other users of the centre. A child in need plan will be drawn up to address issues including the child’s medical needs, extent of any delegation of parental responsibility, contact and so on.

**What is the rationale for not using childminders for overnight care?**

Local authorities should, in accordance with the provisions of the Childcare Act 2006, try to secure childcare that meets the needs of for parents who work night shifts or unsocial hours. This provision does not alter the statutory framework for local authorities providing accommodation for children in need. Foster carers are assessed based on a home study which includes an assessment of all members of the household. They tend to look after children with higher levels of need and for longer periods of time. It is reasonable that there are different types of approval processes for childminding and fostering. Childminding is essentially a universal service agreed between private individuals, and fostering is a targeted service for children in need agreed primarily between the local authority and the foster carer.

*Where a child is provided with short breaks through accommodation under section 17(6) of the Children Act 1989 must the carer be an approved foster carer?*

Whilst care by an approved foster carer is not a statutory requirement if the child is not looked after it is best practice to use an approved foster carer, that is a foster carer who has been approved by the usual procedures set out by the Fostering Services regulations. The *Short Breaks Statutory* states that an approved foster carer is the most appropriate person to provide overnight accommodation whether the child is provided with accommodation under section 20(4) or section 17(6) (i.e. whether or not the child is
9. There is also concern about the welfare of disabled children living away from home in education and health establishments. What is happening about these children?

New legislation and guidance came into force on 1 April 2011. Sections 17 to 19 of the Children and Young Persons Act 2008 amend the 1989 Act to strengthen the local authority duties to ensure the welfare of children is safeguarded and promoted when they are placed in health, and education and other establishments for periods of three months or more. The amended provisions in the 1989 Act and the Regulations made under the new provisions, require the local authority to:

- visit these vulnerable children, maintain contact and step in when there is any significant change in the child’s circumstances; and
- offer a tailored package of services suitable to meet their needs, in particular to support the continuing active involvement of parents in their child’s life.

10. Ofsted

What is Ofsted’s understanding of the new arrangements and its inspection intentions?

The new framework has been developed with helpful and substantial input from Ofsted.

Ofsted will continue its inspections of settings within which short breaks take place. Ofsted published a new framework for inspection of children’s homes which comes into force on the 1 April 2011. Updated guidance on benchmarking for fostering services will be available shortly.
Ofsted also has a yearly programme of unannounced inspections of contact, referral and assessment arrangements.

Following the final recommendations from Munro a new framework for the inspection of local authorities will be introduced in 2012.

**How will the new arrangements be enforced?**

Local authorities will develop internal monitoring processes to ensure compliance with statutory requirements and the Ofsted inspection programme will provide external monitoring. Parents and others will continue to have access to the Ombudsman and to judicial review.