

## **Disabled children and the Children and Young Persons Act 2008**

Supporter briefing – December 2008

### **Introduction**

The Children and Young Persons Act 2008 is the government's flagship new law to improve outcomes for children and young people who are looked after<sup>1</sup> by the state, or who are at risk of needing to be looked after. This includes many disabled children.

EDCM and our partners lobbied hard to get **two key amendments** to the Act as it was going through Parliament, as we had specific concerns that the Bill did not adequately address the needs of disabled children.

- The first amendment creates **a new duty on local authorities to provide short break services** – the first time the law has required local authorities specifically to provide breaks.
- The second amendment is **a new duty to properly support disabled children and their families when children are placed away from home**.

This briefing explains why these amendments are so important, and how they will help disabled children and their families.

### **Note on implementation**

The Children and Young Persons Act became law on 13 November 2008, when it received Royal Assent. However, most of the Act, including these key sections for disabled children, is not yet in force. The government has the power to bring these sections into force by making 'regulations'. EDCM understands that the regulations relating to short breaks will be made in time for 2011, when the short breaks funding from 'Aiming High for Disabled Children'<sup>2</sup> is at its highest. The date when the government intends to bring into force the duties to support disabled children placed away from home has not yet been confirmed. EDCM will tell all our supporters this news through a supporter email when we have it.

### **A new duty on local authorities to provide short break services**

Since its beginning, EDCM has been campaigning for regular, reliable and appropriate short breaks to be available to disabled children and their families who need them.<sup>3</sup> Progress has now been made through the Children and Young Persons Act 2008, which introduces a new duty on local authorities to provide short breaks for disabled children and their families.

This change in the law will make short break provision for disabled children and their families a statutory service. It creates a duty on local authorities in England and Wales to provide short breaks services for disabled children and their families as a care prevention measure.

The wording of the new duty is important. The new legal provision makes clear that breaks should not just be provided to those carers struggling to maintain their caring role, but also

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<sup>1</sup> Children looked after by the state are also known as 'children in care'

<sup>2</sup> 'Aiming High for Disabled Children' is the government programme that invests £370 million in short break services for disabled children and their families from 2008 – 2011. Find out more at [www.edcm.org.uk/ahdc](http://www.edcm.org.uk/ahdc)

<sup>3</sup> See [www.edcm.org.uk/righttobreaks](http://www.edcm.org.uk/righttobreaks)

to those for whom a break would improve the quality of the care they can offer. Short breaks should therefore not just be used as a crisis intervention, but should also be used as a preventative measure, to help parents and carers to maintain and improve the quality of care they naturally wish to provide and to keep more disabled children with their families, and out of the care system.

In addition to the new duty, the government will issue accompanying regulations, which will determine in greater detail what local authorities must do in meeting the new duty. The government is also committed to issuing guidance on the new duty to local authorities. It is hoped that this guidance will be 'statutory' (often known as 'section 7 guidance') which means that local authorities have to follow it unless there is good reason not to do so. EDCM will be lobbying to make the regulations and guidance as strong as possible.

The regulations and the new duty are intended to come into force in April 2011. However it is essential that local authorities use the interim period to develop their provision - in line with the national 'Aiming High for Disabled Children' transformation programme expectations - so as to be in a position to meet the new legal requirements from this date. EDCM supporters can take action by emailing their local authority and asking how they are planning their short breaks services now and beyond 2011 with this new duty in mind – see the **TAKE ACTION!** boxed text below.

We do not yet know exactly how many more disabled children will get a break, or more of a break, as a result of the new duty. This is because how the duty will work in practice will be determined by the regulations and guidance. Influencing the regulations and guidance will be an important part of EDCM and its partner's future work. We will keep all our supporters posted as we get towards implementation of the duty, expected in 2011.

#### The new short breaks duty

The Children and Young Persons Act 2008 adds the provision of short breaks for those who care for disabled children, by amending Schedule 2 of the 1989 (Children) Act so that it reads:

*'every local authority (England and Wales) shall provide services designed to assist individuals who provide care for such children (ie disabled children) to continue to do so, or to do so more effectively, by giving them breaks from caring.'*

#### The full text of the new duty:

##### Care breaks

#### 25 Breaks from caring for disabled children

*Paragraph 6 of Schedule 2 to the 1989 (Children's) Act (provision by local authorities for disabled children) is amended as follows.*

*The existing provision becomes sub-paragraph (1) of that paragraph.*

*In that sub-paragraph, after paragraph (b) insert “; and to assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring.”*

*After that sub-paragraph insert—*

*“The duty imposed by sub-paragraph (1)(c) shall be performed in accordance with regulations made by the appropriate national authority.”*

## **A new duty to properly support disabled children and their families when children are placed away from home**

Disabled children living away from home are some of the most vulnerable members of society. They are often children with severe disabilities, placed in residential settings at the point of crisis, and who communicate in different ways to those who care for them. They are often placed away, particularly in residential special schools, because their needs cannot be met in their home community and families have reached breaking point.

The Children and Young Person's Act 2008 introduces a new duty on local authorities to consider the welfare needs of disabled children and young people living away from home under health or educational placements<sup>4</sup>, and then provide services to meet those needs, if identified.

This amendment does not require local authorities to do anything new. It provides clarity to local authorities on the types of support that should be offered to disabled children who are placed away from home. The new duty requires the local authority to have a tailored package of services suitable to meet the needs of disabled children living outside their area, and in particular the local authority will be required to provide services that support families to stay in contact.

This will make a huge difference to disabled young people in long-term placements, who are often placed far away from home, and can struggle to maintain contact with their families. The amendment should result in practical support to help families stay in touch with their children, such as help with transport costs, and also with essential advice and support to promote a strong relationship between disabled young people living away from home and their families.

The main amendment is backed with a second technical amendment, which clarifies that placing local authorities (i.e. the local authority where a child's family live) retain social care responsibility for children they place. This will be helpful in making sure families know who is responsible for meeting their child's needs when they are placed away from home.

The government has also made a commitment to MPs and to EDCM to introduce a package of regulations and guidance to support the new duty. Critically, we are promised regulations that will require a visit by a local authority representative to any child who is placed away from home and who is not 'looked after' by the state, within 7 days of placement. This helps address EDCM's concern that children who are placed away from home and are not classified as 'looked after' can be invisible and that the current visiting requirements are often ignored.

To summarise, the changes through and around this new duty will mean that:

1. Local authorities must offer services to children placed away from home, particularly services to support their families to continue to play an active role in the child's life
2. Social care professionals will be required to be involved from the outset with children placed away from home under education or health law
3. There will be better guidance on when these children should become 'looked after' and get the full package of support that comes with 'looked after' status

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<sup>4</sup> For example, in a hospital or residential special school.

### **Advocacy for disabled children placed away from home**

The Children's Society and VOICE supported by EDCM and lots of other partners have been lobbying to improve access to advocacy for disabled children placed away from home and other groups of looked after children. We have had reassurances from government that new guidance will require specialist support to be made available for children and young people who have communication support needs or other complex needs to ensure their views are heard when plans for their care are being made or being reviewed. There is also a commitment to undertake research to look at the type of support and skills required, and how to improve the capacity of specialist provision, including advocacy. We also understand that changes will be made to the guidance about making a complaint. The intention is to interpret much more widely the circumstances in which children and young people can raise an issue or concern (this is known as a representation) and if they wish, have the support of an independent advocate in order to pursue the matter. EDCM, the Children's Society and partners will continue to raise these issues as the guidance is developed.

#### **The new duty – support for children placed away from home**

The Children and Young Person's Act 2008 makes provision to support family contact for children who are provided with accommodation under health or education legislation by amending Schedule 2, Part 1 of the Children Act 1989. This amendment creates a duty on local authorities to consider the welfare needs of disabled children in their area who are placed in education or health settings away from home, and then provide services to meet those needs. The duty makes clear the types of support local authorities should be providing to disabled children placed away from home.

#### **Provision for accommodated children**

*After paragraph 8 of schedule 2 to the 1989 Act insert -*

- 8A (1) *Every local authority shall make provision for such services as they consider appropriate to be available with respect to accommodated children*
- (2) *"Accommodated children" are those children in respect of whose accommodation the local authority have been notified under section 85 or 86*
- (3) *The services shall be provided with a view to promoting contact between each accommodated child and that child's family*
- (4) *The services may, in particular, include –*
- (a) advice, guidance and counselling*
  - (b) services necessary to enable the child to visit, or to be visited by, members of the family;*
  - (c) assistance to enable the child and members of the family to have a holiday together*
- (5) *Nothing in this paragraph affects the duty imposed by paragraph 10*

#### **Supporting amendment**

4A *After that subsection add*

*"(5) For the purposes of subsection (4) (b), if the child is not in the area of the local authority, they must treat him as if he were in that area"*

### **Ensuring the Act make a difference**

EDCM welcomes the focus that has been placed by government and MPs from all parties on disabled children during the passage of the Children and Young Persons Act 2008. Both the amendment to consider the welfare needs of disabled children placed in settings away from home and the short breaks amendment were secured with huge Parliamentary support and after significant lobbying from EDCM supporters. Together these measures offer a new level of protection and support to disabled children and their families.

#### **TAKE ACTION! – Supporter action on short breaks**

We now need to work together to make sure that the changes to the law on the provision of short breaks have a real impact on the ground. So, we need all our supporters to:

**Email your local authority to remind them about the new funding for short breaks and that the short breaks duty is now law and will come into force in 2011.** Ask your local authority how they are planning their short breaks services now and beyond 2011 with this new duty in mind.

You can **send an email to your local authority quickly and easily** from our link at: **[www.edcm.org.uk/cypact](http://www.edcm.org.uk/cypact)**

### **Further information**

If you have any questions or comments on the Children and Young Persons Act 2008 as it relates to disabled children, please contact us at [info@edcm.org.uk](mailto:info@edcm.org.uk) or call us on 020 7843 6318.

### **Related links**

Find out more about the Children and Young Persons Act at [www.edcm.org.uk/cypact](http://www.edcm.org.uk/cypact)

Find out more about 'Aiming High for Disabled Children' at [www.edcm.org.uk/ahdc](http://www.edcm.org.uk/ahdc)

Find the latest government news on 'Aiming High for Disabled Children' at [www.ecm.gov.uk/ahdc](http://www.ecm.gov.uk/ahdc)