EXPLANATORY MEMORANDUM TO:

THE CARE STANDARDS ACT 2000 (EXTENSION OF THE APPLICATION OF PART 2 TO HOLIDAY SCHEMES FOR DISABLED CHILDREN (ENGLAND) REGULATIONS 2013

2013 No. 253

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. These Regulations will apply certain regulation making powers in Part 2 of the Care Standards Act 2000 ("the Act") to providers of holiday schemes for disabled children, with the modifications set out in the Schedule.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative context

4.1. Section 1 of the Act provides that an establishment is a children's home if it provides care and accommodation wholly or mainly for children. Section 1(4)(a) allows exceptions to be made in regulations. The Children's Homes Regulations 2001 ("2001 Regulations") provide for these exceptions. Establishments which provide care and accommodation for children for less than 28 days in any 12 month period (in relation to any one child) for the purposes of a holiday or recreational, sporting, cultural or educational activities are excepted from the definition. But that exception does not apply where the home provides care and accommodation for those purposes for less than 28 days for children who are wholly or mainly disabled (i.e. provides holiday schemes for disabled children).

4.2. Such establishments providing holiday schemes for disabled children are therefore subject to the regulation and registration requirements of Part 2 of the Act, and the further registration and conduct requirements in the 2001 Regulations.

4.3. The regulatory framework of Part 2 of the Act and the 2001 Regulations has been perceived as too burdensome for these providers. In particular, there was a concern that the schemes did not fit easily within the concept of a "children's home" under the Act. These holiday schemes are not "establishments" as such: they only operate during

the school holidays and often offer accommodation across a number of sites which may not be owned by the provider.

4.4. Accordingly, the Department proposes to bring these schemes out of the scope of the definition of a children's home and, instead, intends to use the power at section 42 of the Act to apply the provisions of Part 2 of the Act, with modifications, to providers of holiday schemes for disabled children.

4.5. Section 42 of the Act provides a power to extend the application of Part 2 of the Act to "prescribed persons", with modifications. The power in section 42 is exercisable in respect of persons who provide services which are similar to services which may or must be provided by English local authorities (section 42(2A)(b)). The Department proposes that individuals who provide holiday schemes for disabled children are to be prescribed for the purposes of section 42. Part 2 of the Act can then be applied, with necessary modifications, to persons who provide holiday schemes for disabled children.

4.6. These Regulations therefore apply the regulation making powers of Part 2 of the Act to persons who provide holiday schemes for disabled children. Such schemes are defined in regulation 1(3) of these Regulations. The regulation making powers which are applied are listed in regulation 2 with the modifications set out in Schedule 1. Once these Regulations are in force, the Department will have the power and intends to make substantive regulations setting out registration and conduct requirements for the schemes. That second set of regulations will also apply the remainder of Part 2 of the Act to the scheme providers.

5. Territorial Extent and Application

5.1. These Regulations apply in relation to holiday schemes for disabled children in England only.

6. European Convention on Human Rights

6.1. As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. The 2001 Regulations provide a regulatory framework for all children's homes, setting out a clear set of minimum requirements and expectations so that children living in children's homes are provided with a consistent standard of care, whether the home's provider is a local authority, a private or a voluntary organisation.

7.2. They set minimum requirements in respect of the management and staffing of homes, of the training and qualifications required by those

working in homes and in relation to such matters as the management of behaviour and the use of restraint in homes.

7.3. Currently, holiday schemes for disabled children which provide accommodation for less than 28 days a year are required to register as children's homes. As a result such schemes need to meet the requirements of the 2001 Regulations and the National Minimum Standards relating to children's homes. In addition, they are required to pay an annual fee for the cost of inspection and regulation.

7.4. The Department has received strong representation from a number of holiday schemes for disabled children in respect of the unnecessary bureaucracy and financial burden that these requirements place on schemes which are run primarily by voluntary organisations. In response to these concerns, the Department for Education carried out a month long consultation, which set out two core proposals:

- to either exempt the schemes from any regulatory framework; or

- to significantly reduce the current regulatory burden imposed by the 2001 Regulations, by making a number of modifications in respect of the schemes. The consultation document made it clear that the Department's preferred option was the second option and set out a number of proposed easements in respect of 2001 Regulations.

7.5. The response to the consultation demonstrated strong support for the Government's second option. In addition, there was a strong steer from the schemes concerning the importance of schemes being able to operate across multiple sites but only having to register once with Ofsted in respect of each scheme.

7.6. The Government is therefore proposing to remove holiday schemes for disabled children from the definition of a "children's home" and make a separate set of substantive, conduct regulations for the disabled children's holiday schemes, which will in effect 'mirror' the 2001 Regulations but will include a number of core modifications which better reflect the nature and needs of the holiday schemes.

7.7. These Regulations provide for the regulation making powers in Part 2 of the Act to apply to the providers of these schemes (with necessary modifications). The second set of regulations (to be made once the regulation making powers in Part 2 have been applied to the providers) will set out the substantive requirements for the registration and conduct of these schemes, including enabling schemes to operate across a number of sites under one registration. The second set of regulations will also make necessary and consequential amendments to other regulations.

8. Consultation outcome

8.1. The Department consulted publicly on these proposed changes from 5 September to 5 October 2012. The response to this consultation will be available on the Department's consultation website when the second set of regulations are made. The response to the consultation demonstrated strong support for the Government's second option of retaining the schemes within the children's homes regulatory framework but reducing the burden of these. In addition, there was a strong steer from the schemes concerning the importance of schemes being able to operate across multiple sites but only having to register once with Ofsted in respect of each scheme.

9. Guidance

9.1. No additional guidance is being produced. The Department will consult on draft National Minimum Standards for these schemes with a view to publishing those standards in April 2013.

10. Impact

10.1. These Regulations have no immediate impact on business, charities or voluntary bodies. Once the second set of regulations is made, the impact on business, charities or voluntary bodies is a decrease in the current regulatory burden for the schemes and a corresponding decrease in the inspection fees charged by Ofsted.

10.2. The impact on the public sector is none.

10.3. An Impact Assessment has not been prepared specifically for these Regulations. An Impact Assessment has been produced for the second, substantive set of regulations that set out the registration and conduct requirements for the schemes. This has been attached at Annex I.

11. Regulating small business

11.1. These Regulations only apply regulation making powers to providers of holiday schemes. Once the second set of regulations is made, they will apply to small businesses. The effect of the regulatory changes in the second set of regulations will be to reduce burdens on businesses that operate as holiday schemes.

12. Monitoring and review

12.1. Ofsted will continue to monitor and review holiday schemes for disabled children.

13. Contact

13.1. Contact Shelley Stewart-Murray at the Department for Education, Tel:

020 7783 8089 or e-mail: shelley.stewart-murray@education.gsi.gov.uk with any queries regarding the instrument.