

The Looked After Children (Scotland) Regulations

CONSULTATION ON DRAFT REGULATIONS



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SCOTTISH GOVERNMENT

The Looked After Children (Scotland) Regulations

CONSULTATION ON DRAFT REGULATIONS

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INTRODUCTION

CONSULTATION ON DRAFT REGULATIONS

This document is designed to accompany the draft Looked After Children (Scotland) Regulations 2008. It sets out the policy behind the draft Regulations and seeks your comments on a number of issues within the Regulations. The consultation period runs from **5 December 2007 to 14 March 2008**.

There are specific questions on which we seek your views and these are highlighted in the document. However, we welcome comments on all of the proposals.

Further copies of this document can be obtained by

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Electronic responses should be sent to the address above.

Please complete the details on the responsee information form at the end of this document and return it with your response. An electronic version is available as above. This will help ensure we handle your response appropriately. Thank you for your help.

BACKGROUND

Regulations dealing with looked after children and their carers are currently contained in the Arrangements to Look After Children (Scotland) Regulations 1996; the Fostering of Children (Scotland) Regulations 1996 and, to a lesser extent, the Residential Establishments – Child Care (Scotland) Regulations 1996.

There have been a number of recent policy developments that have necessitated an update of the existing regulations. These include

- the publication of *Getting it right for every child in kinship and foster care* in December 2007¹;
- recommendations by the Adoption Policy Review Group (APRG), set out in the report *Adoption: better choices for our children* (June 2005) www.scotland.gov.uk/Publications/2005/06/27140607/06107. particularly chapter 10 on Fostering Issues;
- the introduction of the permanence order by the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”) which is a new order to replace existing parental responsibilities orders (section 86 of the Children (Scotland) Act 1995);
- the policy direction being set by *Getting it Right for Every Child*
- the recent Protection of Vulnerable Groups (Scotland) Act 2007, although implementation of this is not planned until summer 2009;
- specifically, the recommendation in the SWIA report into the Western Isles case² that the Scottish Executive should seek to amend the fostering regulations and relevant guidance so that relatives and friends must be formally approved as carers for a child who is looked after when that child is placed with them as a condition of a supervision requirement made by a children’s hearing and
- the recent Historical Abuse Systemic review, which has implications for record keeping in residential establishments³.

The Scottish Government has decided to reflect the *Getting it Right* approach in terms of the way that the regulatory framework is structured, by seeking to make the child and his or her needs the starting point of the legislation. These new Regulations will apply to all looked after children and their carers, whether the children are cared for at home, by other people known to them (‘relative carers’), by foster carers or in a residential care setting. They therefore replace the existing Regulations referred to above. The Residential Establishments – Child Care (Scotland) Regulations 1996, except for Regulation 17, are not amended nor repealed by the proposals as they make provision in respect of residential establishments where a looked after child may be placed. Regulation 17 of those Regulations is, however, incorporated into the draft Regulations and appears at regulation 21.

¹ <http://www.scotland.gov.uk/fosterkinshipcarestrategy>

² An inspection into the care and protection of children in Eilean Siar., Social Work Inspection Agency October 2005

³ Historical Abuse Systemic review - www.scotland.gov.uk/Publications/2007/11/20104729/0

'Looked after' is defined in section 17(6) of the Children (Scotland) Act 1995 ("the 1995 Act") and generally means a child -

- for whom the local authority is providing accommodation because no-one has parental responsibility for him or her; (s)he is lost or abandoned; or the person who has been caring for him or her is no longer able to do so. This may be temporarily or permanently the case;
- who is subject to a supervision requirement from a children's hearing;
- who is subject to certain orders under the 1995 Act; or
- who is the subject of a permanence order or permanence order proceedings

COMMENTARY AND CONSULTATION QUESTIONS

PART I - GENERAL

Regulation 1- Citation and commencement

It is planned that these Regulations will come into force in early 2009 and will form part of a suite of new Regulations coming into force on or around that date following implementation of the Adoption and Children (Scotland) Act 2007.

The Scottish Government will shortly be advertising for a contractor to provide training on all the new Regulations and on the new provisions of the 2007 Act.

Regulation 2-Interpretation

The Regulations are to be made under powers in the Social Work (Scotland) Act 1968 (“the 1968 Act”) and the Children (Scotland) Act 1995 (“the 1995 Act”). Where an expression or term is used in these Regulations it shall have the same meaning as in those Acts unless a separate definition is provided. For ease of reference a list of those terms as defined in the 1968 Act (section 94) and the 1995 Act (section 93) are provided in Annex A. Regulation 2 sets out those terms which are defined separately for the purposes of the Regulations.

Q1. Please consider the definitions and comment as you feel appropriate.

PART II- PLANNING FOR LOOKED AFTER CHILDREN

Regulation 3- duty of local authority to make a care plan in respect of a child

One of the key thrusts of *Getting it right for every child in kinship and foster care* is that good planning for the child’s long term future should happen at an early stage and that a child should not be moved about between placements unnecessarily. This regulation places a duty on local authorities to make a care plan.

Q2. In line with *Getting it Right for Every Child*, we have been asked to consider using the term ‘child’s plan’. Do you agree with this suggestion?

Q3. Statistics published in November⁴ by the Scottish Government indicates that 25% of looked after children do not have a current care plan. How could regulations be strengthened to ensure this important requirement is met?

Q4. Should the regulation contain a timescale e.g. 2 weeks by which the care plan should be drafted?

Q5. The regulation states that the information about the child in Schedule 1 should be obtained and recorded. Should anything else be added to Schedule 1?

Q6. Should adherence to the Code of Practice on records management be specifically mentioned?⁵

⁴ www.scotland.gov.uk/stats/bulletins/00626

⁵ www.scotland.gov.uk/Resource/Doc/1066/0003775.pdf

Regulation 3(3)(c) reflects the Government's policy as set out in *Getting it right for every child in kinship and foster care* that a child's wider network should be explored as possible carers before placing the child in another care setting.

Regulation 4 –Matters to be addressed in a care plan

This regulation sets out what is to be included in a child's care plan. The list is set out in Schedule 2 which is split into two parts. Part I covers all looked after children, including those who will remain with their birth parents. Part II applies to those children whom the local authority consider need to be placed for a period of time. Where a child needs to be placed with a carer in an emergency, we suggest that only the information in Part I will be needed initially, with the information in Part II being added as plans develop.

Q7. *Is the list in Schedule 2 complete? If not what needs to be added?*

Regulation 4(4) prescribes those persons who must agree the care plan with the local authority, as far as is reasonably practicable before the child is looked after. Subsection (6) specifies those who should be given a copy of the care plan. This will include the foster carer.

Q8. *Do we need to add anyone else? Should there be any caveats or exceptions e.g. for child protection purposes?*

Regulation 5 – considerations to which a local authority should have regard in making a care plan

This regulation applies to all children who are or will be looked after by a local authority. The local authority must have regard to the nature of the service to be provided in the immediate and longer term, taking into account the information in Schedule 1; alternative courses of action, including assessing family and friends of the child as potential carers; plans for meeting the long term needs of the child, with a view to creating permanent, sustainable arrangements for the child; whether they need to seek a change in the child's legal status; the arrangements that will be made for when the child is no longer looked after; the views of the child, if he or she is mature enough, his or her parents and other relevant people, what the child's religious, racial and cultural needs are and anything else the authority feels is relevant.

Q9. *Government is keen to ensure children and young people are enabled to participate in planning and decision making around their care, for example through independent advocates. Is this an area that should be covered in these regulations?*

Regulation 6- considerations to which a local authority shall have regard in making a care plan for a child...where the local authority are considering placing the child

If the local authority are considering making arrangements for the child to be placed elsewhere than with their parents, they must, as well as considering the matters in regulation 5, consider the matters in regulation 6. These are the contact arrangements and any arrangements that need to be made with regard to the child's

health or educational needs. If the child is to be placed in a residential placement, the local authority need to consider whether that is the most appropriate setting for his or her needs.

The current regulation 6(3) specifies that the child should be brought up as far as possible in accordance with his religious persuasion. We intend that the final version of the regulation will also cover issues such as racial and cultural heritage.

Q10. Are there any further matters that need to be considered when placing children elsewhere than with their parents?

Regulation 7- review of children's cases

This regulation places a duty on the local authority to make sure that the care plan is kept up to date as the child's situation develops. This includes developing a plan to meet the long term needs of the child in terms of stability and security within 6 months of the child becoming looked after.

Q11. Do you agree with the 6 month timescale? If not what would you propose and why?

Regulation 8 – Time when a case is to be reviewed

Regulation 8 determines when and how often a local authority is to review the case of a child placed and looked after by them, except where the child is placed by means of a permanence order (see regulation 9). If a child is looked after and placed with a foster carer, a relative carer or in a residential establishment, the first review should be 6 weeks after the placement, with a second review 3 months later and thereafter, reviews every 6 months.

If the child is looked after but not placed by the local authority, the first review should be within 3 months and then at 6 monthly intervals.

Q12. Do you agree with these timescales? If not what would you propose and why?

A review must always be carried out before the child is referred to the Principal Reporter; before the local authority apply for a permanence order; and where practicable under any other circumstances when a children's hearing is convened in respect of the child.

Q13. We believe there is scope for improvement in the process here and would be interested in your comments.

Regulation 9 – Review of a child's case: permanence order

For those children who are placed with their carer by means of a permanence order, the type and regularity of the review will be agreed between the local authority, child and carer for each individual case. This is to reflect the general policy behind a permanence order that it should provide the child with stability and consistency and free him or her from reviews that are not essential.

Q14. Do you have any comments?

Regulation 10 - Recording review information

Any meetings about the child and any decisions made will need to be recorded in writing.

Regulation 11 – Health requirements

This regulation sets out what needs to be done with regard to the health needs of looked after child, before placing him or her.

Q15. Is this provision satisfactory for identifying needs and ensuring they are met, particularly while the child is looked after and accommodated?

Regulation 12 – Notification of occurrences involving the child

Regulation 12 sets out when a carer must notify the authority of serious incidents involving the child and what the local authority must do in their turn.

Regulation 13. – Death of a child

This regulation sets out what must be done if a looked after child dies. The local authority must notify Scottish Ministers and, as far as possible, any parent of the child, unless the child was living with the parent at the time of his or her death.

Regulation 14 – Arrangements for child to be cared for by parents

In certain circumstances a local authority can make arrangements for a looked after child to be cared for by his or her own parents or someone who has parental responsibility for him. Such an arrangement would be subject to the terms of a supervision requirement from the children's hearing and should not return the child to the care of a parent from whose care the child was removed.

Regulation 15 – Application of regulation to short-term placements

This regulation replicates what currently exists. A series of short, planned placements which include overnight stays may be treated as a single placement provided they meet the criteria set out in regulation 15(1). The requirements of the Regulations apply e.g. the placements must be subject to a care plan and must be reviewed, but the requirements do not need to be repeated for each placement in the series.

Q16. Are these provisions appropriate and efficient?

Regulation 16 - notification by local authority on placement of a child

This regulation deals with what needs to be done when a local authority places a child with a carer. Information needs to be given to –

- the child's parents or any other relevant person, unless they have already received a copy of the care plan; or where such notification is not in the child's best interests or where a legal order has been made specifying that they should not receive the information.
- the local authority where the child is going to be living (if it is a different local authority area) unless the placement is to last for less than 28 days
- the health board where the child is going to be living unless the placement is to last for less than 28 days

If the child has significant medical or additional support needs notification will still apply regardless of whether the placement is to last for more than 28 days.

PART III- PLACEMENTS

Regulation 17- decision to place a child in a foster placement

This regulation sets out what a local authority must do before they place a child with a foster carer. They must ensure that placement in a foster placement and with the particular foster carer is in the best interests of the child and that the carer has been approved. The duties referred to in 17(1)(d) include ascertaining the child's views and the views of the relevant people, as appropriate. Regulation 17(1)(e) provides that the local authority must have first explored the child's wider network as potential carers, as set out in *Getting it Right for Every Child in Kinship and Foster Care*⁶.

Q17. Do these cover the requirements in full? If not, what is required?

The Fostering of Children (Scotland) Regulations 1996 precluded children being placed with same sex couples. One of the Scottish Government's aims within the *Getting it Right for Every Child in Kinship and Foster Care* is to improve recruitment and to broaden the pool of potential suitable foster carers. Removal of this prohibition would assist in this aim. In addition the APRG recommended the removal of this restriction. This was accepted by the then Scottish Executive.

Q18. The Scottish Government propose to accept this recommendation from APRG. Do you have any comments?

Each carer will need to be approved either under regulation 25 (foster carers) or 26 (relative carers); and have entered into a written agreement on the matters set out in Schedule 5 (planned placement) or Schedule 3 (emergency placement). Regulation 2(d) sets out that the placement must not take the carer outwith the terms of his or her approval e.g. does not take them over the number of children they are approved to care for.

Q19. Do these Schedules contain all the appropriate material that a carer and an agency need to have discussed before the child is placed with that carer?

The regulation also makes provision about what should happen if a foster carer dies or ceases to live in the household.

Q20.. Do you agree that, if they are willing, any adults remaining in the household should be assessed with a view to approval as foster carers for the child and that the child should be allowed to continue to live in that household during the approval process?

Regulation 18 – Emergency placement

This regulation deals with what must happen when a child requires to be placed in an emergency. The child may be placed with either a carer who is already approved

⁶ <http://www.scotland.gov.uk/fosterkinshipcarestrategy>

or with someone known to the child, if that is the best way of meeting the child's needs. If he or she is placed with an already approved carer, the placing social worker must ensure that the additional child or children does not take the carer over his or her approval limit.

Q21. Do you agree? Does this provide sufficient protection for the child? The carer? The social worker?

Whoever the child is placed with, even if with a relative or friend, the placement must be reviewed within 72 hours. If the carer is already an approved carer, the carer and the local authority must draw up an agreement based on Schedule 3 at the time of placement. If the child is placed with someone known to the child who is not an approved carer, the local authority must prepare a care plan as set out in regulations 3 and 4.

Q22. Do you agree? Does this process and timescale provide sufficient safeguards for the child and those responsible for his or her care?

Regulation 19 – review following emergency placement

Within 72 hours of the child being placed, the local authority must review the child's case to determine whether the placement continues to be in the best interests of the child. If that is the case, a care plan must be prepared as set out in regulations 3 and 4 and the local authority must determine that all the requirements of regulation 17(1)(a) to (e) and (2) are met (see the comments on regulation 17 above).

Q23. Do you agree? Does this process and timescale provide sufficient safeguards for the child and those responsible for his or her care?

The policy intention is that, if the person with whom the child is placed is not an approved foster carer and if the plan is for the child to remain with that carer for longer than 72 hours, an assessment process should be started and completed within 6 months.

Regulation 20- recommendations by a local authority

This regulation will apply when a local authority submits a report to a children's hearing in respect of a child. The local authority can recommend who the child should be placed with. Policy intention is that if they recommend that the child should be placed with someone who is not already an approved foster carer, then the local authority should carry out an assessment within 6 months of the carer's suitability; prepare a plan for supporting the child and the carer; and provide the carer with information on what the way forward might be when the supervision requirement comes to an end.

Q24. Do you agree with these proposals?

Regulation 21 – information to be supplied to persons in respect of each child placed in a residential establishment

This regulation replicates regulation 17 of the Residential Establishments – Child Care (Scotland) Regulations 1996.

Q25. Does it cover all the requirements for children who are placed in residential establishments? If not, please specify.

PART IV – PANELS

Regulation 22 – appointment and composition of fostering panels.

Regulation 22 specifies that any fostering agency registered with the Care Commission should appoint a panel to approve their foster carers. This regulation and regulation 23 make a distinction between the fostering panel, which is the wider pool of those who can serve at a meeting of the fostering panel and a meeting of the fostering panel, which is the group of individuals acting together to make recommendations on any one occasion.

Regulation 22 will prescribe the number of members that a fostering panel (i.e. the wider pool) should have. For smaller agencies, the regulation allows for the appointment of joint fostering panels.

Q26. Do you agree with prescribing these numbers in Regulations, or should it be at an agency's discretion?

Q27. If you agree, what is a reasonable number of members for a fostering panel, to achieve the balance between each member having sufficient expertise, but not being unduly overloaded? What about for a joint fostering panel, across agencies? Should the number of members be the same?

The regulation also specifies that fostering agencies must be satisfied as to the qualifications for membership of a fostering/joint fostering panel.

Q28. Do you agree with these provisions? Should there be other provisions, such as the need for panel members to be Disclosure Scotland checked?

Q29. Is it necessary to have a medical adviser or could this role be covered in some other way e.g. by written reports from the applicants' GPs?

Q30. Should there be a duty on agencies to review the membership of the panel on a regular basis?

Regulation 23 - meetings of the fostering panel and joint fostering panel
Regulation 23 makes provision for a quorum for a meeting of a fostering panel.

Q31. Is this a reasonable approach? What should the quorum be set at ?

Q32. Should there be any other provisions made e.g. the meeting cannot be held without the medical adviser/without sufficient secretariat support to record discussions and decisions?

Regulation 24- functions of a fostering panel

This regulation sets out the functions of a fostering panel. These are to consider the applications of prospective foster carers; to make recommendations as to whether they are suitable and if so, how many children can be placed with them; to consider the reviews of foster carers as appropriate. If the fostering panel is established by a local authority, the authority can ask the panel to consider any relevant issues.

Q33. Do you think anything else needs to be added?

Regulation 25 – approval of foster carers by a fostering agency

Although the fostering panel makes a recommendation, the final decision to approve someone as a foster carer, and what the terms of that approval might be, is taken by the agency. This regulation details what the decision maker at the agency has to consider. In due course, once the Protection of Vulnerable Groups Act 2007 is implemented, any carer of a looked after child will be required to be a member of the Vetting and Barring Scheme to be established by that Act.

Q34. Should any change be made to this list? Should any changes be made to Schedule 4?

Regulation 25(3) states that a fostering agency may approve as a carer a person currently approved by another fostering agency, provided the approval is limited to the categories and numbers of children the carer is already approved for. This provision is in the current Fostering of Children (Scotland) Regulations 1996.

Q35. Is it useful to have this provision? Are there any problems that might arise?

Regulation 26 – approval of relative carers by a fostering agency?

This regulation sets out a procedure for approving a relative or person known to the child as a carer for a looked after child. The reference group set up as part of *Getting it right for every child in kinship and foster care* will be considering this in more detail and will report to the Scottish Government and to COSLA later in 2008.

Q36. Do you agree with the proposals generally? Is there anything else that should be included?

The draft provisions refer to Schedule 4, which has been drafted with regard to foster carers not known to the child. The intention is that a separate Schedule will be created.

Q37. Are there any of the provisions set out in Schedule 4 which should not apply to relative carers?

Regulation 27 – agreements with foster carers and relative carers

Schedule 5 sets out what should be agreed with a foster carer when a child is placed with them.

Q38. Do the contents of the Schedule cover all that is needed?

We propose a separate Schedule to cover agreements with relative carers.

Q39. Using the draft Schedule 5 as a model, what should such a Schedule contain?

Regulation 28 – reviews and terminations of approval

This regulation specifies that the decision to approve a foster carer should be reviewed annually and what should be considered during that review. If for any reason the fostering agency considers that the carer is no longer suitable to care for a child or children, the agency must terminate the carer's approval. The review may also lead to a change in the terms of the carer's approval.

The recent report⁷ by the Care Commission found that 50% of fostering agencies did not review their foster carers on an annual basis, despite this being a requirement in the existing Regulations.

Q40. Do you have any views on these provisions? Could they be strengthened in any way?

Any decisions on these issues must be given to the carer in writing.

Where a carer has been approved by more than one fostering agency using the provision in these Regulations for derivative approval, and one of the agencies terminates or revises the approval, that agency must notify the others of that decision and the reasons for that decision.

Q41. Do you have any views on these provisions? Is there anything that might prevent this happening?

Regulation 29 – Review of approval: further provision

This regulation allows both foster carers and relative carers to ask for a review of a decision made by the fostering agency with regard to their approval. Foster carers are already able to request a review of **the approval process** via the Care Commission. This will allow them and relative carers to ask for a review of the actual decision.

Q42. Do you agree with this approach?

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www.carecommission.com/images/stories/documents/publications/reviews_of_quality_care/fostering_and_adoption_review_-_nov_07.pdf

Regulation 30 – payment of allowances

(NB there is a typing error in the draft regulations. Regulation 30(1) should read ‘A fostering agency shall’, rather than ‘ a local authority shall.’ The paragraph below sets out the policy intention.)

This regulation mirrors the existing regulation governing allowances, except for the fact that it now states that a fostering agency ‘shall’ rather than ‘may’ pay allowances to carers with whom a child is placed under these Regulations. This includes both foster carers and relative carers of looked after children, who have been approved under regulation 25 or 26 of this draft. The policy intention is that allowances will continue to be paid to foster carers who care for children beyond their 16th birthday up till the age of 18.

Q43. Do you have any comments?

PART V - ARRANGEMENTS WITH VOLUNTARY ORGANISATIONS

Regulation 31- arrangements with voluntary organisations

This regulation allows local authorities to enter into arrangements with voluntary organisations and to place children with these organisations. The term ‘voluntary organisation’ is defined at regulation 2.

The regulation sets out those matters which the local authority must carry out before they make any such arrangements. These include checking that the organisation is appropriately registered with the Care Commission; that it has the capacity to carry out the duties on behalf of the local authority; that this is the most suitable way for the duties to be carried out; and that they have entered into a written Service Level Agreement (SLA) with that organisation, as set out in Schedule 6.

Q44. Is there anything else that should be listed here? Do the matters in Schedule 6 cover all the issues to be dealt with in an SLA?

Local authorities will be required to review the agreements at least every 3 years.

Regulation 32 - Circumstances necessitating visits by local authorities

This regulation will ensure that in certain circumstances the local authority arranges for someone representing them to visit every child placed with a foster carer from outwith the local authority area. This allows the local authority to designate someone from another local authority to visit the child on their behalf, if the child is placed at a distance from the local authority who has responsibility for them. These circumstances are: within 28 days of the placement; where the organisation or establishment notify the authority that a visit is needed, within 14 days of being notified; where the authority are notified that the welfare of the child may not be being promoted, as soon as possible, but certainly within 7 days; otherwise at least every 6 months.

Q45. Do you agree with these reasons and timescales?

Q46. We propose that the final version of the Regulations will contain similar provisions for children placed in a residential care home outwith their local authority area, except that they should be visited every 3 months. Do you agree? If not, please specify your proposed alternative.

Q47. Are there any other ways we can ensure that a child's 'home' local authority continues to be involved when the child is placed outwith the area?

PART VI – RECORDS

Regulation 33 - establishment of records for looked after child.

This regulation sets out what needs to be included in a child's record (a copy of the care plan; a copy of the information from Schedule 1; other documents relating to the child's welfare and the child's care) This regulation will apply to any child looked after by the local authority, including those in residential care and those accommodated with a kinship carer.

Q48. Is there anything else that should be recorded?

Q49. Do you feel that adherence to the Code of Practice on records management should be required through guidance?⁸

Regulation 34 - establishment of case records for carers with whom a child is placed.

This regulation sets out the information to be kept with regard to foster carers. The record should contain the agreements made with the carer; reports of any reviews and any variations or termination of approval. The record should also contain a record of the children placed with the carer and a note of when the placement started and finished and the reasons for the placement coming to an end.

Q50. Is there anything else that should be recorded?

Q51. Should there be a similar record for kinship carers?

Regulation 34(4) requires the fostering agency to compile a record on each prospective foster carer who is not approved, including the information obtained during the process leading up to the decision not to approve.

Q52 Do you agree that this should happen?

Regulation 35 –Retention and confidentiality of records

This regulation provides that a case record relating to a looked after and accommodated child should be kept till his or her 75th birthday or, if the child dies before the age of 18, for 25 years after his or her death.

The record for a foster carer or prospective foster carer should be kept for 10 years from the date of the termination of his or her approval or until his or her death if earlier.

⁸ www.scotland.gov.uk/Resource/Doc/1066/0003775.pdf

Q53. Regulations 35(1) and (2) replicate existing provisions with regard to retention of records. We are considering whether these should be updated. In your view, what should the retention period be and why?

Regulations 35(3) and (4) set out how the records should be kept and how access can be gained to them if needed.

Q54. Do you have any comments?

Regulation 36 - Revocation

This regulation revokes

- The Arrangements to Look After Children Regulations 1996.
- The Fostering of Children (Scotland) Regulations 1996
- Residential establishments – Child Care (Scotland) regulations 1996-
regulation 17

DEFINITIONS OF TERMS PROVIDED IN THE CHILDREN (SCOTLAND) ACT 1995 AND THE SOCIAL WORK (SCOTLAND) ACT 1968 WHICH APPLY TO THE REGULATIONS BUT NOT INCLUDED IN THE DEFINITIONS SECTION

CHILDREN (SCOTLAND) ACT 1995

"accommodation" shall be construed in accordance with section 25(8) of this Act;
"children's hearing" shall be construed in accordance with section 39(3), but does not include a business meeting arranged under section 64, of this Act;

"compulsory measures of supervision" means, in respect of a child, such measures of supervision as may be imposed upon him by a children's hearing;

"contact order" has the meaning given by section 11(2)(d) of this Act;

"education authority" has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c.44);

"family", in relation to a child, includes--

(a) any person who has parental responsibility for the child; and

(b) any other person with whom the child has been living;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

"parental responsibilities" has the meaning given by section 1(3) of this Act;

"parental responsibilities order" has the meaning given by section 86(1) of this Act;

"parental rights" has the meaning given by section 2(4) of this Act;

"the Principal Reporter" means the Principal Reporter appointed under section 127 of the said Act of 1994 or any officer of the Scottish Children's Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under this Act;

"relevant local authority", in relation to a child who is subject to a warrant granted under this Part of this Act or to a supervision requirement, means the local authority for whose area there is established the children's panel from which the children's hearing which granted the warrant or imposed the supervision requirement was constituted;

"school age" shall be construed in accordance with section 31 of the Education (Scotland) Act 1980;

"supervision requirement" has the meaning given by section 70(1) of this Act, and includes any condition contained in such a requirement or related to it;

"voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit; and

"child" means--

(i) a child who has not attained the age of sixteen years;

(ii) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement is in force; or

(iii) a child whose case has been referred to a children's hearing by virtue of section 33 of this Act;

"relevant person" in relation to a child means--

(a) any parent enjoying parental responsibilities or parental rights under Part I of this Act;

(b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and

(c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child.

Any reference in this Act to a child-

(a) being "*in need*", is to his being in need of care and attention because--

(i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;

(ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;

(iii) he is disabled; or

(iv) he is affected adversely by the disability of any other person in his family;

(b) who is "looked after" by a local authority, shall be construed in accordance with section 17(6) of this Act.

SOCIAL WORK (SCOTLAND) ACT 1968

"residential establishment" means an establishment managed by a local authority, voluntary organisation or any other person, which provides residential accommodation for the purposes of this Act or of Part II of the Children (Scotland) Act 1995, whether for reward or not,

2008 No.

CHILDREN AND YOUNG PERSONS

SOCIAL WORK

The Looked After Children (Scotland) Regulations 2008

<i>Made</i> - - - -	2008
<i>Laid before the Scottish Parliament</i>	2008
<i>Coming into force</i> - -	2008

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(2), (3) and (4) of the Social Work (Scotland) Act 1968⁽⁹⁾ and sections 17, 31 and 103(2) of the Children (Scotland) Act⁽¹⁰⁾ and all other powers enabling them to do so.

PART I GENERAL

Citation and commencement

1. These Regulations may be cited as the Looked After Children (Scotland) Regulations 2008 and shall come into force on 2008.

Interpretation

2. In these Regulations—

“the 1980 Act” means the Education (Scotland) Act 1980⁽¹¹⁾;

“the 1995 Act” means the Children (Scotland) Act 1995⁽¹²⁾;

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001⁽¹³⁾;

“the 2007 Act” means the Adoption and Children (Scotland) Act 2007⁽¹⁴⁾;

“foster carer” means a person approved under regulation 25;

“derivative approval” means approval by one fostering agency of a person as a foster carer under regulation 25 or 26 where that person is currently approved as such by another fostering agency;

“foster” means arrange for a child to live as a member of the family of a person who is—

- (a) not a parent;
- (b) does not have parental responsibilities in respect of the child unless such parental responsibilities are conferred by virtue of a permanence order; and
- (c) not a relevant person in relation to the child,

who undertakes to look after the child other than in accordance with an adoption order made under section 28(1) of the 2007 Act;

“fostering agency” means—

- (a) a local authority; or
- (b) a registered fostering service;

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978⁽¹⁵⁾;

“parent” means the mother or the father of the child;

“permanence order” means an order made under section 80(1) (permanence orders) of the 2007 Act;

⁽⁹⁾ c.49. Subsections (3) and (4) of section 5 were substituted by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(4)(d).

⁽¹⁰⁾ 1995 c.36. [Section 17 is prospectively amended by the Adoption and Children (Scotland) Act 2007 (asp 4), section 120(1), Schedule 2, paragraph 9.]

⁽¹¹⁾ 1980 c.44.

⁽¹²⁾ 1995 c.36.

⁽¹³⁾ 2001 asp 8.

⁽¹⁴⁾ 2007 asp 4.

⁽¹⁵⁾ 1978, c.29.

“placement” means, subject to regulation 15, the provision of accommodation by a local authority for a child looked after by them by any of the means specified in section 26 (manner of provision of accommodation by local authority) of the 1995 Act or in pursuance of a supervision requirement under section 70 (disposal of referral by children’s hearings) of the 1995 Act;

“registered fostering service” means a voluntary organisation whose functions consist of or include the making of arrangements for or in connection with the performance of functions assigned to a local authority—

(a) under section 26(1)(a) of the 1995 Act; or

(b) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968⁽¹⁶⁾, and which is registered under Part 1 of the 2001 Act;

“relative” means a grandparent, brother, sister, uncle or aunt of the child (in each case, whether or not by affinity, and in the cases of a brother, sister, uncle or aunt, whether of the full-blood or half-blood); and includes a civil partner of any such grandparent, brother, sister, uncle or aunt;

“relative carer” means a person approved under regulation 26;

“residential establishment” has the meaning given by section 94 of the Social Work (Scotland) Act 1968;

“so far as is reasonably practicable” means in regulations 3(1), 3(3), 4(2), 4(4), 11(1), 16(1) and 16(3)(a) (notwithstanding the use of the word “before” in those provisions) so far as is reasonably practicable before a local authority look after or, as the case may be, place a child, failing which as soon as is reasonably practicable thereafter.

PART II

PLANNING FOR LOOKED AFTER CHILDREN

Duty of local authority to make a care plan in respect of a child to be looked after or looked after by them

3.—• Before a child begins to be looked after by a local authority under section 17(6) (child who is “looked after” by a local authority) of the 1995 Act, the authority shall, so far as is reasonably practicable, produce a plan to be known as a “care plan”.

(1) The care plan shall address—

- (a) the child’s immediate and longer-term needs and how those needs can be met; and
- (b) how to safeguard and promote the child’s welfare with a view to making sustainable and long term arrangements.

(2) In preparing the care plan a local authority shall—

- (a) so far as is reasonably practicable, obtain and record in writing the information relating to the child specified in Schedule 1;
- (b) take into account all information available to them relevant to the performance of their duties under section 17(1) to (5) (duty of local authority to child looked after by them) of the 1995 Act; and
- (c) in the case of a child to be placed, consider placing the child with a person related or known to the child before placing with a carer not known to the child or in a residential establishment.

Matters to be addressed in a care plan

4.—• The care plan shall include, where applicable—

- (a) for each case of a child to be looked after or being looked after by the local authority arrangements concerning the matters specified in Part I of Schedule 2;

⁽¹⁶⁾ 1968, c.49.

- (b) in each case where the authority are considering placing or have placed the child, arrangements concerning the matters specified in Part II of Schedule 2; and
- (c) for a child to be placed under an emergency placement under regulation 18 arrangements concerning the matters specified in Part I of Schedule 2;

(2) In the case of a child described in section 25(7)(a) (child aged 16 or over agreeing to be provided with accommodation) of the 1995 Act the care plan shall so far as is reasonably practicable be agreed by the local authority with the child before a placement.

(3) Paragraph (4) applies to any case of a child looked after by a local authority other than a case mentioned in paragraph (2), and subject to the terms of a supervision requirement, or an order made, or authorisation or warrant granted, by virtue of Chapter 2, 3 or 4 of Part II of the 1995 Act, in respect of the child.

(4) The care plan shall, so far as is reasonably practicable, be agreed by the local authority with—

- (a) the parents of the child; and
- (b) any person who has parental responsibilities or parental rights in relation to the child; or
- (c) if there is no such person, the person ordinarily with charge of or control over the child,

before the child is looked after.

(5) All matters relating to a care plan shall be recorded in writing.

(6) A copy of the care plan shall be provided to—

- (a) the child;
- (b) the parents of the child; and
- (c) the person ordinarily with charge or control over the child.

Considerations to which a local authority shall have regard in making a care plan for a child to be, or being, looked after by them

5.—• This regulation applies where a local authority are making a care plan for a child to be, or being, looked after by them.

(1) The local authority in making a care plan shall have regard to—

- (a) the nature of the service to be provided in the immediate and longer-term with particular regard to any information referred to in Schedule 1;
- (b) alternative courses of action including assessing family and friends of the child as prospective relative carers;
- (c) plans for meeting the long term needs of the child;
- (d) whether the local authority should seek a change in the child’s legal status;
- (e) the arrangements which need to be made for the time when the child would or will no longer be looked after by the local authority;
- (f) so far as practicable, the matters listed in section 17(4) (matters which a local authority shall have regard to in making any decision) of the 1995 Act; and
- (g) any further matters relating to the child as appear to the local authority to be relevant for the making of the care plan.

(2) The care plan shall, so far as reasonably practicable, be agreed by the local authority with—

- (a) the parents of the child; and
- (b) any person who has parental rights or parental responsibilities in relation to the child; or
- (c) if there is no such person, the person ordinarily with charge or control over the child.

Considerations to which a local authority shall have regard in making a care plan for a child to be, or being, looked after by them, where the local authority are considering placing the child

6.—• Without prejudice to regulation 5, this regulation applies where a local authority are making a care plan for a child to be, or being, looked after by the local authority and the local authority are considering placing the child.

(1) In addition to any consideration referred to in regulation 5, the local authority in making a care plan shall have regard to—

- (a) whether there is any need for changes in the contact arrangements in order to promote contact with the child's family and others;
- (b) in the light of any information recorded which is specified in paragraph 9 of Schedule 1, the need to change existing health arrangements;
- (c) in the light of any information recorded which is specified in paragraph 10 of Schedule 1, the means of achieving any educational need and the means of achieving continuity in the child's education;
- (d) in the case of a placement in a residential establishment, whether, having regard to the establishment's statement of functions and objectives, that particular placement is appropriate for the child's needs.

(2) Where this regulation applies and a local authority are considering fostering the child or placing him in a residential establishment, they shall, so far as is consistent with their duty under section 17 (duty of local authority to child looked after by them) of the 1995 Act and having ascertained so far as practicable the views of the child having regard to his age and maturity, ensure that—

- (a) in the case of fostering, the person with whom the child is to be fostered is of the same religious persuasion as the child or, if that is not practicable, that the person undertakes that the child will be brought up in accordance with the child's religious persuasion; and
- (b) in the case of a placement in a residential establishment, the child will be brought up in accordance with his religious persuasion (with the local authority having consulted the person in charge of the residential establishment).

(3) Where paragraph (3) applies and the local authority are making arrangements in relation to 2 or more children in the same family, the local authority shall, so far as is consistent with their duty under section 12 (duty of local authority to child looked after by them) of the 1995 Act and, having ascertained the views of each child having regard to their age and maturity, ensure that—

- (a) in the case of fostering, the children are fostered in the same house or, if that is not appropriate or practicable, in homes as near together as is appropriate or practicable; and
- (b) in the case of placement in a residential establishment, the children are placed in the same residential establishment or, where that is not appropriate or practicable, that the placements facilitate as far as possible continued mutual contact and access.

Review of children's cases

7.—• Each local authority shall review in accordance with these Regulations the case of each child while they are being looked after by them.

(1) In carrying out any review, a local authority shall—

- (a) consider the care plan made by virtue of regulation 3 and 4, and revise the care plan as appropriate;
- (b) have regard to the considerations mentioned in regulations 5 and 6; and
- (c) within 6 months of the date when the local authority first began to look after the child make a plan for the long term needs of the child.

Time when case is to be reviewed

8.—• Subject to paragraph (4) a local authority shall carry out the following reviews of the case of a child looked after and placed by the authority:—

- (a) a first review within 6 weeks from the date of such placement;
- (b) a second review within 3 months from the date of the first review; and
- (c) thereafter subsequent reviews within 6 months from the date of the previous review.

(2) Subject to paragraph (4) a local authority shall carry out the following reviews of the case of a child looked after but not placed by the authority:—

- (a) a first review within 3 months from the date on which the authority began to look after the child; and
- (b) thereafter subsequent reviews within 6 months from the date of the previous review.

(3) Notwithstanding paragraphs (1) and (2), a review shall be carried out prior to—

- (a) a decision by the local authority to refer the case of the child to the Principal Reporter under section 73(4) (a child who is subject to a supervision requirement) of the 1995 Act;
- (b) an application by the local authority for a permanence order under section 80 (permanence orders) of the 2007 Act; and
- (c) where practicable under any other circumstances when a children's hearing is convened under section 73 (duration and review of supervision requirement) or 65(3) (referral in respect of a child who is subject to a supervision requirement) of the 1995 Act to consider the case of the child except in the case of a referral made to the Principal Reporter as mentioned in paragraph (a).

(4) This regulation shall not apply to the case of a child who is looked after in pursuance of a permanence order.

Review of child's case: permanence order

9. Where a child is looked after in pursuance of a permanence order the local authority shall agree the frequency of reviews of the child's case with—

- (a) the child; and
- (b) the person or persons in whom parental responsibilities and parental rights are vested by virtue of the permanence order.

Recording review information

10. Each local authority shall record in writing—

- (a) information obtained in respect of the review of a child's case;
- (b) details of the proceedings at any meeting arranged by the authority at which the child's case is considered in connection with any aspect of the review of that case; and
- (c) details of any decisions, arrangements or revised care plan made in the course of or as a result of the review.

Health requirements

11.—• Subject to regulation 15(3), a local authority shall, so far as is reasonably practicable before placing a child looked after by them—

- (a) ensure that arrangements are made for the child to be examined by a registered medical practitioner; and
- (b) obtain from the practitioner who has carried out the examination a written assessment of the state of health of the child and his need for health care,

unless the child has been so examined and such assessment has been made within a period of 3 months immediately preceding the date the child began to be looked after by them.

(2) During the placement of the child the local authority shall ensure that arrangements are made for a child to be provided with health care services, including medical and dental care and treatment.

(3) Nothing in this regulation shall prejudice any capacity of a child enjoyed by virtue of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991⁽¹⁷⁾ (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment); and, without prejudice to that generality, where this provision requires an examination or treatment of a child and the child has the capacity mentioned in section 2(4), the examination or treatment shall be carried out only if the child consents.

Notification of occurrences involving the child

12.—• The local authority shall require the person with whom a child is placed to notify the authority forthwith if the child—

- (a) dies;
- (b) suffers an illness or injury likely to result in death or serious disability; or
- (c) without lawful authority absents himself or is taken away from the person's home.

(2) On receiving notification under paragraph (1), the local authority shall, so far as is reasonably practicable, forthwith notify every person who has parental responsibility for him.

Death of a child

13.—• If a child who is being looked after by a local authority dies, the authority shall forthwith—

- (a) notify the Scottish Ministers;
- (b) subject to paragraph (2) and so far as is reasonably practicable, notify every parent of the child.

(2) The local authority shall not be required to notify under paragraph (1)(b) any parent with whom the child was residing at the time of his death.

Arrangements for child to be cared for by parents

14.—• A local authority looking after a child may, subject to paragraph (2), make arrangements for the child to be cared for by his own parents or by a person who is not a parent of his but who has parental responsibility for him.

(1) A local authority may not make arrangements under paragraph (1) where the authority are providing accommodation for the child by virtue of section 25 of the 1995 Act.

(2) Any arrangements by a local authority under paragraph (1)—

- (a) shall be subject to the terms of a supervision requirement made, or an order made, or authorisation or warrant granted, by virtue of Chapter 2, 3 or 4 of Part II of the 1995 Act in respect of the child; and
- (b) shall not return the child to the care of a parent of the child, where the child was by virtue of any order, authorisation or warrant removed from the care of such parent.

Application of Regulations to short-term placements

15.—• Subject to paragraph (3), this regulation applies to a series of planned short-term placements where the following conditions are satisfied:—

- (a) all the placements occur within a period which does not exceed 1 year;
- (b) no single placement is for a duration of more than 4 weeks; and

⁽¹⁷⁾ 1991 c.50.

(c) the total duration of the placements does not exceed 120 days.

(2) Any series of short-term placements to which this regulation applies may be treated as a single placement for the purpose of these Regulations, except that for the purposes of regulation 8(1) the local authority shall carry out the first review of the placement within 3 months from the date on which the placement was first made and thereafter at intervals of not more than 6 months from the date of the previous review.

(3) An examination of the type referred to in regulation 11(1) shall be required only at the beginning of the period of a series of placements when the series is planned and, notwithstanding paragraph (1)(a), such a series may last for more than one year.

Notification by local authority of placement

16.—• Subject to paragraphs (2) and (3), where a local authority make a placement in accordance with these Regulations they shall as soon as is reasonably practicable give written notice of the placement and the relevant information about the placement to—

- (a) the local authority in whose area the person with whom the child is placed resides if that authority is different from the placing authority;
- (b) the Health Board in whose area the child is to reside;
- (c) each parent or relevant person in relation to the child whose whereabouts are known except where—
 - (i) they have already received a written copy of the care plan made under regulation 4;
 - (ii) the local authority consider, having regard to section 17 (duty of local authority to child looked after by them) of the 1995 Act, that in the interests of the child such particulars should not be given to a particular person; or
 - (iii) a supervision requirement, order or warrant under Part II of the 1995 Act specifies that the place at which the child is to be kept shall not be disclosed to a particular person.

(2) Where it is not intended that the placement shall last for more than 28 days, notification in terms of paragraph (1)(a) and (b) is not required unless—

- (a) in respect of notification in terms of paragraph (1)(a), the child has significant medical or additional support needs;
- (b) in respect of notification in terms of paragraph (1)(b), the child has a problem of medical significance or the child is below compulsory school age within the meaning of section 31 (school age) of the 1980 Act; or
- (c) any such placement does last for more than 28 days.

(3) Written notice shall be given—

- (a) where paragraph (2)(a) or (b) applies, so far as is reasonably practicable before placement; and
- (b) where paragraph (2)(c) applies, as soon as possible after the expiry of the 28 days referred to in that sub-paragraph.

PART III PLACEMENTS

Decision to place a child in a foster placement

17.—• A local authority shall not place the child unless they are satisfied that—

- (a) placement is in the best interests of the child;
- (b) placement of the child with the particular foster carer is in the child's best interests;
- (c) subject to regulation 18 and 20, the person with whom it is proposed to place the child has been approved by the fostering agency as a foster carer in accordance with regulation 25 or 26;

- (d) they have taken into account all information available to them relevant to the performance of their duties under section 17(1) to (5) (duty of local authority to child looked after by them) of the 1995 Act; and
- (e) where the child is not to be placed with a family member, that they have fully explored the possibility of placing the child with a family member, but there is no suitable family member available.

(2) A local authority shall not place a child under this Part of the Regulations unless–

- (a) the carer is approved under regulation 25 or 26;
- (b) the carer has entered into a written agreement with the authority in terms of regulation 27, which covers the matters specified in Schedule 5;
- (c) in the case of an emergency placement under regulation 18 the carer has entered into a written agreement with the authority in terms of regulation 18 which covers the matters specified in Schedule 3; and
- (d) the terms of the carer’s approval are consistent with the placement.

(3) Where the person with whom the child is fostered dies or ceases to live in the household the local authority shall not remove the child from that household provided that the local authority satisfy themselves that the carer has entered into a written agreement with the authority in terms of regulation 18 which covers the matters specified in Schedule 3.

Emergency placement

18.—• Where arrangements have been made for the placement of a child in an emergency, a local authority may for a period not exceeding 72 hours place them with–

- (a) any person approved under regulation 25 or 26; or
- (b) a person known to the child.

(2) Before an emergency placement is made pursuant to paragraph (1) the authority shall satisfy themselves that an emergency placement is the most suitable way of meeting the child’s needs.

(3) Before an emergency placement is made under paragraph (1)(a) the local authority shall satisfy themselves that the terms of the carer’s approval are consistent with the placement.

(4) The person with whom the child is placed shall sign a written agreement with the local authority to carry out the duties specified in Schedule 3.

(5) Where a local authority place a child under paragraph (1)(a) they shall provide the person with whom the child is placed with–

- (a) relevant information about the child’s background, health and emotional development; and
- (b) any other information which the local authority consider relevant to the placement.

(6) Where a local authority place a child under paragraph (1)(b) they must prepare a care plan in accordance with regulations 3 and 4.

Review following emergency placement

19.—• This regulation applies where a child is placed in an emergency under regulation 18.

(1) Within 72 hours of the child being placed the local authority must review the child’s case to determine whether placement continues to be in the best interests of the child.

(2) Where the local authority is satisfied that placement continues to be in the best interests of the child the local authority shall–

- (a) prepare a care plan in respect of the child in accordance with regulation 3 and 4;
- (b) determine whether the conditions specified in regulation 17(1)(a) to (e) and (2) are met.

(3) A child may not remain in an emergency placement after the expiry of 72 hours unless the local authority is satisfied that all the conditions in regulation 17(1)(a) to (e) and (2) are satisfied.

Recommendations by a local authority

20.—• Where a local authority submit a report on a child to a children’s hearing under section 56(7) (initial investigation by the Principal Reporter) of the 1995 Act they may recommend that the child be placed with—

- (a) a relevant person;
- (b) a relative; or
- (c) an approved foster carer.

Information to be supplied to persons in respect of each child placed in a residential establishment

21. Where a local authority places in a residential establishment a child who is looked after by them, the local authority—

- (a) shall provide the person in charge with the following:—
 - (i) written information about the child’s background, health, and mental and emotional development; and
 - (ii) any other information which the local authority considers relevant to the placement including information about the child’s wishes and feelings about the placement, so far as this is appropriate having regard to his age and maturity;
- (b) shall agree with the person in charge arrangements for ensuring that the welfare of the child placed and kept in such accommodation is safeguarded and promoted and that the child receives such provision for his development and control as is conducive to his best interests including—
 - (i) the arrangements that are to be made for contact between the child and his family;
 - (ii) the arrangements that are to be made for ensuring that the child receives adequate and efficient education.

PART IV

PANELS

Appointment and composition of fostering panels

22.—• Each fostering agency shall appoint a panel to be known as the “fostering panel”.

(1) Each fostering agency shall appoint to the fostering panel—

- (a) [a minimum of [z] members] OR [at least [z] members];
- (b) [at least [z]] OR [[z] %] of the members shall be employed by the foster agency appointing the fostering panel; and
- (c) a medical adviser.

(2) Fostering agencies may jointly appoint a panel to be known as the “joint fostering panel”.

(3) Each fostering agency shall appoint to the joint fostering panel—

- (a) [a minimum of [z] members] OR [at least [z] members];
- (b) [at least [z]] OR [[z] %] of the members shall be employed by the fostering agency appointing the fostering panel; and
- (c) a medical adviser.

(4) Each fostering agency shall satisfy themselves that the [numbers], relevant qualifications and experience of individual members of the fostering panel or joint fostering panel will enable it efficiently to discharge its functions under regulation 24.

(5) Where a fostering agency is of the opinion that a member of the fostering panel or joint fostering panel is unsuitable or unable to remain as a member, it may terminate membership at any time by giving notice of immediate termination in writing to the member.

Meetings of the fostering panel and joint fostering panel

23.—• No business shall be conducted by a fostering panel unless at least [y] of its members, [[z] of whom]OR [z% of whom] are employed by the local authority appointing the fostering panel, meet as a panel.

(1) No business shall be conducted by a joint fostering panel unless at least [y] of its members, [[z] of whom]OR [z% of whom] are employed by the local authority appointing the fostering panel, meet as a panel.

(2) The fostering panel and the joint fostering panel shall make a written record of its proceedings and the reasons for its recommendations.

Functions of fostering panel

24.—• The fostering panel and joint fostering panel shall carry out the following functions:–

- (a) consideration of every person referred to the panel as a prospective foster carer;
- (b) the making of recommendations as to whether such a person is suitable to be a foster carer which recommendations shall specify whether they are made in respect of–
 - (i) a particular child or children;
 - (ii) any child;
 - (iii) certain categories of child;
 - (iv) the maximum number of children that foster carer may have in their care at any one time;
- (c) the review of the approval of foster carers made under regulation 25–
 - (i) after 1 year in respect of newly appointed foster carers; and
 - (ii) whenever the case is referred to them thereafter.

(2) In carrying out their functions a fostering panel and a joint fostering panel shall have regard to–

- (a) the duties imposed upon the local authority by section 17(1) (duty of local authority to child looked after by them) of the Act;
- (b) all the information and reports passed to it; and
- (c) any other information which may be provided to it on request.

(3) The local authority or local authorities may request a fostering panel or a joint fostering panel to consider and advise the local authority on any other matters relevant to the performance of their functions under the 1995 Act and these Regulations.

Approval of foster carers by a fostering agency

25.—• Subject to paragraph (3) a fostering agency may approve any person as a carer where–

- (a) the fostering agency have, so far as reasonably practicable, obtained the information in Schedule 4;
- (b) the prospective carer has been interviewed by or on behalf of the fostering agency;
- (c) the fostering agency have provided a fostering panel or a joint fostering panel with a report including the information gathered under sub-paragraph (a) together with such other information and such comment as they consider appropriate;
- (d) the fostering agency have considered a report from a fostering panel or a joint fostering panel containing recommendations on the suitability of the prospective carer; and
- (e) the fostering agency is satisfied that the prospective carer is a suitable person with whom to place a child or children.

(2) The fostering agency shall state whether their approval of any person as a foster carer is in respect of–

- (a) a particular child or children; or
- (b) any child; or

- (c) certain categories of child; or
- (d) the number of children each carer shall have in their care at any one time.

(3) Notwithstanding paragraph (1) a fostering agency may approve any person as a carer where and for as long as that person is currently approved by another fostering agency in terms of paragraph (1), provided that the approval is limited to those categories of child in respect of whom the first fostering agency has approved the person and the second fostering agency advises the first local authority in writing of such derivative approval.

(4) A fostering agency shall notify in writing persons who have been approved as carers under this regulation.

Approval of relative carers by a fostering agency

26.—• This regulation applies where a fostering agency are considering approval of a relative as a carer of that child.

(2) A fostering agency may approve a relative or person known to the child as a carer of that child where—

- (a) the person has been interviewed by or on behalf of the fostering agency;
- (b) the fostering agency has, so far as reasonably practicable, obtained the information in Schedule 4; and
- (c) the fostering agency is satisfied that person is a suitable person with whom to place a child or children.

Agreements with foster carers and relative carers

27.—• Subject to paragraph (2) a local authority which approves a carer under regulation 25 shall enter into a written agreement with the foster carer regarding the matters and obligations set out in Schedule 5 and such other matters as may be appropriate.

(1) A local authority which approves a relative carer under regulation 26 shall enter into a written agreement with that relative carer regarding the matters and obligations set out in Schedule 5 and any other matters as may be appropriate.

Reviews and terminations of approval

28.—• Where a carer has been approved under regulation 25 the fostering agency which approved the carer shall carry out a review, at intervals of not more than a year.

(1) The review shall consider—

- (a) whether the carer continues to be a suitable person with whom to place children;
- (b) the performance of the carer throughout the preceding year and since the carer was first approved;
- (c) the development of the carer throughout the preceding year and since the carer was first approved.

(2) In carrying out the review the fostering agency shall seek, and take into account the views of—

- (a) the carer; and
- (b) any local authority which placed a child with the foster carer—
 - (i) within the preceding year; or
 - (ii) at any time where that placement has not been terminated.

(3) Where on a review the fostering agency is no longer satisfied that the—

- (a) terms of the approval under regulation 25 are appropriate they shall revise the terms; or
- (b) carer is suitable they shall terminate the approval from a date to be specified in the notice under paragraph (6).

(4) At the conclusion of the review the fostering agency shall prepare a report and give notice in writing to the foster carer of their decision (including any revision of the terms of the approval under regulation 25.

(5) Where a carer notifies the fostering agency that they no longer wish to act as a carer, or where the fostering agency is otherwise satisfied that this is the case, the fostering agency shall terminate the approval from a date to be specified by notice in writing to the carer.

(6) A copy of any notice given under paragraphs (5) or (6) shall be sent to any fostering agency who known to them currently approve the foster carer under regulation 25.

(7) Where a fostering agency have been notified under regulation 25(3) by another fostering agency authority of that agency's derivative approval, and the fostering agency have in terms of paragraph (4) revised or terminated their approval, they shall notify the other fostering agency of their decision at the same time as notifying the carer under paragraph (5).

(8) Any fostering agency currently giving derivative approval to a carer, as soon as any notice is received under paragraph (8) shall amend or terminate their approval in accordance with any revision or termination of the first approving fostering agency and shall forthwith notify the carer of this revision or termination with the date of the revision or termination to be specified in the notice and to conform as near as practicable with the date specified in the first fostering agency's notice under paragraph (5).

Review of approval: further provision

29.—• Where a fostering agency approve a person as a foster carer under regulation 25 or a relative carer under regulation 26, the approved foster carer may request a review of the approval.

(1) Where a fostering agency do not approve a prospective foster carer under regulation 25 or a relative carer under regulation 26, the prospective foster carer or relative carer may request a review of the decision of the fostering agency.

(2) A review under paragraph (1) shall seek and take into account the views of—

- (a) the foster carer or relative carer; and
- (b) any local authority which placed a child with the approved foster carer or relative carer—
 - (i) within the preceding year; or
 - (ii) at any time where that placement has not been terminated.

Payment of allowances

30.—• A local authority shall, subject to such conditions as they consider necessary pay such allowance, if any, as they see fit to any person with whom a child is placed under these Regulations.

(1) Any allowance payable by virtue of paragraph (1) may—

- (a) be—
 - (i) a fixed allowance applicable in the case of all children for whom the local authority have responsibility by virtue of these Regulations;
 - (ii) a rate applicable to certain categories or circumstances of case; or
 - (iii) amounts relevant to the individual needs of a particular child; and
- (b) take into account the needs and circumstances of the person with whom the child is placed.

PART V

ARRANGEMENTS WITH VOLUNTARY ORGANISATIONS

Arrangements with voluntary organisations

31.—• Local authorities may individually or jointly enter into arrangements with one or more voluntary organisations in relation to children looked after by the local authorities under Parts II, III and IV of these

Regulations for the voluntary organisations to discharge on their behalf their duties in relation to fostering under those Parts of these Regulations.

(1) Local authorities shall not make arrangements under this regulation unless—

- (a) they are satisfied—
 - (i) the voluntary organisation is a registered fostering service;
 - (ii) the voluntary organisation has the capacity to discharge duties on their behalf; and
 - (iii) that those arrangements are the most suitable way for those duties to be discharged; and
- (b) they enter into a written agreement with the voluntary organisation which covers the matters specified in paragraph 1 of Schedule 6; and
- (c) where they propose to make an arrangement in respect of a particular child they enter into a written agreement with the voluntary organisation which covers the matters specified in paragraph 2 of Schedule 6.

(2) Local authorities shall review any arrangements made under paragraph (1), and any agreement under paragraph (2)(b), at under the terms of the agreement under under paragraph (2)(b) or at intervals of not more than 3 years, which ever is the sooner.

Circumstances necessitating visits by local authorities

32.—• Every local authority shall arrange for one of their officers to visit every child who is accommodated with a foster carer on their behalf by a voluntary organisation in any of the following circumstances and within the periods specified—

- (a) within 28 days of the placement;
- (b) where the voluntary organisation which made the placement with the foster carer make representations to the local authority that there are circumstances relating to the child which require a visit, within 14 days of the receipt of the representations;
- (c) where the local authority are informed that the welfare of the child may not be safeguarded or promoted, as soon as reasonably practicable but in any event within 7 days of being informed;
- (d) at intervals of not more than 6 months where the local authority are satisfied, following a visit to a child under this regulation that the child's welfare is being safeguarded and promoted.

(2) Every local authority shall ensure that a person carrying out a visit in accordance with the paragraph above sees the child during the course of the visit, or if the child is not there, makes arrangements to see the child as soon as reasonably practicable.

PART VI RECORDS

Establishment of records for looked after child

33.—• A local authority shall establish and maintain a written case record, if one is not already in existence, in respect of each child looked after by the authority.

(1) The record shall include—

- (a) a copy of the care plan referred to in regulation 3 and any revised care plan referred to in regulation 8(2)(a);
- (b) a copy of the information obtained under regulation 3(2)(a);
- (c) a copy of any written report in their possession concerning the welfare of the child;
- (d) a copy of any document considered or record established in the course of or as a result of a review of the child's case; and
- (e) details of any arrangements whereby another person acts on behalf of the local authority which placed the child.

Establishment of case records for carers with whom a child is placed

34.—• A fostering agency shall compile a written case record (if one is not already in existence) in respect of each foster carer whom the local authority have approved under regulation 25 with whom a child is placed.

- (1) The record shall include any—
 - (a) agreement under regulation 27;
 - (b) report of review of approval under regulation 28(5);
 - (c) notice of variation or termination of approval under regulation 28(4)(a) or 28(4)(b);
 - (d) any agreement specified in regulation 18(4).
- (2) The information referred to in paragraph (2) is, as the case may be,—
 - (a) a record of each placement with the carer with whom a child is placed including the name, age and sex of each child placed, the dates on which each placement began and terminated and the circumstances of the termination;
 - (b) the information obtained by the local authority in relation to the approval of the carer and in relation to any review or termination of the approval.
- (3) A fostering agency shall compile a record for each prospective carer who is not approved as a foster carer which record shall include a copy of the information as to the prospective carer and his household and family obtained by the authority in connection with the question of approval.

Retention and confidentiality of records

35.—• A case record relating to a child who is placed by the local authority shall be retained by the authority until the 75th anniversary of the date of birth of the child to whom it relates or, if the child dies before attaining the age of 18 years, for a period of 25 years beginning with the date of his death.

(1) The record for a carer or prospective carer compiled under regulation 34, is to be retained by the fostering agency for at least 10 years from the date on which his approval is terminated, or until his death if earlier.

(3) The requirements of paragraphs (1) and (2) may be complied with either by retaining the original written record, or a copy of it, or by keeping all of the information from such record in some other accessible form (such as by means of a computer).

(4) A local authority shall secure the safe-keeping of such case records and shall take all necessary steps to ensure that information contained in them is treated as confidential, subject only to—

- (a) any provision of, or made under or by virtue of, a statute under which access to such records or information may be obtained or given;
- (b) any court order under which access to such records or information may be obtained or given.

Revocation

36. The Arrangements to Look After Children (Scotland) Regulations 1996⁽¹⁸⁾ and the Fostering of Children (Scotland) Regulations 1996⁽¹⁹⁾ are revoked.

⁽¹⁸⁾ S.I. 1996/3262.

⁽¹⁹⁾ S.I. 1996/3263.

SCHEDULE 1

Regulation 3(3), 5

INFORMATION RELATING TO THE CHILD

1. Name, sex, date and place of birth and present address of the child, his parents and any relevant person.
2. Nationality, race, religion and language.
3. Physical description.
4. Present legal status of the child, including any statutory responsibility the local authority have for the child.
5. Why consideration is to be given to the child being looked after by the local authority.
6. Previous history of involvement of the child with any local authority or other relevant organisation.
7. Details of any brothers and sisters, including dates of birth, addresses, including any details in respect of their being looked after by the local authority.
8. The extent of contact with members of the child's family and any other significant person who does not live in the same household as the child.
9. The child's health history, current state of health and development and existing arrangements for his medical and dental care.
10. The child's education history and current arrangements for provision of education.
11. Personality and social development.
12. Interests and recreational activities.

SCHEDULE 2

Regulation 4(1)

MATTERS TO BE ADDRESSED IN THE CARE PLAN

PART I

MATTERS TO BE ADDRESSED IN THE CARE PLAN TO BE MADE AND REVIEWED FOR A CHILD BEING LOOKED AFTER BY A LOCAL AUTHORITY

1. The local authority's immediate and longer-term plans for the child.
2. Details of any services to be provided to meet the care, education and health needs of the child.
3. The respective responsibilities of—
 - (a) the local authority;
 - (b) the child;
 - (c) any person with parental responsibility for the child; and
 - (d) any other relevant person.

PART II

MATTERS TO BE ADDRESSED IN THE CARE PLAN TO BE MADE AND REVIEWED FOR A CHILD PLACED BY A LOCAL AUTHORITY

4. The type of accommodation to be provided and its address together with the name of any person who will be responsible for the child at that accommodation on behalf of the local authority.
5. The contribution the child's parents or any other person will make to the child's day-to-day-care.
6. The arrangements for involving those persons and the child in decision-making.
7. The arrangements for contact between the child and any of the categories of persons mentioned in section 17(3)(b) to (d) of the 1995 Act and, if appropriate, the reasons why contact with such a person would not be reasonably practicable or would be inconsistent with the child's welfare.
8. The expected duration of arrangements and the steps which should be taken in bringing the arrangements to an end including arrangements for rehabilitation of the child with his parents or other suitable person.

SCHEDULE 3

Regulation 18

MATTERS AND OBLIGATIONS IN EMERGENCY PLACEMENT AGREEMENTS

1. The matters and obligations to be included in an agreement are–
 - (a) to care for the child as if the child were a member of that person's family and in a safe and appropriate manner;
 - (b) to permit any person authorised by the local authority to visit the child at any reasonable time;
 - (c) where a placement is terminated to allow the child to be removed at any time by the local authority;
 - (d) to ensure that any information which the person may acquire relating to the child, or to the child's family or any other person, which has been given to the carer in confidence in connection with the placement is kept confidential and is not disclosed except to, or with the agreement of, the local authority; and
 - (e) to allow contact with the child in accordance with section 17(1)(c) (duty of local authority to child looked after by them) of the 1995 Act, with any contact order (as defined in section 11(1) and (2)(d) of the 1995 Act), and with any arrangements made or agreed by the local authority.

SCHEDULE 4

Regulation 25 and 26

INFORMATION AS TO PROSPECTIVE FOSTER CARER AND OTHER MEMBERS OF THE HOUSEHOLD AND FAMILY

The prospective foster carer or relative carer is to provide the following information:–

1. Full name, date of birth, health (supported by a medical report), personality and marital status (including any previous marriage).
2. Particulars of the other adult members of the household and their relationship to the prospective foster carer.
3. Particulars of the children in the family, whether or not members of the household, and any other children in his household.
4. Address and particulars of the accommodation.
5. Religious persuasion, degree of religious observance and capacity to care for a child from any particular religious persuasion.
6. Racial origin, cultural and linguistic background and capacity to care for a child of any particular origin or cultural and linguistic background.
7. Past and present employment or occupation, and standard of living.
8. Leisure activities and interests.
9. Present capacity to care for the prospective foster or relative carer's own and other children, and any previous experience of caring for the prospective foster or relative carer's own and other children and ability to do so in this respect.
10. Details of any criminal offences of which the person has been convicted including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974⁽²⁰⁾ and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) (Scotland) Order 2003⁽²¹⁾ as amended.
11. The outcome of any request or application made by the prospective foster or relative carer or any other member of the household to foster.
12. Particulars of any previous approval under regulation 25 or 26, or refusal of approval or termination of such approval, relating to the prospective foster or relative carer or any other member of the household.
13. An analysis of the motivation of the prospective foster or relative carer in seeking to become a foster carer.
14. References from third parties as to the character of the prospective foster or relative carer and their suitability to be a foster carer.

⁽²⁰⁾ 1974 c.53.

⁽²¹⁾ S.S.I. 2003/231 amended by S.S.I. 2007/75.

MATTERS AND OBLIGATIONS IN FOSTER PLACEMENT AGREEMENTS

1. The support and training to be given to the foster carer.
2. The procedure for the review of approval of a foster carer.
3. The procedure for handling of complaints against foster carers.
4. The procedure in connection with the placement of children, and in particular—
 - (a) the matters to be covered in foster placement agreements and the respective obligations, under any such agreements, of the local authority and the foster carer;
 - (b) the financial arrangements which are to exist between the local authority and the foster carer, including any special financial arrangements in relation to particular categories of children who may be placed with the foster carer;
 - (c) the local authority's arrangements for meeting any legal liabilities of the foster carer arising by reason of a placement; and
 - (d) the procedure available to foster carers who wish to make representations to the local authority which placed the child.
5. The foster carer's obligation to give written notice to the local authority forthwith, with full particulars, of—
 - (a) any intended change of address;
 - (b) any change in the composition of the household, any other change in personal circumstances and any other event affecting either the foster carer's capacity to care for any child placed or the suitability of the household and any criminal convictions arising between approval and subsequent reviews; and
 - (c) any further request or application of a kind mentioned in paragraph 11 of Schedule 1.
6. The foster carer's obligation—
 - (a) not to administer corporal punishment to any child placed with the foster carer;
 - (b) to ensure that any information relating to a child placed with the foster carer, to the child's family or to any other person, which has been given in confidence in connection with a placement is kept confidential and is not disclosed to any person without the consent of the local authority;
 - (c) to comply with the terms of any foster placement agreement, to care for the child placed with the foster carer as if the child was a member of that person's family and in a safe and appropriate manner and to promote the child's welfare having regard to the local authority's immediate and longer-term arrangements for the child;
 - (d) to notify the local authority immediately of any serious illness of the child or of any other serious occurrence affecting the child; and
 - (e) where the placement is terminated, to allow the child to be removed from the foster carer's home by the local authority.

SCHEDULE 6

Regulation 30

VOLUNTARY ORGANISATIONS

1. Before making arrangements under regulation 30 a local authority must enter into a written agreement with the voluntary organisation covering the following matters:–

- (a) which of its duties the local authority proposes to delegate;
- (b) the services to be provided to the local authority by the agency;
- (c) the arrangements for the selection by the local authority of particular foster carers from those approved by the agency;
- (d) a requirement for the agency to submit reports to the local authority on any placement as may be required by the authority, and
- (e) the arrangements for the termination of the agreement.

2. Where a local authority proposes to make an arrangement under this regulation in respect of a particular child the local authority shall enter into an agreement with the agency in respect of that child which sets out–

- (a) details of the particular foster carer with whom the child is to be placed;
- (b) details of any services the child is to receive;
- (c) the terms (including as to payment) of the proposed foster placement agreement;
- (d) the arrangements for record keeping about the child, and for the return of records at the end of the placement;
- (e) a requirement for the agency to notify the local authority immediately in the event of any concerns about the placement; and
- (f) whether and on what basis other children may be placed with the foster carer.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations repeal and replace the Arrangements to Look After Children (Scotland) Regulations 1996 (S.I. 1996/3262) and the Fostering of Children (Scotland) Regulations 1996 (S.I. 1996/3263).

They make provision for local authority duties which apply to children who are, or about to be, looked after in terms of section 17(6) of the Children (Scotland) Act 1995 (c.36) as well as provision for fostering once a child is looked after.

Part II sets out the planning requirement for children who are, or about to be looked after. The local authority must prepare a care plan which records the immediate and longer term needs of the child. Regulation 4 specifies those matters which must be recorded in the care plan. Regulations 5 and 6 prescribe the considerations which must be taken into account by the local authority when preparing the care plan. Once a child is looked after the local authority must carry out a case review for the child. Regulations 8, 9 and 10 set out the review procedure. Regulations 17 to 21 prescribe the procedures which must be followed when children are placed by a local authority.

Parts III and IV concern fostering. Regulations 22 and 23 make provision for the establishment and composition of fostering panels whilst regulation 24 specifies their functions.

Regulations 25 to 29 prescribe the procedures which fostering agencies must follow when approving persons as foster carers.

Part V makes provision for local authorities to enter into agreements with voluntary organisations for the purposes of discharging fostering functions on their behalf.

Part VI prescribes the making and retention of written case records where a child is looked after by a local authority.

RESPONDEE INFORMATION FORM:

CONSULTATION ON DRAFT REGULATIONS LOOKED AFTER CHILDREN (SCOTLAND) REGULATIONS 2008

Name:

Organisation (if applicable)

Postal Address:.....

.....

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
 - (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

- Yes (go to 2b below)
- No, not at all We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

- Yes
- No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No



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