

# Statutory Instrument 1996 No. 3263 (S.253)

## **The Fostering of Children (Scotland) Regulations 1996**

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### STATUTORY INSTRUMENTS

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**1996 No. 3263 (S.253)**

**SOCIAL WORK, SCOTLAND**

**CHILDREN AND YOUNG PERSONS**

The Fostering of Children (Scotland) Regulations 1996

<i>Made</i>	<i>20th December 1996</i>
<i>Laid before Parliament</i>	<i>31st December 1996</i>
<i>Coming into force</i>	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 5(2), (3) and (4) of the Social Work (Scotland) Act 1968<sup>[1]</sup>, and of all other powers enabling him in that behalf, hereby makes the following regulations:

### **Citation and commencement**

1. These regulations may be cited as the Fostering of Children (Scotland) Regulations 1996 and shall come into operation on 1 April 1997.

### **Interpretation**

2.—(1) In these Regulations unless the context otherwise requires-

"the Act" means the Children (Scotland) Act 1995<sup>[2]</sup>;

"foster" means arrange for a child to live as a member of the family of a person who is not a parent, does not have parental responsibilities in respect of the child and who is not a relevant person in relation to the child and who undertakes to look after the child other than in accordance with the Adoption Agencies (Scotland) Regulations 1996<sup>[3]</sup>;

"derivative approval" means approval by one local authority of a person as a foster carer under regulation 7(3) where that person is currently approved as such by another local authority;

"foster carer" means a person approved by a local authority in accordance with regulation 7;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>[4]</sup>;

"looked after" has in respect of a local authority the meaning given to that term by section 17(6) of the Act;

"placement" means the provision of accommodation by a local authority for a child looked after by them by any of the means specified in section 26 of the Act;

"relevant person" has the meaning given to that term by section 93(2) (b) of the Act;

"supervision requirement" has the meaning given to that term by section 93(1) of the Act;

"voluntary organisation" has the meaning given to that term by section 93(1) of the Act.

(2) In these Regulations-

(a) any reference to a numbered regulation is to the regulation in these Regulations bearing that number and any reference in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number;

(b) any reference to a numbered Schedule is to the Schedule to these Regulations bearing that number.

### **Application**

**3.** These Regulations apply where a local authority foster a child who is looked after by them under section 17(6) of the Act.

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#### *Notes:*

[1] 1968 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). [back](#)

[2] [1995 c. 36](#). [back](#)

[3] S.I. [1996/3266](#). [back](#)

[4] [1994 c. 39](#). [back](#)

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### PART II

#### APPROVAL OF FOSTER CARERS

##### **Appointment and composition of fostering panels**

**4.—**(1) Each local authority shall appoint a panel consisting of individuals for the purpose of considering and advising on the matters specified in regulation 6 and may appoint such additional panels as they consider necessary, and each such panel shall be known as a "fostering panel".

(2) A local authority shall appoint as a panel member a medical adviser who shall advise the fostering panel or panels.

**5.** A local authority shall satisfy themselves that the numbers, relevant qualifications and experience, of individual members of the fostering panel will enable it efficiently to discharge its functions under regulation 6.

##### **Functions of fostering panel**

**6.—**(1) Subject to paragraphs (2) and (3), a fostering panel shall consider every person referred to it by the local authority as a prospective foster carer and shall make recommendations to the local authority as to whether such a person is suitable to be a foster carer and shall state whether the panel's recommendation is in respect of-

- (a) a particular child or children; or
- (b) any child; or
- (c) certain categories of child,

to whom these Regulations apply.

(2) In considering its recommendations the panel shall have regard to the duties imposed upon the local authority by section 17(1) of the Act (duty of local authority to child looked after by them) and shall consider all the information and reports passed to it and any other information which may be provided to it on request.

(3) The local authority may request a fostering panel to consider and

advise on any other matters relevant to the performance of their functions under the Act and these Regulations.

### **Approval of foster carers by a local authority**

7.—(1) Subject to paragraph (3) a local authority may approve any person as a foster carer where-

(a) the local authority have, so far as reasonably practicable, obtained the information or data set out in Schedule ;

(b) the prospective foster carer has been interviewed by or on behalf of the local authority;

(c) the local authority have conveyed to the fostering panel a report including the information or data gathered under sub-paragraph (a) together with such other information and such comment as they think appropriate;

(d) the local authority have considered a report from the fostering panel containing recommendations on the suitability of the prospective foster carer; and

(e) the local authority are satisfied, having regard to the duty imposed on them by section 17(1) of the Act, that the prospective foster carer is a suitable person with whom to place a child or children.

(2) The local authority 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

to whom these Regulations apply.

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

(4) A local authority shall notify in writing persons who have been approved as foster carers under this regulation.

### **Agreements with foster carers**

8. A local authority which approve a foster carer under regulation 7 shall enter into a written agreement with the foster carer regarding the matters and obligations set out in Schedule 2 and such other matters as may be appropriate.

## **Payment of allowances**

**9.**—(1) A local authority may, subject to such conditions as they consider necessary, pay such allowance, if any, as they see fit to a foster carer with whom a child is placed under these Regulations.

(2) Any allowance payable by virtue of paragraph (1) may be—  
(a) a fixed allowance applicable in the case of all children for whom the local authority have responsibility by virtue of these Regulations;  
(b) a rate applicable to certain categories or circumstances of case;  
(c) amounts relevant to the individual needs of a particular child;  
and may take into account the needs and circumstances of the foster carer with whom the child is placed.

## **Reviews and Terminations of Approval**

**10.**—(1) Where a foster carer has been approved under regulation 7 the local authority shall review, at intervals of not more than a year, whether the foster carer continues to be a suitable person with whom to place children.

(2) When undertaking a review under this regulation the local authority shall seek, and take into account, the views of the foster carer and of any local authority who have placed a child with the foster carer within the preceding year or who have an earlier placement with the foster carer which has not been terminated.

(3) Where on a review the local authority are no longer satisfied—  
(a) that the terms of the approval under regulation 7(2) are appropriate they shall revise the terms;  
(b) that the foster carer is suitable they shall terminate the approval from a date to be specified in the notice under paragraph (4).

(4) At the conclusion of the review the local authority 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 7(2)).

(5) Where a foster carer notifies the local authority that he no longer wishes to act as a foster carer, or where the authority are otherwise satisfied that this is the case, the authority shall terminate the approval from a date to be specified by notice in writing to the foster carer.

(6) A copy of any notice given under paragraph (4) or (5) shall be sent to any other local authority who known to them currently approve the foster carer under regulation 7.

(7) Where a local authority have been notified under regulation 7(3) by

another authority of that authority's derivative approval, and the local authority have in terms of paragraph (3) revised or terminated their approval, they shall notify the other local authority of their decision at the same time as notifying the foster carer under paragraph (4).

(8) Any local authority currently giving derivative approval to a foster carer, as soon as any notice is received under paragraph (7) shall amend or terminate their approval in accordance with any revision or termination of the first approving authority and shall forthwith notify the foster 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 local authority's notice under paragraph (4).

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### PART III

#### PLACEMENTS

#### **Local authorities fostering a child looked after by them under section 17 (6) of the Act**

**11.** Regulations 11 to 14 apply where a local authority foster a child looked after by them under section 17(6) of the Act other than when the child is looked after under section 17(6)(b) of the Act.

#### **Decision to place a child in a foster placement**

**12.—**(1) A local authority shall not place the child unless they are satisfied that-

- (a) subject to regulation 14, the person with whom it is proposed to place the child has been approved by the local authority as a foster carer in accordance with regulation 7; and
- (b) they have satisfied themselves that placement of the child with the particular foster carer is in the child's best interests.

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

- (a) unless the foster carer has entered into a written agreement with the authority in terms of regulation 8, which covers the matters specified in Schedule 2; and
- (b) except in a case of an emergency or immediate placement under regulations 13 or 14 as the case may be, the foster carer enters into a written agreement with the authority covering the matters specified in Schedule 3.

(3) Where a local authority make arrangements to place a child under this regulation or regulations 13 and 14 outside Scotland, they shall ensure as far as reasonably practicable that arrangements and requirements are complied with outside Scotland as would apply if the child were placed in Scotland.

(4) In making arrangements under this Part of the Regulations the local

authority shall not foster a child with a person except where the household of the person comprises-

- (a) a man and a woman living and acting jointly together; or
- (b) a man or a woman living and acting alone,

provided that a person shall not be disqualified by virtue of this regulation where the household also comprises other relatives of the person who are not themselves concerned in the undertaking to care for the child.

(5) Where the person with whom the child is fostered dies or ceases to live in the household paragraph (4) shall not apply to require removal of the child from that household provided that the local authority satisfy themselves that the child should be fostered with another member or other members of the same household.

### **Emergency and Immediate Placements**

**13.—**(1) Subject to paragraph (2) 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 any person approved under regulation 7.

(2) Before an emergency placement is made pursuant to paragraph (1) the authority shall-

- (a) satisfy themselves that a foster placement is the most suitable way of meeting the child's needs; and
- (b) obtain a written agreement from the person with whom the child is to be placed that that person will carry out the duties specified in regulation 14(2).

(3) Where a local authority place a child under this regulation or regulation 14, they shall provide the person with whom the child is placed with the following:-

- (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.

**14.—**(1) Where a local authority are satisfied that the immediate placement of a child is necessary they may for a period not exceeding six weeks place the child with a person who has not been approved under regulation 7 provided, after interviewing the person, inspecting the accommodation and obtaining information about the person and other persons living in his household, the authority are also satisfied that-

- (a) the person is a relative or friend of the child;

- (b) the person has made a written agreement with the local authority to carry out the duties specified in paragraph (2); and
- (c) the provisions of regulation 13(2)(a) are satisfied.

(2) The duties referred to in regulation 13(2)(b) and paragraph (1)(b) of this regulation are-

- (a) to care for the child as if he 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 his family or any other person, which has been given to him 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) of the Act, with any contact order (as defined in section 11(1) and (2) of the Act), and with any arrangements made or agreed by the local authority.

### **Recommendations by a local authority**

**15.**—(1) Subject to paragraph (2) where a local authority submit a report on a child to a children's hearing under section 56(7) of the Act they may recommend that the child be placed in a place where he is to be under the charge or control of a person who is not a relevant person only if-

- (a) they have carried out the procedure provided for in regulation 12;
- or
- (b) they have carried out the procedure provided for in regulation 13 (2) or 14(1) and are satisfied that a supervision requirement with a condition naming that person's home as the place where the child is to be fostered would be in the child's best interests.

(2) In the case of the provision in relation to procedure under regulation 14 (1) referred to in paragraph (1)(b), for the purposes of paragraph (1)(b) the words "for a period not exceeding six weeks" shall be removed.

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### PART IV

#### ARRANGEMENTS WITH VOLUNTARY ORGANISATIONS

**16.**—(1) 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 and III of these Regulations for the voluntary organisations to discharge on their behalf their duties in relation to fostering under those Parts of these Regulations.

(2) Local authorities shall not make arrangements under this regulation unless-

(a) they are satisfied-

(i) as to the capacity of the voluntary organisations to discharge duties on their behalf; and

(ii) 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 organisations about the arrangements, providing for consultation and for exchange of information and reports between the authority and the voluntary organisations.

(3) A voluntary organisation may not place a child outside the British Islands<sup>[5]</sup>.

(4) Local authorities shall review any arrangements made under paragraph (1), and any agreement under paragraph (2)(b), at intervals of not more than 12 months.

#### **Circumstances necessitating visits by local authorities**

**17.**—(1) 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) 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;

(b) where the local authority are informed that the welfare of the child may not be being safeguarded or promoted, as soon as reasonably practicable but in any event within 7 days of being informed.

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*Notes:*

[5] "British Islands" are defined in the Interpretation Act 1978 (c. 30) as meaning the United Kingdom, the Channel Islands and the Isle of Man. [back](#)

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### PART V

### RECORDS

#### **Case records for foster carers and others with whom a child is placed**

**18.**—(1) A local authority shall compile (if one is not already established) and maintain a record for each foster carer whom they have approved under regulation 7 and for each person, not being a foster carer, with whom a child is placed by them.

(2) Each record compiled under paragraph (1) shall include copies of each of the documents specified in paragraph (3) and the information specified in paragraph (4).

(3) The documents referred to in paragraph (2) are as the case may be—

(a) any notice of approval under regulation 7(4);

(b) any agreement under regulation 8;

(c) any report of review of approval under regulation 10(4);

(d) any notice of variation or termination of approval under regulation 10(4) or (5) or (8);

(e) any agreement specified in regulation 13(2)(b) or 14(1)(b).

(4) The information referred to in paragraph (2) is as the case may be—

(a) a record of each placement with the foster carer or person, not being a foster 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 foster carer and in relation to any review or termination of the approval.

(5) A local authority are to compile a record for each prospective foster carer who is not approved as a foster carer, the record to include a copy of the information, as to the prospective foster carer and his household and family, obtained by the authority in connection with the question of approval.

## **Retention and confidentiality of records**

**19.**—(1) The record for a foster carer or other person compiled under regulation 18, is to be retained for at least 10 years from the date on which his approval is terminated, or until his death if earlier.

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

(3) The local authority responsible for the maintenance of any record under regulation 18 are to secure its safe keeping and to take all necessary steps to ensure that the information which it contains is treated as confidential subject only to-

- (a) any provision in under or by virtue of a statute under which access to such record or information may be obtained or should be granted;
- (b) any court order under which access to such record or information may be obtained or given.

*James Douglas-Hamilton*

Minister of State, Scottish Office  
St Andrew's House, Edinburgh

20th December 1996

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### SCHEDULE 1

#### Regulation 7(1)(a)

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

1. His 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 his family, whether or not members of his household, and any other children in his household.
4. Address and particulars of his accommodation.
5. His religious persuasion, the degree of his religious observance and his capacity to care for a child from any particular religious persuasion.
6. His racial origin, cultural and linguistic background and his capacity to care for a child of any particular origin or cultural and linguistic background.
7. His past and present employment or occupation, and his standard of living.
8. Leisure activities and interests.
9. His present capacity to care for his own and other children and previous experience of caring for his own and other children and his ability in this respect.
10. Any previous criminal convictions and those of other members of his

household (subject to the Rehabilitation of Offenders Act 1974<sup>[6]</sup>).

**11.** The outcome of any request or application made by him or any other member of his household to foster or adopt children or for registration under section 71 of the Children Act 1989<sup>[7]</sup> or any previous amendment of that section.

**12.** Particulars of any previous approval under regulation 7, or refusal of approval or termination of such approval, relating to him or any other member of his household.

**13.** An analysis of the applicant's motivation in wanting to be a foster carer.

**14.** References from third parties as to the applicant's character and suitability to be a foster carer.

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[6] 1974 c. 53. [back](#)

[7] 1989 c. 41. [back](#)

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### SCHEDULE 2

#### Regulation 8

#### MATTERS AND OBLIGATIONS IN FOSTER CARER 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 his address;
  - (b) any change in the composition of his household, any other change in his personal circumstances and any other event affecting either his capacity to care for any child placed or the suitability of his 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 not to administer corporal punishment to any child placed with him.

7. The foster carer's obligation to ensure that any information relating to a child placed with him, to the child's family or to any other person, which has been given to him in confidence in connection with a placement is kept confidential and is not disclosed to any person without the consent of the local authority.

8. The foster carer's obligation to comply with the terms of any foster placement agreement, to care for the child placed with the foster carer as if he was a member of that person's family and in a safe and appropriate manner and to promote his welfare having regard to the local authority's immediate and longer-term arrangements for the child.

9. The foster carer's obligation to notify the local authority immediately of any serious illness of the child or of any other serious occurrence affecting the child.

10. The foster carer's obligation where the placement is terminated, to allow the child to be removed from the foster carer's home by the local authority.

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### SCHEDULE 3

#### Regulation 12

#### MATTERS AND OBLIGATIONS TO BE COVERED IN FOSTER PLACEMENT AGREEMENTS

1. The provision by the local authority of a statement containing all information which the local authority consider necessary to enable the foster carer to care for the child and, in particular, information as to-
  - (a) the local authority's care plan for the child and the objectives of the placement;
  - (b) the details of any supervision requirement or court order in relation to the child;
  - (c) the child's personal history, religious persuasion, cultural and linguistic background and racial origin;
  - (d) the child's state of health and need for health care and surveillance and the name of the child's doctor during the foster placement; and
  - (e) the child's educational needsincluding a requirement for the statement to be provided either at the time of the signing of the agreement or, where this is not practicable, within the following 14 days.
  
2. The local authority's arrangements for the financial support of the child during placement.
  
3. Any arrangements for delegation of parental responsibility for consent to the medical or dental examination or treatment of the child, or consent to the child's engaging in any activity either actively or otherwise.
  
4. The circumstances in which it is necessary to obtain in advance the approval of the local authority for the child to live, even temporarily, away from the foster carer's home or for someone else temporarily to take care of the child.
  
5. The arrangements for visits to the child, in connection with the

supervision of the placement, by the person authorised by or on behalf of the local authority and the frequency of visits and reviews.

6. The arrangements for the child to have contact with his parents and other persons, including any arrangements in pursuance of section 17(1)(c) of the Act (parental contact with children being looked after by a local authority) or any contact (within the meaning of section 11(1) and (2)(d) of the Act with any other person), or any contact required by a children's hearing in terms of section 70(5)(b) of the Act.

7. Compliance by the foster carer with the terms of the agreement set out in Schedule 2.

8. Co-operation by the foster carer with any arrangements made by the local authority.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations apply where a local authority foster a child who is looked after by them under the Children (Scotland) Act 1995. They supersede the Boarding Out and Fostering of Children (Scotland) Regulations 1985 (S. I. 1985/1799).

These Regulations make provision for the establishment of fostering panels and specify the functions of such panels (regulations 4-6). They prescribe the procedures to be followed by local authorities in approving persons as foster carers (regulations 7-10) and the procedures to be followed in making arrangements to foster children (regulations 12-14). The main change to the Regulations is that provision is made for local authorities collectively to enter into agreements with voluntary organisations to discharge general fostering arrangements on their behalf (regulation 16).

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