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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 210**

**CHILDREN AND YOUNG PERSONS  
SOCIAL WORK**

**The Looked After Children (Scotland) Regulations 2009**

*Made* - - - - 2nd June 2009  
*Laid before the Scottish  
Parliament* - - - - 3rd June 2009  
*Coming into force* - - 28th September 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 5(2), (3) and (4) of the Social Work (Scotland) Act 1968 <sup>M1</sup>, sections 17(2) and (3), 31 and 103(2) and (3) of the Children (Scotland) Act 1995 <sup>M2</sup> and sections 110 and 117 of the Adoption and Children (Scotland) Act 2007 <sup>M3</sup> and all other powers enabling them to do so.

**Marginal Citations**

- M1** 1968 c. 49. Subsections (3) to (5) of section 5 were substituted by the [Children \(Scotland\) Act 1995 \(c. 36\)](#), [Schedule 4](#), [paragraph 5\(4\)\(d\)](#). Subsection (2) of section 5 was substituted by the Children Act 1975 c. 72, [Schedule 3](#), [paragraph 49](#). Subsection (2)(c) of section 5 was substituted by the Local Government etc. (Scotland) Act 1994 c. 39, [section 180\(1\)](#), [Schedule 13](#), [paragraph 76\(3\)\(c\)](#) and is amended by the Adoption and Children (Scotland) Act 2007 [asp 4](#), [section 120\(1\)](#), [schedule 2](#), [paragraph 2](#). Subsection (2)(c) of section 5 was amended by the Children (Scotland) Act 1995 c. 36, [section 105\(4\)](#), [Schedule 4](#), [paragraph 15\(4\)\(c\)](#). Subsection (2)(d) of section 5 was repealed by the Children Act 1989 (c. 41), [section 108\(7\)](#), [Schedule 15](#). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 c. 46.
- M2** 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](#). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- M3** 2007 [asp 4](#).

## PART I S

### GENERAL

#### Citation and commencement S

1. These Regulations may be cited as the Looked After Children (Scotland) Regulations 2009 and come into force on 28th September 2009.

#### Interpretation S

2. In these Regulations—

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

[<sup>F1</sup>“the 2011 Act” means the Children’s Hearings (Scotland) Act 2011;]

“the Arrangements to Look After Children Regulations” means the Arrangements to Look After Children (Scotland) Regulations 1996 <sup>M4</sup>;

[<sup>F1</sup>“child protection order” means an order mentioned in section 37 of the 2011 Act;]

[<sup>F1</sup>“compulsory supervision order” has the meaning given by section 83 of the 2011 Act;]

[<sup>F1</sup>“contact direction”—

(a) in relation to a child protection order, has the meaning given by section 41(3) of the 2011 Act;

(b) in relation to a compulsory supervision order, interim compulsory supervision order or medical examination order, means a measure contained within such an order of the type mentioned in section 83(2)(g) or 87(2)(e) of that Act;]

[<sup>F1</sup>“exclusion order” has the meaning given by section 76(12) of the 1995 Act;]

“foster carer” means a person approved as a foster carer in accordance with a decision made under regulation 22(3), 23 or 26(8);

“the Fostering Regulations” means the Fostering of Children (Scotland) Regulations 1996 <sup>M5</sup>;

“Health Board” means a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 <sup>M6</sup>;

[<sup>F1</sup>“interim compulsory supervision order” has the meaning given by section 86 of the 2011 Act;]

“kinship carer” means a person approved as a kinship carer in accordance with a decision made under regulation 10;

[<sup>F1</sup>“medical examination order” has the meaning given by section 87 of the 2011 Act;]

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

“registered fostering service” means a person other than a local authority 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 <sup>M7</sup>,

and who is registered under [<sup>F2</sup>Part 5 of the Public Services Reform (Scotland) Act 2010]; and

[<sup>F3</sup>“relevant person” has the meaning given by section 200 of the 2011 Act and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act; <sup>F4</sup> ...]

[<sup>F5</sup>“sibling of the child” means—

- (a) a person who has at least one parent in common with the child, and
- (b) any other person with whom the child has lived or is living, and with whom the child has an ongoing relationship with the character of a relationship between siblings;]

[<sup>F1</sup>“warrant to secure attendance” has the meaning given by section 88 of the 2011 Act;]

#### Textual Amendments

- F1** Words in reg. 2 inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(2)(a)**; S.S.I. 2013/195, **arts. 2, 3**
- F2** Words in reg. 2 substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 1 para. 42**
- F3** Words in reg. 2 substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(2)(b)**; S.S.I. 2013/195, **arts. 2, 3**
- F4** Word in reg. 2 omitted (26.7.2021) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(2)**
- F5** Words in reg. 2 inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(2)**

#### Marginal Citations

- M4** [S.I. 1996/3262](#).
- M5** [S.I. 1996/3263](#).
- M6** [1978 c. 29](#). Section 2 was amended by the [Health and Social Services and Social Security Adjudications Act 1983 c. 41](#), [section 14\(2\)](#), [Schedule 7](#), [paragraph 1](#), the [National Health Service and Community Care Act 1990 c. 19](#), [sections 28](#) and [66\(1\)](#), the [National Health Service Reform \(Scotland\) Act 2004 asp 7](#), [schedule 1](#), [paragraph 1\(2\)](#) and the [Smoking, Health and Social Care \(Scotland\) Act 2005 asp 13](#), [section 42\(1\)](#), and [schedule 2](#), [paragraph 2](#).
- M7** Section 4 of the [Social Work \(Scotland\) Act 1968](#) allows local authorities to make arrangements with a voluntary organisation or other person to assist with the performance of a function which is assigned to the local authority under that Act or Part II of the 1995 Act.

## PART II **S**

### CARE PLANNING

#### Information to be obtained by the local authority in respect of a child to be or being looked after by them **S**

**3.—(1)** This regulation applies where a child is looked after or about to be looked after by a local authority in terms of section 17(6) of the 1995 Act.

(2) The local authority must—

- (a) carry out the assessment in accordance with regulation 4; and
- (b) so far as is reasonably practicable comply with the requirements in paragraph (3).

(3) The requirements are—

- (a) to obtain and record in writing the information relating to the child specified in Schedule 1; and
- (b) to obtain a written assessment of the child's health and their need for health care by a registered medical practitioner or a registered nurse.

(4) The requirement at paragraph (3)(b) does not apply where an assessment of the child's health and their need for health care has already been made by a registered medical practitioner or a registered nurse within a period of 3 months immediately preceding the date the child began to be looked after by the local authority.

## Assessment **S**

4.—(1) The local authority must make an assessment of—

- (a) the child's immediate needs and how those needs can be met;
- (b) the child's long term needs and how those needs can be met;
- (c) proposals for safeguarding and promoting the child's welfare;
- (d) proposals for making sustainable and long term arrangements for the care of the child;
- (e) the nature of the services proposed for the child in the immediate and long term with particular regard to the information specified in Schedule 1;
- (f) alternative courses of action including the possibility of making an arrangement in accordance with regulation 8 or approving a person as a kinship carer;
- (g) whether the local authority should seek a change in the child's legal status;
- (h) the arrangements which require to be made for the time when the child will no longer be looked after by the local authority;
- (i) the existing health arrangements for the child and whether there is a need to change such arrangements taking into account the information specified in paragraph 9 of Schedule 1;
- (j) having regard to the information specified in paragraph 10 of Schedule 1, the child's educational needs, the proposals for meeting those needs, and the proposals for achieving continuity in the child's education;
- (k) the child's religious persuasion and the need for the child to continue to be brought up in accordance with their religious persuasion; and
- (l) any other matter relating to the welfare of the child either in the immediate or long term as appears to the local authority to be relevant.

(2) In making an assessment under paragraph (1) the local authority must, where appropriate, seek and take into account the views of—

- (a) the child, taking account of their age and maturity;
- (b) the child's parents;
- (c) any person with parental responsibilities or parental rights in respect of the child; <sup>F6</sup>...

[<sup>F7</sup>(ca) any sibling of the child; and]

- (d) any other person as the authority considers appropriate.

(3) Where the local authority are considering placing the child with a kinship carer in accordance with regulation 11 or a foster carer in accordance with regulation 27 they must, in addition to the assessment at paragraph (1) make an assessment of the contact arrangements with the child's parents, their family [<sup>F8</sup>including any sibling of the child], any person with parental responsibilities or parental rights and any other specified person and whether such arrangements should be changed.

(4) Where the local authority are considering placing a child in a residential establishment they must, in addition to the assessment at paragraph (1), carry out the assessment specified in paragraph (3) and make an assessment of whether that particular placement is appropriate for the child's needs taking into account the residential establishment's statement of functions and objectives.

<sup>F9</sup>(5) .....

(6) In paragraph (3) “specified person” means any person who is specified as having contact with the child in any court order or any order granted by a children's hearing.

#### Textual Amendments

- F6** Word in reg. 4(2)(c) omitted (26.7.2021) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(3)(a)(i)**
- F7** Reg. 4(2)(ca) inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(3)(a)(ii)**
- F8** Words in reg. 4(3) inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(3)(b)**
- F9** Reg. 4(5) omitted (26.7.2021) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(3)(c)**

#### Child's plan **S**

5.—(1) Following an assessment made under regulation 4 the local authority must prepare a plan to be known as the “child's plan” in respect of the child.

(2) Before preparing the child's plan the local authority must, so far as is reasonably practicable and consistent with the best interests of the child, consult with—

- (a) the child, taking account of their age and maturity;
- (b) the child's parents;
- <sup>F10</sup>(c) any relevant person in respect of the child;]
- <sup>F11</sup>(d) any person other than a relevant person who appears to the authority to have (or to recently have had) a significant involvement in the upbringing of the child;]
- (e) any person, of whom the local authority are aware, who has had—
  - (i) parental responsibilities or parental rights in respect of the child; and
  - (ii) charge of or control over the child; <sup>F12</sup>...
- <sup>F13</sup>(ea) any sibling of the child; and]
- (f) any other person as the authority consider appropriate.

(3) The child's plan must include—

- (a) the assessments and findings made by the local authority under regulation 4;
- (b) arrangements concerning the matters specified in Part I of Schedule 2;
- (c) in each case where the local authority are considering placing or have placed the child with a kinship carer in accordance with regulation 11, with a foster carer in accordance with regulation 27 or in a residential establishment arrangements concerning the matters specified in Part II of Schedule 2;
- (d) the nature of services proposed for any person to ensure the arrangements concerning the matters specified in Part I or II of Schedule 2 are met;
- (e) the health assessment referred to in regulation 3.

- (4) The local authority must provide a copy of the child's plan to—
- (a) the child where, taking account of the child's age and maturity, the local authority consider that the child is capable of understanding the purpose and effect of the child's plan;
  - (b) the child's parents;
  - <sup>F14</sup>(c) any relevant person in respect of the child; and]
  - <sup>F15</sup>(d) any person other than a relevant person who appears to the authority to have (or to recently have had) a significant involvement in the upbringing of the child.]
- (5) The requirements under paragraph (4)(b) or (c) do not apply where the local authority are of the view that, taking into account their duties under section 17 of the 1995 Act and the terms of any permanence order, [<sup>F16</sup>an exclusion order or any order or warrant made by a children's hearing or sheriff under the 2011 Act], it would not be in the child's interest for a copy of the child's plan to be given to that person.

#### Textual Amendments

- F10** Reg. 5(2)(c) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(3)(a)(i)**; S.S.I. 2013/195, **arts. 2, 3**
- F11** Reg. 5(2)(d) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(3)(a)(ii)**; S.S.I. 2013/195, **arts. 2, 3**
- F12** Word in reg. 5(2)(e) omitted (26.7.2021) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(4)(a)**
- F13** Reg. 5(2)(ea) inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(4)(b)**
- F14** Reg. 5(4)(c) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(3)(b)(i)**; S.S.I. 2013/195, **arts. 2, 3**
- F15** Reg. 5(4)(d) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(3)(b)(ii)**; S.S.I. 2013/195, **arts. 2, 3**
- F16** Words in reg. 5(5) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(3)(c)**; S.S.I. 2013/195, **arts. 2, 3**

#### <sup>F17</sup>Duty to place siblings together **S**

- 5A.—**(1) Paragraph (2) applies where—
- (a) the local authority are considering placing the child—
    - (i) with a kinship carer in accordance with regulation 11,
    - (ii) with a foster carer in accordance with regulation 27,
    - (iii) in a residential establishment, and
  - (b) any sibling of the child is looked after or about to be looked after.
- (2) The local authority must, where appropriate—
- (a) place the child and the sibling of the child with the same carer or in the same residential establishment, or
  - (b) place the child and the sibling of the child in homes which are near to each other.

(3) In determining for the purposes of paragraph (2) whether the placement is appropriate, the local authority must be satisfied that the placement safeguards and promotes the welfare of the child (which is the paramount concern).

(4) In determining for the purposes of paragraph (2) whether a placement as referred to in sub-paragraph (b) of that paragraph is appropriate, the local authority must be satisfied that such a placement would better safeguard and promote the welfare of a child than a placement as referred to in sub-paragraph (a) of that paragraph.]

#### Textual Amendments

**F17** Reg. 5A inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(5)**

## PART III S

### GENERAL MATTERS AFFECTING LOOKED AFTER CHILDREN

#### Death of a looked after child S

6.—(1) If a child who is being looked after by a local authority dies the authority must immediately—

(a) notify the Scottish Ministers; <sup>F18</sup>...

[<sup>F19</sup>(aa) notify Social Care and Social Work Improvement Scotland; and]

(b) so far as is reasonably practicable notify the parents of the child and every person who has any parental responsibilities or parental rights in relation to the child.

(2) The requirement to notify at paragraph (1)(b) does not apply in respect of any person with whom the child was residing at the time of their death.

#### Textual Amendments

**F18** Word in reg. 6(1)(a) omitted (15.3.2013) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/14\)](#), regs. 1, 2

**F19** Reg. 6(1)(aa) inserted (15.3.2013) by [The Looked After Children \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/14\)](#), regs. 1, 2

#### Recommendations by local authority to Principal Reporter S

7.—(1) This regulation applies where a local authority submit a report on a child to a children's hearing under [<sup>F20</sup>section 66(4) of the 2011 Act (investigation and determination by the Principal Reporter)].

(2) Where the local authority are of the view that it would be in the best interests of the child they may recommend that the child—

(a) be cared for by their parents or any person with parental responsibilities or parental rights in relation to the child under arrangements made in accordance with regulation 8;

(b) be placed with a kinship carer who has entered into an agreement under regulation 12;

(c) be placed with a foster carer who has entered into an agreement under regulation 24;

- (d) be placed with any other person <sup>F21</sup>... where the requirements of regulation 36 are met; or
- (e) be placed in a residential establishment.

#### Textual Amendments

- F20** Words in reg. 7(1) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(4)(a)**; S.S.I. 2013/195, **arts. 2, 3**
- F21** Words in reg. 7(2)(d) omitted (24.6.2013) by virtue of [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(4)(b)**; S.S.I. 2013/195, **arts. 2, 3**

## PART IV S

### LOOKED AFTER CHILDREN CARED FOR BY PARENTS

#### Arrangements for child to be cared for by parents or persons with parental rights and parental responsibilities S

8.—(1) A local authority may, in the case of a child who is looked after by that authority in terms of section 17(6) of the 1995 Act, make arrangements for the child to be cared for by—

- (a) the child's parents; or
- (b) any person who has parental rights and parental responsibilities in respect of the child.

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

(3) Any arrangements made by a local authority under paragraph (1) must—

- [<sup>F22</sup>(a) be subject to the terms of any compulsory supervision order, interim compulsory supervision order, warrant to secure attendance, permanence order or exclusion order made in respect of the child; and]
- (b) not return the child to the care of a person where the child was, by virtue of any order, authorisation or warrant, removed from the care of that person.

#### Textual Amendments

- F22** Reg. 8(3)(a) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(5)**; S.S.I. 2013/195, **arts. 2, 3**

#### Notification of occurrences involving the child S

9.—(1) The local authority must, in making arrangements under regulation 8, require the person who is to care for the child to notify the authority immediately if the child—

- (a) dies;
- (b) suffers any serious illness or injury; or
- (c) absents themselves or, without lawful authority, is taken away from the person's home.

(2) On receiving notification under paragraph (1) the local authority must, so far as is reasonably practicable, immediately notify the child's parents and every person who has any parental



responsibilities or parental rights in relation to the child unless that person is caring for the child by virtue of regulation 8.

## PART V S

### KINSHIP CARE

#### Kinship carers S

**10.**—(1) A local authority may make a decision to approve a person mentioned in paragraph (2) as a suitable carer for a child <sup>F23</sup>... which carer shall be known as a “kinship carer”.

(2) The persons referred to in paragraph (1) are—

- (a) a person who is related to the child; or
- (b) a person who is known to the child and with whom the child has a pre existing relationship.

(3) Before making a decision under paragraph (1) the authority must—

- (a) so far as reasonably practicable obtain and record in writing the information specified in Schedule 3; and
- (b) taking into account that information, carry out an assessment of that person's suitability to care for the child.

(4) In paragraph (2)(a) “related” means related to the child either by blood, marriage or civil partnership.

#### Textual Amendments

**F23** Words in reg. 10(1) omitted (24.6.2013) by virtue of [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(6\)](#); S.S.I. 2013/195, [arts. 2, 3](#)

#### Placement of child with kinship carer S

**11.**—(1) A local authority must not place a child with a kinship carer where—

[<sup>F24</sup>(a) the placement is, or would be, contrary to the terms of any—

- (i) order or warrant made by the children’s hearing or the sheriff under the 2011 Act;
- (ii) permanence order; or
- (iii) exclusion order; or]

(b) the placement would return the child to the care of a person where the child was, by virtue of any order, authorisation or warrant, removed from the care of that person.

(2) A local authority must not place a child with a kinship carer unless they are satisfied that—

- (a) placement is in the best interests of the child;
- (b) placement of the child with that kinship carer is in the best interests of the child;
- (c) following the assessment referred to in regulation 10(3), that kinship carer is a suitable person to care for the child;
- (d) they have taken into account all information available to them relevant to the performance of their duties under section 17(1) to (5) of the 1995 Act;

- (e) the kinship carer has entered into a written agreement with the local authority under regulation 12; and
- (f) the kinship carer has entered into a written agreement with the local authority as to the matters specified in Schedule 4.

#### Textual Amendments

**F24** Reg. 11(1)(a) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(7)**; S.S.I. 2013/195, **arts. 2, 3**

#### Agreement with kinship carers **S**

**12.** Where a local authority make a decision to approve a kinship carer under regulation 11 that authority must enter into a written agreement with the kinship carer regarding the matters and obligations in Schedule 5 and any other matters and obligations as the authority consider appropriate.

#### Notification of placement with kinship carer **S**

**13.—(1)** Where a local authority place a child with a kinship carer in accordance with regulation 11 they must, as soon as reasonably practicable, provide notification of the placement to—

- (a) the local authority for the area in which the kinship carer resides if different from the authority making the placement;
- (b) the Health Board which provides services in the area in which the kinship carer resides;
- (c) each parent of the child; and
- (d) any person who has any parental responsibilities or parental rights in relation to the child.

[<sup>F25</sup>(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—

- (a) the Principal Reporter; and
- (b) the child’s relevant person.]

(2) The requirements under [<sup>F26</sup>paragraphs (1)(c) and (d) and (1A)] do not apply in respect of any parent or person with parental responsibilities or parental rights who has already received a written copy of the child's care plan under regulation 5.

(3) Notification under paragraph (1)(c) or (d) must not be given to a person—

- (a) where the local authority are of the view that, taking into account their duties under section 17 of the 1995 Act, it would not be in the child's interests for notification to be given to that particular person;
- (b) where a permanence order, [<sup>F27</sup>an exclusion order or any order or warrant made by the children’s hearing or the sheriff under the 2011 Act] specifies that the place at which a child is to reside shall not be disclosed to a particular person.

(4) In this regulation “notification” means notification in writing and shall include particulars of the placement.

### Textual Amendments

- F25** Reg. 13(1A) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(8\)\(a\)](#); [S.S.I. 2013/195](#), [arts. 2, 3](#)
- F26** Words in reg. 13(2) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(8\)\(b\)](#); [S.S.I. 2013/195](#), [arts. 2, 3](#)
- F27** Words in reg. 13(3)(b) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(8\)\(c\)](#); [S.S.I. 2013/195](#), [arts. 2, 3](#)

### Short-term placements in kinship care **S**

**14.**—(1) Where paragraph (2) applies a series of planned short-term placements with a kinship carer made in accordance with regulation 11 may be treated as a single placement with a kinship carer for the purposes of these Regulations.

- (2) This paragraph applies where—
- (a) all the placements occur within a period which does not exceed 12 months;
  - (b) no single placement is for a duration of more than 4 weeks; and
  - (c) the total duration of the placements does not exceed 120 days.

### Establishment of case records for kinship carers **S**

**15.**—(1) A local authority must compile a written case record, if one is not already in existence, in respect of each kinship carer who has been approved by that authority and with whom a child has been placed.

- (2) The written case record referred to in paragraph (1) must include any—
- (a) written agreement entered into under regulation 12;
  - (b) any agreement entered into under regulation 36;
  - (c) information specified in paragraph (3) in so far as it is relevant to the case.
- (3) The information referred to in paragraph (2)(c) is—
- (a) a record of each placement with the kinship carer to include—
    - (i) the name, age and sex of each child placed;
    - (ii) the dates on which each placement began and terminated;
    - (iii) the circumstances of any terminated placement; and
  - (b) the information obtained by the local authority in respect of the decision to approve the kinship carer.
- (4) The local authority must compile a written case record for each prospective kinship carer.
- (5) The written record referred to in paragraph (4) must include information obtained as to—
- (a) the prospective kinship carer;
  - (b) the members of the prospective kinship carer's household; and
  - (c) the prospective kinship carer's family.

### **Retention and confidentiality of case records for kinship carers** **S**

16.—(1) A case record for a kinship carer compiled under regulation 15 must be retained by the local authority for at least 25 years from the date the placement with that kinship carer is terminated or until their 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) Each local authority must secure the safe keeping of every case record and take all necessary steps to ensure that information contained in the case record is confidential subject only to—

- (a) any provision of, or made under or by virtue of any enactment 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 given.

## **PART VI** **S**

### **FOSTERING PANELS**

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

17.—(1) Each local authority must appoint a panel to be known as the “fostering panel” for the purpose of carrying out the functions conferred on it by regulation 20.

(2) The fostering panel shall consist of at least 6 members.

(3) A fostering panel may be established jointly by any 2 or more local authorities which panel shall be known as a “joint fostering panel” and any reference to a fostering panel in these Regulations shall include a reference to a joint fostering panel.

(4) The persons appointed to a fostering panel shall include a medical adviser appointed by the local authority under regulation 19.

(5) Each local authority must satisfy themselves that the numbers, qualifications and experience of individual members of a fostering panel will enable it effectively to discharge its functions.

(6) Where the local authority are of the opinion that any member of the fostering panel is unsuitable or unable to remain as a member they may terminate membership at any time by giving notice in writing with reasons.

#### **Meetings of the fostering panel** **S**

18.—(1) No business shall be conducted by the fostering panel unless at least 3 of its members meet as the panel.

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

(3) In paragraph (1) “member” does not include any medical adviser or legal adviser.

#### **Appointment of medical and legal advisers** **S**

19.—(1) Each local authority must appoint such number of persons with the qualifications specified in paragraph (3) as they consider necessary for the purpose of providing the fostering panel with medical advice in connection with the exercise of its functions.

(2) A local authority may appoint such number of persons with the qualifications specified in paragraph (4) as they consider necessary for the purpose of advising the fostering panel.

(3) The qualifications referred to in paragraph (1) are that the person is a registered medical practitioner.

(4) The qualifications referred to in paragraph (2) are that the person is—

- (a) a solicitor; or
- (b) an advocate.

(5) In paragraph (4)—

“solicitor” means a person qualified to practice as a solicitor under section 4 of the Solicitors (Scotland) Act 1980<sup>M8</sup>; and

“advocate” means a practising member of the Faculty of Advocates.

#### Marginal Citations

**M8** 1980 c. 46.

### Functions of the fostering panel **S**

**20.**—(1) The fostering panel must consider the case of every foster carer and prospective foster carer referred to it by the local authority.

(2) The fostering panel must make recommendations on the following matters:—

- (a) whether a prospective foster carer is suitable or continues to be suitable to be a foster carer;
- (b) whether a prospective foster carer would be a suitable foster carer for—
  - (i) a particular child or children;
  - (ii) any child; or
  - (iii) certain categories of child;
- (c) the maximum number of children a particular foster carer may have in their care at any one time;<sup>F28</sup> ...

[<sup>F29</sup>(d) following a referral under regulation 27B(2), whether the foster carer is a suitable carer for the child, despite this resulting in more than 3 children who are not all siblings of each other remaining in the care of that foster carer at any one time.]

(3) Before making a recommendation under paragraph (2) the fostering panel must give the prospective foster carer the opportunity to meet with the foster panel to discuss the matter.

(4) In carrying out its functions the fostering panel must have regard to—

- (a) the duties imposed on the local authority by section 17(1) of the 1995 Act;
- (b) all the information and reports passed to it.

[<sup>F30</sup>(c) the presumption that no more than 3 children are to be in the care of a foster carer at any one time, unless all the children are siblings of each other.]

#### Textual Amendments

**F28** Words in reg. 20(2)(c) omitted (31.3.2021) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), **3(6)(a)(i)**

**F29** Reg. 20(2)(d) inserted (31.3.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), **3(6)(a)(ii)**

**F30** Reg. 20(4)(c) inserted (31.3.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), **3(6)(b)**

## PART VII **S**

### FOSTERING

#### Foster carers **S**

**21.**—(1) A local authority may make a decision to approve a person as a suitable carer for a child <sup>F31</sup>... which carer shall be known as a “foster carer”.

(2) A decision to approve a person as a foster carer must be made in accordance with regulation 22.

#### Textual Amendments

**F31** Words in reg. 21(1) omitted (24.6.2013) by virtue of [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(9\)](#); S.S.I. 2013/195, [arts. 2, 3](#)

#### Approval of foster carers **S**

**22.**—(1) Where a local authority are considering whether to approve a person as a foster carer they must refer the case to a fostering panel.

(2) The local authority must so far as reasonably practicable provide the fostering panel with—

- (a) the information in Schedule 3; and
- (b) such other information or observations as they consider appropriate.

(3) Where a local authority receive a recommendation from the fostering panel under regulation 20(2) they must make a decision on whether the prospective foster carer is suitable to be a foster carer within 14 days from the date the recommendation was made.

(4) Where the local authority make a decision that a person is suitable to be a foster carer they must be satisfied that—

- (a) the prospective foster carer has been interviewed by or on behalf of the authority;
- (b) the authority has taken into account the recommendations made by the fostering panel; and
- (c) the prospective foster carer is a suitable person with whom to place a child or children.

(5) A decision that a person is suitable to be a foster carer shall specify whether the approval is in respect of—

- (a) a particular child or children;
- (b) any child;
- (c) certain categories of child;
- (d) the number of children each foster carer may have in their care at any one time <sup>F32</sup>, subject to the placement limit set out in regulation 27A.]

(6) Where the local authority make a decision that is contrary to the recommendation of the fostering panel the authority must record in writing the reasons for that decision.

(7) The local authority must notify in writing the prospective foster carer of the decision made under paragraph (3) within 7 days of making that decision.

### Textual Amendments

- F32** Words in reg. 22(5)(d) inserted (29.12.2014) by [The Looked After Children \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/310\)](#), regs. 1, **2(3)**

### Derivative approval of foster carers **S**

- 23.**—(1) A local authority may make a decision to approve a person as a foster carer where—
- (a) that person has been approved as such following a decision (“the original approval”) made by another local authority in accordance with regulation 22(3) or 26(8); and
  - (b) the original approval has not been terminated under regulation 25(3), 25(4) or 26(8).
- (2) A decision to approve a person as a foster carer under paragraph (1) must correspond to the same terms as the original approval or any variation thereof made under regulation 25(3) or 26(8).
- (3) Where a local authority make a decision to approve a person as a foster carer under paragraph (1) they must notify in writing the local authority which made the original approval.

### Agreements with foster carers **S**

- 24.** Where a local authority make a decision to approve a person as a foster carer that authority must enter into a written agreement with the foster carer regarding the matters and obligations in Schedule 6 and any other matters or obligations as the authority consider appropriate.

### Reviews and termination of approval **S**

- 25.**—(1) Where a local authority have made a decision to approve a foster carer that authority must, by complying with the requirements in paragraph (2), carry out a review of the foster carer’s approval—
- (a) within 12 months of the day the decision to approve the foster carer was made under regulation 22(3), 23 <sup>F33</sup>, 26(8) or 27B(4);
  - (b) thereafter subsequent reviews within 3 years of the previous review; and
  - (c) whenever paragraph (8) applies.
- (2) The requirements are—
- (a) to refer the case to the fostering panel for a recommendation on whether the foster carer continues to be a suitable person with whom to place a child or children;
  - (b) to consider—
    - (i) whether the foster carer continues to be a suitable person with whom to place a child or children;
    - (ii) the development of the foster carer during the appropriate period; and
  - (c) to consult and take into account the views of—
    - (i) the child, taking account of their age and maturity;
    - (ii) the foster carer;
    - (iii) any local authority which placed a child with the foster carer within the appropriate period or at any time where that placement has not been terminated.
- (3) On the review of the approval of the foster carer the local authority may—
- (a) vary the terms of the approval;
  - (b) terminate the approval; or

- (c) confirm the decision to approve a person as a foster carer.
- (4) Where a foster carer notifies the local authority that they no longer wish to act as a foster carer or the local authority are otherwise satisfied that this is the case the authority must terminate the approval.
- (5) Following a review the local authority must—
- (a) record in writing a report of the review which must include—
    - (i) information obtained in respect of the review;
    - (ii) details of the proceedings at any meeting arranged by the authority at which the approval of the foster carer is reviewed;
    - (iii) details of any decisions or arrangements made in the course of or as a result of the review; and
  - (b) give notice of the decision made under paragraph (3) to—
    - (i) the foster carer;
    - (ii) any other local authority which have approved the foster carer.
- (6) Where a local authority have approved a foster carer under regulation 23 they must, on receiving any notice under paragraph (5)(b)—
- (a) vary or terminate their approval in accordance with any revision or determination made under paragraph (3) or 26(8); and
  - (b) give notice to the foster carer of any variation or termination of approval made under sub-paragraph (a).
- (7) In paragraph (2) “appropriate period” means the period ending 12 months from the day the decision to approve the foster carer was made under regulation 22(3), 23 or 26(8).
- (8) This paragraph applies where the local authority consider that a review of the foster carer's approval is necessary or appropriate to safeguard the welfare of any child who has been placed with that carer.

#### Textual Amendments

**F33** Words in [reg. 25\(1\)\(a\)](#) substituted (31.3.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), 3(7)

#### Review of approval: further provision **S**

**26.**—(1) Where a local authority approve a person as a foster carer under regulation 22(3), that person may request a review of the terms of the approval.

- (2) Where a local authority make a decision—
- (a) not to approve a person as a foster carer under regulation 22(3);
  - (b) to vary the terms of a foster carer's approval under regulation 25(3)(a); or
  - (c) to terminate a foster carer's approval,

that person may request a review of the decision.

(3) A request for a review under paragraph (1) or (2) must be made before the end of the period of 28 days beginning with the day on which notice of the decision was made under regulation 22(7) or 25(5).

(4) Where the local authority receive a request for a review under paragraph (1) or (2) they must refer the case to a fostering panel for a recommendation.



- (5) A referral under paragraph (4) must be made to a differently constituted fostering panel.
- (6) Where a referral is made under paragraph (4) the local authority must provide the fostering panel with—
- (a) a copy of the decision and reasons made under regulation 22(3) or 25(3);
  - (b) the information provided to the fostering panel under regulation 22;
  - (c) any further representations received by the local authority from the foster carer or the prospective foster carer; and
  - (d) any other relevant information.
- (7) The fostering panel shall consider the case referred to it under paragraph (4) and make a fresh recommendation to the local authority as to whether—
- (a) the prospective foster carer is suitable to be a foster carer; or
  - (b) the terms of the foster carer's approval should be varied.
- (8) The local authority must—
- (a) make a decision (“the reviewed decision”) within 14 days from the date the fresh recommendation was made under paragraph (7); and
  - (b) notify the foster carer or prospective foster carer of their decision within 7 days of making the reviewed decision.
- (9) In making a decision under paragraph (8)(a) the local authority may—
- (a) vary the terms of the approval;
  - (b) terminate the approval; or
  - (c) approve a person as a foster carer.
- (10) The right to request a review under paragraph (1) or (2) does not apply to a decision made under paragraph (8)(a).
- (11) Following a review under this regulation the local authority must record in writing a report of the review and give notice of their reviewed decision under paragraph (8)(a); and paragraphs (5) and (6) of regulation 25 apply as if—
- (a) references to the review were references to the review under this regulation; and
  - (b) references to the decision under paragraph (3) were references to the reviewed decision under regulation 26(8)(a).

### **Placement of child with foster carer** S

- 27.**—(1) A local authority must not place a child with a foster carer where—
- <sup>F34</sup>(a) the placement is, or would be, contrary to the terms of any—
    - (i) order or warrant made by the children’s hearing or the sheriff under the 2011 Act;
    - (ii) permanence order; or
    - (iii) exclusion order; or]
  - (b) the placement would return child to the care of a person where the child was, by virtue of any order, authorisation or warrant, removed from the care of that person [<sup>F35</sup>; or
  - (c) the placement would result in the placement limit set out in regulation 27A being exceeded.]
- (2) A local authority must not place a child with a foster carer unless they are satisfied that—
- (a) placement is in the best interests of the child;
  - (b) placement of the child with that foster carer is in the best interests of the child;

- (c) the person with whom it is proposed to place the child has been approved as a foster carer by the local authority;
  - (d) they have taken into account all information available to them relevant to the performance of their duties under section 17(1) to (5) of the 1995 Act;
  - (e) they have given full consideration to the possibility of entering into an arrangement under regulation 8 or placing the child with a kinship carer;
  - (f) the foster carer has entered into a written agreement with the local authority under regulation 24;
  - (g) the foster carer has entered into a written agreement with the local authority as to the matters specified in Schedule 4; and
  - (h) the terms of the foster carer's approval are consistent with the placement.
- (3) The local authority must require the foster carer with whom a child is placed to notify the authority immediately if the child—
- (a) dies;
  - (b) suffers any serious illness or injury; or
  - (c) absents themselves or without lawful authority is taken away from the foster carer's home.
- (4) On receiving notification under paragraph (3) the local authority must, so far as reasonably practicable, immediately notify the child's parents and any person who has any parental responsibilities or parental rights in relation to the child.

#### Textual Amendments

- F34** Reg. 27(1)(a) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(10)**; S.S.I. 2013/195, **arts. 2, 3**
- F35** Reg. 27(1)(c) and word inserted (29.12.2014) by [The Looked After Children \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/310\)](#), regs. 1, **2(4)** (which affecting ptorivion expires (30.9.2021 at the end of the day) by [Coronavirus \(Extension and Expiry\) \(Scotland\) Act 2021 \(asp 19\)](#), ss. 2(1)(3), 11(2) (with **sch. para. 1**))

#### [<sup>F36</sup>Placement limit **S**

**27A.**—(1) Subject to paragraph (2) a local authority must not place a child with a foster carer where the placement would result in more than 3 children being placed with that foster carer at any one time.

- (2) The limit in paragraph (1) does not apply—
- (a) when a group of more than 3 siblings are being placed by a local authority; <sup>F37</sup>...
  - (b) when an emergency placement of a child with a foster carer in accordance with regulation 36 or a short-term placement of less than 4 weeks would result in more than 3 children being placed with that foster carer [<sup>F38</sup>; or
  - (c) when regulation 27B(4) applies.]]

#### Textual Amendments

- F36** Reg. 27A inserted (29.12.2014) by [The Looked After Children \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/310\)](#), regs. 1, **2(5)**

- F37** Word in reg. 27A(2)(a) omitted (31.3.2021) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), **3(8)(a)**
- F38** Reg. 27A(2)(c) and word inserted (31.3.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), **3(8)(b)**

### **[<sup>F39</sup>Exceptional approval of foster carer S**

**27B.**—(1) This regulation applies where—

- (a) a child (“A”) is the subject of an emergency or short-term placement with a foster carer as mentioned in regulation 27A(2)(b), and
- (b) the local authority considers that exceptional circumstances exist so that the welfare of A and any other child placed with the foster carer (which is to be the paramount consideration) will be safeguarded and promoted by continuing the emergency or short term placement of A with the foster carer.

(2) The local authority must refer the case to the fostering panel within 4 weeks of the date on which A is placed with the foster carer or as soon as practicable thereafter.

(3) The local authority must so far as reasonably practicable provide the fostering panel with—

- (a) the information in schedule 3, and
- (b) such other information or observations as they consider appropriate.

(4) Where a local authority receives a recommendation from the fostering panel under regulation 20(2) the authority must make a decision on whether the foster carer is suitable to be a foster carer for A within 14 days from the date the recommendation was made.

(5) Where the local authority make a decision that the foster carer is suitable to be a foster carer for A, they must be satisfied that the authority has taken into account the recommendations made by the fostering panel.

(6) Where the local authority make a decision that is contrary to the recommendation of the fostering panel the authority must record in writing the reasons for that decision.

(7) The local authority must notify the foster carer in writing of the decision made under paragraph (4) within 7 days of the date of making that decision.]

#### **Textual Amendments**

- F39** [Reg. 27B](#) inserted (31.3.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(4), **3(9)**

### **Death or absence of the foster carer: continuation of placement S**

**28.**—(1) This regulation applies where a local authority place a child with a foster carer in accordance with regulation 27 and that foster carer dies or ceases to live in the household following the placement.

(2) The local authority may allow the child to remain in the household where paragraph (3) applies until such time as a member of that household is approved as a kinship carer or foster carer or the local authority determine that the child should be placed with another carer in accordance with these Regulations or in a residential establishment.

(3) This paragraph applies where—

- (a) the local authority are satisfied that—

- (i) it is in the best interests of the child to be cared for by another member of the foster carer's household; and
  - (ii) the household member should be considered for approval as a kinship carer or a foster carer; and
- (b) the household member has signed a written agreement to carry out the duties in regulation 36(3).

### Notification of placement with foster carer **S**

**29.**—(1) Where a local authority place a child with a foster carer in accordance with regulation 27 they must, as soon as reasonably practicable, provide notification of the placement to—

- (a) the local authority for the area in which the foster carer resides if different from the authority making the placement;
- (b) the Health Board which provides services in the area in which the foster carer resides;
- (c) each parent of the child; and
- (d) any person with any parental responsibilities or parental rights in relation to the child.

[<sup>F40</sup>(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—

- (a) the Principal Reporter; and
- (b) the child's relevant person.]

(2) The requirements under [<sup>F41</sup>paragraphs (1)(c) and (d) and (1A)] do not apply in respect of any parent or person with parental responsibilities or parental rights who has already received a written copy of the child's care plan under regulation 5.

(3) Notification under paragraph (1)(c) or (d) must not be given to a person—

- (a) where the local authority are of the view that, taking into account their duties under section 17 of the 1995 Act, it would not be in the child's interests for notification to be given to that particular person;
- (b) where a permanence order, [<sup>F42</sup>an exclusion order or any order or warrant made by the children's hearing or the sheriff under the 2011 Act] specifies that the place at which the child is to reside must not be disclosed to that particular person.

(4) In this regulation “notification” means notification in writing and shall include particulars of the placement.

#### Textual Amendments

- F40** Reg. 29(1A) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(11\)\(a\)](#); S.S.I. 2013/195, [arts. 2, 3](#)
- F41** Words in reg. 29(2) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(11\)\(b\)](#); S.S.I. 2013/195, [arts. 2, 3](#)
- F42** Words in reg. 29(3)(b) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(11\)\(c\)](#); S.S.I. 2013/195, [arts. 2, 3](#)

### Short-term placements with foster carers **S**

**30.**—(1) Where paragraph (2) applies a series of planned short-term placements with a foster carer made in accordance with regulation 27 may be treated as a single placement with a foster carer for the purposes of these Regulations.

(2) This paragraph applies where—

- (a) all the placements occur within a period which does not exceed 12 months;
- (b) no single placement is for a duration of more than 4 weeks; and
- (c) the total duration of the placements does not exceed 120 days.

### Establishment of case records for foster carers **S**

**31.**—(1) A local authority must compile a written case record, if one is not already in existence, in respect of each foster carer who has been approved by that local authority and with whom a child has been placed.

(2) The written case record referred to in paragraph (1) shall include any—

- (a) written agreement entered into under regulation 24;
- (b) review of approval made under regulation 25 or 26;
- (c) variation of the terms of approval;
- (d) termination of approval;
- (e) agreement entered into under regulation 36(3); and
- (f) information specified in paragraph (3) insofar as it is relevant to the case.

(3) The information referred to in paragraph (2)(f) is—

- (a) a record of each placement with the foster carer including—
  - (i) the name, age and sex of each child placed;
  - (ii) the dates on which each placement began and terminated; and
  - (iii) the circumstances of any terminated placement;
- (b) the information obtained by the local authority in respect of the decision to approve the foster carer; and
- (c) the information obtained by the local authority in respect of any review, variation or termination of the foster carer's approval.

(4) The local authority must compile a written case record for each prospective foster carer.

(5) The written record referred to in paragraph (4) must include the information obtained as to—

- (a) the prospective foster carer;
- (b) the members of the prospective foster carer's household; and
- (c) the prospective foster carer's family.

### Retention and confidentiality of case records for foster carers **S**

**32.**—(1) A case record for a foster carer or prospective foster carer compiled under regulation 31 must be retained by the local authority for at least 25 years from the date the foster carer's approval is terminated or until their 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) Each local authority must secure the safe keeping of every case record and take all necessary steps to ensure that information contained in the case record is confidential subject only to—
- (a) any provision of, or made under or by virtue of any enactment 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.

## PART VIII S

### FOSTERING AND KINSHIP CARE ALLOWANCES

#### Fostering and kinship care allowances S

- 33.**—(1) A local authority shall, subject to such conditions as they consider necessary, pay such allowance, as they see fit to—
- (a) a foster carer or a kinship carer with whom a child has been placed in accordance with these Regulations;
  - (b) where a child is required by virtue of [<sup>F43</sup>a compulsory supervision order] to reside with a person other than their parent, the person with whom the child is directed to reside; and
  - (c) any person in whom parental responsibilities and parental rights are vested by virtue of the making of a permanence order with whom a child who is the subject of that order is residing.
- (2) Any allowance payable in terms 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 section 17 of the 1995 Act;
    - (ii) a rate applicable to certain categories 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.

#### Textual Amendments

**F43** Words in reg. 33(1)(b) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(12\)](#); [S.S.I. 2013/195](#), [arts. 2, 3](#)

## PART IX S

### LOOKED AFTER CHILDREN PLACED IN RESIDENTIAL ESTABLISHMENTS

#### Child placed in a residential establishment: notification S

- 34.**—(1) Where a local authority place a child who is looked after by them in terms of section 17(6) of the 1995 Act in a residential establishment they must, as soon as reasonably practicable, provide notification of the placement to—

- (a) the local authority for the area in which the residential establishment is located if different from the authority making the placement;
- (b) the Health Board which provides services in the area in which the residential establishment is located;
- (c) each parent of the child; and
- (d) any person with any parental responsibilities or parental rights in relation to the child.

[<sup>F44</sup>(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—

- (a) the Principal Reporter; and
- (b) the child's relevant person.]

(2) The requirement under [<sup>F45</sup>paragraphs (1)(c) and (d) and (1A)] does not apply in respect of any parent or person with parental responsibilities or parental rights who has already received a written copy of the child's care plan under regulation 5.

(3) Notification under paragraph (1)(c) and (d) must not be given to a person—

- (a) where the local authority are of the view that, taking into account their duties under section 17 of the 1995 Act, it would not be in the child's interests for notification to be given to that particular person;
- (b) where a permanence order, [<sup>F46</sup>an exclusion order or any order or warrant made by the children's hearing or the sheriff under the 2011 Act] specifies that the place at which the child is to reside must not be disclosed to that particular person.

(4) In this regulation “notification” means notification in writing and shall include particulars of the placement.

#### Textual Amendments

- F44** Reg. 34(1A) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(13)(a)**; S.S.I. 2013/195, **arts. 2, 3**
- F45** Words in reg. 34(2) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(13)(b)**; S.S.I. 2013/195, **arts. 2, 3**
- F46** Words in reg. 34(3)(b) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(13)(c)**; S.S.I. 2013/195, **arts. 2, 3**

### Child placed in residential establishment: information to be supplied **S**

**35.** Where a local authority place a child who is looked after by them in terms of section 17(6) of the 1995 Act in a residential establishment, that authority must—

- (a) provide the person in charge of the residential establishment with—
  - (i) written information about the child's background, educational needs, health and mental and emotional development; and
  - (ii) any other information which the local authority consider relevant to the placement including the views of the child having regard to the child's age and maturity;
- (b) agree with the person in charge of the residential establishment arrangements for—
  - (i) ensuring that the child's welfare is safeguarded and promoted;

- (ii) ensuring that the child receives such provision for their development and control as is conducive to their best interests;
- (iii) contact between the child and their family [<sup>F47</sup>including any sibling of the child]; and
- (iv) ensuring that the child receives adequate and efficient education.

#### Textual Amendments

**F47** Words in [reg. 35\(b\)\(iii\)](#) inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(10)**

## PART X **S**

### EMERGENCY MEASURES

#### Emergency placement with carer **S**

**36.**—(1) Subject to paragraph (4) where a child <sup>F48</sup>... is to be placed in an emergency that authority may, for a period not exceeding 3 working days, place the child with—

- (a) any person approved as a kinship carer in respect of that child;
  - (b) any person approved as a foster carer; or
  - (c) any person who is known to the child and who has a pre-existing relationship with the child.
- (2) A local authority may not place a child under paragraph (1) unless—
- (a) they are satisfied that an emergency placement is the most suitable way of meeting the child's needs; and
  - (b) the person with whom the child is to be placed has signed a written agreement with the local authority to carry out the duties in paragraph (3).
- (3) The duties are—
- (a) to care for the child as if that child were a member of that person's family and in a safe and appropriate manner;
  - (b) to allow any person authorised by the local authority to visit the child at any reasonable time;
  - (c) where the 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 their family or any other person which has been given 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—
    - (i) section 17(1)(c) [<sup>F49</sup>and (d)]<sup>F50</sup> of the 1995 Act;
    - (ii) the terms of any contact order; and
    - (iii) any arrangements made or agreed by the local authority.
- (4) A child may not be placed under paragraph (1) where—
- <sup>F51</sup>(a) the placement is, or would be, contrary to the terms of any—



- (i) order or warrant made by the children’s hearing or the sheriff under the 2011 Act;
  - (ii) permanence order; or
  - (iii) exclusion order; or]
- (b) the placement would return the child to the care of a person where the child was, by virtue of any order, authorisation or warrant, removed from the care of that person.
- (5) Where a local authority place a child under paragraph (1) they must provide the person with whom the child is placed with information about the child's background, health and emotional development.

#### Textual Amendments

- F48** Words in reg. 36(1) omitted (24.6.2013) by virtue of [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(14)(a)**; [S.S.I. 2013/195](#), **arts. 2, 3**
- F49** Words in reg. 36(3)(e)(i) inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(11)**
- F50** Section 17(1)(d) of the [Children \(Scotland\) Act 1995 \(c.36\)](#) was inserted by the [Children \(Scotland\) Act 2020 \(asp 16\)](#), **section 13(2)(a)(ii)**.
- F51** Reg. 36(4)(a) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(14)(b)**; [S.S.I. 2013/195](#), **arts. 2, 3**

#### Emergency placement in residential establishment **S**

**37.**—(1) Where a child who is looked after by a local authority in terms of section 17(6) of the 1995 Act is to be placed in an emergency that authority may place the child in a residential establishment for a period not exceeding 3 working days.

- (2) A local authority may not place a child under paragraph (1) unless—
- (a) they are satisfied that an emergency placement in a residential establishment is the most suitable way of meeting the child's needs; and
  - (b) they have given full consideration to the possibility of placing the child with a carer in accordance with regulation 36.

#### Review of emergency placement under regulation 36 **S**

**38.**—(1) This regulation applies where a child is placed in an emergency under regulation 36.

(2) Within 3 working days 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 by complying with the requirements in paragraph (3).

- (3) The requirements are—
- (a) to consult—
    - (i) the child, taking into account their age and maturity;
    - (ii) the person with whom the child has been placed;
    - (iii) any parent of the child; and
    - (iv) any person with parental responsibilities or parental rights in respect of the child;
  - (b) to assess—
    - (i) whether placement is in the best interests of the child;

- (ii) whether placement of the child with that carer is in the best interests of the child;
- (iii) whether that carer has been approved as a kinship carer or as a foster carer;
- (iv) all the information available to them relevant to the performance of their duties under section 17(1) to (5) of the 1995 Act; and
- (v) where the child has not been placed with a member of their family, the possibility of placing the child with a kinship carer.

(4) Where the local authority are satisfied that, following a review of the emergency placement, placement with that carer continues to be in the best interests of the child the local authority must carry out the requirements in regulations 3, 4 and 5 in so far as they have not already done so.

### **Extension of emergency placement** S

**39.**—(1) Where—

- (a) a child has been placed in an emergency under regulation 36; and
- (b) following a review of that placement carried out in accordance with regulation 38 the local authority are satisfied that placement with that carer continues to be in the best interests of the child,

the local authority may allow the placement to continue for a further period not exceeding 12 weeks beginning with the expiry of the period mentioned in regulation 36(1).

(2) The local authority must not allow the child to remain in the extended placement beyond the 12 week period referred to in paragraph (1) unless—

- (a) in the case of a child placed under regulation 36(1)(a) the requirements specified in regulation 11 are met;
- (b) in the case of a child placed under regulation 36(1)(b) the requirements specified in regulation 27 are met; or
- (c) in the case of a child placed under regulation 36(1)(c) the authority—
  - (i) are satisfied that placement with that carer is in the best interests of the child;
  - (ii) have approved the carer as a kinship carer; and
  - (iii) are satisfied that the requirements specified in regulation 11 are met.

(3) Before the expiry of 6 weeks beginning with the expiry of the period mentioned in regulation 36(1) the authority must carry out a review of the child's case by complying with the requirements in regulation 38(3).

### **Notification of an extended emergency placement** S

**40.**—(1) Where a local authority allow an emergency placement to continue for a further period in accordance with regulation 39 they must, as soon as reasonably practicable, provide notification of the placement to—

- (a) the local authority for the area in which the carer resides if different from the authority making the placement;
- (b) the Health Board which provides services in the area in which the carer resides;
- (c) each parent of the child; and
- (d) any person with any parental responsibilities or parental rights in relation to the child.

[<sup>F52</sup>(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—

- (a) the Principal Reporter; and

- (b) the child's relevant person.]
- (2) Notification under [<sup>F53</sup>paragraphs (1)(c) and (d) and (1A)] must not be given to a person—
- (a) where the local authority are of the view that, taking into account their duties under section 17 of the 1995 Act, it would not be in the child's interests for notification to be given to that particular person;
- (b) where a permanence order, [<sup>F54</sup>an exclusion order or any order or warrant made by the children's hearing or the sheriff under the 2011 Act] specifies that the place at which the child is to reside must not be disclosed to that particular person.
- (3) In this regulation "notification" means notification in writing and shall include particulars of the placement.

#### Textual Amendments

- F52** Reg. 40(1A) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(15\)\(a\)](#); S.S.I. 2013/195, [arts. 2, 3](#)
- F53** Words in reg. 40(2) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(15\)\(b\)](#); S.S.I. 2013/195, [arts. 2, 3](#)
- F54** Words in reg. 40(2)(b) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, [sch. para. 11\(15\)\(c\)](#); S.S.I. 2013/195, [arts. 2, 3](#)

#### Review of emergency placement under regulation 37 **S**

**41.**—(1) This regulation applies where a child is placed in an emergency in a residential establishment under regulation 37.

(2) Within 3 working days the local authority must review the child's case to determine whether placement in that residential establishment continues to be in the best interests of the child by complying with the requirements in paragraph (3).

(3) The requirements are—

(a) to consult—

- (i) the child, taking into account their age and maturity;
- (ii) the manager of the residential establishment;
- (iii) any parent of the child; and
- (iv) any person with parental responsibilities or parental rights in respect of the child;

(b) to assess—

- (i) whether placement is in the best interests of the child;
- (ii) whether placement of the child in a residential establishment is in the best interests of the child;
- (iii) all the information available to them relevant to the performance of their duties under section 17(1) to (5) of the 1995 Act; and
- (iv) the possibility of placing the child with a kinship carer under regulation 11 or a foster carer under regulation 27.

(4) Where the local authority are satisfied that, following a review of the emergency placement in a residential establishment, placement in that establishment continues to be in the best interests

of the child the local authority must carry out the requirements in regulations 3, 4, 5, 34 and 35 in so far as they have not already done so.

## **PART XI** **S**

### **CASE RECORDS**

#### **Establishment of case records for looked after children** **S**

**42.**—(1) Each local authority must establish and maintain a written case record, if one is not already in existence, in respect of each child who is looked after by that authority in terms of section 17(6) of the 1995 Act.

(2) Each case record must include—

- (a) a copy of the child's plan referred to in regulation 5 and any revised child's plan;
- (b) a copy of the information obtained under regulation 3(3);
- (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 any review of the child's case; and
- (e) details of any arrangements made by the local authority in respect of the care of the child with any person; and
- (f) details of any arrangements made by the local authority in respect of the child with any registered fostering service.

#### **Retention and confidentiality of records** **S**

**43.**—(1) A case record relating to a child who is placed by a local authority must be retained by that authority—

- (a) until the 100th anniversary of the child's date of birth;
- (b) if the child dies before attaining the age of 18 years, for a period of 25 years beginning with the date of death.

(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 of the information from the record in some other accessible form (such as by means of a computer).

(3) Each local authority must secure the safe keeping of every case record and take all necessary steps to ensure that information contained in the case record is confidential subject only to—

- (a) any provision of, or made under or by virtue of any enactment 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.

## PART XII S

### REVIEW OF CHILD'S CASE

#### Review of child's case: child cared for by parents or persons with parental responsibilities and parental rights S

44.—(1) This regulation applies where a child is looked after by a local authority in terms of section 17(6) of the 1995 Act and is cared for by their parents or any person with parental rights and parental responsibilities in respect of the child by virtue of—

- (a) an arrangement made in accordance with regulation 8; or
- (b) a permanence order.

(2) The local authority must review the child's case by complying with the requirements in paragraph (3).

(3) The requirements are—

- (a) to consult and take into account the views of—
  - (i) the child, taking account of the child's age and maturity;
  - (ii) the child's parents; and
  - (iii) any person with parental responsibilities or parental rights in respect of the child;
- (b) to assess—
  - (i) the child's needs and how those needs are being met;
  - (ii) the child's long term needs and how those needs are being or can be met;
  - (iii) whether the child's welfare is being safeguarded and promoted;
  - (iv) the child's development;
  - (v) whether the accommodation is suitable for the child; and
  - (vi) the child's educational needs and whether those needs are being met.

(c) to consider any written report made in accordance with regulation 46(4).

(4) Following a review of the child's case the local authority must—

- (a) record in writing—
  - (i) information obtained in respect of the review;
  - (ii) 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
  - (iii) details of any decisions or arrangements made in the course of or as a result of the review; and
- (b) revise the child's plan prepared under regulation 5 to take account of the outcome of the review.

(5) The local authority must agree the frequency of reviews with—

- (a) the child, taking account of the child's age and maturity; and
- (b) the person caring for the child.

(6) Where no agreement is reached under paragraph (5) the local authority must carry out the following reviews of the child's case:—

- (a) a first review within 6 weeks of the placement; and
- (b) thereafter subsequent reviews within 12 months of the previous review.

## **Review of the child's case: child placed with kinship carer, foster carer or in a residential establishment** **S**

**45.**—(1) This regulation applies where a child has been placed <sup>F55</sup>...—

- (a) with a kinship carer in accordance with regulation 11;
- (b) with a foster carer in accordance with regulation 27;
- (c) by virtue of regulation 39(1); or
- (d) in a residential establishment.

(2) Subject to paragraphs (3) and (4) the local authority must, by complying with the requirements in paragraph (5), carry out the following reviews of the child's case:—

- (a) a first review within 6 weeks of the 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.

(3) Where regulation 14 or 30 applies or the child has been placed by virtue of regulation 39(1), the local authority must, by complying with the requirements in paragraph (5), carry out the following reviews of the child's case:—

- (a) a first review within 3 months from, where regulation 14 or 30 applies, the date on which the placement was first made and, where regulation 39(1) applies, the date of the review required by regulation 39(3); and
- (b) thereafter subsequent reviews within 6 months from the date of the previous review.

(4) Notwithstanding paragraphs (2) and (3) a review must be carried out—

- <sup>F56</sup>(a) prior to the implementation authority requiring, by notice to the Principal Reporter, a review of a compulsory supervision order under section 131 of the 2011 Act;]
- (b) prior to an application by the local authority for a permanence order; and
- (c) where practicable, under any other circumstances when a children's hearing is convened under the <sup>F57</sup>2011 Act] to consider the case of a child.

(5) The requirements are—

- (a) to consult and take into account the views of—
  - (i) the child, taking account of the child's age and maturity;
  - (ii) the kinship carer, foster carer or manager of any residential establishment where the child has been placed; and
  - (iii) any person with any parental responsibilities or parental rights in respect of the child;
- (b) to assess—
  - (i) the child's needs and how those needs are being met;
  - (ii) the child's long term needs and how those needs are being or can be met;
  - (iii) whether the child's welfare is being safeguarded and promoted;
  - (iv) the child's development;
  - (v) whether the accommodation is suitable for the child;
  - (vi) the child's educational needs and whether those needs are being met.
- (c) to consider any written report made in accordance with regulation 46(4).

(6) Following a review of the child's case the local authority must—

- (a) record in writing—
  - (i) information obtained in respect of the review;

- (ii) 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
  - (iii) details of any decisions or arrangements made in the course of or as a result of the review; and
- (b) revise the child's plan prepared under regulation 5 to take account of the outcome of the review.

#### Textual Amendments

- F55** Words in reg. 45(1) omitted (28.9.2009) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(3)**
- F56** Reg. 45(4)(a) substituted (2.6.2014) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2014 \(S.S.I. 2014/112\)](#), art. 1, **sch. para. 2(2)(a)**
- F57** Words in reg. 45(4)(c) substituted (2.6.2014) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2014 \(S.S.I. 2014/112\)](#), art. 1, **sch. para. 2(2)(b)**

#### Local authority visits: child in placement **S**

- 46.**—(1) This regulation applies where a child has been placed <sup>F58</sup>...—
- (a) with a kinship carer in accordance with regulation 11;
  - (b) with a foster carer in accordance with regulation 27;
  - (c) by virtue of regulation 39(1); or
  - (d) in a residential establishment.
- (2) The local authority must ensure that the child and their carer are visited on their behalf—
- (a) within one week of the placement being made; and
  - (b) thereafter at intervals of not more than 3 months from the date of the previous visit.
- (3) Without prejudice to the duty at paragraph (2) the local authority must ensure that the child and their carer are visited on their behalf—
- (a) on any occasion where the local authority consider it necessary or appropriate to safeguard or promote the welfare of the child;
  - (b) where paragraph (1)(a) or (b) applies on any occasion where the local authority consider it necessary or appropriate to provide support and assistance to the child's carer for the purpose of safeguarding or promoting the welfare of the child; and
  - (c) where reasonably requested to do so by the child or their carer.
- (4) The local authority must ensure that written reports are produced recording the visits made in accordance with paragraph (2) or (3).
- (5) In this regulation “carer” means, in relation to the child—
- (a) the kinship carer with whom the child has been placed in accordance with regulation 11;
  - (b) the foster carer with whom the child has been placed in accordance with regulation 27;
  - (c) the person with whom the child is placed by virtue of regulation 39(1); or
  - (d) the manager of the residential establishment at which the child has been placed.

### Textual Amendments

**F58** Words in [reg. 46\(1\)](#) omitted (28.9.2009) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(3)**

### Termination of placement **S**

**47.**—(1) Where, for any reason, it appears to a local authority that it is no longer in a child's best interests to remain in a placement the local authority must make arrangements to terminate the placement as soon as is practicable.

(2) Where a local authority terminates a placement under paragraph (1) they must immediately notify any person, local authority or Health Board who received notification of the placement under regulation 13, 29 or 34.

(3) In this regulation a child is in a placement where that child is—

- (a) being cared for under arrangements made in accordance with regulation 8;
- (b) placed with a kinship carer under regulation 11;
- (c) placed with a foster carer under regulation 27;
- (d) placed with a carer in an emergency under regulation 36 or 39; or
- (e) otherwise provided with accommodation by a local authority under section 25 of the 1995 Act.

## PART XIII **S**

### ARRANGEMENTS WITH REGISTERED FOSTERING SERVICES

#### Arrangements with registered fostering services **S**

**48.**—(1) Each local authority may individually or jointly enter into arrangements with one or more registered fostering services for the purposes of carrying out the functions mentioned in paragraph (2) in relation to children who are looked after by them in terms of section 17(6) of the 1995 Act.

(2) The functions are those specified in Parts <sup>F59</sup>... VI, [<sup>F60</sup>VII,] VIII [<sup>F61</sup>and] X, <sup>F59</sup>... of these Regulations.

(3) A local authority must not make arrangements under this regulation unless—

- (a) they are satisfied—
  - (i) as to the capacity of the registered fostering service to discharge duties and functions on their behalf; and
  - (ii) the arrangements are the most suitable way for those duties and functions to be discharged;
- (b) they enter into a written agreement with the registered fostering service regarding the matters in Part 1 of Schedule 7; and
- (c) where they propose to make arrangements in respect of a particular child, they enter into a written agreement with the registered fostering service regarding the matters in Part II of Schedule 7.

(4) Each local authority entering into an arrangement under this regulation must review the arrangement at intervals of not more than 12 months.



(5) No registered fostering service shall be permitted to place a child outside the United Kingdom.

#### Textual Amendments

- F59** Words in reg. 48(2) omitted (28.9.2009) by virtue of [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(4)(a)**
- F60** Word in reg. 48(2) inserted (28.9.2009) by [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(4)(b)**
- F61** Word in reg. 48(2) substituted for comma (28.9.2009) by [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(4)(c)**

#### Visits by local authorities **S**

**49.**—(1) This regulation applies where, by virtue of an arrangement made under regulation 48, a registered fostering service places a child with a foster carer in accordance with these Regulations.

(2) The local authority must arrange for one of their officers to visit the child within 28 days of the placement.

(3) Where the registered fostering service which placed the child with the carer makes representations to the local authority that there are circumstances relating to the child which require a visit, the local authority must arrange for one of their officers to visit the child within 14 days from the day they receive those representations.

(4) Where the local authority are informed that the welfare of the child may not be or is not being safeguarded or promoted, the local authority must arrange for one of their officers to visit the child as soon as reasonably practicable but not later than 3 days from the day they are so informed.

## PART XIV **S**

### TRANSITIONAL AND SAVINGS PROVISION

#### Cases in progress under the Arrangements to Look After Children Regulations or the Fostering Regulations **S**

**50.**—(1) Any action or decision under a provision of the Arrangements to Look After Children Regulations or the Fostering Regulations will, on or after 28th September 2009, be treated as if it were an action or decision under the corresponding provision of these Regulations.

(2) Where, before 28th September 2009, a fostering panel has considered whether a person is suitable or continues to be suitable to be a foster carer and no decision on that question has been made by the local authority before 28th September 2009, the Fostering Regulations continue to apply for the purposes of making that decision.

(3) Where a local authority makes a decision under the Fostering Regulations (whether before 28th September 2009 or, by virtue of paragraph (2), on or after that day) that a person is suitable to become a foster carer—

- (a) the Fostering Regulations continue to apply for the purposes of placing the child with that foster carer; and
- (b) any such placement will be deemed to have been made under regulation 27 of these Regulations.

(4) Where, before 28th September 2009, a child has been placed under regulation 12 of the Fostering Regulations that child will be treated as if they had been placed with a foster carer in

accordance with regulation 27 of these Regulations regardless of whether or not that foster carer was, at the time of the placement, known to or related to the child.

(5) Where, before 28th September 2009, a child has been placed in an emergency in accordance with regulation 13 of the Fostering Regulations that placement will continue to have effect until the expiry of the period mentioned in regulation 13(1) of those Regulations.

(6) Where, before 28th September 2009, a child has been placed in an immediate placement in accordance with regulation 14 of the Fostering Regulations that placement will continue to have effect until the expiry of the period mentioned in regulation 14(1) of those Regulations.

### **Fostering allowances** **S**

**51.** Where a person was receiving, before their revocation, an allowance under regulation 9 of the Fostering Regulations that person may continue to receive payments so made which, had there been no revocation, would have fallen to that person, or that person may agree to receive, instead of the continued payments, payments in accordance with regulation 33 of these Regulations.

## **PART XV** **S**

### **MISCELLANEOUS**

### **Revocation** **S**

**52.** The following Regulations are revoked:–

- (a) the Arrangements to Look After Children Regulations; and
- (b) the Fostering Regulations.

St Andrew's House,  
Edinburgh

*ADAM INGRAM*  
Authorised to sign by the Scottish Ministers

SCHEDULE 1 **S**

Regulations 3(3) and 4(1)

INFORMATION RELATING TO THE CHILD

1. Name, sex, date and place of birth and present address of the child, their 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 [<sup>F62</sup>sibling of the child,] including their dates of birth, addresses and any details in respect of their being looked after by a local authority.

**Textual Amendments**

**F62** Words in *sch. 1 para. 7* substituted (26.7.2021) by *The Looked After Children (Scotland) Amendment Regulations 2021 (S.S.I. 2021/103)*, regs. 1(3), **3(12)(a)**

8. The extent of contact with members of the child's family [<sup>F63</sup>including any sibling of the child] and any other significant person who does not live in the same household as the child.

**Textual Amendments**

**F63** Words in *sch. 1 para. 8* inserted (26.7.2021) by *The Looked After Children (Scotland) Amendment Regulations 2021 (S.S.I. 2021/103)*, regs. 1(3), **3(12)(b)**

9. The child's health history, current state of health and development and existing arrangements for their 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 **S**

Regulation 5(3)

MATTERS TO BE SPECIFIED IN THE CHILD'S PLAN

**PART I S**

MATTERS TO BE ADDRESSED IN THE CHILD'S  
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 responsibilities for the child;
  - (d) any foster carer or kinship carer of the child;
  - (e) the designated manager of that establishment who is responsible for the care of the child whilst in that establishment where the child has been placed in a residential establishment; and
  - (f) any other relevant person.

**PART II S**

MATTERS TO BE ADDRESSED IN THE CHILD'S 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 the return of the child to their parents or other suitable person.

## SCHEDULE 3 **S**

Regulations 10 and 22

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

1. Full name, date of birth, health (supported by a medical report), personality and marital [<sup>F64</sup>or civil partnership] status (including any previous marriage [<sup>F65</sup>and civil partnership]).

#### Textual Amendments

**F64** Words in sch. 3 para. 1 inserted (28.9.2009) by The Looked After Children (Scotland) Amendment Regulations 2009 (S.S.I. 2009/290), regs. 1, **2(5)(a)(i)**

**F65** Words in sch. 3 para. 1 inserted (28.9.2009) by The Looked After Children (Scotland) Amendment Regulations 2009 (S.S.I. 2009/290), regs. 1, **2(5)(a)(ii)**

2. Particulars of the other adult members of the household and their relationship to the prospective foster [<sup>F66</sup>or kinship] carer.

#### Textual Amendments

**F66** Words in sch. 3 para. 2 inserted (28.9.2009) by The Looked After Children (Scotland) Amendment Regulations 2009 (S.S.I. 2009/290), regs. 1, **2(5)(b)**

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 prospective foster or kinship carer's 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 kinship carer's own and other children, and any previous experience of caring for the prospective foster or [<sup>F67</sup>kinship] carer's own and other children and ability to do so in this respect.

#### Textual Amendments

**F67** Word in sch. 3 para. 9 substituted (28.9.2009) by The Looked After Children (Scotland) Amendment Regulations 2009 (S.S.I. 2009/290), regs. 1, **2(5)(c)**

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 <sup>M9</sup> and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) (Scotland) Order 2003 <sup>M10</sup> as amended.

**Marginal Citations****M9** 1974 c. 53.**M10** S.S.I. 2003/231 amended by S.S.I. 2007/75.

**11.** The outcome of any request or application made by the prospective foster carer or kinship carer or any other member of the household to [<sup>F68</sup>become a foster or kinship carer].

**Textual Amendments****F68** Words in sch. 3 para. 11 substituted (28.9.2009) by [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(5)(d)**

**12.** Particulars of any previous approval under regulation 22(3) or 23, or refusal of approval or termination of such approval, relating to the prospective foster or kinship carer or any other member of the household.

**13.** An analysis of the motivation of the prospective foster or kinship carer in seeking to become a foster [<sup>F69</sup>or kinship] carer.

**Textual Amendments****F69** Words in sch. 3 para. 13 inserted (28.9.2009) by [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(5)(e)**

**14.** References from third parties as to the character of the prospective foster or kinship carer and their suitability to be a foster [<sup>F70</sup>or kinship] carer.

**Textual Amendments****F70** Words in sch. 3 para. 14 inserted (28.9.2009) by [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(5)(e)**SCHEDULE 4 **S**

Regulations 11 and 27

MATTERS AND OBLIGATIONS TO BE COVERED IN  
FOSTER AND KINSHIP 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 or kinship carer to care for the child and, in particular, information as to—

- (a) the child's plan prepared in accordance with regulation 5 and the objectives of the placement;
- (b) the details of any [<sup>F71</sup>order or warrant made by the children's hearing or sheriff under the 2011 Act or other] 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 needs,

including 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.

#### Textual Amendments

**F71** Words in sch. 4 para. 1(b) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(16)(a)**; [S.S.I. 2013/195](#), arts. 2, 3

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.

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 or kinship 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.

<sup>F72</sup>6. The arrangements for the child to have contact with their parents and other persons, including any arrangements in pursuance of section 17(1)(c) [<sup>F73</sup>or (d)] of the 1995 Act or any contact (within the meaning of section 11(1) and (2)(d) of the 1995 Act with any other person), or any [<sup>F74</sup>contact direction contained within a compulsory supervision order, interim compulsory supervision order, medical examination order or child protection order.]

#### Textual Amendments

**F72** By [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2014 \(S.S.I. 2014/112\)](#), **sch. para. 2(3)**, it is provided that (2.6.2014) the words "an order containing (or that is varied so as to contain) a measure of the type mentioned in section 83(2)(g) or 87(2)(e) of the 2011 Act" are substituted for the words "terms of section 70(5)(b) of the 1995 Act"

**F73** Words in sch. 4 para. 6 inserted (26.7.2021) by [The Looked After Children \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/103\)](#), regs. 1(3), **3(13)**

**F74** Words in sch. 4 para. 6 substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Subordinate Legislation\) Order 2013 \(S.S.I. 2013/147\)](#), art. 1, **sch. para. 11(16)(b)**; [S.S.I. 2013/195](#), arts. 2, 3

7. Compliance by the foster or kinship carer with the terms of the agreement set out in Schedule 5 [<sup>F75</sup>or 6].

#### Textual Amendments

**F75** Words in sch. 4 para. 7 inserted (28.9.2009) by [The Looked After Children \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/290\)](#), regs. 1, **2(6)**

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

SCHEDULE 5 **S**

Regulation 12

## MATTERS AND OBLIGATIONS IN KINSHIP CARER AGREEMENTS

1. The support and training to be given to the kinship carer.
2. The procedure for the review of the child's placement with the kinship carer and the timescales agreed for such review.
3. The procedure for placement with the kinship carer and in particular—
  - (a) the matters to be covered in the kinship placement agreement and the respective obligations, under any such agreements, of the local authority and the kinship carer;
  - (b) the financial arrangements which are to exist between the local authority and the kinship carer including any special financial arrangements in relation to particular categories of children who may be placed with the kinship carer; and
  - (c) the procedure available to kinship carers who wish to make representations to the local authority which place the child.
4. The kinship 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, any other event affecting either the kinship 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 3.
5. The kinship carer's obligation—
  - (a) not to administer corporal punishment to any child placed with them;
  - (b) to ensure that any information relating to a child placed with them, 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 kinship placement agreement, to care for the child placed with the kinship carer 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 their home by the local authority.

SCHEDULE 6 **S**

Regulation 24

## 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 address;
  - (b) any change in the composition of the household, any other change in personal circumstances, 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 3.
6. The foster carer's obligation—
  - (a) not to administer corporal punishment to any child placed with them;
  - (b) to ensure that any information relating to a child placed with them, 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 their home by the local authority.

## SCHEDULE 7 **S**

Regulation 48

### ARRANGEMENTS WITH REGISTERED FOSTERING SERVICES

#### **PART I **S****

##### MATTERS AND OBLIGATIONS IN AGREEMENTS WITH REGISTERED FOSTERING SERVICES

1. The duties the local authority propose to delegate to the registered fostering service.
2. The services to be provided to the local authority by the registered fostering service.

3. The arrangements for the selection by the local authority of particular foster carers from those approved by the registered fostering service.
4. The requirements for the registered fostering service to submit reports to the local authority on any placement as may be required by the authority.
5. The arrangements for the termination of the agreement.

## PART II S

### MATTERS AND OBLIGATIONS IN AGREEMENTS WITH REGISTERED FOSTERING SERVICES WHERE ARRANGEMENT MADE IN RESPECT OF A PARTICULAR CHILD

6. Details of the foster carer with whom the child is to be placed.
7. Details of any services the child is to receive.
8. The terms of the proposed foster agreement and foster placement.

### EXPLANATORY NOTE

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

These Regulations make provision for the duties and functions of local authorities in respect of children who are looked after by them in terms of section 17(6) of the Children (Scotland) Act 1995 (“the 1995 Act”). They revoke 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).

Part II makes provision for the care planning process when a child is or is about to be looked after in terms of section 17(6) of the 1995 Act. This Part prescribes the information which must be obtained by the local authority and the assessments which must be made.

Part III makes provision for general matters affecting looked after children (death of a looked after child and recommendations to the Principal Reporter).

Part IV, regulations 8 and 9, give local authorities the power to allow looked after children to be cared for either by their own parents or persons who have parental rights and responsibilities.

Part V makes provision for a group of carers to be known as “kinship carers” who will be related or known to the child (regulation 10(2)). Regulations 11 and 12 prescribe the requirements which must be met before a child may be placed with a kinship carer whilst regulation 13 specifies the notification requirements once a placement is made. Regulations 15 and 16 make provision for establishing and maintaining case records for kinship carers.

Parts VI and VII make provision for foster care. Part VI regulates the creation and functions of foster panels whilst Part VIII regulates the approval of foster carers, review of approval and placement of children in foster care. Regulations 31 and 32 also make provision for establishing and maintaining case records for foster carers. Part VII, regulation 33, makes provision for fostering and kinship allowances.

Part IX makes provision for cases where a child is placed in a residential establishment.

Regulation 34 prescribes notification requirements and regulation 35 the information which must be supplied and the arrangements which must be made with the manager of the establishment.

Part X concerns emergency placements and regulates when they may be made with a carer (regulation 36) or in a residential establishment (regulation 37). Regulations 38 and 41 prescribe the review of emergency placements whilst regulation 39 allows for emergency placement under regulation 36 to be extended in certain circumstances.

Part XI prescribes the requirement to establish a case record for all looked after children. Part XII provides a system for review of the child's case. Regulation 46, in addition, requires visits to be made on behalf of the local authority. Regulation 47 places a duty on the local authority to terminate any placement where it is no longer in the child's interests to remain there.

Part XIII allows local authorities to enter into agreements with other fostering services (who are not local authorities and who are registered with the Care Commission) for the purposes of discharging certain functions in respect of looked after children on their behalf.

**Changes to legislation:**

There are currently no known outstanding effects for the The Looked After Children (Scotland) Regulations 2009.