
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 210

The Looked After Children (Scotland) Regulations 2009

PART VII

FOSTERING

Foster carers

21.—(1) A local authority may make a decision to approve a person as a suitable carer for a child^{F1} ... 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

F1 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

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^[F2]^[F3], 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

- F2** Words in reg. 22(5)(d) revoked (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020 \(asp 7\)](#), s. 17(1), [sch. 3 para. 10\(3\)](#) (with ss. 11-13) (which affecting provision 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](#))
- F3** 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

- 23.**—(1) A local authority may make a decision to approve a person as a foster carer where—
- 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
 - 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

- 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

- 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—
- within 12 months of the day the decision to approve the foster carer was made under regulation 22(3), 23^[F4], 26(8) or 27B(4);
 - thereafter subsequent reviews within 3 years of the previous review; and
 - whenever paragraph (8) applies.
- (2) The requirements are—
- 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;
 - to consider—
 - 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

- F4** 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

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.

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Changes to legislation: There are currently no known outstanding effects for the The Looked After Children (Scotland) Regulations 2009, PART VII. (See end of Document for details)

(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

27.—(1) A local authority must not place a child with a foster carer where—

- [^{F5}(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 [F6; or
- [F7(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.
- [F8(2A) But a local authority may place a child with a foster carer where the terms of the foster carer's approval regarding the number of children the foster carer may have in their care at any one time are not consistent with the placement, if the authority—
- (a) considers that it is necessary to do so for a reason relating to coronavirus, and
 - (b) is otherwise satisfied as to the matters mentioned in paragraph (2).]
- (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.
- [F9(5) In paragraph (2A), “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.]

Textual Amendments

- F5** 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**
- F6** 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

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end of the day) by Coronavirus (Extension and Expiry) (Scotland) Act 2021 (asp 19), ss. 2(1)(3), 11(2) (with **sch. para. 1**)

- F7** Reg. 27(1)(c) revoked (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 3 para. 10(4)(a)** (with ss. 11-13) (which affecting provision 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**))
- F8** Reg. 27(2A) inserted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 3 para. 10(4)(b)** (with ss. 11-13) (which affecting provision 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**))
- F9** Reg. 27(5) inserted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 3 para. 10(4)(c)** (with ss. 11-13) (which affecting provision 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**))

[^{F10}[^{F11}Placement limit

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; ^{F12}...
- (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 [^{F13}; or
- (c) when regulation 27B(4) applies.]]]

Textual Amendments

- F10** Reg. 27A inserted (29.12.2014) by The Looked After Children (Scotland) Amendment Regulations 2014 (S.S.I. 2014/310), regs. 1, **2(5)**
- F11** Reg. 27A revoked (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 3 para. 10(5)** (with ss. 11-13) (which affecting provision 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**))
- F12** 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)**
- F13** 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)**

[^{F14}Exceptional approval of foster carer

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

F14 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

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

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

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(d) any person with any parental responsibilities or parental rights in relation to the child.

[^{F15}(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 [^{F16}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, [^{F17}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

- F15** 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(1)(a)**; S.S.I. 2013/195, **arts. 2, 3**
- F16** 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(1)(b)**; S.S.I. 2013/195, **arts. 2, 3**
- F17** 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(1)(c)**; S.S.I. 2013/195, **arts. 2, 3**

Short-term placements with foster carers

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

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

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.

Status:

Point in time view as at 31/03/2021.

Changes to legislation:

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