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WELSH STATUTORY INSTRUMENTS

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**2001 No. 2189 (W.151)**

**CHILDREN AND YOUNG PERSONS, WALES**

**The Children (Leaving Care) (Wales) Regulations 2001**

*Made* - - - - *12th June 2001*

*Coming into force* - - *1st October 2001*

The National Assembly for Wales in exercise of the powers conferred by sections 23A(3), 23B(5), (6), (8)(c), (10), 23D(2), 23E, 24B(6), 24D(2) and 104(4) of, and paragraphs 19B(2), (3), (7) and (8) of Schedule 2 to, the Children Act 1989(1), hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Children (Leaving Care)(Wales) Regulations 2001 and shall come into force on 1st October 2001.

(2) These Regulations apply to Wales.

**Interpretation**

2. In these Regulations, unless the context otherwise requires—

“the Act” (“*y Ddeddf*”) means the Children Act 1989;

“general practitioner” (“*ymarferydd cyffredinol*”) means a registered medical practitioner who—

- (a) provides general medical services under Part II of the National Health Service Act 1977(2); or
- (b) performs personal medical services in connection with a pilot scheme under the National Health Service (Primary Care) Act 1997(3);

“hospital” (“*ysbyty*”) means:

- (a) any health service hospital within the meaning of the National Health Service Act 1977; and

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(1) 1989 c. 41 (“the 1989 Act”). Sections 23A and 23B are inserted by the Children (Leaving Care) Act 2000 (c. 35) (“the 2000 Act”), section 2(4); sections 23D and 23E are inserted by section 3 of the 2000 Act; sections 24B and 24D are inserted by section 4 of the 2000 Act. Paragraph 19B of Schedule 2 is inserted by section 1 of the 2000 Act. The functions of the Secretary of State under these provisions are transferred to the National Assembly for Wales in relation to Wales by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 8(7) of the 2000 Act. See section 105(1) of the 1989 Act for the definition of “prescribed”.

(2) 1977 c. 49.

(3) 1997 c. 46.

- (b) any mental nursing home being a home in respect of which the particulars of registration are for the time being entered in the separate part of the register kept for the purposes of section 23(5)(b) of the Registered Homes Act 1984(4);

“placement” (“*lleoliad*”) means the provision of accommodation and maintenance by a local authority for a child they are looking after by any of the means specified in section 23(2)(a) to (d) or (f) of the Act;

“responsible local authority” (“*awdurdod lleol cyfrifol*”) has the following meanings:

- (a) in relation to an eligible child(5), the local authority looking after that child; and  
 (b) in relation to a relevant child(6), the meaning given to it by section 23A(4) of the Act;

“young person” (“*person ifanc*”) means a former relevant child(7).

### Eligible children

3.—(1) For the purposes of paragraph 19B(2)(b) of Schedule 2 to the Act, the prescribed period is 13 weeks and the prescribed age is 14.

(2) The following categories of children are not to be eligible children despite falling within paragraph 19B(2) of Schedule 2—

- (a) any child who has been looked after by a local authority in circumstances where the following conditions apply—
- (i) the local authority has arranged to place the child in a series of short-term placements none of which individually exceeds four weeks (even though they may amount in all to the prescribed period); and
  - (ii) at the end of each such placement the child returns to the care of his or her parent, or a person who is not a parent but who has parental responsibility for the child,
- (b) any child who is subject to a care order, who, under arrangements made by a local authority looking after the child, has been living with a person falling within section 23(4) of the Act (8) for a period of six months or more.

### Relevant children

4.—(1) For the purposes of section 23A(3), the category of children described in paragraph (2) are an additional category of relevant children.

(2) Any child aged 16 or 17 (not being subject to a care order) (9) who—

- (a) at the time when he or she attained the age of 16 was detained or in hospital; and  
 (b) had been accommodated by a local authority for a single period of at least 13 weeks (“the single period”) or for periods amounting in all to at least 13 weeks (“the aggregate period”) where
- (i) the single period or the first period of the aggregate period began after he or she reached the age of 14, and
  - (ii) the single period or the aggregate period ended immediately before such detention or admission.

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(4) 1984 c. 23.

(5) See section 19B of the 1989 Act for the meaning of “eligible child”.

(6) See section 23A of the 1989 Act for the meaning of “relevant child”.

(7) See section 23C of the 1989 Act for the meaning of “former relevant child”.

(8) A person falls within section 23(4) if he or she is a parent of the child, a person who is not a parent but who has parental responsibility for the child, or where the child is in care and there was a residence order in force with respect to the child immediately before the care order was made, a person in whose favour the residence order was made.

(9) A “care order” is defined in section 105(1) of the Act by reference to section 31(11) of that Act.

(3) For the purposes of this regulation, “detained” means detained in a remand centre, a young offender institution or a secure training centre<sup>(10)</sup>, or any other institution pursuant to an order of a court.

(4) Any child who has lived with a person falling within section 23(4) of the Act for a continuous period of six months or more is not to be a relevant child despite falling within section 23A(2).

(5) Paragraph (4) applies whether the period of six months commences before or after a child ceases to be looked after by a local authority.

### **Assessments and pathway plans — general**

5.—(1) Each responsible local authority must prepare a written statement describing the manner in which the needs of each eligible and relevant child will be assessed.

(2) The written statement must include, in relation to each child whose needs are to be assessed, information about, in particular—

- (a) the person responsible for the conduct and co-ordination of the assessment;
- (b) the timetable for the assessment;
- (c) who is to be consulted for the purposes of the assessment;
- (d) arrangements for recording the outcome of the assessment;
- (e) any action the child may take in the event of disagreement.

(3) The responsible local authority must make a copy of the statement available to the child and the persons specified in regulation 7(5).

(4) Nothing in these Regulations shall prevent the carrying out of any assessment or review under these Regulations at the same time as any assessment, review or consideration under any other provision.

### **Involvement of the child or young person**

6.—(1) The responsible local authority in carrying out an assessment and in preparing or reviewing a pathway plan, shall to the extent that it is reasonably practicable—

- (a) seek and have regard to the views of the child or young person to whom it relates; and
- (b) take steps to enable him or her to attend and participate in any meetings at which his or her case is to be considered.

(2) The responsible local authority shall without delay provide the child or young person with copies of—

- (a) the results of his or her assessment,
- (b) his or her pathway plan,
- (c) each review of his or her pathway plan,

and shall so far as reasonably practicable ensure that the contents of each document are explained to him or her.

### **Assessment of needs**

7.—(1) The responsible local authority shall assess the needs of each eligible child, and each relevant child who does not already have a pathway plan, in accordance with these Regulations.

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<sup>(10)</sup> For remand centres, young offender institutions and secure training centres, see section 43 of the Prison Act 1952 (15&16 Geo 16 and Eliz 2 c.52) as amended by the Criminal Justice Act 1982 (c. 48) section 11, Criminal Justice Act 1988 (c. 33), paragraphs 11 and 12 of Schedule 15, and the Crime and Disorder Act 1998 (c. 37), paragraph 6 of Schedule 8.

- (2) The assessment is to be completed—
- (a) in the case of an eligible child, not more than three months after the date on which the child reaches the age of 16 or becomes an eligible child after that age;
  - (b) in the case of a relevant child who does not already have a pathway plan, not more than three months after the date on which the child becomes a relevant child.
- (3) Each responsible local authority shall ensure that a written record is kept of—
- (a) the information obtained in the course of an assessment;
  - (b) the deliberations at any meeting held in connection with any aspect of an assessment; and
  - (c) the results of the assessment.
- (4) In carrying out an assessment the responsible local authority shall take account of the following considerations—
- (a) the child’s health and development<sup>(11)</sup>;
  - (b) the child’s need for education, training or employment;
  - (c) the support available to the child from relationships with members of his or her family and with other persons;
  - (d) the child’s financial needs;
  - (e) the extent to which the child possesses the practical and other skills necessary for independent living; and
  - (f) the child’s needs for care, support and accommodation.
- (5) The responsible local authority shall, unless it is not reasonably practicable to do so, seek and take into account the views of—
- (a) the child’s parents;
  - (b) any person who is not a parent but has parental responsibility for the child;
  - (c) any person who is caring for the child on a day to day basis;
  - (d) any school or college attended by the child, or the local education authority for the area in which the child lives;
  - (e) any independent visitor appointed for the child<sup>(12)</sup>;
  - (f) the general practitioner in whose list the child is included;
  - (g) the personal adviser<sup>(13)</sup> appointed for the child; and
  - (h) any other person whose views the responsible local authority or the child consider may be relevant.

### **Pathway plans**

**8.—**(1) As soon as possible after completing the assessment, the responsible local authority shall prepare a pathway plan for each eligible child, and each relevant child who does not already have one, in accordance with this regulation.

- (2) The pathway plan must include, in particular, the matters referred to in the Schedule.
- (3) The pathway plan must, in relation to each of the matters referred to in the Schedule, set out—
  - (a) the manner in which the responsible local authority proposes to meet the needs of the child; and

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<sup>(11)</sup> “Health” and “development” are defined for the purposes of Part III of the Act in section 17(11).

<sup>(12)</sup> An independent visitor is a person appointed as a visitor for a child in accordance with paragraph 17 of Schedule 2 to the Act.

<sup>(13)</sup> Personal advisers are provided for in sections 23B(2), 23C(3)(a) and 23D of, and paragraph 19C of Schedule 2 to, the Act.

- (b) the date by which any action required to implement any aspect of the plan, will be carried out by the responsible local authority.
- (4) The pathway plan must be recorded in writing.

### **Review of pathway plans**

**9.**—(1) The responsible local authority shall review the pathway plan of each eligible, relevant and former relevant child in accordance with this regulation.

- (2) The responsible local authority shall arrange a review—
  - (a) if requested to do so by the child or young person;
  - (b) if it, or the personal adviser considers a review necessary; and
  - (c) in any other case, at intervals of not more than six months.
- (3) In carrying out a review, the responsible local authority shall, to the extent it considers it appropriate to do so, seek and take account of the views of the persons mentioned in regulation 7(5).
- (4) The responsible local authority conducting a review shall consider—
  - (a) in the case of an eligible or relevant child, whether, in relation to each of the matters set out in the Schedule, any change to the pathway plan is necessary; and
  - (b) in the case of a former relevant child, whether in relation to the matters set out in paragraphs 1, 3 and 4 of the Schedule, any change to the pathway plan is necessary.
- (5) The results of the review must be recorded in writing.

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

**10.**—(1) Records relating to assessments, pathway plans and their review shall be retained by the responsible local authority until the seventy-fifth anniversary of the date of birth of the child or young person to whom they relate, or if the child dies before attaining the age of 18, for a period of fifteen years beginning with the date of the child’s death.

(2) The requirement in paragraph (1) may be complied with by retaining the original written records or copies of them, or by keeping all or part of the information contained in them in some other accessible form such as a computer record.

(3) The records mentioned in paragraph (1) must be kept securely and may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under, or by virtue of, a statute under which access to such records is authorised;
- (b) any court order authorising access to such records.

### **Support and accommodation**

**11.**—(1) For the purposes of section 23B(8)(c) (support for relevant children), the responsible local authority must provide assistance, including financial assistance, which may in exceptional circumstances, be in cash, in order to meet the child’s needs in relation to education, training or employment as provided for in his or her pathway plan.

- (2) For the purposes of section 23B(10), “suitable accommodation” means accommodation—
  - (a) which so far as reasonably practicable is suitable for the child in the light of the child’s needs, including health needs;
  - (b) in respect of which the responsible local authority has satisfied itself as to the character and suitability of the landlord or other provider;

- (c) in respect of which the responsible local authority has so far as reasonably practicable taken into account the child's—
  - (i) wishes and feelings; and
  - (ii) educational, training or employment needs.
- (3) For the purposes of section 24B(5) (provision of vacation accommodation),
  - (a) “higher education” (“*addysg uwch*”) means education provided by means of a course of a description referred to in regulations made under section 22 of the Teaching and Higher Education Act 1998<sup>(14)</sup>;
  - (b) “further education” (“*addysg bellach*”) has the same meaning as in the Education Act 1996<sup>(15)</sup> save that for the purposes of this regulation it only includes further education which is provided on a full-time residential basis.

### Functions of personal advisers

- 12.**—(1) A personal adviser shall have the following functions<sup>(16)</sup>—
- (a) in relation to eligible and relevant children, the functions listed in paragraph (2); and
  - (b) in relation to former relevant children, the functions listed in paragraph (2) other than sub-paragraph (b).
- (2) The functions are—
- (a) to provide them with advice (including practical advice) and support;
  - (b) to participate in their assessment and the preparation of their pathway plans;
  - (c) to participate in reviews of their pathway plans;
  - (d) to liaise with the responsible local authority in the implementation of the pathway plan;
  - (e) to co-ordinate the provision of services to them, and to take reasonable steps to ensure that they make use of such services;
  - (f) to keep informed about their progress and wellbeing; and
  - (g) to keep a written record of any of the adviser’s contacts with them.

### Representations

- 13.**—(1) The Representations Procedure (Children) Regulations 1991<sup>(17)</sup> shall be amended as follows.
- (2) In regulation 2 (Interpretation)—
- (a) in the definition of “complainant”, for “qualifying for advice and assistance” substitute “falling within section 23A, 23C, 24, or 24B(3) of the Act making any representations”;
  - (b) in the definition of “representations”, for “24(14)” substitute “24D(1)”.

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<sup>(14)</sup> 1998 c. 30. Currently the relevant regulations are the Education (Student Support) Regulations 2000 (S.I. 2000/1121).

<sup>(15)</sup> 1996, c.56. The definition of further education is in section 2(3).

<sup>(16)</sup> In addition the responsible local authority may see fit to arrange for the personal adviser to act on its behalf in the provision of other services pursuant to section 17(5)(b) of the Act.

<sup>(17)</sup> S.I. 1991/ 879 as amended by S.I. 1991/2033 and 1993/3069.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(18)

12th June 2001

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly  
for Wales

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Regulations 8(2) and (3) and 9(4)

### MATTERS TO BE DEALT WITH IN THE PATHWAY PLAN AND REVIEW

1. The nature and level of personal support to be provided to the child or young person.
2. Details of the accommodation the child or young person is to occupy.
3. A detailed plan for his or her education or training.
4. Where relevant, how the responsible local authority will assist the child or young person in employment or seeking employment.
5. The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships.
6. A programme to develop the practical and other skills necessary for him or her to live independently.
7. The financial support to be provided to the child or young person, in particular where it is to be provided to meet his or her accommodation and maintenance needs.
8. The health needs, including any mental health needs, of the child or young person, and how they are to be met.
9. Contingency plans for action to be taken by the responsible local authority should the pathway plan for any reason cease to be effective.

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### EXPLANATORY NOTE

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

These Regulations make provision about support for children and young people aged 16 and over, who are, or have been, looked after by a local authority.

Regulations 3 and 4 prescribe further categories of children to whom local authorities will, or as the case may be, will not, owe additional duties as provided for in Part III of the Children Act 1989, as amended by the Children (Leaving Care) Act 2000.

Regulations 5 to 10 make provision about the assessment of needs, and the preparation and review of pathway plans, and regulation 11 makes provision about assistance with education and training, and accommodation.

Regulation 12 prescribes the functions of a personal adviser. Regulation 13 amends the Representations Procedure (Children) Regulations 1991 as they affect children and young people formerly looked after by a local authority, or leaving care.