
STATUTORY INSTRUMENTS

1996 No. 3256 (S.246)

**RESIDENTIAL AND OTHER
ESTABLISHMENTS, SCOTLAND**

**The Residential Establishments – Child
Care (Scotland) Regulations 1996**

Made - - - - *18th December 1996*
Laid before Parliament *31st December 1996*
Coming into force - - *1st April 1997*

The Secretary of State, in exercise of the powers conferred on him by sections 5(2) and 60(1) of the Social Work (Scotland) Act 1968(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**PART I
GENERAL**

Citation and commencement

1. These Regulations may be cited as the Residential Establishments – Child Care (Scotland) Regulations 1996 and shall come into force on 1 April 1997.

Interpretation

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

“the Act” means the Social Work (Scotland) Act 1968;

“the 1995 Act” means the Children (Scotland) Act 1995(2);

“children’s hearing” has the meaning given to that term by section 93(1) of the 1995 Act;

(1) 1968 c. 49; section 5(2) was amended by the Adoption (Scotland) Act 1978 (c. 28), Schedule 3, paragraph 9, the Children Act 1989 (c. 41), Schedule 13, paragraph 19, and the National Health Service and Community Care Act 1990 (c. 19), s.51; section 60(1) was amended by the National Health Service (Scotland) Act 1978 (c. 24), Schedule 16, paragraph 29(i) and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 8(3).

(2) 1995 c. 36.

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(3);

“looked after” has in respect of a local authority the meaning given to that term by section 17(6) of the 1995 Act;

“managers” means–

- (a) the case of a local authority, those officers having delegated powers under section 56 of the Local Government (Scotland) Act 1973(4) for the management of the residential establishment.
- (b) in any other case, those who are responsible for management of the residential establishment;

“person in charge” means the person in charge of a residential establishment who is responsible to the managers of the residential establishment;

“parent” has the meaning given to that term by section 15(1) of the 1995 Act and includes any person who is not a parent of the child but who has parental responsibilities in respect of him;

“parental responsibilities” has the meaning given to that term by section 1(3) of the 1995 Act;

“placement” means the provision of accommodation by a local authority for a child looked after by them by any of the means specified in section 26 of the 1995 Act;

“registering authority” means the local authority with which the person carrying on any residential establishment is registered or is required to be registered for the purposes of section 62 of the Act;

“residential establishment” has the meaning given to that term by section 93(1) of the 1995 Act;

“voluntary organisation” has the meaning given to that term by section 93(1) of the 1995 Act.

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

PART II

GENERAL PROVISIONS APPLYING TO CONDUCT OF RESIDENTIAL ESTABLISHMENTS

General

3. This Part of these Regulations shall apply to any residential establishment which provides residential accommodation for children and–

- (a) is controlled or managed by a local authority; or
- (b) is one in respect of which a person is required to be registered under section 61 of the Act(5); or
- (c) is a school which is registered voluntarily in accordance with section 61A of the Act(6).

(3) 1994 c. 39.

(4) 1973 c. 65; section 56 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), section 32; the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47), section 28; the Local Government Finance Act 1992 (c. 14), Schedule 13, paragraph 35; the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 92; and the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 22.

(5) Section 61 was amended by section 1 of the Registered Establishments (Scotland) Act 1987 (c. 40) and by section 34 of the Children (Scotland) Act 1995.

(6) Section 61A was inserted by section 2 of the Registered Establishments (Scotland) Act 1987, and substituted by section 34(3) of the Children (Scotland) Act 1995.

4. The managers of any residential establishment to which these Regulations apply shall ensure that the welfare of the child placed and kept in such accommodation is safeguarded and promoted and that the child receives such provision for his development and control as is conducive to his best interests.

Statement of functions and objectives

5.—(1) Subject to the provisions of this Part of the Regulations the managers of a residential establishment which provides residential accommodation for children shall, in consultation with the person in charge, prepare within 6 months of these Regulations coming into force a statement of functions and objectives for that establishment which shall include the particulars specified in the Schedule to these regulations.

(2) The managers referred to in paragraph (1) shall keep under review the preparation of and implementation of the said statement of functions and objectives and for that purpose they—

- (a) shall ensure that the person in charge reports in writing to them at intervals of not more than 12 months on the implementation of the statement of functions and objectives for that establishment; and
- (b) shall make arrangements to ensure that each residential establishment they provide is visited on their behalf at intervals of not more than 6 months to furnish them with a report on the implementation of the statement of functions and objectives for each establishment.

(3) Without prejudice to the arrangements made under paragraph (2)(b), the managers may make arrangements for each residential establishment they provide to be visited at such other times as they consider necessary by a person authorised for that purpose.

(4) Where the managers consider it necessary or appropriate, they shall in consultation with the person in charge make such amendments to the statement of functions and objectives prepared in accordance with paragraph (1) as they consider appropriate.

(5) The managers shall arrange for the statement of functions and objectives for any residential establishment they provide to be made available, on request, to any local authority or children's hearing considering the placing of a child in such an establishment.

Number of children who may be accommodated

6. Subject to section 62(5) of the Act⁽⁷⁾ the managers shall, as they consider appropriate, determine the total number of children who may normally be resident in each residential establishment they provide.

Appointment of person in charge

7.—(1) Where a residential establishment is not provided by a local authority, the managers shall appoint a person to be in charge of the establishment and shall in writing—

- (a) delegate such duties under these Regulations or otherwise to the person in charge as the managers may determine;
- (b) specify the persons who will have charge of the establishment in the absence of the person in charge.

(2) Where a residential establishment is provided by a local authority, the person in charge shall be an officer appointed by the local authority.

(7) Section 62(5) was substituted by section 3 of the Registered Establishments (Scotland) Act 1987.

Appointment and vetting of staff in residential establishments

8. The managers of a residential establishment shall have in place appropriate procedures to be followed in the vetting of staff in relation to their suitability to work in the establishment both prior to their appointment and regularly thereafter.

Precautions against fire and accident

9.—(1) The managers shall, in consultation with the fire authority for the area in which any residential establishment they provide is situated, ensure that adequate precautions are taken against fire and shall review such precautions at suitable intervals having regard to any recommendations they may receive at any time from the fire authority.

(2) The managers shall make arrangements to ensure that by means of drills and practices the staff of residential establishments provided by them and, as far as practicable, children resident there are adequately trained and instructed in procedures to be followed in the event of fire.

(3) The managers shall ensure that adequate precautions are taken against the occurrence of other forms of accident in a residential establishment and that the staff and, as far as practicable, children resident there are acquainted with such precautions.

Sanctions

10.—(1) Arrangements for sanctions, relevant to the control of children resident in a residential establishment, shall be determined by the managers in accordance with the statement of functions and objectives formulated under regulation 5(1).

(2) The arrangements shall not authorise the giving of corporal punishment and corporal punishment shall for this purpose have the same meaning as in section 48A of the Education (Scotland) Act 1980(8).

Provision of education

11.—(1) The managers of each residential establishment shall ensure, in consultation with the appropriate education authority, that each child of school age accommodated in the establishment, and not meanwhile receiving education at a school or other place outwith the establishment, receives adequate and efficient education.

(2) In making provision for education under paragraph (1), the managers shall have regard to—

(a) the requirements of sections 1 (duty of education authorities to secure provision of education) and 30 (duty of parents to provide education for their children) of the Education (Scotland) Act 1980;

(b) the number of children normally resident in the establishment in respect of whom education may require to be provided, either within the establishment or, where that is not appropriate or is not provided, at a school;

(c) the age, ability, aptitude and progress of each child.

(3) For the purposes of paragraph (2)(b) in deciding where a child might best receive education the managers, in consultation with the appropriate education authority, shall have regard to the period for which the child is normally expected to be resident within the establishment.

(4) Any arrangements made under paragraph (1) for the provision of education within the establishment shall include accommodation for teaching purposes together with other requisite

(8) 1980 c. 44; section 48A was inserted by the Education (No.2) Act 1986 (c. 61), section 48, and subsequently amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8, and the Education Act 1993 (c. 35), section 294.

facilities and the employment, or arrangement for the services, of an adequate and appropriately qualified teaching staff.

(5) In this regulation the expression “school age” has the meaning assigned to it by section 31 of the Education (Scotland) Act 1980.

Log book or books

12. The managers shall ensure in consultation with the person in charge that there is maintained for each residential establishment a log book or books of day-to-day events of importance or of an official nature, including, without prejudice to this generality and to the inclusion of such information in personal records maintained under regulation 13, details of sanctions imposed.

Personal records

13. The managers in consultation with the person in charge shall ensure that all necessary records, including where necessary health particulars, are maintained in respect of each child resident in a residential establishment.

Religious instruction

14. The managers of a residential establishment shall, so far as is practicable and having regard to the child’s wishes and feelings, arrange that every child resident in the establishment is able to attend such religious services and to receive such religious instruction as may be appropriate to the child’s religious persuasion.

Health and medical care

15. The managers shall ensure that arrangements are made—
- (a) within the residential establishment for the maintenance of conditions conducive to good health among the children resident there including the maintenance of satisfactory conditions of hygiene; and
 - (b) where appropriate, in consultation with the relevant local authority responsible for the child’s welfare, for such medical and dental treatment to be available as may be required for each child.

Monitoring of registered establishments

16. Where the registering authority have issued a certificate of registration in accordance with section 62(3) of the Act, they shall satisfy themselves by visits—
- (a) at intervals of not more than 1 year, that the operation of the residential establishment continues to conform to the requirements for registration and in doing so shall have regard to the statement of functions and objectives prepared in accordance with regulation 5; and
 - (b) otherwise as they consider necessary or appropriate, that the safety and welfare of children resident within the establishment are being maintained.

PART III

MISCELLANEOUS PROVISIONS APPLICABLE TO ALL PLACEMENTS IN A RESIDENTIAL ESTABLISHMENT

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

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

- (a) shall provide the person in charge with the following:-
 - (i) written information about the child's background, health, and mental and emotional development; and
 - (ii) any other information which the local authority considers relevant to the placement including information about the child's wishes and feelings about the placement, so far as this is appropriate having regard to his age and maturity;
- (b) shall agree with the person in charge arrangements for ensuring that the welfare of the child placed and kept in such accommodation is safeguarded and promoted and that the child receives such provision for his development and control as is conducive to his best interests including—
 - (i) the arrangements that are to be made for contact between the child and his family;
 - (ii) the arrangements that are to be made for ensuring that the child receives adequate and efficient education (having regard to regulation 11) and appropriate medical and dental treatment.

St Andrew's House, Edinburgh
18th December 1996

James Douglas-Hamilton
Minister of State, Scottish Office

SCHEDULE

Regulation 5(1)

MATTERS TO BE INCLUDED IN A STATEMENT OF FUNCTIONS AND OBJECTIVES

1. Arrangements to meet the needs and development potential of all children resident in the establishment, including the child's emotional, spiritual, intellectual and physical needs and which give due regard to the child's religious persuasion, cultural and linguistic background and racial origin.
2. Arrangements for the education of children resident in the establishment including—
 - (a) where education is provided in the establishment, the standard and range of educational provision; or
 - (b) where education is not provided in the establishment, the arrangements made with the relevant education authority for such provision.
3. For the purposes of regulation 9, the measures which will be taken to safeguard the physical safety of children resident in the establishment.
4. The sanctions and other arrangements relating to the control of children as provided for in regulations 4 and 10.
5. Arrangements for the residential establishment—
 - (a) in co-operation with the relevant local authority, to assist each child in developing his potential while resident in the establishment and after leaving;
 - (b) for taking into account the needs and wishes of each child so placed, and those of the parents, and for the child's rights and responsibilities to be defined with due regard to his age and maturity; and
 - (c) for formulating procedures in co-operation with the relevant local authority in each case to deal with complaints from children resident in the establishment, or their parents or other relatives.
6. Arrangements for record keeping in accordance with regulation 13 including—
 - (a) procedures for the selection of children to be admitted to the establishment;
 - (b) details of arrangements for admissions and discharges from the establishment;
 - (c) procedures for access to records for staff, children and parents; and
 - (d) records regarding any involvement of children and parents in relation to decisions taken about the child's welfare while resident in the establishment.
7. Arrangements for contact and visits by relatives and friends of children resident in the establishment.
8. The establishment's policy on the involvement of children and parents in decisions about the child's future while resident in the establishment.
9. Policy and practice in regard to the recruitment and training of appropriately qualified staff to ensure that the objectives of the residential establishment are achieved, having regard also to the range of services which will be provided including social work, health and, where relevant, education.
10. Arrangements for health care and its promotion within the residential establishment in accordance with regulation 15.
11. Details of all fire practices and fire alarm tests carried out in the residential establishment.
12. Arrangements for consulting children and staff in preparing and reviewing the statement of aims and objectives.

13. Procedures for dealing with complaints and grievances of staff and children and the arrangements by which children and young people have access on a personal basis on matters of concern to an allocated responsible person.

14. Statement covering the general ethos and philosophy of the establishment and how this is reflected in its policies and practices.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to residential establishments in which a child who is looked after by a local authority under the Children (Scotland) Act 1995 may be placed. They supersede the Social Work (Residential Establishments – Child Care) (Scotland) Regulations 1987 (S.I.1987/2233).

Part II of the Regulations deals with the conduct of residential establishments and requires them to be conducted in a way which is conducive to the best interests of the children resident in them (regulation 4). Each establishment is required to prepare a statement of functions and objectives setting out the responsibilities of managers (regulation 5 and the Schedule). Minimum requirements are specified regarding fire precautions, sanctions, log books, records, education and health care (regulations 9-15).

Part III of the Regulations prescribes the information to be supplied to persons in respect of each child placed in a residential establishment.

Two main changes are made to the Regulations. Some of the regulations from the Social Work (Residential Establishments – Child Care) (Scotland) Regulations 1987 have been removed to the Arrangements to Look After Children (Scotland) Regulations 1996 (S.I. 1996/3262) which deal with matters relating to the nature, review and termination of placement of such children. A new regulation has been introduced which places a specific duty on managers of residential establishments to have in place procedures for the appointment and vetting of staff (regulation 8).