
WELSH STATUTORY INSTRUMENTS

2002 No. 327

The Children's Homes (Wales) Regulations 2002

PART III

CONDUCT OF CHILDREN'S HOMES

CHAPTER 1

WELFARE OF CHILDREN

Promotion of welfare

- 11.**—(1) The registered person shall ensure that the children's home is conducted so as to—
- (a) promote and make proper provision for the welfare of children accommodated there; and
 - (b) make proper provision for the care, education, supervision and, where appropriate, treatment, of children accommodated there.
- (2) The registered person shall make suitable arrangements to ensure that the home is conducted—
- (a) in a manner which respects the privacy and dignity of children accommodated there;
 - (b) with due regard to the sex, religious persuasion, racial origin, and cultural and linguistic background and any disability of children accommodated there.

Child's placement plan

- 12.**—(1) The registered person shall, before providing accommodation for a child in a children's home, or if that is not reasonably practicable, as soon as possible thereafter, prepare in consultation with the child's placing authority a written plan ("the placement plan") for the child setting out, in particular—
- (a) how, on a day to day basis, he or she will be cared for, and his or her welfare safeguarded and promoted by the home;
 - (b) the arrangements for his or her health care and education; and
 - (c) the arrangements made for contact with his or her parents, relatives and friends.
- (2) The registered person shall keep under review and revise the placement plan as necessary.
- (3) In preparing or reviewing the placement plan the registered person shall, so far as practicable and having regard to the child's age and understanding, seek and take account of his or her views.
- (4) The registered person shall—
- (a) ensure that the placement plan is consistent with any plan for the care of the child prepared by his or her placing authority; and
 - (b) comply with reasonable requests made by the child's placing authority to—
 - (i) provide it with information relating to the child; and

- (ii) provide a suitable representative to attend any meetings it may hold concerning the child.

Food provided for children

13.—(1) The registered person shall ensure that children accommodated in a children's home are provided with—

- (a) food which—
 - (i) is served in adequate quantities and at appropriate intervals;
 - (ii) is properly prepared, wholesome and nutritious;
 - (iii) is suitable for their needs and meets their reasonable preferences; and
 - (iv) is sufficiently varied; and
- (b) access to fresh drinking water at all times.

(2) The registered person shall ensure that any special dietary need of a child accommodated in the home, which is due to his health, religious persuasion, racial origin or cultural background, is met.

Provision of clothing, pocket money and personal necessities

14.—(1) The registered person shall ensure that the needs and reasonable preferences of each child accommodated in the home for clothing, including footwear, and personal necessities are met.

(2) The registered person shall provide children accommodated in the home with such sums of money in respect of their occasional personal expenses as is appropriate to their age and understanding.

Contact and access to communications

15.—(1) The registered person shall—

- (a) subject to paragraphs (6) and (8), promote the contact of each child with his or her parents, relatives and friends in accordance with the arrangements set out in his or her placement plan; and
- (b) subject to paragraph (3), ensure that suitable facilities are provided within the children's home for any child accommodated there to meet privately at any reasonable time with his or her parents, friends, relatives, and the persons listed in paragraph (2).

(2) The persons are—

- (a) any solicitor or other adviser or advocate whom the child has instructed or wishes to instruct;
- (b) any officer of the Children and Family Court Advisory and Support Service appointed for the child⁽¹⁾;
- (c) any social worker for the time being assigned to the child by his placing authority;
- (d) any person appointed in respect of any requirement of the procedure specified in the Representations Procedure (Children) Regulations 1991⁽²⁾;
- (e) any person holding an appointment as a visitor for the child under paragraph 17 of Schedule 2 to the 1989 Act;

(1) The Children and Family Court Advisory and Support Service is established by Chapter II of Part I of the Criminal Justice and Court Services Act 2000 c. 43. Officers of CAFCASS are appointed for children in specified proceedings (section 41).

(2) S.I.1991/894 as amended by S.I.1991/2033 and S.I. 1993/3069.

- (f) any person authorised by the National Assembly under section 31 of the Act to inspect undertakings regulated under Part II of the Act;
 - (g) any person authorised by the local authority for the area in which the home is situated;
 - (h) any person authorised in accordance with section 80(2) of the 1989 Act by the National Assembly to conduct an inspection of the children's home and the children there.
- (3) In the case of a home in respect of which a certificate under section 51 of the 1989 Act is in force, the facilities may be at an address different to that of the home.
- (4) Subject to paragraphs (6) and (8), the registered person shall ensure that children accommodated in the home are provided at all reasonable times with access to the following, which they may use without reference to persons working in the home—
- (a) a telephone on which to make and receive telephone calls in private; and
 - (b) facilities to send and receive post and, if the necessary facilities are provided for the use of children accommodated in the home, electronic mail, in private.
- (5) The registered person shall ensure that any disabled child accommodated in the home is provided with access to such aids and equipment which he or she may require as a result of his or her disability in order to facilitate his or her communication with others.
- (6) The registered person may (subject to paragraphs (7) and (8)) impose restrictions, prohibitions or conditions upon a child's contact with any person under paragraph (1)(a), or upon a child's meeting privately in the home with those persons, or upon a child's access to communications under paragraph (4), if he or she is of the reasonable opinion that the imposition is necessary for the purpose of safeguarding or promoting the welfare of the child in question.
- (7) No measure may be imposed by the registered person in accordance with paragraph (6) unless—
- (i) the child's placing authority consents to the imposition of the measure; or
 - (ii) the measure is imposed in an emergency and full details are given to the placing authority within 24 hours of its imposition.
- (8) This regulation is subject to the provisions of any court order relating to contact between the child and any person.
- (9) It is declared (for the avoidance of doubt) that any rule of law relating to duress or necessity may, as well as paragraphs (6) and (8), be relied upon if it is alleged that this regulation has not been complied with.

Arrangements for the protection of children

- 16.**—(1) The registered person shall prepare and implement a written policy which—
- (a) is intended to safeguard children accommodated in the home from abuse or neglect; and
 - (b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.
- (2) The procedure under paragraph (1)(b) shall in particular provide for—
- (a) liaison and co-operation with any local authority which is, or may be, making child protection enquiries in relation to any child accommodated in the children's home;
 - (b) the prompt referral to the local authority in whose area the home is situated, of any allegations of abuse or neglect affecting any child accommodated in the children's home;
 - (c) notification (in accordance with regulation 29) of the instigation and subsequent outcome of any child protection enquiries involving any child accommodated in the children's home to the appropriate office of the National Assembly and to the child's placing authority;

- (d) written records to be maintained (in accordance with regulation 28(1)) of any allegation of abuse or neglect, and of the action taken in response;
 - (e) consideration to be given to the measures which may be necessary to protect children in the children's home following an allegation of abuse or neglect;
 - (f) a requirement (in accordance with regulation 27) for persons working at the home to report any concerns about the welfare or safety of a child accommodated there to one of the following—
 - (i) the registered person;
 - (ii) a constable;
 - (iii) a person exercising functions of the National Assembly under Part II of the Act;
 - (iv) an officer of the local authority in whose area the home is situated, or
 - (v) an officer of the National Society for the Prevention of Cruelty to Children;
 - (g) arrangements to be made so that persons working at the home and children accommodated there have access, at all times and in an appropriate form, to information which would enable them to contact the local authority in whose area the home is situated, or the appropriate office of the National Assembly concerning the welfare or safety of children accommodated in the home.
- (3) The registered person shall prepare and implement—
- (a) a written policy for the prevention of bullying in the children's home, which shall include a procedure for dealing with an allegation of bullying; and
 - (b) a procedure to be followed when any child accommodated in a children's home is absent without permission.

Behaviour management, discipline and restraint

17.—(1) Without prejudice to paragraph (5), no measure of control, restraint or discipline which is excessive, or unreasonable shall be used at any time on children accommodated in a children's home.

(2) The registered person shall prepare and follow a written policy (in this regulation referred to as "the behaviour management policy") which shall set out—

- (a) the measures of control, restraint and discipline which may be used in the children's home; and
- (b) the means whereby appropriate behaviour is to be promoted in the home.

(3) The registered person shall—

- (a) keep under review and where appropriate revise the behaviour management policy; and
- (b) notify the appropriate office of the National Assembly of any such revision within 28 days.

(4) The registered person shall ensure that within 24 hours of the use of any measure of control, restraint or discipline in a children's home a written record is made in a volume kept for the purpose which shall include—

- (a) the name of the child concerned;
- (b) details of the child's behaviour leading to the use of the measure;
- (c) a description of the measure used;
- (d) the date, time and location of the use of the measure (including in the case of any form of restraint, the duration of the restraint);
- (e) the name of the person using the measure, and of any other person present;

- (f) the effectiveness and any consequences of the use of the measure; and
 - (g) the signature of a person authorised by the registered provider to make the record.
- (5) Subject to paragraph (6) of this regulation, the following measures shall not be used against children accommodated in a children's home—
- (a) any form of corporal punishment;
 - (b) any punishment relating to the consumption or deprivation of food or drink;
 - (c) any restriction, other than one imposed in accordance with regulation 15, on—
 - (i) a child's contact with his or her parents, relatives or friends;
 - (ii) visits to the child by his or her parents, relatives or friends;
 - (iii) a child's communications with any of the persons listed in regulation 15(2); or
 - (iv) his or her access to any telephone helpline providing counselling or advice for children;
 - (d) any requirement that a child wear distinctive or inappropriate clothes;
 - (e) the use or withholding of medication or medical or dental treatment as a disciplinary measure;
 - (f) the intentional deprivation of sleep;
 - (g) the imposition of any financial penalty, other than a requirement for the payment of a reasonable sum (which may be by instalments) by way of reparation;
 - (h) any intimate physical examination of a child;
 - (i) the withholding of any aids or equipment needed by a disabled child;
 - (j) any measure which involves—
 - (i) a child in the imposition of any measure against any other child; or
 - (ii) the punishment of a group of children for the behaviour of an individual child.
- (6) Nothing in this regulation shall prohibit—
- (a) the taking of any action by, or in accordance with the instructions of, a registered medical or dental practitioner which is necessary to protect the health of a child;
 - (b) the imposition of a requirement that a child wear distinctive clothing for sporting purposes, or for purposes connected with his education or with any organisation whose members customarily wear uniform in connection with its activities.
- (7) It is declared (for the avoidance of doubt) that any rule of law relating to duress or necessity may be relied upon, as well as paragraph (6), if it is alleged that this regulation has not been complied with.

Education, employment and leisure activity

18.—(1) The registered person shall promote the educational attainment of children accommodated in a children's home, which shall include ensuring that—

- (a) the children make use of educational facilities appropriate to their age, aptitude, needs, interests and potential;
 - (b) the routine of the home is organised so as to further children's participation in education including private study; and
 - (c) effective links are maintained with any schools attended by children accommodated in the home.
- (2) The registered person shall ensure that children accommodated in the home are—

- (a) encouraged to develop and pursue appropriate leisure interests; and
- (b) provided with appropriate leisure facilities and activities.

(3) Where any child in a children's home has attained the age where he or she is no longer required to receive compulsory full-time education, the registered person shall assist with the making of, and giving effect to, the arrangements made for him or her in respect of his education, training and employment.

Religious observance

19. The registered person shall ensure that each child accommodated in a children's home is enabled, so far as practicable—

- (a) to attend the services of;
- (b) to receive instruction in; and
- (c) to observe any requirement (whether as to dress, diet or otherwise) of,

the religious persuasion to which he or she belongs.

Health needs of children

20.—(1) The registered person shall promote and protect the health of the children accommodated in a children's home.

(2) In particular the registered person shall ensure that—

- (a) each child is registered with a general practitioner;
- (b) each child has access to such medical, dental, nursing, psychological and psychiatric advice, treatment and services as he or she may require;
- (c) each child is provided with such individual support, aids and equipment as he or she may require in the light of any particular health needs or disability he or she may have;
- (d) each child is provided with guidance, support and advice on health and personal care issues appropriate to his or her needs and wishes;
- (e) at all times, at least one person on duty at the home has a suitable first aid qualification;
- (f) any person appointed to the position of nurse at the children's home is a registered nurse.

Medicines

21.—(1) The registered person shall make suitable arrangements for the recording, handling, safekeeping, safe administration and disposal of any medicines received into the children's home.

(2) In particular the registered person shall ensure, subject to paragraph (3), that—

- (a) any medicine which is kept in a children's home is stored in a secure place so as to prevent any child accommodated there having unsupervised access to it;
- (b) any medicine which is prescribed for a child is administered as prescribed, to the child for whom it is prescribed, and to no other child; and
- (c) a written record is kept of the administration of any medicine to any child.

(3) Paragraph (1) does not prevent a medicine being—

- (a) stored by the child for whom it is provided;
- (b) self-administered by the child for whom it is provided,

if it is safe for the child and others for that to be done.

(4) In this regulation, "prescribed" means—

- (a) ordered for a patient for provision to them—
 - (i) under or by virtue of section 41 of the National Health Service Act 1977; or
 - (ii) as part of the performance of personal medical services in connection with a pilot scheme under the National Health Service (Primary Care) Act 1997; or
- (b) in a case not falling within sub-paragraph (a), prescribed for a patient under section 58 of the Medicines Act 1968⁽³⁾.

Use of surveillance

22. Subject to any requirements for monitoring imposed by a court under any enactment, the registered person shall ensure that a device for the surveillance of children is not used in a children's home, except for the purpose of safeguarding and promoting the welfare of the child concerned, or other children accommodated in the children's home, and where the following conditions are met—

- (a) the child's placing authority consents to the use of the surveillance in question;
- (b) it is provided for in the child's placement plan;
- (c) so far as practicable in the light of his or her age and understanding, the child in question is informed in advance of the intention to use the measure; and
- (d) the measure is no more restrictive than necessary, having regard to the child's need for privacy.

Hazards and safety

23. The registered person shall ensure that—

- (a) all parts of the home to which children have access are so far as reasonably practicable free from hazards to their safety;
- (b) any activities in which children participate are so far as reasonably practicable free from avoidable risks;
- (c) unnecessary risks to the health or safety of children accommodated in the home are identified and so far as possible eliminated; and
- (d) suitable arrangements are made for persons working in the home to be trained in first aid.

Representations and complaints

24.—(1) The registered person shall prepare and follow a written procedure for considering representations and complaints made by or on behalf of children accommodated in the home.

(2) The procedure shall, in particular, provide—

- (a) for an opportunity for informal resolution of the representation or complaint at an early stage;
- (b) that no person who is the subject of a complaint is involved in any part of its consideration other than, if in the reasonable opinion of the registered person it is appropriate, at the informal resolution stage only;
- (c) for dealing with complaints about the registered person;
- (d) for representations and complaints to be made, and for the other aspects of the procedure to be performed, by a person acting on behalf of a child;
- (e) for arrangements for the procedure to be made known to—

(3) 1968 c. 67. Section 58 has been amended by section 1 of the Medicinal Products: Prescription by Nurses etc Act 1992 (c. 28).

- (i) children accommodated in the home;
- (ii) their parents;
- (iii) placing authorities; and
- (iv) persons working in the home.

(3) A copy of the procedure shall be supplied on request to any of the persons mentioned in paragraph (2)(e).

(4) The copy of the procedure supplied under paragraph (3) shall include—

- (a) the name, address and telephone number of the appropriate office of the National Assembly; and
- (b) details of the procedure (if any) which has been notified to the registered person by the National Assembly for the making of complaints to it relating to children's homes.

(5) The registered person shall ensure that a written record is made of any complaint, the action taken in response, and the outcome of the investigation.

(6) The registered person shall ensure that—

- (a) children accommodated in the home are enabled to make a complaint or representation; and
- (b) no child is subject to any detriment for making a complaint or representation.

(7) The registered person shall supply to the appropriate office of the National Assembly at its request a statement containing a summary of any complaints made during the preceding twelve months and the action taken in response.

(8) This regulation (apart from paragraph (6)) does not apply to any representation to which the Representations Procedure (Children) Regulations 1991(4) applies.

CHAPTER 2

STAFFING

Staffing of children's homes

25.—(1) The registered person shall ensure that there is at all times, having regard to—

- (a) the size of the children's home, its statement of purpose, and the number and needs (including any needs arising from any disability) of the children accommodated there; and
- (b) the need to safeguard and promote the health and welfare of the children accommodated in the home;

a sufficient number of suitably qualified, skilled and experienced persons working at the children's home.

(2) The registered person shall ensure that the employment of any persons on a temporary basis at the children's home will not prevent children accommodated in the children's home from receiving such continuity of care as is reasonable to meet their needs.

Fitness of workers

26.—(1) The registered person shall not—

- (a) employ a person under a contract of employment to work at the children's home unless that person is fit to do so;

(4) See the footnote to regulation 15(2)(d).

- (b) allow a volunteer to work at the children's home unless that person is fit to do so;
 - (c) allow any other person to work at the children's home in a position in which he or she may in the course of his or her duties have regular contact with children accommodated there unless that person is fit to do so.
- (2) For the purposes of paragraph (1), a person is not fit to work at a children's home unless—
- (a) he or she is of suitable integrity and good character to work at a children's home;
 - (b) he or she has the qualifications, skills and experience necessary for the work he or she is to perform;
 - (c) he or she is physically and mentally fit for the purposes of the work he or she is to perform; and
 - (d) full and satisfactory information or documentation (as the case may be) is available in relation to him or her in respect of the following matters—
 - (i) except where paragraph (3) applies, in respect of each matter specified in paragraphs 1 to 6 of Schedule 2;
 - (ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 7 of Schedule 2.
- (3) This paragraph applies where any certificate or information on any matters specified in paragraph 2 of Schedule 2 is not available to an individual because any provision of the Police Act 1997(5) has not been brought into force.
- (4) The registered person shall ensure that—
- (a) any offer of employment to, or other arrangement about working at the children's home made with or in respect of, a person falling within paragraph (1) is subject to paragraph (2) (d) being complied with in relation to that person; and
 - (b) unless paragraph (5) applies, no such person starts work at a children's home until such time as paragraph (2)(d) has been complied with in relation to him or her.
- (5) Where the following conditions apply, the registered person may permit a person to start work at a children's home notwithstanding paragraph (4)(b)—
- (a) the registered person has taken all reasonable steps to obtain full information in respect of each of the matters listed in Schedule 2 in respect of that person, but the enquiries in relation to any of the matters listed in paragraphs 3 to 6 of Schedule 2 are incomplete;
 - (b) full and satisfactory information in relation to that person has been obtained in respect of—
 - (i) the matter specified in paragraph 1 of Schedule 2; and
 - (ii) except where paragraph (3) applies, the matter specified in paragraph 2 of that Schedule; or
 - (iii) where paragraph (3) applies, the matter specified in paragraph 7 of that Schedule;
 - (c) in the reasonable opinion of the registered person the circumstances are exceptional; and
 - (d) pending receipt of, and satisfying himself or herself with regard to, any outstanding information, the registered person ensures that the person is appropriately supervised while carrying out his or her duties.
- (6) The registered person shall ensure that any person working at the children's home who does not fall within paragraph (1) is appropriately supervised at all times.

(5) 1997 c. 50. Sections 113 and 115, as amended, have not yet been brought into force. See further the footnotes to paragraph 2 of Schedule 2 to these regulations.

Employment of staff

- 27.—(1) The registered person shall—
- (a) ensure that all permanent appointments are subject to the satisfactory completion of a period of probation; and
 - (b) provide all employees with a job description outlining their responsibilities.
- (2) The registered person shall operate a disciplinary procedure which, in particular—
- (a) provides for suspension, and the taking of other action short of suspension, in relation to an employee where appropriate in the interests of the safety or welfare of children accommodated in the home; and
 - (b) provides that a failure on the part of an employee to report an incident of abuse, or suspected abuse of a child accommodated in the home to an appropriate person is a ground on which disciplinary proceedings may be instituted.
- (3) For the purposes of paragraph (2)(b), an appropriate person is the registered person, an officer of either the National Assembly responsible for exercising any of its function under Part II of the Act, the local authority for the area in which the home is situated, or the National Society for the Prevention of Cruelty to Children, or a constable.
- (4) The registered person shall ensure that all persons employed by him or her—
- (a) receive appropriate training, supervision and appraisal; and
 - (b) are enabled from time to time to obtain further qualifications appropriate to the work they perform.

CHAPTER 3
RECORDS

Records

- 28.—(1) The registered person shall, on behalf of a child's placing authority, maintain in respect of each child who is accommodated in the children's home a record in the form of a report which—
- (a) includes the information, documents and records specified in Schedule 3 relating to that child;
 - (b) is kept up to date; and
 - (c) is signed and dated by the author of each written entry.
- (2) The record mentioned in paragraph (1) shall not be disclosed to any person except in accordance with—
- (a) any enactment under which access to such records is authorised; or
 - (b) any court order authorising access to such records.
- (3) The record mentioned in paragraph (1) shall be—
- (a) kept securely in the children's home so long as the child to whom it relates is accommodated there; and
 - (b) thereafter delivered to the child's placing authority⁽⁶⁾.

(6) Under the Arrangements for Placement of Children (General) Regulations 1991 (S.I. 1991/890), the responsible authority in relation to a child placed in a children's home must retain their case records (which includes any report in their possession concerning the welfare of the child) for seventy five years after the death of the child or, if the child dies before reaching eighteen, fifteen years from the date of death.

(4) The registered person shall maintain in the children's home the record specified in Schedule 4, or if the home closes keep the record elsewhere and make it available for inspection by the National Assembly at its request.

(5) A record referred to in paragraph (4) shall be kept up to date and retained for at least fifteen years from the date of the last entry, except for records of menus, which need be kept for one year.

(6) This regulation and regulation 29 are without prejudice to any enactment (including a provision of subordinate legislation) or other rule of law about records or information.

Notifiable events

29.—(1) If, in relation to a children's home, any of the events listed in column 1 of the table in Schedule 5 takes place, the registered person shall without delay notify the persons indicated in respect of the event in column 2 of the table.

(2) A notification under paragraph (1) shall include a child's name only if that is necessary.

(3) The registered person shall without delay notify the parent of any child accommodated in the home of any significant incident affecting the child's welfare unless to do so is not reasonably practicable or would place the child's welfare at risk.

(4) Any notification made in accordance with this regulation which is given orally shall be confirmed in writing.