

2001 No. 2874

CHILDREN AND YOUNG PERSONS, ENGLAND

The Children (Leaving Care) (England) Regulations 2001

Made - - - - - *8th August 2001*

Laid before Parliament *8th August 2001*

Coming into force - - *1st October 2001*

The Secretary of State, 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(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

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

(2) These Regulations extend to England only.

Interpretation

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

“the Act” means the Children Act 1989;

“placement” 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 authority”—

- (a) in relation to an eligible child(b), means the local authority looking after him; and
- (b) in relation to a relevant child(c) or a former relevant child(d), has the meaning given to it by section 23A(4) of the Act.

(2) In these Regulations, a reference—

- (a) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;
- (b) in a regulation or Schedule to a numbered paragraph, is to the paragraph in that regulation or Schedule bearing that number.

(a) 1989 c. 41. 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, which substitutes section 24 of the 1989 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 in respect of Wales are transferred to the National Assembly for Wales by 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 Act for the definition of “prescribed”.

(b) See paragraph 19B of Schedule 2 to the Act for the meaning of “eligible child”.

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

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

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) A child falling within paragraph (3) is not an eligible child despite falling within paragraph 19B(2) of Schedule 2 to the Act.

(3) A child falls within this paragraph if he has been looked after by a local authority in circumstances where—

- (a) the local authority has arranged to place him in a pre-planned series of short-term placements, none of which individually exceeds four weeks (even though they may amount in all to the prescribed period); and
- (b) at the end of each such placement the child returns to the care of his parent, or a person who is not a parent but who has parental responsibility for him.

Relevant children

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

(2) Subject to paragraph (3) a child falls within this paragraph if—

- (a) he is aged 16 or 17;
- (b) he is not subject to a care order^(a); and
- (c) at the time when he attained the age of 16 he was detained or in hospital and immediately before he was detained or admitted to hospital he had been looked after by a local authority for a period or periods amounting in all to at least 13 weeks, which began after he reached the age of 14.

(3) In calculating the period of 13 weeks referred to in paragraph (2)(c), no account is to be taken of any period in which the child was looked after by a local authority in any of a pre-planned series of short-term placements, none of which individually exceeded four weeks, where at the end of each such placement the child returned to the care of his parent, or a person who is not a parent but who has parental responsibility for him.

(4) For the purposes of this regulation—

- (a) “detained” means detained in a remand centre, a young offenders institution or a secure training centre^(b), or any other institution pursuant to an order of a court; and
- (b) “hospital” means—
 - (i) any health service hospital within the meaning of the National Health Service Act 1977^(c); or
 - (ii) 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^(d).

(5) Subject to paragraph (7), any child who has lived with a person falling within section 23(4) of the Act^(e) (“a family placement”) for a continuous period of six months or more is not to be a relevant child despite falling within section 23A(2) of the Act.

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

(7) Where a family placement within the meaning of paragraph (5) breaks down and the child ceases to live with the person concerned, the child is to be treated as a relevant child.

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

(b) For remand centres, young offender institutions and secure training centres, see section 43(1) of the Prison Act 1952 (c. 52) as amended by the Criminal Justice Act 1982 (c. 48) section 11, Criminal Justice Act 1988 (c. 33), section 170 and paragraph 11 and 12 of Schedule 15, and Schedule 16, the Criminal Justice and Public Order Act 1994 (c. 33), section 18(3), the Crime and Disorder Act 1998 (c. 37), paragraph 6 of Schedule 8, and the Powers of the Criminal Courts (Sentencing) Act 2000 (c. 6) section 165(1) and paragraph 5(1) and (2) of Schedule 9. The provisions relating to remand centres will be repealed by the Criminal Justice and Court Services Act 2000 (c. 43) sections 59 and 75 and Schedule 8, on a date to be appointed.

(c) 1977 c. 49.

(d) 1984 c. 23.

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

Assessments and pathway plans—general

5.—(1) The responsible 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) the arrangements for recording the outcome of the assessment;
- (e) the procedure for making representations in the event of a disagreement.

(3) The responsible 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 enactment.

Involvement of the child or young person

6.—(1) The responsible authority in carrying out an assessment and in preparing or reviewing a pathway plan shall, unless it is not reasonably practicable—

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

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

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

and shall ensure that the contents of each document are explained to him in accordance with his level of understanding unless it is not reasonably practicable to do so.

Assessment of needs

7.—(1) The responsible 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.

(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 he reaches the age of 16 or becomes an eligible child after that age; and
- (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 he becomes a relevant child.

(3) Each responsible 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 authority shall take account of the following considerations—

- (a) the child's health and development^(a);
- (b) the child's need for education, training or employment;
- (c) the support available to the child from members of his family and 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

(a) "Health" and "development" are defined for the purposes of Part III of the Act in section 17(11).

(f) the child's needs for care, support and accommodation.

(5) The responsible 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 on a day to day basis cares for, or provides accommodation for the child;
- (d) any school or college attended by the child, or the local education authority for the area in which he lives;
- (e) any independent visitor appointed for the child^(a);
- (f) any person providing health care or treatment to the child;
- (g) the personal adviser^(b) appointed for the child; and
- (h) any other person whose views the responsible authority, or the child consider may be relevant.

Pathway plans

8.—(1) A pathway plan prepared under paragraph 19B of Schedule 2 to, or section 23B of, the Act, must be prepared as soon as possible after the assessment and must include, in particular, the matters referred to in the Schedule.

(2) 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 authority proposes to meet the needs of the child; and
- (b) the date by which, and by whom, any action required to implement any aspect of the plan will be carried out.

(3) The pathway plan must be recorded in writing.

Review of pathway plans

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

(2) The responsible 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 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 authority conducting a review must 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 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 his death.

(a) An independent visitor is a person appointed as a visitor for a child in accordance with paragraph 17 of Schedule 2 to the Act.
(b) Personal advisers are provided for in section 23B(2), 23C(3)(a) and 23D of, and paragraph 19C of Schedule 2 to, the Act.

(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; or
- (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 in order to meet the child’s needs in relation to education, training or employment as provided for in his 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 his needs, including his health needs and any needs arising from any disability;
- (b) in respect of which the responsible authority has satisfied itself as to the character and suitability of the landlord or other provider; and
- (c) in respect of which the responsible authority has so far as reasonably practicable taken into account the child’s—
 - (i) wishes and feelings; and
 - (ii) education, training or employment needs.

(3) For the purposes of section 24B(5) (provision of vacation accommodation)—

- (a) “higher education” 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(a);
- (b) “further education” has the same meaning as in the Education Act 1996(b) 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. A personal adviser shall have the following functions(c) in relation to an eligible or a relevant child or a young person who is a former relevant child—

- (a) to provide advice (including practical advice) and support;
- (b) where applicable, to participate in his assessment and the preparation of his pathway plan;
- (c) to participate in reviews of the pathway plan;
- (d) to liaise with the responsible authority in the implementation of the pathway plan;
- (e) to co-ordinate the provision of services, and to take reasonable steps to ensure that he makes use of such services;
- (f) to keep informed about his progress and wellbeing; and
- (g) to keep a written record of contacts with him.

Representations

13.—(1) The Representations Procedure (Children) Regulations 1991(d) shall be amended as follows.

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

(b) 1996 c. 56. The definition of further education is in section 2(3).

(c) In addition the responsible 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.

(d) S.I. 1991 No. 894 as amended by S.I. 1991 No. 2033 and S.I. 1993 No. 3069.

- (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)”.
- (3) After regulation 3 (local authority action), there shall be inserted the following new regulation—

“Local resolution

3A.—(1) Where a local authority receive any representation from a person specified in section 24D(1) they shall—

- (a) provide the person appointed under regulation 3(1) with a written summary of the representation;
- (b) endeavour by informal means to reach a settlement to the satisfaction of the complainant within 14 days; and
- (c) if at the end of 14 days no resolution has been achieved, notify the person appointed under regulation 3(1).”.

(4) In regulation 4 (preliminaries), in paragraph (1) for the words from “a local authority” to “they” substitute—

- “(a) a person to whom it applies is dissatisfied with the outcome of the procedure set out in regulation 3A; or
- (b) a local authority receive representations from any other complainant, except from a person to whom section 26(3)(e) may apply, the local authority”.

Transitional provision

14. Where a child who becomes a former relevant child on or before 1st January 2002 does not already have a pathway plan, the local authority shall (as the circumstances require) assess his needs and prepare a pathway plan for him in accordance with these regulations as if he were (as the case may be) still an eligible child or a relevant child.

Signed by authority of the Secretary of State for Health

8th August 2001

Jacqui Smith
Minister of State
Department of Health

SCHEDULE

MATTERS TO BE DEALT WITH IN THE PATHWAY PLAN AND REVIEW

1. The nature and level of contact and personal support to be provided, and by whom, to the child or young person.
2. Details of the accommodation the child or young person is to occupy.
3. A detailed plan for the education or training of the child or young person.
4. How the responsible authority will assist the child or young person in relation to employment or other purposeful activity or occupation.
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 the child or young person 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 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 authority should the pathway plan for any reason cease to be effective.

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, the preparation and review of pathway plans, and the keeping of records, 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.

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