



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 6

### LOOKED AFTER AND ACCOMMODATED CHILDREN

#### *Interpretation*

#### **74 Child or young person looked after by a local authority**

- (1) In this Act, a reference to a child who is looked after by a local authority is a reference to a child who is—
  - (a) in its care, or
  - (b) provided with accommodation by the authority in the exercise of any functions which are social services functions, apart from functions under section 15, Part 4, or section 109, 114 or 115.
- (2) In subsection (1), “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.
- (3) In this Part, a reference to a young person being looked after by a local authority is a reference to a young person being looked after by the authority while he or she is or was a child.

#### *Accommodation duties*

#### **75 General duty of local authority to secure sufficient accommodation for looked after children**

- (1) A local authority must take steps that secure, so far as reasonably practicable, that the local authority is able to provide the children mentioned in subsection (2) with accommodation that—

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- (a) is within the authority’s area, and
  - (b) meets the needs of those children.
- (2) The children referred to in subsection (1) are those—
- (a) that the local authority is looking after,
  - (b) in respect of whom the authority is unable to make arrangements under section 81(2), and
  - (c) whose circumstances are such that it would be consistent with their well-being for them to be provided with accommodation that is in the authority’s area.
- (3) In discharging its duty under subsection (1), the local authority must have regard to the benefit of having—
- (a) a number of accommodation providers in its area that is, in the authority’s opinion, sufficient to discharge its duty, and
  - (b) a range of accommodation in its area capable of meeting different needs that is, in its opinion, sufficient to discharge its duty.
- (4) In this section “accommodation providers” means—
- (a) local authority foster parents, and
  - (b) children’s homes.

## **76 Accommodation for children without parents or who are lost or abandoned etc**

- (1) A local authority must provide accommodation for any child within its area who appears to the authority to require accommodation as a result of—
- (a) there being no person who has parental responsibility for the child,
  - (b) the child being lost or having been abandoned, or
  - (c) the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.
- (2) Where a local authority provides accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—
- (a) three months of being notified in writing that the child is being provided with accommodation, or
  - (b) such other longer period as may be specified.
- (3) A local authority must provide accommodation for any child within its area who has reached the age of 16 and whose well-being the authority considers is likely to be seriously prejudiced if it does not provide the child with accommodation.
- (4) A local authority may not provide accommodation under this section for any child if any person objects who—
- (a) has parental responsibility for the child, and
  - (b) is willing and able to—
    - (i) provide accommodation for the child, or
    - (ii) arrange for accommodation to be provided for the child.
- (5) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of a local authority under this section.

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- (6) Subsections (4) and (5) do not apply while any person—
  - (a) in whose favour a residence order is in force with respect to the child,
  - (b) who is a special guardian of the child, or
  - (c) who has care of the child by virtue of an order made in the exercise of the High Court’s inherent jurisdiction with respect to children,agrees to the child being looked after in accommodation provided by or on behalf of the local authority.
- (7) Where there is more than one such person as is mentioned in subsection (6), all of them must agree.
- (8) Subsections (4) and (5) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.

## **77 Accommodation for children in police protection or detention or on remand etc**

- (1) A local authority must make provision for the reception and accommodation of children who are removed or kept away from home under Part 5 of the Children Act 1989.
- (2) A local authority must receive, and provide accommodation for, children—
  - (a) in police protection whom it is requested to receive under section 46(3)(f) of the Children Act 1989;
  - (b) whom it is requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984;
  - (c) with respect to whom it is the designated authority and who are—
    - (i) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (breach etc of referral orders and reparation orders);
    - (ii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach etc of youth rehabilitation orders);
    - (iii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 10 of the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act);
    - (iv) the subject of a youth rehabilitation order imposing a local authority residence requirement or a youth rehabilitation order with fostering.
- (3) In subsection (2), the following terms have the same meanings as in Part 1 of the Criminal Justice and Immigration Act 2008 (see section 7 of that Act)—
  - “local authority residence requirement”;
  - “youth rehabilitation order”;
  - “youth rehabilitation order with fostering”.
- (4) Subsection (5) applies where—
  - (a) a child has been—
    - (i) removed under Part 5 of the Children Act 1989, or
    - (ii) detained under section 38 of the Police and Criminal Evidence Act 1984, and

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- (b) the child is not being provided with accommodation—
  - (i) by a local authority, or
  - (ii) in a hospital vested in the Welsh Ministers, an NHS Trust, an NHS Foundation Trust or the Secretary of State, or otherwise made available pursuant to arrangements made by a Local Health Board, an NHS Trust, an NHS Foundation Trust, the Welsh Ministers, the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group.
- (5) Any reasonable expenses of accommodating the child are recoverable from the local authority in whose area the child is ordinarily resident.

*Duties of local authorities in relation to looked after children*

**78 Principal duty of a local authority in relation to looked after children**

- (1) A local authority looking after any child must—
  - (a) safeguard and promote the child’s well-being, and
  - (b) make such use of services available for children cared for by their own parents as appears to the authority reasonable in the child’s case.
- (2) The duty of a local authority under subsection (1)(a) to safeguard and promote the well-being of a child looked after by it includes, for example—
  - (a) a duty to promote the child’s educational achievement;
  - (b) a duty—
    - (i) to assess from time to time whether the child has care and support needs which meet the eligibility criteria set under section 32, and
    - (ii) if the child has needs which meet the eligibility criteria, to at least meet those needs.
- (3) Before making any decision with respect to a child whom it is looking after, or proposing to look after, a local authority must (in addition to the matters set out in sections 6(2) and (4) and 7(2) (other overarching duties)) have regard to—
  - (a) the views, wishes and feelings of any person whose views, wishes and feelings the authority considers to be relevant;
  - (b) the child’s religious persuasion, racial origin and cultural and linguistic background.
- (4) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise its powers with respect to a child whom it is looking after in a manner which may not be consistent with its duties under this section or section 6, it may do so.

**79 Provision of accommodation for children in care**

When a child is in the care of a local authority, the authority must provide the child with accommodation.

## **80 Maintenance of looked after children**

A local authority must maintain a child it is looking after in other respects apart from the provision of accommodation.

## **81 Ways in which looked after children are to be accommodated and maintained**

- (1) This section applies where a local authority is looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3), but this is subject to subsections (4) and (11).
- (3) A person (“P”) falls within this subsection if—
  - (a) P is a parent of C,
  - (b) P is not a parent of C but has parental responsibility for C, or
  - (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
  - (a) would not be consistent with C’s well-being, or
  - (b) would not be reasonably practicable.
- (5) If the local authority is unable to make arrangements under subsection (2), it must place C in the placement that is, in its opinion, the most appropriate placement available (but this is subject to subsection (11)).
- (6) In subsection (5) “placement” means—
  - (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent,
  - (b) placement with a local authority foster parent who does not fall within paragraph (a),
  - (c) placement in a children’s home, or
  - (d) subject to section 82, placement in accordance with other arrangements that comply with any regulations made for the purposes of this section.
- (7) In determining the most appropriate placement for C under subsection (5), the local authority must, subject to the other provisions of this Part (in particular, to its duties under section 78)—
  - (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection,
  - (b) comply, so far as is reasonably practicable in all the circumstances of C’s case, with the requirements of subsection (8), and
  - (c) comply with subsection (9) unless it is not reasonably practicable to do so.
- (8) The local authority must ensure that the placement is such that—
  - (a) it allows C to live near C’s home;
  - (b) it does not disrupt C’s education or training;
  - (c) if C has a sibling for whom the local authority is also providing accommodation, it enables C and the sibling to live together;
  - (d) if C is disabled, the accommodation provided is suitable to C’s particular needs.

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- (9) The placement must be such that C is provided with accommodation within the local authority's area.
- (10) Subsection (11) applies where—
- (a) the local authority is satisfied that C ought to be placed for adoption and proposes to place C for adoption with a particular prospective adopter ("A"),
  - (b) an adoption agency has determined that A is suitable to adopt a child, and
  - (c) the local authority is not authorised to place C for adoption.
- (11) The local authority must place C with A, unless in its opinion it would be more appropriate—
- (a) to make arrangements for C to live with a person falling within subsection (3), or
  - (b) to place C in a placement of a description mentioned in subsection (6).
- (12) For the purposes of subsection (10)—
- (a) "adoption agency" has the meaning given by section 2 of the Adoption and Children Act 2002;
  - (b) a local authority is authorised to place C for adoption only if it has been authorised to do so under—
    - (i) section 19 of that Act (placing children with parental consent), or
    - (ii) a placement order made under section 21 of that Act.
- (13) The local authority may determine—
- (a) the terms of any arrangements it makes under subsection (2) in relation to C (including terms as to payment), and
  - (b) the terms on which it places C with a local authority foster parent under subsection (5) or with a prospective adopter under subsection (11) (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).

## **82 Review of child's case before making alternative arrangements for accommodation**

- (1) Where a local authority is providing accommodation for a child ("C") other than in accordance with arrangements falling within section 81(6)(d), it must not make such arrangements for C unless it has decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 102 (review of cases and inquiries into representations).
- (2) But subsection (1) does not prevent a local authority making arrangements for C under section 81(6)(d) if it is satisfied that in order to safeguard C's well-being it is necessary—
- (a) to make such arrangements, and
  - (b) to do so as a matter of urgency.

## **83 Care and support plans**

- (1) Where a child becomes looked after by a local authority, any care and support plan prepared under section 54 in relation to that child must be—
- (a) reviewed, and

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- (b) maintained under this section.
- (2) Where a child who does not have a care and support plan under section 54 becomes looked after by a local authority, the local authority must prepare and maintain a care and support plan in relation to that child.
- (3) A local authority must keep under review the plans that it maintains under this section.
- (4) Where a local authority is satisfied that the circumstances of the child to whom a plan relates have changed in a way that affects the plan, the authority must—
  - (a) carry out such assessments as it considers appropriate, and
  - (b) revise the plan.
- (5) Regulations must make provision about—
  - (a) how plans under this section are to be prepared;
  - (b) what a plan is to contain;
  - (c) the review and revision of plans.
- (6) Regulations under subsection (5)(c) must specify, in particular—
  - (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
  - (b) the circumstances in which a local authority—
    - (i) may refuse to comply with a request for a review of a plan, and
    - (ii) may not refuse to do so.
- (7) When preparing, reviewing or revising a plan under this section, a local authority must involve the child to whom the plan relates and any person with parental responsibility for the child.
- (8) The local authority may—
  - (a) prepare, review or revise a plan under this section at the same time as it or another body is preparing, reviewing or revising another document in the case of the child concerned, and
  - (b) include the other document in the plan.
- (9) Any part of a plan maintained under this section which meets the requirements imposed by or under section 31A of the Children Act 1989 may be treated for the purposes of that Act as a plan prepared under section 31A of that Act.

#### **84 Regulations about care and support plans**

Regulations under section 83 may, for example—

- (a) require plans to be in a specified form;
- (b) require plans to contain specified things;
- (c) make provision about further persons whom a local authority must involve in the preparation, review or revision of plans;
- (d) require plans to be prepared, reviewed or revised by specified persons;
- (e) confer functions on persons specified in the regulations in connection with the review or revision of plans;
- (f) specify persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates);

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(g) specify further circumstances in which plans must be reviewed.

**85 Contributions towards maintenance of looked after children**

Schedule 1 makes provision about contributions towards the maintenance of children looked after by local authorities.

**86 Children’s homes provided, equipped and maintained by the Welsh Ministers**

Where a local authority places a child it is looking after in a children’s home provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children Act 1989, it must do so on such terms as the Welsh Ministers may from time to time determine.

*Regulations about looked after children*

**87 Regulations about looked after children**

Regulations may make further provision about children looked after by local authorities.

**88 Regulations about conditions under which a child in care is allowed to live with a parent etc**

Regulations under section 87 may, for example, impose requirements on a local authority as to—

- (a) the making of any decision to allow a child in its care to live with any person falling within section 81(3) (including requirements as to those who must be consulted before the decision is made and those who must be notified when it has been made);
- (b) the supervision or medical examination of the child concerned;
- (c) the removal of the child, in such circumstances as may be specified in regulations, from the care of the person with whom the child has been allowed to live;
- (d) the records to be kept by the local authority.

**89 Regulations about placements of a kind mentioned in section 81(6)(d)**

- (1) Regulations under section 87 may, for example, make provision as to placements of the kind mentioned in section 81(6)(d).
- (2) Regulations under subsection (1) may, for example, make provision as to—
  - (a) the persons to be notified of any proposed arrangements;
  - (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
  - (c) the persons to be notified of any proposed changes in the arrangements;
  - (d) the records to be kept by local authorities;
  - (e) the supervision by local authorities of any arrangements made.



## **90 Regulations about placements out of area**

Regulations under section 87 may, for example, impose requirements that a local authority must comply with—

- (a) before a child looked after by it is provided with accommodation at a place outside the area of the authority, or
- (b) if the child’s well-being requires the immediate provision of such accommodation, within such period of the accommodation being provided as may be specified.

## **91 Regulations about the avoidance of disruption in education**

- (1) Regulations under section 87 may, for example, impose requirements that a local authority must comply with before making any decision concerning a child’s placement if he or she is in the fourth key stage.
- (2) A child is “in the fourth key stage” if the child is a pupil in the fourth key stage for the purposes of Part 7 of the Education 2002 (see section 103 of that Act).

## **92 Regulations about the placing of children with local authority foster parents and prospective adopters**

- (1) Regulations under section 87 may, for example, make provision—
  - (a) with regard to the well-being of children placed with local authority foster parents or prospective adopters;
  - (b) as to the arrangements to be made by local authorities in connection with the health and education of such children;
  - (c) as to the records to be kept by local authorities;
  - (d) for securing that where possible the local authority foster parent or prospective adopter with whom a child is to be placed—
    - (i) is of the same religious persuasion as the child, or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (e) for securing that children placed with local authority foster parents or prospective adopters, and the premises in which they are accommodated, will be supervised and inspected by a local authority and that the children will be removed from those premises if their well-being appears to require it.
- (2) In this section “prospective adopter” means a person with whom a child is placed under section 81(11).

## **93 Regulations providing for approval of local authority foster parents**

- (1) Regulations under section 87 may, for example, make provision—
  - (a) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority as may be specified;
  - (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the Welsh Ministers for a review of that determination by a panel constituted by the Welsh Ministers.
- (2) A determination is a qualifying determination if—

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- (a) it relates to the issue of whether a person should be approved, or should continue to be approved, as a local authority foster parent, and
  - (b) it is of a specified description.
- (3) Regulations made under subsection (1)(b) may include provision as to—
- (a) the duties and powers of a panel;
  - (b) the administration and procedures of a panel;
  - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for their appointment);
  - (d) the payment of fees to members of a panel;
  - (e) the duties of any person in connection with a review conducted under the regulations;
  - (f) the monitoring of any such reviews.
- (4) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to the Welsh Ministers such amount as the Welsh Ministers may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination.
- (5) The Welsh Ministers must secure that, taking one financial year with another, the aggregate of the amounts which become payable to them under regulations made by virtue of subsection (4) does not exceed the cost to them of performing their independent review functions.
- (6) The Welsh Ministers may make an arrangement with an organisation under which independent review functions are performed by the organisation on their behalf.
- (7) If the Welsh Ministers make such an arrangement with an organisation, the organisation must perform their functions under the arrangement in accordance with any general or specific direction given by the Welsh Ministers.
- (8) The arrangement may include provision for payments to be made to the organisation by the Welsh Ministers.
- (9) Payments made by the Welsh Ministers in accordance with such provision are to be taken into account in determining (for the purpose of subsection (5)) the cost to the Welsh Ministers of performing their independent review functions.
- (10) A direction under subsection (7)—
- (a) must be in writing;
  - (b) may be varied or revoked by a later direction.
- (11) In this section—
- “financial year” (*“blwyddyn ariannol”*) means a period of twelve months ending with 31 March;
  - “independent review function” (*“swyddogaeth adolygu annibynnol”*) means a function conferred or imposed on the Welsh Ministers by regulations made by virtue of subsection (1)(b);
  - “organisation” (*“sefydliad”*) includes the Secretary of State, a public body and a private or voluntary organisation.

## **94 Regulations about agency arrangements**

Regulations under section 87 may, for example, make provision as to the circumstances in which a local authority may make arrangements for duties imposed on it by the regulations to be discharged on its behalf.

### *Contact and visits*

## **95 Promotion and maintenance of contact between child and family**

- (1) Where a child is being looked after by a local authority, the authority must, unless it is not reasonably practicable or consistent with the child's well-being, promote contact between the child and—
  - (a) the child's parents,
  - (b) any person who is not a parent of the child but who has parental responsibility for the child, and
  - (c) any relative, friend or other person connected with the child.
- (2) Where a child is being looked after by a local authority, the authority must take such steps as are reasonably practicable to secure that the following persons are kept informed of where the child is being accommodated—
  - (a) the child's parents;
  - (b) any person who is not a parent of the child but who has parental responsibility for the child.
- (3) Every person mentioned in subsection (2)(a) or (b) must secure that the authority is kept informed of his or her address.
- (4) Where a local authority ("the receiving authority") takes over the provision of accommodation for a child from another local authority ("the transferring authority") under section 76—
  - (a) the receiving authority must (where reasonably practicable) inform—
    - (i) the child's parents, and
    - (ii) any person who is not a parent of the child but who has parental responsibility for the child,
  - (b) subsection (2) applies to the transferring authority, as well as to the receiving authority, until at least one of the persons mentioned in paragraph (a) or (b) of that subsection has been informed of the change, and
  - (c) subsection (3) does not require any person to inform the receiving authority of his or her address until that person has been informed under paragraph (a).
- (5) Nothing in this section requires a local authority to inform a person of the whereabouts of a child, other than a child aged under 16 who is being accommodated under section 76, if the authority has reasonable cause to believe that informing the person would prejudice the child's well-being.
- (6) Any person who fails, without reasonable excuse, to comply with subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**96 Family visits to or by children: expenses**

- (1) This paragraph applies where—
  - (a) a child is being looked after by a local authority, and
  - (b) the conditions mentioned in subsection (4) are satisfied.
- (2) The authority may make payments in respect of travelling, subsistence or other expenses incurred by the following persons in visiting the child—
  - (a) a parent of the child,
  - (b) any person who is not a parent of the child but who has parental responsibility for the child, or
  - (c) any relative, friend or other person connected with the child.
- (3) The authority may make payments to the child, or to any person on the child’s behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in visiting the persons mentioned in paragraphs (a) to (c) of subsection (2).
- (4) The conditions are that—
  - (a) it appears to the authority that the visit in question could not otherwise be made without undue financial hardship, and
  - (b) the circumstances warrant the making of the payments.

**97 Duty of local authority to ensure visits to, and contact with, looked after children and other children**

- (1) This section applies to—
  - (a) a child looked after by a local authority;
  - (b) a child who was looked after by a local authority but who has ceased to be looked after by the authority as a result of circumstances specified in regulations;
  - (c) a child who falls within a category specified in regulations.
- (2) Regulations specifying a category for the purpose of subsection (1)(c) must also specify the local authority which must discharge the duties imposed by or under this section in relation to a child who falls within the specified category.
- (3) The local authority must—
  - (a) ensure that a child to whom this section applies is visited by a representative of the authority (“a representative”);
  - (b) arrange for appropriate advice and other support to be available to a child to whom this section applies.
- (4) The duties imposed by subsection (3)—
  - (a) are to be discharged in accordance with any regulations made for the purposes of this section;
  - (b) are subject to any requirement imposed by or under an enactment applicable to the place in which the child to whom this section applies is accommodated.
- (5) Regulations under this section may, for the purposes of subsection (4)(a), make provision about—
  - (a) the frequency of visits;
  - (b) circumstances in which a child to whom this section applies must be visited by a representative;

- (c) the functions of a representative.
- (6) In choosing a representative, a local authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.

## **98 Independent visitors for looked after children**

- (1) A local authority looking after a child must appoint an independent person to be the child's visitor if—
  - (a) the child falls within a category specified in regulations, or
  - (b) in any other case, it appears to the authority that it would be in the child's interests to do so.
- (2) A person appointed under this section must visit, befriend and advise the child.
- (3) A person appointed under this section is entitled to recover from the appointing authority any reasonable expenses incurred by that person for the purposes of that person's functions under this section.
- (4) A person's appointment as a visitor in pursuance of this section comes to an end if—
  - (a) the child ceases to be looked after by the local authority,
  - (b) the person resigns the appointment by giving notice in writing to the appointing authority, or
  - (c) the authority gives the person notice in writing that it has terminated the appointment.
- (5) The ending of such an appointment does not affect any duty under this section to make a further appointment.
- (6) Where a local authority proposes to appoint a visitor for a child under this section, the appointment must not be made if—
  - (a) the child objects to it, and
  - (b) the authority is satisfied that the child has sufficient understanding to make an informed objection.
- (7) Where a visitor has been appointed for a child under this section, the local authority must terminate the appointment if—
  - (a) the child objects to its continuing, and
  - (b) the authority is satisfied that the child has sufficient understanding to make an informed objection.
- (8) If the local authority gives effect to a child's objection under subsection (6) or (7) and the objection is to having anyone as the child's visitor, the authority does not have to propose to appoint another person under subsection (1) until the objection is withdrawn.
- (9) Regulations may provide for the circumstances in which a person is to be regarded for the purposes of this section as being independent of the appointing local authority.

### *Review of cases*

#### **99 Appointment of independent reviewing officer**

- (1) If a local authority is looking after a child, it must appoint an individual as the independent reviewing officer for that child's case.
- (2) The initial appointment under subsection (1) must be made before the child's case is first reviewed in accordance with regulations made under section 102.
- (3) If a vacancy arises in respect of a child's case, the local authority must make another appointment under subsection (1) as soon as is practicable.
- (4) An appointee must fall within a category of persons specified in regulations.

#### **100 Functions of the independent reviewing officer**

- (1) The independent reviewing officer must—
  - (a) monitor the performance by the local authority of its functions in relation to the child's case;
  - (b) participate, in accordance with regulations, in any review of the child's case;
  - (c) ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the local authority;
  - (d) perform any other function specified in regulations.
- (2) An independent reviewing officer's functions must be performed—
  - (a) in such manner as may be specified in regulations, and
  - (b) having regard to such guidance as that authority may issue in relation to the discharge of those functions.
- (3) If the independent reviewing officer considers it appropriate to do so, the child's case may be referred by that officer to a Welsh family proceedings officer.
- (4) If the independent reviewing officer is not an officer of the local authority, it is the duty of the authority—
  - (a) to co-operate with that individual, and
  - (b) to take such reasonable steps as that individual may require to enable that individual's functions under this section to be performed satisfactorily.

#### **101 Referred cases**

- (1) In relation to children whose cases are referred to Welsh family proceedings officers under section 100(3), the Lord Chancellor may by regulations—
  - (a) extend any functions of the Welsh family proceedings officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings;
  - (b) require any functions of the Welsh family proceedings officers to be performed in the manner specified by the regulations.
- (2) The power to make regulations under this section is exercisable only with the consent of the Welsh Ministers.

## **102 Review of cases and inquiries into representations**

- (1) Regulations may require the case of each child who is being looked after by a local authority to be reviewed in accordance with the provisions of the regulations.
- (2) The regulations may, among other things, make provision—
  - (a) as to the manner in which each case is to be reviewed;
  - (b) as to the considerations to which the local authority is to have regard in reviewing each case;
  - (c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;
  - (d) requiring the authority, before conducting any review, to seek the views of—
    - (i) the child,
    - (ii) the child’s parents,
    - (iii) any person who is not a parent of the child but who has parental responsibility for the child, and
    - (iv) any other person whose views the authority considers to be relevant, including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;
  - (e) requiring the authority, in the case of a child who is in its care—
    - (i) to keep the plan under section 31A of the Children Act 1989 (care orders: care plans) for the child under review and, if it is of the opinion that some change is required, to revise the plan or make a new plan accordingly, and
    - (ii) to consider whether an application should be made to discharge the care order;
  - (f) requiring the authority, in the case of a child in accommodation provided by or on behalf of the authority—
    - (i) if there is no plan for the future care of the child, to prepare one,
    - (ii) if there is such a plan for the child, to keep it under review and, if it is of the opinion that some change is required, to revise the plan or make a new plan accordingly, and
    - (iii) to consider whether the accommodation accords with the requirements of this Part;
  - (g) requiring the authority to inform the child, so far as is reasonably practicable, of any steps the child may take under this Act or the Children Act 1989;
  - (h) requiring the authority to make arrangements, including arrangements with other bodies which provide services and which it considers appropriate, to implement any decision which it proposes to make in the course, or as a result, of the review;
  - (i) requiring the authority to notify details of the result of the review and of any decision taken by it in consequence of the review to—
    - (i) the child,
    - (ii) the child’s parents,
    - (iii) any person who is not a parent of the child but who has parental responsibility for the child, and
    - (iv) any other person whom it thinks ought to be notified;
  - (j) requiring the authority to monitor the arrangements which it has made with a view to ensuring that it complies with the regulations.

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*Leaving care, accommodation and fostering*

**103 Befriending, advising and assisting looked after children**

A local authority looking after a child must advise, assist and befriend the child with a view to promoting the child’s well-being when it has ceased to look after the child.

**104 Young people entitled to support under sections 105 to 115**

(1) The categories of young person defined in subsection (2) are entitled to support in accordance with sections 105 to 115.

(2) In this Act—

“category 1 young person” means a child who—

- (a) is aged 16 or 17,
- (b) is being looked after by a local authority, and
- (c) has been looked after by a local authority or a local authority in England for a specified period, or periods amounting in all to a specified period, which began after the child reached a specified age and ended after the child reached the age of 16;

“category 2 young person” means a child who—

- (a) is aged 16 or 17,
- (b) is not being looked after by a local authority or a local authority in England, and
- (c) immediately before ceasing to be looked after, was a category 1 young person;

“category 3 young person” means a person aged 18 or over who—

- (a) has been a category 2 young person (and would continue to be so if he or she were under the age of 18), or
- (b) was being looked after by a local authority when he or she reached the age of 18 and, immediately before ceasing to be looked after, was a category 1 young person;

“category 4 young person” means a person who—

- (a) is a category 3 young person towards whom the duties under sections 105, 106, 107(3) and (10) and 110 have ceased to apply (see section 111),
- (b) has informed the responsible local authority that he or she is pursuing, or wishes to pursue, a programme of education or training, and
- (c) has not reached the age of 25 or any lower age specified;

“category 5 young person” means a person—

- (a) who has reached the age of 16 but has not yet reached the age of 21,
- (b) with respect to whom a special guardianship order is in force (or, if the young person has reached the age of 18, was in force when he or she reached that age), and
- (c) who was, immediately before the making of that order, looked after by a local authority;

“category 6 young person” means a person, other than a category 5 young person, who—

- (a) at any time after reaching the age of 16 but while still a child was, but is no longer, looked after, accommodated or fostered,



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- (b) if so accommodated or fostered, is now within Wales, and
  - (c) has not yet reached the age of 21.
- (3) In the definition of “category 6 young person”, “looked after, accommodated or fostered” means—
  - (a) looked after by a local authority (without subsequently being looked after by a local authority in England),
  - (b) accommodated by or on behalf of a voluntary organisation,
  - (c) accommodated in a private children’s home,
  - (d) accommodated for a consecutive period of at least three months—
    - (i) by or on behalf of a Local Health Board or Special Health Authority,
    - (ii) by or on behalf of a clinical commissioning group or the National Health Service Commissioning Board,
    - (iii) by or on behalf of a local authority in the exercise of education functions,
    - (iv) by or on behalf of a local authority in England in the exercise of education functions,
    - (v) in any care home or independent hospital, or
    - (vi) in any accommodation provided by or on behalf of an NHS Trust or by or on behalf of an NHS Foundation Trust, or
  - (e) privately fostered (within the meaning of section 66 of the Children Act 1989).
- (4) Subsection (3)(d) applies even if the period of three months mentioned there began before the child reached the age of 16.
- (5) In this Act “responsible local authority” means—
  - (a) in relation to a category 1 young person, the local authority which looks after the child;
  - (b) in relation to a category 2, category 3 or category 4 young person, the local authority which last looked after that person;
  - (c) in relation to category 5 young person, a local authority determined in accordance with regulations;
  - (d) in relation to a category 6 young person falling within that category by virtue of paragraph (a) of subsection (3), the local authority which last looked after that person;
  - (e) in relation to a category 6 young person falling within that category by virtue of any other paragraph of that subsection, the local authority within whose area the person is.
- (6) Regulations may, for the purposes of any of the powers or duties under sections 105 to 115—
  - (a) specify additional categories of persons;
  - (b) specify categories of persons who are not to be treated as falling within a category of young person mentioned in subsection (1);
  - (c) make provision for determining which local authority is to be the responsible local authority for the purpose of a category specified under paragraph (a).

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## **105 Keeping in touch**

- (1) The responsible local authority for a category 2 or category 3 young person must take reasonable steps to keep in touch with that person, whether the person is within its area or not.
- (2) If the responsible local authority for a category 2 or category 3 young person has lost touch with that person it must—
  - (a) consider how to re-establish contact, and
  - (b) take reasonable steps to do so.
- (3) In the case of a category 2 young person, the responsible local authority must discharge its duty under subsection (2) without delay and continue to take reasonable steps to re-establish contact until it succeeds.
- (4) In the case of a category 3 young person, the duties under subsections (1) and (2) are subject to section 111.
- (5) The responsible local authority for a category 6 young person falling within that category by virtue of section 104(3)(a) must take reasonable steps to contact the young person at such times as it thinks appropriate with a view to discharging its functions under section 115.

## **106 Personal advisers**

- (1) The responsible local authority for a person mentioned in subsection (2) must arrange for that person to have a personal adviser.
- (2) The persons are—
  - (a) a category 1 young person;
  - (b) a category 2 young person;
  - (c) a category 3 young person;
  - (d) a category 4 young person.
- (3) The duty under subsection (1)—
  - (a) in the case of a category 3 young person, is subject to section 111;
  - (b) in the case of a category 4 young person, is subject to section 113.
- (4) Personal advisers appointed under or by virtue of this Part are to have such functions as may be specified in regulations.

## **107 Pathway assessments and plans: general**

- (1) The responsible local authority for a category 1 young person must carry out an assessment of the young person's needs with a view to determining what advice and other support it would be appropriate for it to provide to the young person under this Part—
  - (a) while it is still looking after the young person, and
  - (b) after it ceases to look after the young person.
- (2) The responsible local authority for a category 2 or category 3 young person who does not already have a pathway plan must carry out an assessment of the young person's needs with a view to determining what advice and other support it would be appropriate for it to provide to the young person under this Part.

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- (3) After conducting an assessment under subsection (1) or (2), the local authority must prepare a pathway plan and maintain it for as long as the young person falls within category 1, 2 or 3 (but see subsection (12)).
- (4) The responsible local authority for a category 4 young person must carry out an assessment of the young person's needs with a view to determining what advice and other support (if any) it would be appropriate for it to provide to the young person under this Part.
- (5) In conducting an assessment under subsection (4), the local authority may take into account any duty that it may have to make a payment to the young person under section 112(2).
- (6) After conducting an assessment under subsection (4), the local authority must prepare a pathway plan.
- (7) A pathway plan is a plan setting out—
  - (a) in the case of a plan for a category 1 young person—
    - (i) the advice and other support which the local authority intends to provide for the young person under this Part, both while it is looking after the young person and later, and
    - (ii) when it might cease to look after the young person;
  - (b) in the case of a plan for a category 2, category 3 or category 4 young person, the advice and other support which the local authority intends to provide for the young person under this Part;
  - (c) such other matters (if any) as may be specified in regulations.
- (8) Regulations may make provision as to assessments for the purposes of this section.
- (9) The regulations may, for example, make provision about—
  - (a) the persons who are to be consulted in relation to an assessment;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment;
  - (d) the considerations to which the local authority are to have regard in carrying out an assessment.
- (10) The local authority must keep the pathway plan under regular review (but see subsections (12) and (13)).
- (11) The local authority may carry out an assessment or review under this section at the same time as any other assessment or review of the young person's needs.
- (12) In the case of a category 3 young person, the duties under subsections (3) and (10) are subject to section 111.
- (13) In the case of a category 4 young person, the duty under subsection (10) is subject to section 113.

## **108 Pathway assessments and plans: post-18 living arrangements**

- (1) The responsible local authority for a category 1 young person who has been placed with a local authority foster parent must comply with subsection (2) when—
  - (a) carrying out an assessment in relation to the young person under section 107(1),

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- (b) preparing and maintaining a pathway plan for the young person under section 107(3), or
  - (c) reviewing the young person’s pathway plan under section 107(10).
- (2) The responsible local authority must ascertain whether the young person and his or her local authority foster parent wish to make a post-18 living arrangement.
- (3) A “post-18 living arrangement” is an arrangement under which—
- (a) a category 3 young person—
    - (i) who is under the age of 21, and
    - (ii) who was being looked after by a local authority when he or she reached the age of 18 and, immediately before ceasing to be looked after, was a category 1 young person, and
  - (b) a person (a “former foster parent”) who was the young person’s local authority foster parent immediately before he or she ceased to be looked after, continue to live together after the young person has ceased to be looked after.
- (4) Where the young person and his or her local authority foster parent wish to make a post-18 living arrangement, the responsible local authority must provide advice and other support in order to facilitate the arrangement.
- (5) Subsection (4) does not apply if the responsible local authority considers that the making of a post-18 living arrangement between the young person and his or her local authority foster parent would not be consistent with the young person’s well-being.
- (6) Regulations may make provision about—
- (a) the persons to whom information about post-18 living arrangements must be provided;
  - (b) the manner in which that information must be provided.

### **109 Support for category 2 young people**

- (1) The responsible local authority for a category 2 young person must safeguard and promote that person’s well-being and, unless it is satisfied that the person’s well-being does not require it, support the person by—
- (a) maintaining the person,
  - (b) providing the person with, or maintaining the person in, suitable accommodation, and
  - (c) providing support of such other descriptions as may be specified in regulations.
- (2) Support under subsection (1) may be in kind or in cash.
- (3) Regulations may make provision about the meaning of “suitable accommodation” and in particular about the suitability of landlords or other providers of accommodation.
- (4) Section 78(3) applies in relation to any decision by a local authority for the purposes of this section as it applies in relation to the decisions referred to in that section.

### **110 Support for category 3 young people**

- (1) The responsible local authority for a category 3 young person must support that young person by—

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- (a) contributing, to the extent that the young person’s well-being requires it, to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;
  - (b) contributing, to the extent that the young person’s well-being and educational or training needs require it, to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
  - (c) making a grant to the young person, to the extent that the young person’s well-being and educational or training needs require it, to enable him or her to meet expenses connected with his or her education or training;
  - (d) doing anything else it considers appropriate, to the extent that the young person’s well-being requires it.
- (2) The responsible local authority for a category 3 young person who has a post-18 living arrangement must, in addition—
- (a) monitor the arrangement, and
  - (b) if the authority considers that the arrangement is consistent with the young person’s well-being, provide advice and other support to the young person and the former foster parent with a view to maintaining the arrangement.
- (3) In subsection (2) “post-18 living arrangement” has the meaning given by section 108 and “former foster parent” has the same meaning as in that definition.
- (4) The support given under subsection (1)(d) and (2)(b) may be in kind or in cash.
- (5) Where support is provided to a former foster parent under subsection (2)(b), the support must include financial support.
- (6) The responsible local authority for a category 3 young person who pursues higher education in accordance with his or her pathway plan must pay the relevant amount to that young person.
- (7) The duty under subsection (6) is in addition to the responsible local authority’s duty under subsection (1).
- (8) Subsection (9) applies where the responsible local authority for a category 3 young person is satisfied that the young person—
- (a) is in full-time further or higher education,
  - (b) is being given support under subsection (1)(b) or (c) or has received a payment under subsection (6), and
  - (c) needs accommodation during a vacation because term-time accommodation is not available.
- (9) The responsible authority must—
- (a) provide the young person with suitable accommodation during the vacation, or
  - (b) pay the young person enough to secure such accommodation.
- (10) The duties under this section are subject to section 111.

## **111 Cessation of duties in relation to category 3 young people**

- (1) A responsible local authority’s duties towards a category 3 young person cease when the young person reaches the age of 21, except in the circumstances set out in subsection (2).

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- (2) Where the category 3 young person's pathway plan sets out a programme of education or training which extends beyond the date on which he or she reaches the age of 21—
  - (a) the duties under section 110(1)(b) and (c), (6) and (9) continue until the young person ceases to pursue that programme, and
  - (b) the duties under sections 105, 106 and 107(3) and (10) continue concurrently with those duties and cease at the same time.
- (3) For the purposes of subsection (2)(a), the responsible local authority must disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

### **112 Support for category 4 young people**

- (1) The responsible local authority for a category 4 young person must support that young person, to the extent that his or her educational or training needs require it, by—
  - (a) contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
  - (b) making a grant to the young person to enable him or her to meet expenses connected with his or her education or training.
- (2) The responsible local authority for a category 4 young person who pursues higher education in accordance with his or her pathway plan must pay the relevant amount to that young person.
- (3) The duty under subsection (2) is in addition to the responsible local authority's duty under subsection (1).
- (4) Where the responsible local authority for a category 4 young person is satisfied that the young person is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must—
  - (a) provide the young person with suitable accommodation during the vacation, or
  - (b) pay the young person enough to secure such accommodation.
- (5) The responsible local authority for a category 4 young person may take its duty under subsection (2) into account in assessing the young person's need under section 107(4) and in discharging its duties under subsections (1) and (4).
- (6) The duties under this section are subject to section 113.

### **113 Cessation of duties in relation to category 4 young people**

- (1) A responsible local authority's duties towards a category 4 young person cease when the young person ceases to pursue a programme of education or training in accordance with his or her pathway plan.
- (2) For the purposes of subsection (1), the responsible local authority may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

#### **114 Support for category 5 young people and former category 5 young people**

- (1) The responsible local authority for a category 5 young person must consider whether the conditions in subsection (2) are satisfied in relation to the young person.
- (2) The conditions are that—
  - (a) the young person needs support of a kind which it can give under this section, and
  - (b) the local authority is satisfied that the person by whom the young person was being looked after does not have the necessary facilities for advising or befriending him or her.
- (3) If the conditions are satisfied the local authority must advise and befriend the young person and may give that person support in the manner described in subsection (4).
- (4) The support may be given—
  - (a) in kind;
  - (b) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;
  - (c) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
  - (d) by making a grant to the young person to enable him or her to meet expenses connected with his or her education or training;
  - (e) by providing accommodation, if support may not be given in respect of the accommodation under paragraphs (b) to (d);
  - (f) in cash.
- (5) A local authority may also give support in the manner described in paragraphs (c) and (d) of subsection (4) to a young person who—
  - (a) is under the age of 25, and
  - (b) would be a category 5 young person if he or she were under the age of 21.
- (6) Where a local authority is giving support in the manner described in subsection (4) (c) or (d) it may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.
- (7) Where a local authority is satisfied that a young person for whom it may provide support under subsection (4) or (5) is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must—
  - (a) provide the person with suitable accommodation during the vacation, or
  - (b) pay the person enough to secure such accommodation.

#### **115 Support for category 6 young people and former category 6 young people**

- (1) The responsible local authority for a category 6 young person must consider whether the conditions in subsection (2) are satisfied in relation to the young person.
- (2) The conditions are that—
  - (a) the young person needs support of a kind which the local authority can give under this section, and

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- (b) where the young person is a category 6 young person by virtue of section 104(3)(b) to (e), the local authority is satisfied that the person by whom the young person was being looked after, accommodated or fostered (within the meaning of that subsection) does not have the necessary facilities for advising or befriending him or her.
- (3) If the conditions are satisfied—
  - (a) the local authority must advise and befriend the young person, if that person is a category 6 young person by virtue of section 104(3)(a) or (b), and
  - (b) in any other case, the local authority may advise and befriend the young person.
- (4) Where as a result of this section, a local authority is under a duty, or is empowered, to advise and befriend a young person, it may give that person support in the manner described in subsection (5).
- (5) The support may be given—
  - (a) in kind;
  - (b) where the young person is a category 6 young person by virtue of section 104(3)(a)—
    - (i) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;
    - (ii) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
    - (iii) by making a grant to the young person to enable him or her to meet expenses connected with his or her education or training;
  - (c) by providing accommodation, if support may not be given in respect of the accommodation under paragraph (b);
  - (d) in cash.
- (6) A local authority may also give support in the manner described in subsection (5)(b)(ii) and (iii) to a young person who—
  - (a) is under the age of 25, and
  - (b) if he or she were under the age of 21, would be a category 6 young person by virtue of section 104(3)(a).
- (7) Where a local authority is giving support in the manner described in subsection (5)(b)(ii) or (iii) it may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.
- (8) Where a local authority is satisfied that a young person for whom it may provide support under subsection (4) or (6) is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must—
  - (a) provide the person with suitable accommodation during the vacation, or
  - (b) pay the person enough to secure such accommodation.



## **116 Supplementary provision about support for young persons in further or higher education**

- (1) Regulations may, for the purposes of sections 110(6) and 112(2)—
  - (a) specify the relevant amount;
  - (b) specify the meaning of “higher education”;
  - (c) make provision as to the payment of the relevant amount;
  - (d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by a local authority from a young person to whom a payment has been made under those provisions.
- (2) Regulations may make provision for the meaning of “full-time” (“*llawnamser*”), “further education” (“*addysg bellach*”), “higher education” (“*addysg uwch*”) and “vacation” (“*gwyliau*”) for the purposes of sections 110(8), 112(4), 114(7) and 115(8).

## **117 Charging for provision under sections 109 to 115**

- (1) A local authority may impose a charge for support (other than advice) under sections 109 to 115.
- (2) A charge imposed under subsection (1)—
  - (a) may only cover the cost that the local authority incurs in meeting the needs to which the charge applies;
  - (b) may be imposed—
    - (i) on the young person who receives the support, if that person has reached the age of 18;
    - (ii) on a person with parental responsibility for the young person who receives the support, if the young person is under 18 years of age.
- (3) A person is not liable to pay a charge under this section during any period when the person is in receipt of a benefit which falls within a category specified in regulations.
- (4) In subsection (3) “benefit” includes any allowance, payment, credit or loan.
- (5) The power to make regulations under section 61 or 62 applies to charges under this section in relation to support as it applies to charges under section 59 in relation to care and support.
- (6) Regulations may apply any provision made in or under sections 63 to 68 or sections 70 to 73 to charging under this section with or without specified modifications.

## **118 Information**

- (1) Where it appears to a local authority that a young person—
  - (a) with whom it is under a duty to keep in touch under section 105,
  - (b) whom it has been advising and befriending under section 114 or 115, or
  - (c) to whom it has been giving other support under section 114 or 115,proposes to live, or is living, in the area of another local authority or a local authority in England, it must inform that other authority.
- (2) Where a child who is accommodated in Wales—
  - (a) by a voluntary organisation or in a private children’s home,
  - (b) by or on behalf of any Local Health Board or Special Health Authority,

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- (c) by or on behalf of a clinical commissioning group or the National Health Service Commissioning Board,
- (d) by or on behalf of local authority in the exercise of education functions,
- (e) by or on behalf of a local authority in England in the exercise of education functions,
- (f) in any care home or independent hospital, or
- (g) in any accommodation provided by or on behalf of an NHS Trust or by or on behalf of an NHS Foundation Trust,

ceases to be so accommodated after reaching the age of 16, the person by whom or on whose behalf the child was accommodated or who carries on or manages the home or hospital (as the case may be) must inform the local authority or local authority in England within whose area the child proposes to live.

- (3) Subsection (2) only applies by virtue of paragraphs (b) to (g), if the accommodation has been provided for a consecutive period of at least three months.
- (4) In a case where a child was accommodated by or on behalf of a local authority, or a local authority in England, in the exercise of education functions, subsection (2) applies only if the authority which accommodated the child is different from the authority within whose area the child proposes to live.

#### *Secure accommodation*

### **119 Use of accommodation for restricting liberty**

- (1) Subject to the following provisions of this section, a child who is being looked after by a local authority or a local authority in England may not be placed, and if placed, may not be kept, in accommodation in Wales provided for the purpose of restricting liberty (“secure accommodation”) unless it appears—
  - (a) that the child—
    - (i) has a history of absconding and is likely to abscond from any other description of accommodation, and
    - (ii) is likely to suffer significant harm if the child absconds, or
  - (b) that if the child is kept in any other description of accommodation, he or she is likely to injure himself or herself or other persons.
- (2) The Welsh Ministers may by regulations—
  - (a) specify a maximum period—
    - (i) beyond which a child may not be kept in secure accommodation in Wales without the authority of the court, and
    - (ii) for which the court may authorise a child to be kept in secure accommodation in Wales;
  - (b) empower the court from time to time to authorise a child to be kept in secure accommodation in Wales for such further period as the regulations may specify;
  - (c) provide that applications to the court under this section be made only by a local authority.
- (3) It is the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in the child’s case.

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- (4) If a court determines that any such criteria are satisfied, it must make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which the child may be so kept.
- (5) On any adjournment of the hearing of an application under this section, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.
- (6) No court is to exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless, having been informed of his or her right to apply for representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service and having had the opportunity to do so, the child refused or failed to apply.
- (7) The Welsh Ministers may by regulations provide that—
  - (a) this section is or is not to apply to any description of children specified in the regulations;
  - (b) this section has effect in relation to children of a description specified in the regulations subject to modifications specified in the regulations;
  - (c) other provisions specified in the regulations are to have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation in Wales.
- (8) The giving of an authorisation under this section does not prejudice any power of any court in England and Wales to give directions relating to the child to whom the authorisation relates.
- (9) The giving of an authorisation under this section does not prejudice the effect of any direction given by a court in Scotland relating to a child to whom the authorisation relates, in so far as the direction has effect in the law of England and Wales.
- (10) This section is subject to section 76(5).

*Children accommodated in certain establishments*

**120 Assessment of children accommodated by health authorities and education authorities**

- (1) Subsection (2) applies where a child is provided with accommodation in Wales by a Local Health Board, an NHS Trust or a local authority in the exercise of education functions (“the accommodating authority”)—
  - (a) for a consecutive period of at least 3 months, or
  - (b) with the intention, on the part of that authority, of accommodating the child for such a period.
- (2) The accommodating authority must notify the appropriate officer of the responsible authority—
  - (a) that it is accommodating the child, and
  - (b) when it ceases to accommodate the child.
- (3) In this section, “the responsible authority” means—

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- (a) the local authority or local authority in England appearing to the accommodating authority to be the authority within whose area the child was ordinarily resident immediately before being accommodated, or
  - (b) where it appears to the accommodating authority that a child was not ordinarily resident within the area of any local authority or local authority in England, the local authority within whose area the accommodation is situated.
- (4) In this section and in sections 121 and 122 “the appropriate officer” means—
- (a) in relation to a local authority, its director of social services, and
  - (b) in relation to a local authority in England, its director of children’s services.
- (5) Where the appropriate officer of a local authority has been notified under this section, the authority must—
- (a) assess the child under section 21, and
  - (b) consider the extent to which (if at all) it should exercise any of its other functions under this Act, or any of its functions under the Children Act 1989, with respect to the child.
- (6) The duty under subsection (5)(a) does not apply in relation to a child looked after by—
- (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.

## **121 Assessment of children accommodated in care homes or independent hospitals**

- (1) Subsection (2) applies where a child is provided with accommodation in Wales in any care home or independent hospital—
- (a) for a consecutive period of at least three months, or
  - (b) with the intention, on the part of the person taking the decision to accommodate the child, of accommodating the child for such period.
- (2) The person carrying on the establishment in question must notify the appropriate officer of the local authority within whose area the establishment is carried on—
- (a) that it is accommodating the child, and
  - (b) when it ceases to accommodate the child.
- (3) Where the appropriate officer of a local authority has been notified under this section, the authority must—
- (a) assess the child under section 21, and
  - (b) consider the extent to which (if at all) it should exercise any of its other functions under this Act, or any of its functions under the Children Act 1989, with respect to the child.
- (4) The duty under subsection (3)(a) does not apply in relation to a child looked after by—
- (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.
- (5) If a person carrying on a care home or independent hospital fails, without reasonable excuse, to comply with this section, the person is guilty of an offence.

- (6) A person authorised by a local authority may enter a care home or independent hospital within the authority's area for the purpose of establishing whether the requirements of this section have been complied with.
- (7) A person exercising the power of entry must, upon request, produce some duly authenticated document showing authority to do so.
- (8) A person who intentionally obstructs a person exercising the power of entry is guilty of an offence.
- (9) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **122 Visitors for children notified to a local authority under section 120 or 121**

- (1) This section applies if the appropriate officer of a local authority—
  - (a) has been notified with respect to a child under section 120(2)(a) or 121(2)(a), and
  - (b) has not been notified with respect to that child under section 120(2)(b) or section 121(2)(b).
- (2) The local authority must, in accordance with regulations made under this section, make arrangements for the child to be visited by a representative of the authority (“a representative”).
- (3) It is the duty of a representative to provide advice and assistance to the local authority on the performance of its duties under this Act in relation to the child.
- (4) Regulations under this section may make provision about—
  - (a) the frequency of visits under visiting arrangements;
  - (b) circumstances in which visiting arrangements must require a child to be visited;
  - (c) additional functions of a representative.
- (5) In choosing a representative a local authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.
- (6) In this section “visiting arrangements” means arrangements made under subsection (2).

### **123 Services for children notified to a local authority under section 120 or 121**

- (1) A local authority must provide such services as it considers appropriate for children in respect of whom it receives notification under section 120 or 121.
- (2) The services provided under this section must be provided with a view to promoting contact between each child in respect of whom the local authority receives notification and the child's family.
- (3) The services may include anything the authority may provide or arrange under Part 4.
- (4) Nothing in this section affects the duty imposed by section 39.

*Moving looked after children to live outside the jurisdiction*

**124 Arrangements to assist children to live outside England and Wales**

- (1) A local authority may only arrange for, or assist in arranging for, a child in its care to live outside England and Wales with the approval of the court.
- (2) A local authority may, with the approval of every person who has parental responsibility for the child arrange for, or assist in arranging for, any other child looked after by it to live outside England and Wales.
- (3) The court must not give its approval under subsection (1) unless it is satisfied that—
  - (a) living outside England and Wales would be in the child’s best interests,
  - (b) suitable arrangements have been, or will be, made for the child’s reception and well-being in the country in which he or she will live,
  - (c) the child has consented to living in that country, and
  - (d) every person who has parental responsibility for the child has consented to the child living in that country.
- (4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold consent, it may disregard subsection (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, special guardian, or other suitable person.
- (5) Where a person whose consent is required by subsection (3)(d) fails to give consent, the court may dispense with that person’s consent if it is satisfied that—
  - (a) the person cannot be found or lacks capacity to give consent, or
  - (b) the well-being of the child requires the consent to be dispensed with.
- (6) Section 85 of the Adoption and Children Act 2002 (which imposes restrictions on taking children out of the United Kingdom) does not apply in the case of a child who is to live outside England and Wales with the approval of the court given under this section.
- (7) Where a court decides to give its approval under this section, it may order that its decision is not to have effect during the appeal period.
- (8) In subsection (7) “the appeal period” means—
  - (a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal, and
  - (b) otherwise, the period during which an appeal may be made against the decision.
- (9) This section does not apply to a local authority placing a child for adoption with prospective adopters.

*Death of a looked after child*

**125 Death of children being looked after by local authorities**

- (1) If a child who is being looked after by a local authority dies, the authority—
  - (a) must notify the Welsh Ministers,

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- (b) must, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of the child but who has parental responsibility for the child,
  - (c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated, and
  - (d) may, if the conditions mentioned in subsection (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.
- (2) The conditions are that—
- (a) it appears to the authority that the person concerned could not otherwise attend the child's funeral without undue financial hardship, and
  - (b) that the circumstances warrant the making of the payments.
- (3) Subsection (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.
- (4) Where a local authority has exercised its power under subsection (1)(c) with respect to a child who was under 16 when the child died, it may recover from any parent of the child any expenses incurred by it.
- (5) Any amounts so recoverable are, without prejudice to any other method of recovery, recoverable summarily as a civil debt.
- (6) Nothing in this section affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of the deceased person.