

The Children Act 1989

Guidance and Regulations

**Local authority responsibilities
towards former looked after
children in custody**

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***Including* The Visits to Former Looked After Children in Detention (England) Regulations 2010**

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Preface

Status

This document provides guidance, primarily addressed to local authorities and their staff in England, about their functions under Part 3 of the Children Act 1989. It is issued as guidance under section 7 of the Local Authority Social Services Act 1970 which requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State. This guidance should be complied with by local authorities when exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation.

The guidance is addressed to:

- directors of children's services;
- lead members in local authorities;
- managers of services for looked after children;
- frontline managers who have particular responsibilities in relation to looked after children;
- children's services social workers;
- managers of Youth Offending Teams and their staff; and
- governors, directors and registered managers of establishments in the secure estate.

It will also be relevant to partner agencies and to providers of services to looked after children, including agencies in the private, voluntary and public sectors.

Section 15 of the Children and Young Persons Act 2008 inserted a new section 23ZA into the 1989 Act, imposing a duty on the local authority to visit children who cease to be looked after as a result of being remanded or sentenced to custody and are not eligible for leaving care support. This statutory guidance and The Visits to Former Looked After Children in Detention (England) Regulations 2010 set out how local authorities should carry out their responsibilities to this group of children in custody:

- The responsible local authority must appoint a representative to visit the child to assess their needs.
- The representative must make recommendations about any appropriate advice, support and assistance needed by the child, which where necessary, could include arranging for their accommodation on release, which might involve planning for them to be looked after again.

Background

1. Research and data indicates that that looked after children enter custody at a higher rate than other children. The most recent report by Her Majesty's Inspector of Prisons identified that 24% of 15-18 year olds were looked after before entering custody¹. Where a child has been looked after prior to entry to custody, the local authority has varying duties depending on the child's legal status.
2. Where a child is the subject of a Care Order (under Section 31 of the Children Act 1989 ('the 1989 Act')) then the local authority shares parental responsibility for the child and will have ongoing duties to support the child whilst they are in custody and plan for their release and resettlement in the community. This release and resettlement planning should address where the child will live on release and how they will be provided with the support and services required to meet their needs – including the need to be diverted from re-offending.
3. A similar process should be followed where children are entitled to support as care leavers. These young people will become "relevant" children under the leaving care provisions of the 1989 Act. The responsible authority (i.e. the local authority that was looking after the child before he or she entered custody) must allocate a personal advisor and work with the young person to prepare a pathway plan. This should include arrangements for the support that they will be provided with on release. This will include arranging for their accommodation and maintenance if they have not reached the age of 18.
4. However there are particular concerns with regard to children who were voluntarily accommodated (under section 20 of the 1989 Act) before a custodial remand² or sentence and whose period in custody ends before their 16th birthday or those aged 16 and 17 who are not entitled to leaving care support. If their remand or sentence is served in a Youth Offender Institution (YOI), or their sentence is served in a Secure Training Centre (STC) or Secure Children's Home (SCH) then these children will no longer be looked after by a local authority. Some children in this group may have been looked after for a considerable time prior to being sentenced or remanded and may not necessarily be able to return to the care of a stable family.

1 HMIP/YJB Children and Young People in custody 2008-2009

2 A person aged 17 years may be remanded to a YOI under section 27 of the Criminal Justice Act 1948 (as amended). Any child who was a looked after child prior to being remanded to a YOI will cease to be looked after once they are in custody.

Introduction

5. This guidance applies to children who lose their looked after status on entering custody. This means children who were either looked after under section 20 of the 1989 Act prior to being remanded or sentenced to custody or those who were looked after by virtue of having been remanded to local authority care under section 23(1) of the Children and Young Person's Act 1969 on being sentenced.
6. The guidance does not, however, apply to children who on entering custody become "relevant" children for purposes of section 23A of the 1989 Act, or who become so if the appropriate time-scales are reached whilst they are in custody³. This is because these children will be entitled to local authority support as care leavers (see paragraph 4 above).
7. Those who will **not** become relevant care-leavers whilst in custody are children who:
 - are aged 16 or 17 but have been looked after for less than 13 weeks since the age of 14 (perhaps because they were remanded into local authority accommodation immediately prior to sentence); or who
 - will leave custody before their 16th birthday.
8. Section 15 of the Children and Young Persons Act 2008 inserts a new section 23ZA into the 1989 Act. This imposes a duty on the local authority to ensure that a child who was looked after by that local authority, but has ceased to be so as a result of certain circumstances, is visited by a representative of the authority. The local authority also has a duty to arrange for appropriate advice, support and assistance to be available to those children.
9. The Visits to Former Looked After Children in Detention (England) Regulations 2010 ("the 2010 Regulations") provide that these duties will apply to children and young people who have ceased to be looked after as a result of being detained in a:
 - Young Offender Institution (YOI);
 - Secure Training Centre (STC); or
 - Secure Children's Home (SCH);and who are not "relevant" children⁴.

³ The Care Leavers (England) Regulations 2010, Regulation 3.

⁴ Regulation 2(2) provides that the Regulations do not apply to a child who is a relevant child for the purposes of section 23A of the 1989 Act.

10. The local authority may have other ongoing duties towards this group of children under the 1989 Act. Where these children and young people are aged 16 or 17 they may be entitled to advice and assistance as “qualifying children” under section 24(1B) of the 1989 Act.
11. All children who may be in need are entitled to an assessment under section 17 of the 1989 Act.

Notification and Visiting

12. At the point the young person is remanded or sentenced to custody, if the local authority’s social worker has not attended Court, the responsible YOT should notify the local authority about the details of their sentence, or remand into custody, and about where they have been detained.
13. The local authority must then appoint a representative to visit the child. This representative should be a qualified social worker employed by the authority, usually the social worker or personal advisor who was allocated to the child’s case and was responsible for maintaining the care or pathway plan before they entered custody. There may be some circumstances where a residential care worker or a foster carer familiar to the child might be appropriate to carry out this role.

The role must not be fulfilled by a YOT worker.

14. The local authority should also inform the child’s Independent Reviewing Officer (IRO) of their placement in custody and the name of the appointed representative.
15. Regardless of the fact that the child is no longer looked after, the secure establishment will have the same need for information as any other residential setting. Within five working days of the child’s placement, the local authority should provide information to the custodial establishment by contacting the offender supervisor based in the YOI, or equivalent post in the STC or SCH, to inform them of:
 - the child’s previous care status;
 - persons with parental responsibility for the child;
 - name and contact details of the local authority’s appointed representative and the accountable team manager;
 - any immediate information necessary to ensure the child’s safety;
 - relevant information about the child’s family/carers and contact arrangements;

- relevant information about the child's needs that will enhance the establishment's ability to care for the child, especially in responding to the child's health and education needs;
 - the date when the appointed representative will be visiting the child.
16. In return, they should seek information from the secure establishment about how the child has settled in and agree arrangements for them to visit the child.

Timing of visits

17. The local authority must ensure that the appointed representative visits the child **within 10 working days** of their entering custody, unless this is not reasonably practicable⁵. It may be helpful if these visits can be coordinated with arrangements for the initial planning meeting (see Appendix A). The establishment should facilitate the visit and allow the child to be seen in privacy, unless the child refuses. Representatives of the local authority should be afforded the same status as legal visitors rather than the more limited access to the child that applies to family visits.
18. Regulation 4(1)(b) of the 2010 Regulations places a duty on the local authority to ensure that their representative also visits the child when reasonably requested to do so by:
- the child;
 - a member of staff of the establishment where the child is detained;
 - the child's parent(s) or person with parental responsibility; or by
 - the relevant YOT case manager.

Assessment and planning process

19. The purpose of the initial visit is to complete an assessment of the child's needs whilst in custody and on release. This will take into account previous assessments that have informed the child's care plan and any new information from the assessments undertaken by the YOT or custodial establishment. The assessment should be based on the format for initial assessments provided by *Framework for Assessment for Children in Need and their Families*⁶.
20. The representative should consider the following issues in arriving at their assessment:
- Is there a risk of self harm?

⁵ Regulation 4(1)(a) of the 2010 Regulations

⁶ <http://www.archive.official-documents.co.uk/document/doh/facn/fw-00.htm>

- What is the child's emotional state?
 - Does the child need money, clothes, books or other practical support?
 - Are education staff aware of, and able to meet, the child's educational needs, including any special needs or abilities?
 - Are the health unit and wing staff aware of, and able to meet, the child's health needs?
 - Are staff aware of, and able to meet, the child's religious and cultural needs?
 - Is the child worried about anything? If so, what? Does the child understand how they can access advocacy and other services to express any concerns and make their views known?
 - Are the child's parents able to fulfill their parental responsibility to the child whilst in custody?
 - Has there been a change in the parents' capacity to enable them to resume care of the child on his release in a way that will meet the child's needs? If not, might additional support be provided to enable the parents be able to resume care of the child?
 - If it is not appropriate for the child to return home or to become looked after again, what alternative arrangements need to be made?
21. The child's wishes and feelings on these matters must be sought⁷. The assessment must also take into account the views of the child's parents (or any other person with parental responsibility) and appropriate members of staff in the custodial establishment (including pastoral care, education and health staff), unless it is not reasonably practicable to do so or it is not consistent with the child's welfare⁸. The views of the child's previous carers and the IRO should also be sought. If the appointed representative is not the social worker who was previously allocated to the child's case, that social worker's views should also be sought.
22. The assessment should be completed within 20 working days of the child entering custody and should conclude with an analysis that sets out clearly the representative's recommendations to the authority about the advice, assistance and support that the child will need whilst in custody and on release.
23. Regulation 6 of the 2010 Regulations sets out the information that must be included in the assessment:

⁷ Regulation 6(1)(a) of the 2010 Regulations

⁸ Regulation 6(2) of the 2010 Regulations

- Is the child's welfare being adequately safeguarded and promoted (taking account of the child's wishes and feelings)?
 - Are further visits required?
 - Who will keep in touch with the child whilst they are detained? Does there need to be help with contact arrangements?
 - Will it be in the child's best interests to become looked after again by the local authority on release?
 - Might the child and their family require other services provided by the local authority formerly responsible for looking after the child, or from another local authority?
24. The recommendations should include proposals as to the future involvement of the local authority, for example whether visits should be maintained whilst the child remains in custody and on release. If parents are unavailable or otherwise unable to exercise their parental responsibility by providing the child with support whilst in custody, the child will require ongoing visits, support and practical help from the local authority whilst in custody as a child in need under section 17 of the 1989 Act.
25. Options for the child on release will be as follows:
- child's parents or wider family will be able to resume care of the child on release from custody, with support from the local authority exercising their powers under section 17 of the 1989 Act and with continuing supervision from the YOT;
 - child's parents or wider family will be able to resume care of the child on release from custody, solely with supervision from the YOT for as long as any order continues;
 - child will need to become looked after again on release;
 - child will not be able to return home to parents but it will be inappropriate for them to become looked after again because of their age or particular circumstances, in which case the YOT and local authority will need to meet with housing and other relevant services well before the planned release date to determine the arrangements that will be necessary in order to provide them with suitable accommodation and support in the community.
26. Regulation 6(3) specifies that the local authority should give a copy of the representative's report to:
- the child;
 - their parents or those with parental responsibility, unless this would not be in the child's interests;

- the governor or director or registered manager of the establishment where the child is detained;
- the relevant YOT case manager;
- the local authority where the child is being detained (if different from the authority that formerly looked after the child); and
- any other person the responsible authority considers should receive a copy of the report.

Decision making

27. Every local authority will need to appoint a designated manager to receive reports from the representative and decide how the local authority will act on their recommendations. This should be an officer of the authority with responsibility for allocating any resources necessary to provide support to the child in future.
28. The representative's assessment with their recommendations about the support and services that the responsible authority and youth justice services will provide to safeguard and promote the child's welfare⁹, must be sent to the designated manager in the authority formerly responsible for their care.
29. The relevant local authority manager must confirm that the assessment and recommended plan have been received and the steps that will be taken to implement its recommendations. The local authority should develop a protocol with the local youth offending service for confirming and recording such plans (see Appendix B).
30. In circumstances where the designated manager does **not** accept the recommendations about ongoing support to be provided to the child, it will be necessary to consult the YOT case manager and YOT manager; and also desirable to consult with the child's former IRO and their former social worker (if not the appointed representative), before the designated manager confirms this decision.
31. Each local authority will need to put in place a process agreed with the youth offending service and set out in their joint protocol for resolving disputes in cases where the local authority designated manager rejects the representative's assessment or recommendations for providing continuing support for a previously looked after child in custody. This process must enable a decision to be reached about whether or not the formerly responsible authority will contribute to their future support well before they are due to be resettled into the community (no later than 28 days prior to their potential release date).

⁹ Regulation 6(1)(b) of the 2010 Regulations

32. Details of the plan confirming how the local authority previously responsible for their care will contribute to their support in future should be sent to:
- the child's case manager in the YOT;
 - the Governor or manager of the custodial establishment;
 - the child, their parents and others with parental responsibility;
 - any other agencies that would be responsible for implementing the recommendations relating to the child, such as a provider of supported housing;
 - The local authority might also send the assessment and agreed plan to any other relevant parties with the child's consent.
33. **Where the local authority has decided that it will not be providing any continuing support for a formerly looked after child assessed by their representative, the designated manager in the responsible authority must inform the following:**
- **the child's case manager in the YOT;**
 - **the Governor or manager of the custodial establishment;**
 - **the child, their parents and others with parental responsibility.**
34. Where the authority has determined that they will be offering some support to the child then responsibility for implementing the plan to deliver this will rest with the manager appointed by the local authority to take forward this task. This should not affect other services being provided and future support should be provided in conjunction with any on-going interventions provided by youth offending services.
35. Where it has been agreed that the child will need ongoing support from the local authority, either whilst they are in custody or following release, or that the child will need to become looked after again, arrangements should be made to maintain contact with the child whilst they remain in custody.
36. Whilst the child remains in custody, where appropriate, they should be visited in the same way as any other looked after child. That is, visits taking place at intervals of not more than six weeks for the first year and not more than three months after that. Additional visits should also take place if reasonably requested by the child, the establishment or the YOT case manager or if there are particular circumstances that require a visit. For example, it will be good practice for the appointed representative to attend the child's remand or sentence planning meetings. Where the child is placed in an SCH or STC, a visit should also take place either if there has been a notification under the Care Standards Act 2000; or if, where the child is placed in a YOI, concerns about the welfare or safety of children are raised by Her Majesty's Inspectorate of Prisons.

Children serving long sentences

37. Most children will not be in custody for long periods. The most common custodial sentence is a Detention and Training Order (DTO), with a maximum of two years, where half of the Order is served in the community. Periods on remand awaiting trial are also usually short. In the case of serious crimes, however, longer sentences can be imposed¹⁰. These children are much more likely to be transferred between establishments as they get older and, if they reach the age of 18 whilst in custody, they may be moved to an adult prison. Responsibility for their supervision will then transfer from the YOT to the Probation Service.
38. The same principles apply as with other children: if parents or wider family are assessed as being able to meet their needs whilst in custody and on release, the assessment may conclude that there is no ongoing role for the local authority. Where they are not able to fulfill this role, the representative's assessment will need to take this into account and make recommendations to the designated manager in the authority formerly responsible for the child's care about remaining in touch with the child.
39. This may involve the formerly responsible authority negotiating with the YOT and Probation Service about the child's release plan in adulthood. These services will need to be advised about whether in future the child will be eligible for leaving care services. The YJB has additional responsibility for planning for children on long sentences and the local authority should inform them of their involvement and intentions. The relevant contact is:

Head of Placement and Casework Service

Youth Justice Board for England and Wales

1 Drummond Gate

Pimlico, London

SW1V 2QZ

Tel: 020 3372 7855

¹⁰ Section 90/91 of the Powers of the Criminal Courts (Sentencing) Act 2000 allows the Crown Court to impose longer sentences where a young person is convicted for a serious crime. If a young person is convicted of murder they will receive a mandatory life sentence under S90 with a specified minimum term. If they are convicted of an offence for which an adult could receive at least 14 years in custody, they may be sentenced under S91 and the length of the sentence can be anywhere up to the adult maximum for the same offence.

Section 226 of the Criminal Justice Act 2003 allows young people to be detained for an indeterminate period, but at least two years, in order to protect the public. Section 228 of the same Act allows an extended sentence to be passed for certain violent and sexual crimes, and the minimum period of detention is four years.

40. The needs of children serving long sentences are likely to change and need to be re-assessed. Where parents are able to meet the child's needs whilst in custody, but will not be able to provide suitable accommodation or support on release, it may not be necessary for the local authority representative to undertake regular visits throughout the entire sentence. They should, however, ensure that they receive regular information about the child's progress and should agree with the child's YOT case manager the point during the sentence when they will undertake a re-assessment with a view to beginning to plan for release. Visits should be resumed at this point. A re-assessment could also be triggered by a change in the child's needs, circumstances or plans before this point.

Action to be taken if there are concerns about the child's safety or welfare

41. The local authority does not have the power to terminate the 'placement' of a child who has been remanded or sentenced to custody in the way that it can terminate placements made under section 22C of the 1989 Act. Where there are concerns that the child is not being safeguarded or their welfare promoted, there are a number of avenues for the local authority to pursue. These concerns may relate to the quality of care the child is receiving in this particular establishment or to a perception that the type of placement is unsuitable for the child, for example because they are thought to need closer supervision. In the first instance, the authority may be able to resolve the concerns by agreement with the establishment itself. All YOIs are required to have a Safeguards Manager who may be able to address the problem, as may the managers of SCHs and STCs. For example, the child could be moved to another unit within the establishment or provided with additional support or services.
42. Where issues cannot be resolved at establishment level, the responsible authority may need to involve external agencies. All custodial placements for under 18 year olds are commissioned by the YJB and they are ultimately responsible for ensuring that they provide appropriate care. The YJB employs monitors to have oversight of standards and performance. Local Safeguarding Children's Boards (LSCBs) also have responsibility for secure establishments for under 18s in their area – as do Local Authority Designated Officers (LADOs) if child protection concerns arise. If the responsible authority is of the view that the child needs to be moved to another establishment, the YJB has a transfer protocol. Transfer requests can be formally initiated by the:
- YOT
 - establishment, or
 - placement team at the YJB.

43. The local authority should contact one of these agencies to express their concerns and ask that they complete a Transfer Request Form, indicating the degree of urgency. Concerns should also be submitted in writing to the YJB placement team and, if they relate to the standard of care being provided by the establishment rather than the specific needs of an individual child, the LSCB and YJB monitor for the establishment should be notified. The Local Authority should inform the establishment and NOMS Young People's Team that they have decided to take this course of action.

Planning for release

44. Where the plan is for the child to be looked after again or for them to be provided with support in the community from children's services then the local authority must be involved in the plans for release. They must also be involved in discussions if the child is being considered for early release or home curfew detention, particularly with regard to the child's ability to cope with any additional supervision requirements, such as electronic monitoring or an Intensive Supervision and Surveillance Programme (ISSP); or any MAPPA¹¹ arrangements that have been set on release.
45. Wherever possible, arrangements should be made for children to visit prospective placements and employment or educational facilities and to meet relevant practitioners before their release. There are facilities for a child to be granted Release on Temporary Licence (ROTL) or Mobility to allow outside visits to take place. This is subject to the relevant agreement from the appropriate people.
46. As soon as possible, and [ideally] no later than 14 days before release, the child must know:
- who is collecting them;
 - where they will be living;
 - the reporting arrangements;
 - sources of support – including out of hours;
 - the arrangements for education or employment;
 - arrangements for meeting continuing health needs;
 - how and when they will receive financial support;
 - when they will be seeing their social worker;

¹¹ MAPPA – Multi Agency Public Protection Arrangements – is a risk management system encompassing the police, probation, prison services as well as other crime reduction stakeholders to reduce the risk posed to the public by serious offenders (<http://www.justice.gov.uk/news/newsrelease261009a.htm>)

- the roles and responsibilities of the respective practitioners.
47. It is essential that there is clarity about who is responsible for each element of the child's plan and the arrangements for communication and enforcement. The local authority should record this plan and make copies available to the child, the supervising YOT officer, IRO, the establishment, other agencies that will be involved with supporting the child after release and the child's family, if appropriate.

Support in the community

48. Sentenced children returning to the community will continue to be supervised by the YOT. For those on a Detention and Training Order (DTO), the most common custodial sentence, the second half of the term is served in the community but the child can be recalled if they do not comply with the conditions within their Notice of Supervision. For children who have served other types of sentence, they are released on License and can be recalled if they breach the conditions or are thought to pose a risk to others.
49. Where, as a result of the representative's assessment, the local authority has agreed to support the child on release, the social worker allocated to the child's case will collaborate with the YOT case manager during the period of supervision by the YOT. The function of the allocated social worker, that is to plan for the child's care or for their support in the community, is different and more extensive than that of the YOT case manager.
50. Children are vulnerable in the early days after release and need considerable help, both emotionally and practically, to:
- readjust to living in open conditions;
 - meet the requirements for reporting and surveillance;
 - settle into accommodation;
 - become established in education or training;
 - re-establish relationships with family and friends;
 - be diverted from re-offending.
51. It is good practice to have some joint appointments with the child, supervising YOT officer and local authority social worker, so that information is shared and the child receives an integrated service. The YOT should consult the local authority over enforcement issues, particularly if there is a possibility of the child being breached – that is when the YOT considers the child has broken the conditions of their Notice of Supervision and issues proceedings to return the child to court, when they may be returned to custody. (Children on Licence can be recalled to custody without returning to court). Where the child is

having difficulty in complying with their conditions, the local authority should work with the YOT to put additional support in place. The social worker and supervising YOT officer should keep each other informed of significant events, including any changes in service delivery or plans.

52. Where the child becomes looked after, their care plan must be reinstated and the placement plan agreed with their placement provider should include information about the support that the placement will provide to minimise the likelihood of the child committing further offences in future.

Appendix A

Taken from National Standards for Youth Justice Services 2010 [National Standard 9: Planning and delivering interventions in custody and resettlement into the community (Detention and Training Orders)]

Sentence length	Initial planning meeting	Case discussion	1st review meetings*	Subsequent reviews*	Release preparation meeting	Final release review meeting
4 months	Within 10 working days of arrival	Prior to review meeting	None	None	After 4 weeks (alongside final review)	After 4 weeks (alongside resettlement review)
6 months	Within 10 working days of arrival	4 weeks after initial planning meeting	None	None	1 month before release date	10 working days before release
8 months	Within 10 working days of arrival	4 weeks after initial planning meeting	If early release, none. If not early release then 4 weeks before release	None	1 month before release date	10 working days before release
10 months	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case decision	Every 3 months following 1 st review	1 month before release date	10 working days before release
12 months	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case decision	Every 3 months following 1 st review	1 month before release date	10 working days before release
18 months	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case decision	Every 3 months following 1 st review	1 month before release date	10 working days before release
24 months or more	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case decision	Every 3 months following 1 st review	1 month before release date	10 working days before release

* Review meetings can be undertaken by video link with the exception of the final release review where this must be attended by the YOT case manager.

Appendix B

Outline of matters to be included in protocols between local authority children's services and Youth Offending Teams

This outline is not intended to be comprehensive but sets out those matters that will be particularly important so that children's services and YOT can work in partnership to support and assist children in need, "on the edge of care", or those that are looked after.

B1. Arrangements, compatible with the *Framework for Assessment for Children in Need and their Families*¹² to enable YOTs to refer children on their caseloads for initial and core assessment so that they are able to access support as children in need. These will include processes for expediting referrals of children who may require accommodation by children's services, including children who may be homeless on their release from custody.

B2. Where children are known to both services, arrangements for joint working that recognise the distinctive contribution of each service to safeguarding and promoting the welfare of the child concerned. (Where a child is looked after the "lead professional" will be a children and families social worker). These will include detail about:

- information sharing;
- notification by the YOT when a child, not already allocated to a social worker in children's services, is remanded to local authority accommodation;
- arrangements for children's services to refer looked after children and "children in need" to "early intervention" and positive activities provided by youth offending services to prevent offending behaviour and divert children from the criminal justice system.

B3. Arrangements for children's services to notify their local YOT about the risk of offending by looked after children placed out of authority, so that the local YOT may provide support in negotiating appropriate services in the area where the child is placed.

B4. Joint arrangements for participating in remand or sentence planning and statutory care planning and review where looked after children are detained in the

¹² <http://www.archive.official-documents.co.uk/document/doh/facn/fw-00.htm>

secure estate (i.e. subject to a Care Order under s.31 of the Children Act or remanded under section 23(1) of the Children and Young Person's Act 1969).

B5. Arrangements for sharing plans for the future support of a former looked after child in custody that have been developed following the assessment of a representative appointed under The Visits to Former Looked After Children in Detention (England) Regulations 2010 and this Guidance.

B6. Processes for timely, effective, dispute resolution in circumstances where the accountable staff in children's services and YOT are unable to reach agreement about how individual children might be best supported – including a process to meet the requirement set out in paragraph 30 of this guidance, where the local authority designated manager rejects the representative's assessment and recommendations for providing continuing support for a previously looked after child in custody.

STATUTORY INSTRUMENTS

2010 No. 2797

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Visits to Former Looked After Children in Detention (England)
Regulations 2010**

<i>Made</i>	- - - -	<i>19th November 2010</i>
<i>Laid before Parliament</i>		<i>25th November 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by section 23ZA(1)(b), (3) and (4), and section 104(4) of the Children Act 1989^(a):

Citation, commencement and application

1.—(1) These Regulations may be cited as the Visits to Former Looked After Children in Detention (England) Regulations 2010 and come into force on 1st April 2011.

(2) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“the 1989 Act” means the Children Act 1989;

“A” means a child who was looked after by a local authority but who has ceased to be looked after^(b) by them as a result of the circumstances prescribed in regulation 3;

^(a) 1989 c.41. Section 23ZA was inserted by section 15 of the Children and Young Persons Act 2008 (c.23) (“the 2008 Act”); section 104(4) is amended by sections 39 and 42 of the 2008 Act. The powers are expressed to be exercisable by the “appropriate national authority”, defined in section 30A of the Children Act 1989 (“the 1989 Act”) (which is inserted by section 39 of the 2008 Act) as meaning, in relation to England, the Secretary of State. For the definition of “prescribed” see section 105(1) of the 1989 Act.

^(b) For the meaning of a child who is “looked after” see section 22(1) of the 1989 Act, as amended by section 107 of, and paragraph 19 of Schedule 5 to, the Local Government Act 2000 (c.22), section 2 of the Children (Leaving Care) Act 2000 (c.35) and by section 116(2) of the Adoption and Children Act 2002 (c.38). “Local authority” is defined in section 105(1) of the 1989 Act as, in relation to England, “the council of a county, a metropolitan district, a London Borough or the Common Council of the City of London”. Further, by virtue of the Isles of Scilly (Children Act 1989) Order 2010 (S.I. 2010/1116) any reference to a “local authority” in the 1989 Act is to be construed, in relation to the Isles of Scilly, as a reference to the Council of the Isles of Scilly.

The Children Act 1989 Guidance and Regulations

“R” means the representative of the responsible authority who is appointed to visit A in accordance with arrangements made by them under section 23ZA of the 1989 Act;

“relevant youth offending team case manager” means the person within the responsible authority’s youth offending team^(c) who is managing A’s case;

“responsible local authority” means the local authority which looked after A immediately prior to A being detained; and

“secure children’s home” means a children’s home used for the purpose of restricting liberty and approved for that purpose by the Secretary of State, in respect of which a person is registered under Part 2 of the Care Standards Act 2000⁽¹⁵⁾.

(2) These Regulations do not apply to a child who is a relevant child for the purposes of section 23A of the 1989 Act⁽¹⁶⁾.

Circumstances prescribed for the purpose of section 23ZA of the 1989 Act

3.—(1) The circumstances prescribed for the purposes of section 23ZA(1)(b) of the 1989 Act⁽¹⁷⁾ are that the child is detained pursuant to an order of a court in—

- (i) a young offender institution⁽¹⁸⁾,
- (ii) a secure training centre⁽¹⁹⁾, or
- (iii) a secure children’s home.

Frequency of visits

4.—(1) The responsible authority must ensure that their representative (“R”) visits A—

- (a) within ten working days of A first being detained, in so far as is reasonably practicable, and
- (b) thereafter whenever reasonably requested to do so by—

^(c) Under section 39(1) of the Crime and Disorder Act 1998 (c.37) a local authority has a duty to establish one or more youth offending teams for their area.

⁽¹⁵⁾ 2000 c.14.

⁽¹⁶⁾ Section 23A(2) provides that a “relevant child” is a child who (a) is not being looked after by any local authority (b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2 and (c) is aged sixteen or seventeen. The Care Leavers (England) Regulations 2010 (S.I. 2010/2571) prescribe, for the purposes of section 23A(3), additional categories of “relevant children” and categories of children who are not relevant children despite falling within subsection (2). Section 23B of the 1989 Act sets out the additional functions of the responsible authority in respect of relevant children.

⁽¹⁷⁾ Section 23ZA(2) places a duty on the responsible local authority to ensure that a person to whom the section applies is visited by a representative of the authority and to arrange for appropriate advice, support and assistance to be available to them if requested; section 23ZA(1)(b) provides that the section applies to a child who was looked after by a local authority but who has ceased to be looked after by them as a result of prescribed circumstances.

⁽¹⁸⁾ A youth offender institute is defined in section 43(1)(aa) of the Prison Act 1952 (c.52) as amended by the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 11 and the Criminal Justice and Public Order Act 1994 (c.33), section 18(3), and the Criminal Justice and Immigration Act 2008 (c.4), section 148(1), Schedule 26, Part 2, paragraph 3.

⁽¹⁹⁾ A secure training centre is defined in section 43(1)(d) of the Prison Act 1952, as amended by the Criminal Justice and Public Order Act 1994, section 5(2), the Crime and Disorder Act 1998 (c.37), the Powers of Criminal Courts (Sentencing Act) 2000 (c.6).

Local authority responsibilities towards former looked after children in custody

- (i) A,
- (ii) a member of staff of the institution where A is detained,
- (iii) any parent of, or any other person with parental responsibility for, A, or
- (iv) the relevant youth offending team case manager.

(2) The responsible authority may arrange for R to make such additional visits to A, having regard to any recommendation made by R in accordance with regulation 6(1)(b).

Conduct of visits

5. On each visit, R must speak to A in private unless—

- (a) A, being of sufficient age and understanding to do so, refuses,
- (b) R considers it inappropriate to do so, having regard to A's age and understanding, or
- (c) R is unable to do so.

Reports of visits

6.—(1) R must provide a written report of each visit which must include—

- (a) R's assessment, having regard to A's wishes and feelings, as to whether A's welfare is being adequately safeguarded and promoted whilst in detention,
- (b) R's recommendation as to the timing and frequency of any further visits by R,
- (c) any other arrangements which R considers should be put in place with a view to promoting contact between A and A's family or in order to safeguard and promote A's welfare,
- (d) R's assessment as to how A's welfare should be adequately safeguarded and promoted following release from detention, in particular—
 - (i) whether A will need to be provided with accommodation on release by the responsible authority or another local authority, and
 - (ii) whether any other services should be provided by the responsible authority or another local authority in the exercise of their duties under the 1989 Act.

(2) R must, in making any assessment under paragraph (1), unless it is not reasonably practicable to do so or it is not consistent with A's welfare, take into account the views of—

- (a) any parent of, or any other person with parental responsibility for, A, and
- (b) appropriate members of staff of the institution where A is detained.

(3) The responsible authority must give a copy of the report to—

- (a) A, unless it would not be appropriate to do so,
- (b) a person falling within paragraph (2)(a), unless to do so would not be in A's best interests,
- (c) the governor, director or registered manager⁽²⁰⁾ of the institution where A is being detained,
- (d) the relevant youth offending team case manager,
- (e) where different from the responsible authority, the local authority in whose area A is detained, and
- (f) any other person whom the responsible authority consider should be given a copy of the report having regard to R's assessment.

⁽²⁰⁾ That is, a person who is registered under Part 2 of the Care Standards Act 2000 as a manager of a secure children's home.

Advice, support and assistance

7. When making arrangements in accordance with section 23ZA(2)(b) for appropriate advice, support and assistance to be available to A, the responsible authority must ensure that—

- (a) the arrangements—
 - (i) are appropriate having regard to A's age and understanding, and
 - (ii) give due consideration to A's religious persuasion, racial origin, cultural and linguistic background and to any disability A may have, and
- (b) so far as is reasonably practicable having regard to A's age and understanding, A knows how to seek appropriate advice, support and assistance from the authority.

19th November 2010

Tim Loughton
Parliamentary Under Secretary of State
Department for Education

The Children Act 1989 Guidance and Regulations

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