

2010 No. 2571

CHILDREN AND YOUNG PERSONS, ENGLAND

The Care Leavers (England) Regulations 2010

Made - - - - - *20th October 2010*

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Coming into force - - - *1st April 2011*

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SCHEDULE 2 — Matters to be considered in determining the suitability of accommodation

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 23A(3), 23B(8)(c) and (10), 23D(2), 23E(1), (1B), (1C) and (2), 24B(6) and 104(4) of, and paragraph 19B(2), (3), (7) and (8) of Schedule 2 to, the Children Act 1989(a):

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Care Leavers (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;

“personal adviser” means the person appointed—

(i) under paragraph 19C of Schedule 2 to the 1989 Act for an eligible child(b),

(ii) under section 23B(2) for a relevant child, or

(iii) under section 23CA(2) for a former relevant child(c);

“placement” has the meaning given in section 22C(6)(d);

“relevant child” has the meaning given in section 23A(2) and regulation 3; and

“responsible authority” means the local authority that last looked after the child(e).

(2) In these Regulations, save as otherwise appears, any reference to a numbered section is a reference to that section in the 1989 Act.

Relevant children

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

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

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- (a) 1989 c.41. For the definition of “prescribed” see section 105(1). Sections 23A and 23B were inserted by section 2(1) and (4) of the Children (Leaving Care) Act 2000 (c.35) (“the 2000 Act”); section 23A was amended by paragraph 8 of Schedule 3 to the Children and Young Persons Act 2008 (c.23) (“the 2008 Act”); and section 23B(10) was amended by paragraph 9 of Schedule 3 to the 2008 Act. Sections 23D and 23E were inserted by section 3 of the 2000 Act; section 23D(2) was amended by paragraph 10 of Schedule 3 to the 2008 Act and section 23E was amended by section 22(3) to (5) of, and paragraph 11 of Schedule 3 to, the 2008 Act. Section 24B was inserted by section 4(1) of the 2000 Act and subsection (6) was amended by paragraph 13 of Schedule 3 to the 2008 Act. Section 104(4) was amended by paragraph 25(1) and (5) of Schedule 3, and Schedule 4, to the 2008 Act. Paragraph 19B of Schedule 2 was inserted by section 1 of the 2000 Act and amended by section 39 of, and paragraphs 1 and 27(1) and (3) of Schedule 3 to, the 2008 Act.
- (b) Paragraph 19C of Schedule 2 was inserted by section 1 of the 2000 Act. For the definition of “eligible child” see paragraph 19B(2) of Schedule 2 to the 1989 Act and regulation 40 of the Care Planning, Placement and Case Review (England) Regulations 2010 (S.I. 2010/959).
- (c) Section 23CA was inserted by section 22(2) of the 2008 Act. “Former relevant child” has the meaning given in section 23C(1) of the 1989 Act and includes a former relevant child who falls within section 23CA(1) of the 1989 Act.
- (d) Section 22C was inserted by section 8(1) of the 2008 Act.
- (e) “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.

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

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

(4) For the purposes of this regulation—

- (a) “detained” means detained in a remand centre, a young offender institution or a secure training centre(b), or any other institution pursuant to an order of a court, and
- (b) “hospital” has the meaning given in section 275(1) of the National Health Service Act 2006(c).

(5) Subject to paragraph (6), a child who has lived for a continuous period of six months or more (whether that period commenced before or after they ceased to be looked after) with—

- (a) their parent,
- (b) someone who is not their parent but who has parental responsibility for them, or
- (c) where they were in care and there was a residence order in force immediately before the care order was made, a person in whose favour the residence order was made,

is not a relevant child despite falling within section 23A(2).

(6) Where living arrangements described in paragraph (5) break down and the child ceases to live with the person concerned, the child is a relevant child.

PART 2

Assessments of need and pathway plans

Involvement of relevant child or former relevant child

4.—(1) In carrying out an assessment of needs under regulation 5, and in preparing or reviewing a pathway plan under regulation 6 or 7, the responsible authority must, unless it is not reasonably practicable—

- (a) seek and have regard to the views of the relevant or former relevant child to whom the assessment or pathway plan relates, and

(a) For the meaning of “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 2000 Act and by section 116(2) of the Adoption and Children Act 2002 (c.38).

(b) For the meanings of “remand centre”, “young offender institution” and “secure training centre” see section 43(1)(a), (aa) and (d) of the Prison Act 1952 (c. 52). Subsection (1) was substituted by section 11 of the Criminal Justice Act 1982 (c. 48). Subsection (1)(aa) was inserted by paragraph 11 of Schedule 15 to the Criminal Justice Act 1988 (c. 33) and amended by section 18(3) of the Criminal Justice and Public Order Act 1994 (c. 33) and by paragraph 3 of Part 2 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4). Subsection (1)(d) was substituted by paragraph 6 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 5(1) and (2) of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(c) 2006 c.41. There are amendments to section 275(1) which are not relevant to these Regulations. A “hospital” is defined as (a) any institution for the reception and treatment of persons suffering from illness, (b) any maternity home and (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution; “illness” is defined in that section as including any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing.

- (b) take all reasonable steps to enable the relevant or former relevant child to attend and participate in any meetings at which their case is to be considered.

(2) The responsible authority must as soon as practicable provide the relevant or former relevant child with copies of—

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

and must ensure that the contents of each document are explained to the relevant or former relevant child having regard to their level of understanding, unless it is not reasonably practicable to do so.

(3) The responsible authority must ensure that a written record is kept of the views obtained under paragraph (1)(a).

Assessment of needs

5.—(1) The responsible authority must assess the needs of each relevant child who does not already have a pathway plan, and each former relevant child falling within section 23CA (*further assistance to pursue education or training*), in accordance with this regulation(a).

(2) The assessment of needs must be completed—

- (a) in the case of a relevant child who does not already have a pathway plan, not more than three months after the date on which the child becomes a relevant child, and
- (b) in the case of a former relevant child falling within section 23CA, not more than three months after the date on which the responsible authority are informed, in accordance with section 23CA(1)(c), that the former relevant child is pursuing, or wishes to pursue, a programme of education or training.

(3) The responsible authority must ensure that a written record is kept of—

- (a) the identity of the persons whose views have been sought for the purpose of carrying out the assessment,
- (b) the information obtained in the course of the assessment,
- (c) the deliberations at any meeting held in connection with any aspect of the assessment, and
- (d) the results of the assessment.

(4) In carrying out an assessment of the needs of a relevant child who does not already have a pathway plan, the responsible authority must—

- (a) take into account—
 - (i) the child's health and development,
 - (ii) the child's needs for education, training or employment,
 - (iii) the support available to the child from members of the child's family and other persons,
 - (iv) the child's financial needs,
 - (v) the extent to which the child possesses the practical and other skills necessary for independent living, and
 - (vi) the child's needs for care, support and accommodation, and
- (b) unless it is not reasonably practicable or appropriate to do so, seek and take into account the views of—
 - (i) the child's parents,

(a) Responsible authorities are required to carry out an assessment of needs for a relevant child by section 23B(3)(a) of the 1989 Act and, for a former relevant child who falls within section 23CA of that Act, by section 23CA(3)(a).

- (ii) any person who is not the child’s parent but has parental responsibility for the child,
- (iii) any person who on a day to day basis cares for, or provides accommodation for the child,
- (iv) any school or institution within the further education sector attended by the child,
- (v) the local authority for the area in which the child lives where that is different from the responsible authority,
- (vi) the designated teacher at the school where the child is a registered pupil(a),
- (vii) any person providing health care or treatment to the child,
- (viii) any person by whom assistance by way of representation is provided to the child by virtue of arrangements made by the responsible authority under section 26A(b) (*advocacy services*),
- (ix) the personal adviser, and
- (x) any other person whose views the responsible authority, or the child, consider may be relevant.

(5) In carrying out an assessment of the needs of a former relevant child falling within section 23CA, the responsible authority must—

- (a) take into account—
 - (i) the former relevant child’s needs for education, training or employment, and
 - (ii) any other considerations the responsible authority consider relevant, and
- (b) unless it is not reasonably practicable to do so, seek and take into account the views of—
 - (i) the personal adviser, and
 - (ii) any other person whose views the responsible authority, or the former relevant child consider may be relevant.

(6) In this regulation—

- (a) “institution within the further education sector” has the meaning given in section 91(3) of the Further and Higher Education Act 1992(c),
- (b) “registered pupil” has the meaning given in section 434(5) of the Education Act 1996(d), and
- (c) “school” has the meaning given in section 4 of the Education Act 1996(e).

Pathway plans

6.—(1) A pathway plan prepared under section 23B(3) (*relevant children*) or 23CA(3) must be prepared as soon as possible after the assessment of needs referred to in regulation 5 is completed.

(2) The pathway plan must include, in particular—

- (a) in the case of a plan prepared under section 23B(3), the matters referred to in Schedule 1, and
- (b) in the case of a plan prepared under section 23CA, the matters referred to in paragraphs 1 to 4 of Schedule 1.

(a) The “designated teacher” in the case of a maintained school means the member of staff designated by the governing body in accordance with section 20(1) of the 2008 Act. Academies, City Technology Colleges and City Colleges for the Technology of the Arts are required by their Funding Agreements to have a designated teacher. The Designated Teacher (Looked After Pupils etc.)(England) Regulations 2009 (S.I. 2009/1538) made under section 20(3) of the 2008 Act prescribe the qualifications and experience of the designated teacher.

(b) Section 26A was inserted by section 119 of the Adoption and Children Act 2002.

(c) 1992 c.13. Section 91(3)(c) was inserted by paragraphs 1 and 13 of Schedule 8 to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22).

(d) 1996 c.56.

(e) That is, an educational institution, outside the further and higher education sectors, for providing primary and/or secondary education.

(3) The pathway plan must, in relation to each of the matters included in it by virtue of paragraph (2), set out—

- (a) the manner in which the responsible authority propose to meet the needs of the relevant or former relevant child, and
- (b) the date by which, and by whom, any action required to implement any aspect of the pathway plan will be carried out.

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

Review of pathway plans

7.—(1) The responsible authority must review the pathway plan of each relevant and former relevant child in accordance with this regulation(a).

(2) The responsible authority must arrange a review—

- (a) if requested to do so by the relevant or former relevant child,
- (b) if the responsible authority, or the personal adviser, consider a review necessary, and
- (c) in any event, at intervals of not more that six months.

(3) If the responsible authority provide the relevant child or former relevant child with accommodation under section 23B or section 24B, the responsible authority must also—

- (a) arrange a review as soon as is practicable after the end of a period of 28 days beginning on the day on which the accommodation is first provided, and
- (b) on completing a review under sub-paragraph (a), determine at what intervals (not exceeding three months) subsequent reviews will be carried out.

(4) In carrying out a review the responsible authority must—

- (a) to the extent it considers it appropriate to do so, seek and take account of the views of the persons mentioned in regulation 5(4)(b) or, as the case may be, regulation 5(5)(b), and
- (b) consider whether, in relation to each of the matters set out in the pathway plan, any change is necessary.

(5) The results of the review and any change to the pathway plan must be recorded in writing.

PART 3

Personal advisers

Functions of personal advisers

8.—(1) A personal adviser has the following functions in relation to the relevant child or former relevant child for whom they are appointed—

- (a) to provide advice (including practical advice) and support,
- (b) where applicable, to participate in the assessment and the preparation of the pathway plan,
- (c) to participate in reviews of the pathway plan,
- (d) to liaise with the responsible authority in the implementation of the pathway plan,
- (e) to co-ordinate the provision of services, and to take reasonable steps to ensure that the child makes use of such services and that they are appropriate to the child's needs,

(a) Relevant authorities are required by section 23E(1D) of the 1989 Act to keep pathway plans prepared for relevant children and former relevant children falling within section 23CA under regular review. They are required by section 23C(3)(b) to continue to keep pathway plans of former relevant children under regular review.

- (f) to remain informed about the relevant child’s or former relevant child’s progress and wellbeing, and
- (g) to keep a written record of contacts with, and of services provided to, the relevant or former relevant child.

(2) In addition, where accommodation is provided to a relevant child or former relevant child by the responsible authority under section 23B or section 24B, the personal adviser must visit the relevant child or former relevant child at that accommodation—

- (a) within 7 days of the accommodation first being provided,
- (b) subsequently, before the pathway plan is reviewed under regulation 7(3), and
- (c) at subsequent intervals of not more than two months.

PART 4

Miscellaneous

Support and accommodation

9.—(1) For the purposes of section 23B(8)(c) (*other support for relevant children*), the responsible authority must provide assistance in order to meet the relevant child’s needs in relation to education, training or employment as provided for in the pathway plan.

(2) For the purposes of section 23B(10), “suitable accommodation” means accommodation—

- (a) which so far as reasonably practicable is suitable for the relevant child in the light of their needs, including any health needs and any needs arising from any disability,
- (b) in respect of which the responsible authority have satisfied themselves as to the character and suitability of the landlord or other provider, and
- (c) in respect of which the responsible authority have, so far as reasonably practicable, taken into account the relevant child’s—
 - (i) wishes and feelings, and
 - (ii) education, training or employment needs.

(3) In determining for the purposes of paragraph (2)(a) whether accommodation is suitable for a relevant child, the responsible authority must have regard to the matters set out in Schedule 2.

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

- (a) “higher education” means education provided by means of a course of a description referred to in regulations made under section 22 of the Teaching and Higher Education Act 1998(a), and
- (b) “further education” has the same meaning as in section 2(3) and (5) of the Education Act 1996(b) save that for the purposes of this regulation it only includes further education which is provided on a full-time residential basis.

Records

10.—(1) The responsible authority must establish and maintain a written case record for each relevant child and former relevant child (“the case record”).

(2) The case record must include the written records required by virtue of regulation 4(3), and regulation 5(3)(a) to (c), and the following records (“relevant records”)—

- (a) any assessment of needs,

(a) 1998 c.30. Section 22(1) was amended by section 146(1) and (2) of the Learning and Skills Act 2000 (c.21); there are other amendments to section 22 which are not relevant to these Regulations.

(b) Section 2(3) was amended by Part 3 of Schedule 22 to the Education Act 2002 (c.32).

- (b) any pathway plan,
- (c) any review of a pathway plan.

(3) Relevant records must be retained by the responsible authority until the seventy-fifth anniversary of the date of birth of the relevant or former relevant child to whom they relate or, if the child dies before attaining the age of 18, for a period of fifteen years beginning with the date of death.

(4) The requirement in paragraph (1) may be complied with by retaining the original written records or copies of them, or by keeping all or part of the information contained in them in some other accessible form such as a computer record.

(5) Relevant records must be kept securely and may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under or by virtue of, a statute under which access to such records is authorised, or
- (b) any court order authorising access to such records.

Revocation of Regulations

11. The Children (Leaving Care) (England) Regulations 2001 are revoked^(a).

Tim Loughton
Parliamentary Under Secretary of State
Department for Education

20th October 2010

SCHEDULE 1

Regulation 6

Matters to be dealt with in the pathway plan and review

1. The nature and level of contact and personal support to be provided, and by whom, to the child or young person.

2. A detailed plan for the education or training of the child or young person.

3. How the responsible authority will assist the child or young person in relation to employment or other purposeful activity or occupation.

4. Contingency plans for action to be taken by the responsible authority should the pathway plan for any reason cease to be effective.

5. Details of the accommodation the child or young person is to occupy (including an assessment of its suitability in the light of the child's or young person's needs, and details of the considerations taken into account in assessing that suitability).

6. The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships.

7. A programme to develop the practical and other skills necessary for the child or young person to live independently.

8. The financial support to be provided to the child or young person, in particular where it is to be provided to meet accommodation and maintenance needs.

9. The health needs, including any mental health needs, of the child or young person, and how they are to be met.

(a) S.I. 2001/2874.

10. Details of the arrangements made by the authority to meet the child's needs in relation to identity with particular regard to their religious persuasion, racial origin and cultural and linguistic background.

SCHEDULE 2

Regulation 9

Matters to be considered in determining the suitability of accommodation

- 1.** In respect of the accommodation, the—
 - (a) facilities and services provided,
 - (b) state of repair,
 - (c) safety,
 - (d) location,
 - (e) support,
 - (f) tenancy status, and
 - (g) the financial commitments involved for the relevant child and their affordability.
- 2.** In respect of the relevant child, their—
 - (a) views about the accommodation,
 - (b) understanding of their rights and responsibilities in relation to the accommodation, and
 - (c) understanding of funding arrangements.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Children Act 1989 ('the 1989 Act') and come into force on 1st April 2011. They revoke, and in part replace, the Children (Leaving Care) (England) Regulations 2001.

The Regulations make provision about support to be provided to certain children and young people who are no longer looked after by a local authority i.e. 'relevant children' (defined in section 23A(2) of the 1989 Act and **regulation 3**) and 'former relevant children' (defined in section 23C of the 1989 Act).

They re-enact provisions in the 2001 Regulations (other than those relating to 'eligible children' which are now contained in the Care Planning, Placement and Case Review (England) Regulations 2010) with minor changes. They also reflect a change made by the Children and Young Persons Act 2008 which inserted section 23CA into the 1989 Act, extending the duties of local authorities in relation to certain former relevant children who pursue further education or training.

These Regulations make provision about the way in which the local authority must carry out an assessment of the needs of relevant and former relevant children [**regulation 5**] and about the preparation and review of pathway plans, which are plans setting out the advice, assistance and support the local authority intend to provide [**regulations 6 and 7, and Schedule 1**].

They prescribe the functions of personal advisers appointed for relevant and former relevant children [**regulation 8**] and make provision about other support, the suitability of accommodation and the provision of vacation accommodation [**regulation 9, and Schedule 2**]. They provide for the establishment and keeping of records in relation to assessments and pathway plans [**regulation 10**].

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STATUTORY INSTRUMENTS

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CHILDREN AND YOUNG PERSONS, ENGLAND

The Care Leavers (England) Regulations 2010

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