

Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007

March 2011

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CHAPTER 1 INTRODUCTION: THE LEGISLATIVE AND POLICY CONTEXT

IN THIS CHAPTER:

1. Primary Legislation
2. Underpinning Principles
 - a. Welfare of the Child
 - b. Consider the Views of the Child
 - c. Minimum Intervention and Avoidance of Delay
3. Relevant Strategies and Recent Initiatives
4. Equality and Diversity
5. Case Records

1. PRIMARY LEGISLATION

This guidance is founded upon the following primary legislation:

- Children (Scotland) Act 1995
- Adoption and Children (Scotland) Act 2007

2. UNDERPINNING PRINCIPLES

The following three principles underpin the primary legislation, the regulations and this guidance:

- To give paramount consideration to the welfare of the child;
- To consider the views of the child;
- To avoid delay and to make the minimum intervention necessary to a child's life.

The basis for these principles can be summarised as follows:

A: THE WELFARE OF THE CHILD IS PARAMOUNT.

This principle recurs in primary legislation as follows:

- Sections 11, 16 and 17 of the 1995 Act;
- Sections 14 and 84 of the 2007 Act.

The welfare principle is to be applied to decisions made in children's hearings and the courts, including the making of a Permanence Order (Section 84 of the 2007 Act) and matters relating to adoption (Section 14 of the 2007 Act). In practice, balancing the interests of children alongside the right to a private family life is no easy matter, and this is an issue returned to later in this guidance.

B: THE CONSIDERATION OF THE CHILD'S VIEWS

The requirement to consider the views of the child is expressed repeatedly in the legislation and regulations. The underpinning principle can be summarised as follows: children and young people should not be passive in decision making processes. They have the right to input into decisions about their lives and the services provided to them for the following reasons:

- Effective consultation underpins ethical social care: there is a legal and moral duty to consult children and young people about the decisions that affect them;
- Effective consultation has benefits for children and young people as a process, enabling them to feel more involved, effective and competent, and preparing them for the decision-making and responsibilities that come with adulthood;
- Effective consultation and participation improves outcomes for children and young people.

To increase the genuine consideration of children's views it is good practice that independent advocacy should be provided.

C: MINIMUM INTERVENTION NECESSARY AND AVOIDANCE OF DELAY

All interventions in a family's life carry risks. These risks have to be balanced against the risks of leaving a child or young person in a harmful environment. This guidance will outline how this balance is expressed in the legislation and regulations, and how the inevitably complex debates could best be framed.

All decisions about a child's welfare need to be taken within a timescale that meet her or his developmental needs. The avoidance of delay is an essential part of good quality social care practice with children and young people. In order to co-ordinate services, a lead professional may be appointed. The lead professional will also be responsible for ensuring the different elements of a plan for a child are progressed.

3. RELEVANT STRATEGIES AND RECENT INITIATIVES

This guidance should be read within the context of the following significant initiatives:

- GIRFEC (Getting it Right for Every Child)
- Child Protection and Risk Assessment Guidance (2010);
- Code of Practice on Additional Support for Learning and Safe and Well in School;
- Integrated Workforce Developments (including Early Years);
- Children's Hearing Scotland Act 2011;
- Scottish Government policy and initiatives on Corporate Parenting;
- Reports and initiatives led by the Looked After Children Strategic Implementation Group
- Initiatives to hasten decision making about permanence and care planning

4. EQUALITY AND DIVERSITY

Both the 1995 and 2007 Acts require the consideration of the following characteristics of children and young people when making any important decision about them:

- Ethnicity;
- Religious Persuasion;
- Cultural Background;
- Linguistic Background.

A young person's sense of their own identity can become very fragile in the care system. Separated from their birth parents, young people may struggle to retain a positive sense of their own cultural, racial and religious heritage. The isolation that many young people in the care system experience can further undermine their already damaged self-esteem, and these risks can be aggravated for disabled children or children exploring aspects of their sexuality; children, in other words, are not regarded by some of their peers as 'normal.' These issues are explored more fully elsewhere in this guidance.

5. CASE RECORDS

Young people *leaving* care often complain that they have no clear understanding of why they came *into* care, or ever fully understood the reasons for their movement between placements once they were *in* care. Case Records can play a vital role in holding practitioners to account, clarifying their thinking on specific issues and evidencing how they have reached specific decisions.

The Code of Practice on Records Management (2003) (sometimes referred to as the "Section 61 code") sets out the expectations of local authorities in terms of the maintenance and retention of records.

CHAPTER 2 – AN OVERVIEW OF THE LOOKED AFTER CHILDREN (SCOTLAND) REGULATIONS 2009 AND GUIDANCE

IN THIS SECTION:

1. The Status of the 2009 Regulations
2. The Status of this Guidance
3. The Definition of a Looked After Child
4. The Duties of a Local Authority in relation to a Looked After Child

1. THE STATUS OF THE 2009 REGULATIONS

These regulations replace the Arrangements to Look After Children (Scotland) Regulations 1996 and Fostering of Children (Scotland) Regulations 1996. They also affect parts of the Residential and Other Establishments (Scotland) Regulations 1996 where they apply to the placement of a child or young person in residential care.

The 2009 Regulations bring together the regulation of care planning services with care provision for those children separated from their birth parents.

The 2009 Regulations outline the requirements when children are looked after by kinship carers.

2. THE STATUS OF THIS GUIDANCE

This guidance replaces Volume 2 of Scotland's Children, Scottish Office, Edinburgh 1996 covering the Arrangements to Look After Children (Scotland) Regulations 1996 and Fostering of Children (Scotland) Regulations 1996.

3. THE DEFINITION OF A LOOKED AFTER CHILD

The definition of a 'looked after' child is in section 17(6) of the 1995 Act, as amended by Schedule 2, para 9(4) of the 2007 Act. A child is looked after when he or she is:

- (a) provided with accommodation by a local authority under section 25 of the 1995 Act; or
- (b) subject to a supervision requirement made by a children's hearing, in terms of section 70 of the 1995 Act; or
- (c) subject to an order, authorisation or warrant made under Chapter 2, 3 or 4 of Part II of the 1995 Act, and according to which the local authority has responsibilities in respect of the child. These include a child protection order, a child assessment order, an authorisation from a justice of the peace to remove a child to a place of safety or maintain a child in a place of safety, removal to a place of safety by a police constable, or a warrant to keep a child in a place of safety made by a children's hearing or a sheriff; or

- (d) living in Scotland and subject to an order in respect of whom a Scottish local authority has responsibilities, as a result of a transfer of an order to it under the Children (Reciprocal Enforcement of Prescribed Orders) etc. (England and Wales and Northern Ireland) (Scotland) Regulations 1996. These 1996 Regulations were made under section 33 of the 1995 Act; or
- (e) subject to a permanence order made after an application by the local authority under section 80 of the 2007 Act.

4. DUTIES OF THE LOCAL AUTHORITY IN RELATION TO A LOOKED AFTER CHILD

A local authority has a range of statutory duties to a child looked after by it, as laid out in section 17 of the 1995 Act:

- to safeguard and promote the child's welfare, taking the welfare of the child as its paramount concern;
- to make use of services that would be available for the child were he or she cared for by his or her parents;
- to take steps to promote regular and direct contact between the child who is looked after and any person with parental responsibilities, so far as is practicable, appropriate and consistent with the duty to safeguard the child's welfare;
- to provide advice and assistance with a view to preparing the child for when he or she is no longer looked after;
- to find out and have regard to, so far as is practicable when making decisions about the child, the views of the child, his parents and any other person whom the local authority think is relevant; and
- to take account, so far as is practicable, of the child's religious persuasion, racial origin and cultural and linguistic background.

Authorities may deviate from complying with these duties *only when it is necessary to protect members of the public from serious harm*, and then only to the extent required to achieve such protection for the public as set out in section 17(5) of the 1995 Act.

CHAPTER 3- INFORMATION GATHERING AND DEVELOPING THE ASSESSMENT

RELEVANT REGULATIONS: 3 AND 4

IN THIS CHAPTER:

1. The Underpinning Principles and Key Stages of Care Planning
2. Information Gathering
3. Developing the Assessment
4. Options for Long-term Care Planning
5. Specific Care Planning Considerations for Infants
6. Specific Considerations in relation to Residential Placements
7. The Elements of a Good Assessment
8. The Importance of Partnership Working in Assessment

1. THE UNDERPINNING PRINCIPLES AND KEY STAGES OF CARE PLANNING

High quality care planning is essential to the discharge of a local authority's responsibilities to looked after children and their families. The fundamental principles that underpin effective care planning include the following:

- **Timeliness**
Developing plans that take account of the developmental timescales of children, with particular importance attached to the needs of those less than two years old;
- **Stability and Permanence**
Achieving stability and security for children with the minimum of delay, acknowledging that all changes and periods of uncertainty for children carry with them a high degree of risk of (further) damage;
- **Transparency**
Making the basis for decisions clear to all parties, including the children and young people concerned, their families and those with responsibility for overseeing care planning;
- **Respect for each child's identity**
Ensuring that all care planning decisions take account of the identity and heritage of each child.

The four key stages of care planning can be summarised as follows:

- i. Information Gathering

- ii. Developing the Assessment
- iii. Drawing up the Child's Plan
- iv. Monitoring and Reviewing the Child's Plan

The first two of these stages are addressed in Chapter 3 of this Guidance; the third and fourth in Chapter 4.

2. INFORMATION GATHERING

[Schedule 1](#) of the 2009 Regulations sets out the minimum requirements for the information that needs to be gathered to inform a child's plan. The information can be gathered using the three dimensions of a child's welfare outlined in the GIRFEC approach, as follows:

- a) the child and how he or she is growing and developing physically, cognitively, socially and emotionally;
- b) whether the people responsible for the care of the child can meet his or her needs; and
- c) the child's place in his or her local network community and wider world.

Key elements to address therefore include:

- initial risk assessment;
- the child's development, needs and views;
- parents' or guardians' abilities, understanding, lifestyle and motivation;
- parent/child relationship;
- other key family relationships – siblings and kinship network;
- family environment;
- chronology of events in the lifetime of the child and significant information from before the child's birth;
- wider community links and supports.

As far as possible, the information gathering and assessment processes should involve the child, their family members and anyone else who has recently cared for the child or young person. Although previously gathered information gleaned from assessments may well be useful, **care should be taken to ensure that the information relied upon in the formation of a care plan remains accurate and up to date.**

The care plan is likely to be more accurate and supportive of the child's welfare if it draws from a wide range of relevant practitioners and individuals, such as Teachers and Health professionals. Information on educational and health needs are likely to be available from two important sources. The requirements set out in the [Education \(Additional Support for Learning\) \(Scotland\) Act 2009](#)

requires all looked after children to be given a multi-disciplinary assessment to identify any support they require. In addition, [Regulation 3 \(3\) \(b\)](#) requires the completion of a written assessment of the health needs of each child who is, or who may become, looked after. Scottish Health Boards are required by the Scottish Government (Chief Executive Letter 16) to implement procedures to perform Health assessments of all looked after children in their area and this should complement efforts by Social Work to undertake a health assessment.

3. DEVELOPING THE ASSESSMENT

Immediate Assessment

In urgent cases a comprehensive assessment may not be possible. However, for all children an assessment of their immediate needs should cover the elements required to discharge the authority's duty of care to the child. This might include the following areas:

- The specific needs or difficulties which gave grounds for concern, or are revealed through the assessment. This should focus on the nature of the needs or difficulties, the possible reasons for them, and the likelihood of improving the child's situation or behaviour either through the child becoming looked after or through any alternative forms of action.
- The availability of care, support, and guidance for the child from the family (including the extended family) which, where applicable, should be considered alongside the family's willingness to respond to the proposed intervention. The use of family group conferences is frequently helpful to consider in this context.
- The level and extent of the risk involved for the child (and, where offending is a factor, the risk to others) of remaining at home or moving to a different placement.

Assessments for Looked After Children

[Regulation 4](#) distinguishes between the child's immediate needs and his or her long-term needs. Even if a child remains at home, albeit under compulsory supervision, the change of legal status to becoming 'looked after' is a significant event.

In relation to every looked after child, regulation 4 indicates a number of areas that an assessment must cover, some of which apply at all stages from the point of intervention and others which relate more to longer term planning. Those that apply at all stages include:

- the proposals for safeguarding and promoting the child's welfare;
- the nature of services proposed;
- the matters listed in section 17(4) of the 1995 Act, namely: the child's wishes and views; the views of the child's parents, of anyone holding parental responsibilities in relation to the child and of any other person whose views are considered relevant by the local authority; and the child's religion, ethnicity, cultural and linguistic background;

- alternative courses of action, including kinship care;
- the need for any change in the legal status of the child.

Planning for Permanence

In the longer term, regulation 4 also requires the assessment to address the sustainability of the arrangements for the child and look ahead to what arrangements need to be in place when the child will no longer be looked after by the local authority. These are particularly mentioned in Regulation 4(1)(b) to (e), (h) and (l). These aspects will recur at later points in a child's progress through the looked after children system. If a permanence order is under consideration, the child's welfare throughout childhood must be addressed; and if adoption is contemplated, one of the principles to consider is the child's *lifelong* welfare.

From the outset in every case, there should be active consideration of the purpose of a child becoming looked after and of the possible outcomes. The broadest interpretation of 'permanence planning' covers *all* options, with the aim of securing a stable living situation for a child which meets his or her needs for consistent, sustainable, positive relationships, normally best achieved within a family setting. The normal starting point for the local authority is assumed to be the maintenance or return of the child to their birth parents, or kinship carers if this is not appropriate. Planning should therefore take account of all available routes to permanence, including returning home. In order to avoid prolonged uncertainty and delay, models of 'twin tracking' (where different options are explored and progressed simultaneously) should be considered.

A growing body of research suggests that particular attention is required regarding decisions to return a child home from a looked after setting. Without adequate planning and focus upon the factors that led to the child becoming initially looked after such returns home can prove short-lived and detrimental to a child's welfare. See also Chapter 8 of this guidance.

4. OPTIONS FOR LONG-TERM CARE PLANNING

The options for the time when a child no longer needs to be looked after or requires long-term care away from home include:

- for a child remaining at home, sufficient improvement in the parents' care of the child or in the child's behaviour that supervision is no longer required and the family functioning has stabilised;
- the child can return to parent(s) from kinship carers or local authority accommodation with evidence that such a move is safe and sustainable;
- there is a clear plan that return home is not safe or feasible but the child sees him/herself as a full member of their birth family and will require to remain with kinship carers on a permanent basis;
- there is a clear plan that return home is not safe or feasible but the child sees him or herself as a full member of their birth family and will require to remain looked after by the local authority until he or she is able to be independent and make choices for adult life;

- there is a clear plan that return home is not safe or feasible, the child’s relationship with the birth family is non-existent, tenuous, damaging or dangerous, and the child has the potential to become a full member of another family.

The aim of the long-term planning therefore is to explore which of these routes to permanence is most appropriate. At the outset, the local authority should be clear with parents, children, family members, carers and other bodies and organisations who have a role, that becoming looked after **is not an end in itself but is the start of a new process**, with the overriding aim of securing permanence for each child.

5. SPECIFIC CARE PLANNING CONSIDERATIONS FOR INFANTS

Particular attention needs to be given to planning for infants who require accommodation by the local authority immediately after birth and where such planning may start pre-birth. This is most likely to be the case where there is significant history of intervention with previous children.

The principles and tools developed in concurrent planning projects in other jurisdictions are useful in identifying the small number of infants where active exploration of permanence options away from the birth parents should be explored alongside potential rehabilitation. There is clear and robust worldwide research which shows that **effective planning for infants requires urgency**: a birth parent’s progress with overcoming drug or alcohol addiction, for example, needs to be achieved within a timescale that meets the developmental needs of a young child. For children under the age of two, this implies making firm decisions about permanence and the suitability of birth parents within a matter months.

Timescales and expectations about risk factors in parental behaviour need to be specific, transparent and child-focussed: birth relatives should always be clear about what needs to change by when. Although openness and honesty with all families is essential, it is likely that a local authority will best meet its duties to a young child in particular if its needs are given precedence over those of the birth parents to overcome their own difficulties. See also Chapter 4 of this Guidance.

6. SPECIFIC CONSIDERATIONS IN RELATION TO RESIDENTIAL PLACEMENTS

In relation to possible placement in a residential establishment, in addition to the overall assessment of the child’s case, the local authority is also required to assess whether a particular placement is appropriate for the child’s needs, taking into account the establishment’s statement of functions and objectives. **Each local authority should have such statements available for its own establishments and for others that it uses regularly.** It should be clear where these are held and where advice can be obtained on the suitability of particular residential establishments for individual children.

7. THE ELEMENTS OF A GOOD ASSESSMENT

It is good practice for assessments to have a strong evidence base and clear analysis. The following components can be found in high quality social work assessments:

- i. Assessments should be recorded in writing. These should distinguish between information gathered as evidence for the conclusions and the evaluation of that information.

- ii. This evaluation is the professional core of the assessment and is where the specific information is interpreted, weighed against the best available knowledge from research, 'good practice' models and overall criteria; and the balancing of all factors relating to the child's welfare occurs.
- iii. The assessment should conclude with an outline of options and clear recommendations. This will be the foundation for the child's plan.

8. THE IMPORTANCE OF PARTNERSHIP WORKING IN ASSESSMENT

Where the assessment has been prepared in partnership with the parents or carers and child, the content and recommendations should be explained to the family and fully discussed with them and the child. Even when co-operation has been limited, every effort should be made with parents and children to share as much as possible about the basis for intervention in their family life. Information should normally only be withheld wholly or partially when a child is unable to understand the assessment by virtue of his or her age or maturity, or disclosure to the parents, carers or child would breach confidentiality or cause harm.

Likelihood of change is increased when the key participants understand and acknowledge the need for that change and have had the opportunity to consider what will be involved in that process. Particular care should be taken when parents or children have additional challenges in understanding the content of an assessment, to ensure that they have time to absorb this. This includes when individuals have difficulty with the written word, have a learning disability, do not have fluent use of English or are extremely stressed.

Where key participants do not agree with the proposed outcome of the assessment, it should be noted in writing whether they disagree with the evidence, with the evaluation of that evidence, with the plan proposed as a result or with all of these.

CHAPTER 4– THE CHILD’S PLAN

RELEVANT REGULATIONS: 4 AND 5.

IN THIS CHAPTER:

1. Introduction: A note about the use of the term ‘Child’s Plan.’
2. The Contents of the Child’s Plan
3. Who needs to be consulted when preparing a Child’s Plan
4. Reviewing and Monitoring the Child’s Plan
5. The Range and Level of Services to be provided
6. The Child’s Development
7. Health
8. Education
9. Other aspects of development
10. Parental Involvement for all Looked After Children
11. Parental Responsibilities for Father and Others
12. Relevant Persons for the Children’s Hearing System
13. The Local Authority’s Relationship with Parents.

1. INTRODUCTION - A NOTE ABOUT THE USE OF THE TERM ‘CHILD’S PLAN.’

The use of the term ‘child’s plan’ in these regulations is within the context of ‘looked after’ children as defined in [section 17\(6\)](#) of the 1995 Act. However, in parts of Scotland the term ‘child’s plan’ may have wider application than solely in relation to looked after children. Some children who become looked after may already be subject to other planned interventions, for example in relation to health or education. These may be under a different title or be brought together under the heading of a single child’s plan. Please see the Scottish Government [GIRFEC website](#) for further details. Equally, when children are no longer ‘looked after’, other services may need to continue and these will require planning and coordination and this too may involve the creation of a plan, or the on-going use of an existing child’s plan.

Regardless of whether the term the ‘child’s plan’ is used in the specific context of these regulations, the same multiagency imperative remains, that of working together to provide a cohesive planned intervention and support to vulnerable children.

2. THE CONTENTS OF THE CHILD'S PLAN

The child's plan that the local authority must make for each looked after child, regardless of the particular legal status or where the child is living, should be based on the information found and made by the local authority under Regulations 3 and 4.

Requirements for those Looked After (including those living at home)

For every looked after child, including those living at home, the child's plan should set out the matters and arrangements specified in [Part I of Schedule 2](#). The Part I matters that *must* be set out in the child's plan for every looked after child are:

- The local authority's immediate and longer term plans for the child;
- Details of the services required to meet the care, health and education needs of the child;
- The respective responsibilities of the local authority; the child; any person with parental responsibility; any foster carer or kinship carer for the child; where the child is placed in a residential establishment, the designated manager of that establishment; and of any other relevant person.

Additional Requirements for those Looked After who are placed away from Home

For children who are being or have been placed away from home, the matters covered in [Schedule 2](#), Part II, *must* also be included in the child's plan. Placement may be with a kinship carer in accordance with [regulation 11](#); with foster carers in accordance with [regulation 27](#); or in a residential establishment. Part II of Schedule 2 has a list of matters to be covered, namely:

- The type of accommodation to be provided, the address and name of the person at that accommodation responsible on behalf of the local authority;
- The contribution the child's parents or any other person will make to the child's day-to-day care;
- Arrangements for involving the child and those contributing to the child's day-to-day care in decision-making;
- Contact arrangements between the child and any of the categories of persons in section 17(3)(b) to (d) of the 1995 Act i.e. parents; any person who is not a parent but has parental responsibilities and rights in relation to the child; and any other person whose views the local authority considers relevant. If appropriate, the reasons why contact with any of these people would not be reasonably practicable or would be inconsistent with the child's welfare (see also Section 5 of this Guidance);
- The expected duration of the arrangements for the child and the steps which should be taken in bringing the arrangement to an end, including arrangements for the return of the child to his or her parents or other suitable person.

3. WHO NEEDS TO BE CONSULTED WHEN PREPARING A CHILD'S PLAN

As part of the preparation for the child's plan, the local authority must "so far as is reasonably practicable and consistent with the best interest of the child" consult with the people listed in [regulation 5\(2\)](#). The child's plan should be made in writing and include the matters listed in [regulation 5\(3\)](#). A copy of the plan should be given to those listed in [regulation 5\(4\)](#), including the child where appropriate. However, [regulation 5\(5\)](#) says that a copy of the plan does not need to be given to parents or others when the local authority considers that it would not be in the child's best interests, taking account of their responsibilities under section 17 of the 1995 Act or in terms of any order, warrant etc.

Through seeking the views of affected people and consulting with them as much as possible, plans should be agreed with the following parties:

- the child or young person themselves, taking account of his or her abilities and level of understanding;
- those who have parental responsibilities and rights for the child;
- those who have charge of or control over the child at the time the arrangement commences; and
- anyone else the local authority considers "appropriate", including the prospective carers if these are not the parents.

Where a child is looked after because he or she is subject to a supervision requirement or an order, authorisation or warrant made under Chapters 2, or 3 of Part II of the 1995 Act or a permanence order, the parents or carers will have no choice about whether or not their child is looked after. **However, this should not generally preclude trying to reach agreement with parents or carers about the ways in which the plan is put into effect.**

Where a young person is 16 or over, arrangements to accommodate him or her may be made directly with him or her under section 25 of the 1995 Act and parents' agreement is not required to look after the child or young person. However, in practice, except where a young person is completely estranged from his or her parents, it will normally be beneficial to the young person to include his or her parents in the decision-making. In these circumstances, care needs to be taken not to undermine the young person's right to request accommodation or breach his or her confidentiality.

Whenever practicable, the plan for the immediate arrangements for the child **should be drawn up before the placement is made**. Otherwise it should be drawn up as soon as practicable after the child is placed. It should be reviewed, and where necessary adjusted, at the first and at subsequent reviews and/or if the child changes placement.

Where the child remains at home, or is accommodated and placed elsewhere at the request of parents, or is placed under a supervision requirement, permanence order, warrant etc, achievement of the child's plan is most likely where there is agreement between the local authority and the parents about the main matters in the plan. A signed written agreement will generally be the best way of signifying the parents' understanding and commitment to the plan. Where placement is contrary to the wishes of the parents, every effort should be made to be open and honest in

discussing the areas of disagreement. It may be helpful in some situations for the parent to record his or her agreement with some aspects of the plan but not others, rather than not agreeing the plan at all.

Where the child is of sufficient age and understanding, the child should also be a signatory of the plan. This is particularly relevant if the plan relates to a young person whose behaviour is the primary matter of concern. This may be more difficult to achieve, and sometimes inappropriate, where a child is required to live away from home on a supervision requirement.

4. REVIEWING AND MONITORING THE CHILD'S PLAN

The initial plan will primarily address the immediate arrangements to meet the child's care needs. It may require further assessment within a time limited period, defined in local authority procedures and monitored through reviews, to complete a comprehensive assessment. This may then raise more detailed and specific matters which have to be addressed to meet the child's longer term needs. Agreement to a more substantive plan for change can usefully be accompanied by a contract between the child if appropriate, the parents, and the local authority, including expectations of the concerns to be addressed, the services to be provided and anticipated evidence of progress.

In drawing up the child's plan, consideration should be given to the following points:

- what are the objectives of the local authority in looking after the child and is any change needed in legal status to achieve these objectives?
- can the objectives be achieved through the provision of accommodation by voluntary agreement with parents either as a single placement or as a series of short-term respite placements?
- is a supervision requirement or other legal order needed to achieve the objectives?
- if the child is to be looked after under a supervision requirement or other legal order, does the child need to be looked after away from home?
- if so, what type of placement is required?
- how long is it planned that the child will be looked after and what arrangements have to be made for the time when the child is no longer looked after?
- where it is agreed that the child is looked after away from home, what plans are there to restore the child to his or her immediate or extended family or, if this is not appropriate or achievable, to provide permanence in an alternative family or to provide support for the child to live independently?
- where it is agreed that the child is looked after away from home, what arrangements need to be made for contact, health care and/or education?

The child's plan should be a clear and focused document which spells out who will be doing what, and by when, in order to meet the objectives of the placement. It should address **both** what is necessary to ensure appropriate care for the child **and also** what needs to be addressed in relation

to the child's family and environment to secure a safe, sustainable and appropriate base for the child. It should outline the responsibilities of the local authority, the child, anyone with parental responsibilities for the child, and any other person the local authority consider relevant. For a child placed away from home, the responsibilities of his or her *carers* will be relevant. The objectives should be tangible and achievable.

The plan should be written in plain language, avoiding jargon, and convey to each party what is expected of him or her.

It should be a document that is monitored, reviewed and updated so that it remains relevant. The plan should help to ensure that the child is only looked after for as long as is necessary and beneficial for him or her.

5. THE RANGE AND LEVEL OF SERVICES TO BE PROVIDED

A: TYPE OF PLACEMENT AND MATCHING

For each child, consideration needs to be given to the type of placement and services which will meet his or her assessed needs. Wherever practicable, prior to making a placement when a child is to be placed away from home, the local authority should find out the views of the child and his or her parents about the type of placement which they feel will meet their needs. The child's extended family and friendship network should normally be the first option considered for a potential placement. **This is addressed more fully in Chapter 9 of this Guidance.** However, it will not always be possible to consider kinship carers in short or even long-term planning, and arrangements for and placement of a child **should not be delayed** because appropriate kinship carers are not available.

If a choice of placement is available, the local authority should apply their own criteria for the selection of the placement and also consider how the views of the child and their parents are taken into consideration. **The placement of a child away from their family in a stranger's home is one of the most important interventions that can be made in a child's life.** Consequently, the decisions we make regarding where a child is placed must be based upon the best available evidence, both about the child and the foster carer or residential provider.

Local Authorities should develop their policies and procedures to ensure that the needs of the child are appropriately matched with the proposed placement, and that any gaps or shortfalls – for example, in relation to a child's religious or cultural needs – are appropriately addressed in the type of support and advice provided. Any needs arising from a child's disability or learning needs also require specific consideration at this stage. For older children in particular issues of gender and sexuality may also be relevant. The level, frequency and location of contact with family members and others will always be a particularly important area to consider at the point of placement. See also Chapter 5 of this guidance.

Once a suitable placement has been identified, wherever possible an introductory visit should be made by the child and parents as part of planning the move. If this is not possible, the child and their parents should be provided with information about the carers, e.g. through a carers' book.

Placement in Residential Care

Where the child needs placement away from home all options should be considered in light of the needs of the child, set out in the care plan. This is likely to mean placing with kinship carers, foster carers, in residential care or suitable alternative care placements.

In making a placement decision, the age of the child should be seen as one of a range of important factors which determine the best option. It is important that the right placement is chosen from the beginning and ideally this should also be a place which can offer permanence to a young person in care.

Making an effective first placement – which offers stability, safety and a nurturing environment – reduces the risk of placement breakdown. However, where a young person has experienced placement breakdowns, careful consideration of the reasons for the breakdown is required before a further placement is decided.

Some young people may express a view that they prefer residential care to foster care. This view should be carefully considered, given that an enforced placement is unlikely to work. Some young people need specialist, educational or therapeutic services provided in the place where they live. A very small number of young people will need secure residential care because of risk factors.

Before placing a child in a residential establishment, the local authority should seek and take account of the views of the child, his or her parents, other people with parental responsibilities and any other person deemed relevant by the local authority. The local authority should also be satisfied and continue to monitor that the stated functions and objectives of the establishment, as far as practicable, meet the assessed needs of the child and, where appropriate, his or her family. This is particularly important where a child has been identified as requiring specific therapeutic services.

Strategic Commissioning

The launch of the National Residential Child Care Initiative reports and the response by the Scottish Government set out a range of issues and ideas to help local authorities efficiently and effectively provide services for children in care. In particular, local authorities will want to adopt a strategic commissioning approach to the provision of services – starting with a analysis of their population and future needs, and working with partner organisations – to determine what profile of services are needed over time and to seek value-for-money arrangements with providers on this basis. Strategic commissioning has the potential to reduce the use of expensive ‘spot purchasing’ and to ensure sufficient capacity for the range of care placements needed is available when needed.

B: OTHER SERVICES

Regardless of the type of placement, or if children remain at home on home supervision, consideration should be given as to whether there are additional services which will benefit the children. In some particularly challenging placements, the provision of well planned respite may help to sustain the main placement where this is consistent with meeting the needs of the child. Children may need counselling, psychological, or psychiatric services to help overcome the effects of previous deprivation or abuse. As outlined above, children may need additional help to maintain their ethnic, religious, cultural and linguistic identity, particularly if it has not been possible to

achieve this fully within the placement. Children who commit offences may need to take part in programmes which discourage re-offending.

One particularly important dimension of the child's plan is working with the family. This is the child's plan and as such emphasis is on services for the child. However, part of the overall plan may be about the need for:

- change in parental lifestyle;
- additional support to compensate for parental vulnerabilities;
- development of parenting abilities;
- changes to the home environment for the child's benefit.

Some services may therefore be appropriately focused on adult needs and draw on other statutory, voluntary or independent services. Where such services are involved in the child's plan, it needs to be clear that, while subsequent decisions may take into account progress made by parents to improve their circumstances or functioning, the local authority retain the responsibility to assess whether such changes will be sufficient to allow a child to return home. **The child's well-being remaining central.**

The child's plan should indicate the anticipated duration of supervision and/or placement. After a child ceases to be looked after, he or she may remain 'in need', and, along with the parents or carers, may well still require services. This is the case whether a child returns to their birth parents, is granted permanence with a carer or is adopted.

6. THE CHILD'S DEVELOPMENT

The Regulations make a number of references to health and educational services. Much of this is about ensuring the appropriate transfer of arrangements for services. Effective intra and inter agency collaboration requires:

- a shared understanding of the tasks, processes, principles, and roles and responsibilities outlined in national guidance and local arrangements for protecting children and meeting their needs;
- good communication between professionals, including a common understanding of key terms, definitions and thresholds for action;
- effective working relationships, including an ability to work in multi-disciplinary groups or teams; and
- sound decision-making, based on information-sharing, thorough assessment, critical analysis and professional judgement; and
- multi-agency training as an essential component in building common understanding and nurturing good working relationships.

Children who have experienced loss and separation may have complex needs requiring a co-ordinated response across a range of professional disciplines. The child's plan therefore needs to be genuinely multidisciplinary, embodying the principles of effective corporate parenting.

7. HEALTH

Children in care are vulnerable to poor health outcomes, in part because of experiences prior to entering the care system. We know more and more about the impact of neglect and adverse experiences upon physical development, including the development of the brain. Children in care are vulnerable to mental health problems: recent research has identified that children who suffer early neglect are up to ten times more likely to have a conduct disorder; up to twelve times more likely than other children to have post traumatic stress disorder; up to three times more to suffer from significant depression. Immunisations are often overlooked by chaotic or neglectful parenting: children who come into care may never have seen a dentist. Common health conditions – such as eczema or asthma – may have been overlooked or poorly treated by birth parents.

Unfortunately, without appropriate focus on this important area, the care system can fail to address these early life inequalities – some issues linked to brain development in particular can negatively affect a child throughout their entire adult life. Children in care have been found to be more than twice as likely as other children to miss out on immunisations; medical records sometimes fail to follow a child's journey through different placements in different locations in a timely way, leaving essential information lacking for foster carers and residential providers offering day to day care.

Local authorities, as corporate parents, should act as good parents would in relation to the health care of children who are looked after by them. Children's plans should fully reflect health care needs and should include health promotion, healthy lifestyles and general surveillance and assessment of developmental progress, as well as treatment for illness and accidents. Where children are on home supervision, health care will often be an important element in their plans and local authorities should work with parents to promote and maintain children's health. It is the responsibility of local authorities, and part of carers' tasks, to educate young people to understand the importance of health care and **to take increasing responsibility for their own health.**

When drawing up a plan for a child placed full time away from home, local authorities should ensure that the child is provided with good health care based on a robust assessment of his/her health needs. In many local authorities, responsibility for overseeing this will be carried out by LAC nurses and procedures need to be in place to facilitate their involvement. Consideration should be given to continuity of care, and where possible, **the child should retain the same GP, dentist and optician.**

Local authorities and child health specialists should make arrangements for professional advice to be available to local authorities and to carers, to interpret health reports and information, assist in preparing and reviewing the arrangements for health care and assist in decisions relating to children's care. Local authorities need to decide, in consultation with local child health services, what is the best way to monitor the health of looked after children and what notifications will be required to the relevant services to achieve this. For some children, there may also be a requirement for medical examination or assessment as part of a supervision requirement.

Issues relating to Consent

Local authorities should have information and procedures about consent to medical examination and treatment of children who are placed away from home. These should be known to the child health services, parents, children and the children's carers in each case. The arrangements for medical consent should be set out in each child's plan where a child is placed away from home. These will vary according to the legal status of the child, the age and understanding of the child and whether the local authority does or does not have parental responsibilities for the child. **Parents, where they have parental responsibilities and the child is placed away from home, should be asked to sign a general medical consent form, giving permission for medical and dental procedures and treatment for the child, without delay or confusion.** It is helpful if this includes consent to any specifically recommended immunisations.

However, depending on the age and capacity of each child, it must be remembered that a young person under 16 has the right to consent to his or her own medical procedures and treatment, when the medical or dental practitioner considers him or her to be capable of understanding the nature and consequences of the procedure or treatment. This is in terms of section 2(4) of the [Age of Legal Capacity \(Scotland\) Act 1991](#). Therefore, for an older looked after child, parental or other consent will *only* be necessary when the doctor considers that the child is not capable of consenting. It remains good practice to include parents and/or carers in discussions, provided the child agrees to this. Children and young people should be supported and encouraged to access health services and attend appointments with GPs, dentists and opticians.

Where a child is placed with foster or kinship carers, it is possible for the foster carer to give consent to a specific surgical, medical or dental treatment or procedure, where the child is not of sufficient age or maturity to give his or her own consent and the carer has no reason to think the parent would refuse to consent. This is a useful power in emergencies, or where the treatment or procedure is minor, or where a parent cannot be found. **Foster carers should, however, be discouraged from giving consent where the treatment or procedure is major or where there is no great urgency.** Parents, should as far as possible, be consulted prior to such treatment or procedures. [Section 5 Children \(Scotland\) Act](#) provides for situations where parents or those with parental rights and responsibilities are not available so that someone who has the care and control of the child (without these responsibilities and rights) may give consent to any surgical, medical or dental treatment.

There may be occasions when parents for religious or other reasons refuse consent to a medical treatment and the child is not of sufficient understanding to make the decision. If the local authority is of the opinion that the child would suffer significant harm if examination or treatment does not occur, and if the child is already subject to a supervision requirement, a Children's Hearing may be asked to consider a condition about medical treatment etc, and this would overrule parental non-consent. If the child is not subject to a supervision requirement, the local authority may refer the case to the Principal Reporter or seek a child assessment or child protection order. Another option is for a Health Board, NHS Trust or other organisation, or another person such as a foster or kinship carer, but not the local authority, to apply for a "specific issue order" under [section 11 of the 1995 Act](#), to ensure that necessary medical examinations and treatments are available to the child.

Young people of 16 and over have full adult capacity and should be asked to give their own consent to medical examination or treatment. If a young person of 16 or over is not capable of consenting,

this is a matter of adult legislation and will need to be dealt with under the Adults with Incapacity (Scotland) Act 2000. As indicated above, children under 16 may also be able to give or refuse consent, depending on their capacity to understand the nature and consequences of the treatment. It is for the medical or dental practitioners to decide this. And in every case, children should be encouraged to express their views to the doctors, etc concerned. Children who are judged able to give consent cannot be medically examined or treated without their consent and this cannot be overridden by a supervision requirement or a warrant or order (section 90 of the 1995 Act).

Health Records

An accurate and up-to-date health record should be maintained as part of the record of every child placed away from home on a full time basis. This should record medical assessments, illnesses or accidents suffered by the child, medical, operative, psychiatric, psychological, dental or ophthalmic treatment and operations received or carried out, and all immunisations. The health record should also include any form(s) indicating parental consent to treatment. The child's health needs should be monitored through the ongoing review process.

8. EDUCATION

Despite some recent improvements, the educational attainment of Looked After Children remains unacceptably low. Only a very small minority of Looked after Children, for example, enter higher education. In part, this can be explained by the difficult experiences children have often had *before* coming into the care system. All too often, though, the care system fails to prioritise educational attainment for children, giving little thought to disruptions to schooling when changing placements, for example, or failing to advocate for children with schools fail to meet their needs in the way that an effective and interested birth parent would. Social work departments and education departments have a shared responsibility to fulfil their statutory duties including those for looked after children and for children with additional support needs.

Children who are looked after should have the same opportunities as all other children for education, including further and higher education, and access to other opportunities for development. They should also receive additional help, encouragement and support to address special educational needs or compensate for previous disadvantage and gaps in educational provision.

Educational and wider developmental needs should normally be addressed in the child's plan. When a child becomes looked after, the first step is to establish whether there are any arrangements or provisions or a co-ordinated support plan in place under the Education (Additional Support for Learning) Scotland Act 2004, as amended by the Education (Additional Support for Learning) Scotland Act 2009. For further information on Additional Support for Learning please see the [Scottish Government website](#).

These 2004 and 2009 Education Acts provide a single structure for children who require additional support to make the most of their education. Such support can start from very early on, just after birth if children have a disability, and cover all types of reasons why children may struggle in education, not just specific learning difficulties. **Looked after children should be considered as having additional support needs solely on the basis of their looked after status, even if there are**

no other reasons. Social workers responsible for looked after children should be as familiar as parents with both requesting an assessment and also the various arrangements that can be made through provision of a range of supports, personal learning plans, individualised educational programmes and co-ordinated support plans. Strong links should also be formed and sustained with designated teachers for looked after children in schools, and with others in the authorities' education department responsible for additional support needs services and for looked after children. In planning for the child, local authorities should have regard to continuity of education, take a long-term view of the child's education, provide educational and developmental opportunities and support and promote potential and achievement.

Local authorities should, in most cases, act jointly with parents in relation to the education of children who are looked after on a full time basis away from home. The aim will be to ensure that the child receives the support he or she needs to achieve his or her full educational potential. When a child is subject to supervision at home, education will often be a significant element in the child's plan and the local authority should aim to work with parents to promote the child's education.

Local authorities should notify all placements to their education department or the education department of another local authority where children are placed out of their 'home' local authority area. There should be notification about all placements, except for those which are intended to last for less than 28 days. Information should reach those who need it in good time, especially schools. Special support may be needed where a change of school cannot be avoided.

Carer and Parental Responsibilities

Local authorities should ensure that the carer's responsibilities towards the child are understood by the school. Carers may exercise the parental role in relation to the school in day-to-day matters such as attending parents' evenings or receiving school reports, but there will be many cases where parents continue to play that role or where the role is shared. It is up to the social worker to clarify such arrangements with the school following discussion with all parties.

Carers have a major contribution to make to a child's educational progress and development. They are in a good position to identify the child's capabilities and any difficulties, fears and developmental needs. With the help of the carer, and through school reports and direct contact with the school, the child's educational progress must be kept under review along with other aspects of the child's welfare. Difficulties should be addressed and help provided, including, where appropriate, access to specialist services within the local authority's educational provision. If a child is excluded from school, the local authority and/or the parents should pursue all the avenues open to them to try to get the child re-instated. Also, any child, with the capacity to be his or her own legal representative, should be encouraged and supported to exercise his or her own rights to take steps, **including appealing against any exclusion.** If re-instatement in school proves impossible, and the child is permanently excluded, the local authority should ensure that the child receives appropriate education as soon as possible.

9. OTHER ASPECTS OF DEVELOPMENT

Some children can be overwhelmed by the negative experiences they have had and never fully recover, whereas others, who have experienced similarly difficult events, seem to be able to recover

and move on. A growing body of research explains these differences in terms of resilience. A resilient young person seems able to overcome adversity and maintain a positive sense of their own identity.

We know that **friendships and a strong, trusting relationship with at least one adult can be important protective factors that help to build resilience**. We also know that encouraging children to develop particular areas of interest and promoting their talents can play a significant role in developing their self-esteem. For children used to high level of criticism or neglect this may be their first experience of being told they are good at something: foster carers and residential staff often report how the impact of this can be startling and life-changing.

Children should be encouraged and given opportunities to develop and pursue leisure interests and any special gifts they may have. They also need opportunities to share in activities with their peers and develop both their social skills and their talents to increase their self-esteem. With the child's agreement, supplementary educational opportunities could be arranged if these would help the child overcome past disadvantages, help develop a particular interest or talent or maintain his or her culture and language. Even where a child is looked after or placed for a relatively short period, the aim should be to provide opportunities for development so that the child can benefit as far as possible from the placement, and to identify the help the child may need to sustain new interests on return home.

The local authority has a responsibility to address the child's moral and spiritual needs. Where a child is placed away from home, the social worker and the child's carers should discover whether the child practised any aspect of his or her religion when he or she was at home and provide opportunities and encouragement for this to continue.

10. PARENTAL INVOLVEMENT FOR ALL LOOKED AFTER CHILDREN

Inevitably there is variation in the extent to which parents and others are involved in and contribute to the care of a looked after child, particularly when the child is placed away from home. As a general rule, parents should be helped to exercise parental responsibilities and rights in close relationship with the local authority, provided this is compatible with the child's welfare. [Regulation 2](#) defines "parent" as "either the mother or father of the child or both". The home situation of many children who become looked after may be complex and issues may emerge about a variety of matters such as:

- the genetic parentage of a child;
- who has parental responsibilities and rights; and
- the day-to-day experience of parenting as perceived by the child.

11. PARENTAL RESPONSIBILITIES FOR FATHERS AND OTHERS

Paternity can sometimes be complex issue for Looked After Children. For example, the same child may have one person named as the genetic father (agreed or alleged), a second person who has acquired parental responsibilities and rights, and a third person who has carried out the parenting

role and is known to the child as his or her 'father'. It is important to establish as much as possible about the parentage of a child as a basis for understanding and deciding:

- practical issues about involvement in planning and access to information;
- important relationships for the child;
- issues around legal status and future plans where parental responsibilities and rights may be relevant; and
- ways of helping the child understand the family circumstances, now and in the future.

A man automatically has parental responsibilities and rights for the child if:

- he was married to the mother at the time of conception of the child or later, provided he is the genetic father; or
- if the child's birth was registered **on or after 4 May 2006** and his name is shown on the birth certificate as the father, whether he is married to the mother or not.

Otherwise, a father does not automatically have parental responsibilities and rights for the child. If he is named on the birth certificate but the birth was registered **before 4 May 2006**, he does not automatically have parental responsibilities and rights.

However, where a father does not automatically have parental responsibilities and rights, he can acquire them. Many fathers do this before or after a child becomes looked after. The main ways in which a father may obtain parental responsibilities and rights are:

- marry the mother, provided he is the genetic father;
- enter into an agreement with the mother under [section 4 of the 1995 Act](#) ("a section 4 agreement"), provided he is the genetic father;
- obtain a court order for them under [section 11 of the 1995 Act](#);
- be named in the mother's will as the person who is to have parental responsibilities and rights, **and** she has died, [section 7 of the 1995 Act](#).

Other people, such as grandparents, may also acquire parental responsibilities and/or rights through an order under section 11 of the 1995 Act, or by will. Sometimes a section 11 order is only about contact and/or limited responsibilities and rights. Such an order does not give full responsibilities and rights, but the father or other person must be treated as having some parental responsibilities and/or rights, and their position must be respected. In particular, if plans are being considered for permanence or adoption, a father with contact or other limited parental responsibilities and rights will have the right to consent or not consent to adoption, and he must therefore be treated in the same way as if he had full responsibilities and rights.

Others with a close relationship with the child, even though they do not have parental responsibilities and rights, may also have a role to play, depending on the child's circumstances. This will entail exploring the nature and origins of the relationship with the child; the extent of the

involvement; how the child views the person as expressed either verbally or observed through their behaviour when they meet, and the potential of the person for positive and sustained involvement with the child in the future.

12. RELEVANT PERSONS FOR THE CHILDREN'S HEARING SYSTEM

Being a "relevant person" for a child in the Children's Hearing system is not the same as having parental responsibilities and rights, although there is an overlap. The definition of "relevant person" is in section 93(2)(b) of the 1995 Act as amended by Schedule 2, para 9(8) of the 2007 Act. In 2010, this was extended by two judgements, *Authority Reporter -v- S* 2010 SLT 765 and *Principal Reporter v K and others* [2010] UKSC 56.

As a result of these changes, section 93(2)(b) now defines a relevant person as:

(a) any parent enjoying parental responsibilities or parental rights *or a right of contact in terms of a contact order* under Part I of this Act;

(b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and

(c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child *or who appears to have established family life with the child with which the decision of a children's hearing may interfere.*

This suggests that a relevant person is:

- any parent who has parental responsibilities or rights automatically under the 1995 Act, **or** through a section 4 agreement, **or** as a result of a court order made under section 11, including a contact order, **or** as a result of a will when the mother has died;
- anyone who ordinarily (and other than by reason only of employment) has charge of, or control over, the child;
- anyone who appears to have established a family life with the child, although a hearing may hold that he or she has not established this;
- anyone, including the local authority, who has parental responsibilities or rights as a result of a permanence order under the 2007 Act.

A father, or someone else such as a grandparent, may be a "relevant person" for hearings if he has been living with the child and/or caring for a child, but not have responsibilities or rights. Foster carers who have a child placed with them for more than a short time will become relevant persons – this is a matter for the hearing system to determine. Similarly, when a child who is subject to a supervision requirement is placed with prospective adopters, they will become relevant persons.

Being a "relevant person" in the hearing system does not give parental responsibilities or rights to someone who does not otherwise have them.

13. THE LOCAL AUTHORITY'S RELATIONSHIP WITH PARENTS

A positive relationship with parents is not always easy to achieve, and consensus will not be possible in every circumstance since the child's welfare must remain paramount. However, the following will increase the chances of developing a successful relationship with parents, and local authorities should develop guidelines for staff covering areas such as:

- provision of both written and verbal information to parents at every stage of the process;
- the maximum amount of participation by parents in decision-making that is consistent with the child's welfare, including advice and support to participate in meetings;
- making meetings accessible and comprehensible to parents;
- managing situations which are potentially acrimonious or where this may be difficult for children. For example, if a parent is not invited to a meeting to which it is usual to invite the parent, the reason for this should be recorded on the child's file;
- providing a regular, consistent, and reliable service to parents which does not just focus on meetings;
- considering ways in which parents may be able to contribute towards the child's care in practical ways.
- being clear about the possible outcomes for the child, for example, that they may not return to the parents' care.
- where permanence away from the birth parents is likely, working with the parents to help them understand this and to accept such an outcome during and after the care planning process.

Parents will often wish to be consulted about certain aspects of their child's care even if they do not intend to be directly involved: for example, hairstyles. It may not always be appropriate to include this level of detail in the child's plan but the social worker should ensure that the parents, carers and child, if old enough, are aware of the decisions and actions where consultation is needed.

Agreed Early Consent

When a child is looked after away from home in particular, a range of decisions will need to be made about the day to day care and support of the child or young person. There is a risk of disruption to the care environment and to the relationship between the carers, local authority and parents if consent on each issue is not clear. It is considered good practice therefore for a full list of common situations about e.g. hair cuts, dentistry treatment, ear piercings, to be considered as early as possible once the child becomes looked after and consent agreed by the parties at that stage. Where this is done by mutual consent, the parents would normally retain the right to withhold consent on a given issue subject to the overriding provisions within the Act and Regulations.

CHAPTER 5 - CONTACT

Relevant Regulations: 4 and 5

IN THIS CHAPTER:

1. Introduction
2. Contact as legally defined
3. The Purpose of Contact
4. Planning Contact
5. Restriction of Termination of Contact
6. Siblings or Children in the Same Family

1. INTRODUCTION

Contact is a legal term used to describe the maintenance of a relationship between two people. A Contact Order, for example, determines the duration and frequency of contact, often between a child and a birth relative. For Looked After Children the term is often used to describe the need to maintain a relationship with members of their birth family, but in its broadest sense contact may also apply to the child's wider family, previous foster carers or staff from residential settings, former teachers or counsellors, friends from another area where they lived in the past; anyone, in fact, who has played a significant role in the child's life.

Without specific attention we know that contact arrangements tend to wither over time, with the result that children leaving the looked after system are often isolated and lack the support networks that other young people take for granted.

2. CONTACT AS LEGALLY DEFINED

When a child is looked after, the local authority have a duty under [section 17\(1\)\(c\)](#) of the 1995 Act to take steps "to promote on a regular basis, personal relations and direct contact between the child and any person with parental responsibilities". **However, this is not an absolute duty.** It is qualified, because a local authority should make arrangements so far as they are practicable and appropriate, and taking account of their duty to safeguard and protect the child's welfare as their paramount concern.

Where the local authority are considering placing a child away from the birth parents, with kinship carers or foster carers or in a residential establishment, [regulation 4\(3\)](#) and (4) say they must assess the child's need for contact with:

- the parents;
- family members;

- anyone else with parental responsibilities or rights; and
- “any other specified person”.

Regulation 4(6) says that a “specified person” is someone with whom the child has contact as a result of a court order or a supervision requirement or Children’s Hearing warrant.

The local authority’s general duty about contact, section 17(1)(c) of the 1995 Act, refers both to direct contact and to maintaining personal relations. This indicates a responsibility not just to enable contact to happen, but also actively to encourage and facilitate it, provided it is practicable and appropriate, taking into account a child’s welfare. The responsibility under regulation 4(3) and (4) to assess contact arrangements covers the range of people listed above, including any other “specified person”. As part of their overall enquiries, the local authority should check if there are any contact orders already in existence, for example under section 11 of the 1995 Act. They should also find out if anyone in the child’s family or wider network is seeking a contact order with a child who is, or may become looked after. This will also include checking whether there is any information in their records about any contra-indication to this contact.

Whenever statutory orders are made to remove children from the care of their parents, the Sheriff or the Children's Hearing may make conditions or orders determining with whom children may have contact, and its frequency. The 1995 Act allows children and/or any 12. Relevant **PERSONS** ” to ask for a review of conditions or orders, whether they are short or long-term ones. Where there is evidence of serious risk, conditions or orders can also include prohibition of contact or restrictions on its nature.

Orders etc under the 1995 Act where contact may be covered include:

- child assessment orders;
- child protection orders;
- warrants from Children’s Hearings;
- supervision requirements with a condition that the child lives away from home; and
- private law orders under section 11.

Permanence Orders may also include ancillary provisions about contact. Birth parents and others with an interest may go back to court to ask to have ancillary provisions varied, although they will need leave from the court to go ahead with a full application.

A Parental Responsibilities Order (“PRO”) granted under section 86 of the 1995 Act, became a “deemed permanence order” when the 2007 Act came into force on 28 September 2009. Any PRO granted after that date is automatically also a “deemed permanence order” when it is made. A “deemed permanence order” is described in the transitional provisions, in article 13(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009, SSI 2009/267. It has ancillary provisions and these will include any contact condition attached to the original PRO. Birth parents and others with an interest may go back to

court about a “deemed permanence order”, to ask to have ancillary provisions varied, although they will need leave from the court to go ahead with a full application, article 15 of the 2009 Order.

3. THE PURPOSE OF CONTACT

From the outset, it is important to discuss the purpose of contact with birth parents, both from the perspective of the child and also as part of the plan to work with the family situation. It is very easy for parents to be drawn into the ‘rights’ debate without really understanding all the potential opportunities of well managed contact. At all points in planning for a child, the relationship between child and parents is central. Where a relationship is largely positive, contact will be an important part of helping the child through a separation. The circumstances leading to the child being placed may have put strain on that relationship, so contact can be an opportunity to refocus on the positive aspects. For other parents, contact may provide a space to work on less positive aspects of their relationship with their child or learn new skills and approaches to this. This requires support to all parties.

Observing some of the contact in the early stages of separation is a valuable part of understanding a child’s relationships and therefore part of the assessment. It should highlight the valuable aspects of the relationships which can be built on; and also offer evidence of negative or dangerous factors in contact which must be assessed more fully in order to decide if contact should be suspended or terminated. Observation and support during contact should be differentiated from any need for supervision; and the role of any other person present for all or part of the contact explained to participants. This needs to be balanced with opportunities for personal time together.

It is important that foster carers and residential staff are clear about the purpose and frequency of contact, **and understand which elements of the proposed contact arrangements lie within their discretion and which issues require further consultation with the local authority.**

4. PLANNING CONTACT

The assessment of the child should include full consideration of the value of continuing contact with parents and others, and the purpose and frequency of this contact should be outlined in the child’s plan.

The plan should be modified where there are clear signs that restriction or termination of contact is necessary, either to protect the child from physical or emotional harm, or to ensure the long-term welfare of the child. This should be based on careful observation and full consideration of all the factors, including the views of the child. Contact, however occasional, may continue to have a value for a child even when there is no question of returning to the family. Such contact can keep alive a sense of origins for a child; may keep open options for family relationships later in life; and may re-assure a child about the well-being of the people concerned.

Contact in its broadest sense extends beyond face to face meetings to include the exchange of letters, telephone calls, gifts and photographs. Looked After Children often express the wish to share ‘big news’ or recent successes rather than comply with the expectations of a rigid contact plan. Similarly, Social Workers and carers should also be vigilant about the unpredictable potential and implications of contact via social networks or mobile telephones.

The issues and dilemmas of contact require careful consideration regardless of the duration of the placement, from short-term placements right through to adoption. The first weeks of a placement can set the tone for contact arrangements when a child is looked after, and specific consideration should be given to contact for emergency admissions to ensure that obstacles to appropriate contact are not inadvertently established at the outset of the placement.

Contact in the Foster Home

Foster homes may be appropriate venues for contact. Foster carers often play a role in facilitating contact and subsequent reunification. However, the foster carers' home is usually a family home and they, their children, and any other foster children also need time to get on with daily life. Contact arrangements or recommendations for contact conditions or orders should always be subject to consultation with foster carers. The same considerations about the use of a child's home for contact applies to the residential setting as it can be very difficult for children who do not have any contact with their own family to see other children with their families or feel that the communal space is always being used for "meetings".

Contact when placed with another agency

If a child is placed with another agency, the local authority should ensure that there is a clear agreement with the agency about arrangements for contact. Responsibility for the child's welfare remains with the placing local authority. The other agency will normally have the responsibility for ensuring that agreed contact arrangements are implemented. The local authority should, with the agency's help, keep the child's contact with his or her family under review. Any decision to alter or restrict contact arrangements is for the local authority, in consultation with the agency, subject to any supervision requirement or court order.

Monitoring Contact Arrangements

Authorities should monitor the implementation of the proposed contact arrangements. Records should be kept to remind social workers of decisions taken earlier and to give a new social worker a full picture of the plan for the child. Social workers should check regularly whether the degree of contact with parents and others envisaged in the plan is happening in practice, and whether it fulfils a purpose consistent with the plan for the child. Any progress or problems should be discussed with the parents and the carers. It may be necessary to discuss with parents the possible implications of an inadequate or unpredictable level of contact for the child's future.

Contact with others, including friends

Both in the early stages of placement, when holding on to familiar contacts is reassuring, and for children who spend prolonged periods looked after away from home, contact with siblings living elsewhere and with other extended family members and friends needs similar attention as contact with parents. In surveys of the opinions of Looked After Children they are keen to emphasise how friendships are often sacrificed or overlooked when placements change.

Where a relationship which is the subject of contact arrangements spans multiple local authorities across Scotland, the UK or internationally, these factors should not be given undue weight in determining what arrangements are appropriate.

5. RESTRICTION OR TERMINATION OF CONTACT

Where contact is not reasonably practicable and/or would be inconsistent with the child's welfare, the reasons for this should be recorded. Any risk to a child from contact with parents must be assessed and a decision may be taken that contact should be supervised. Consideration must be given in these situations to the appropriate arrangements for such contact, including safe venues and sufficient people to ensure that contact can be as relaxed as possible within the necessary confines. The reasons for supervision and any conditions that may affect the continuation of the contact should be explained to the parents and the child.

Local authorities should discover and monitor a child's wishes about continuing contact with his or her parents and other family members. Social workers should, particularly in cases where the child is unsure about contact, try to help the child to clarify his or her views, and to understand what is likely to be of greatest benefit to him or her, both in the immediate and in the long-term. If a child who understands the situation continues to insist that he or she wishes to have no contact, or only limited contact, the local authority should consider taking the necessary steps to restrict or terminate contact. The full responsibility for decision-making should not, however, be laid upon the child.

Because of their responsibility to give paramount consideration to the welfare of the child, authorities should not avoid or defer difficult recommendations or decisions when it is clear that it is in the best interest of the child that contact should be restricted for the foreseeable future or terminated altogether. However, in both of these circumstances non face-to-face contact may still be in the child's interest. **Authorities should have procedures, involving senior members of staff, for reaching such recommendations or decisions. Looked after reviews should be called to consider such recommendations, except in an emergency.** Termination of contact should not always be permanent. As children mature and/or recover from traumatic events in their lives, their views about contact and their ability to benefit from it may change, and a dynamic approach to the planning of and consideration of contact is required.

If contact appears to be damaging a child who is accommodated by voluntary agreement with parents, and the parents are committed to its continuation, the case may need to be referred to the Principal Reporter for a decision as to whether there are grounds for referral; or to a court if the Local Authority think a Permanence Order is appropriate.

6. SIBLINGS OR CHILDREN IN THE SAME FAMILY

In terms of regulation 4(5), Local Authorities should try to ensure that siblings (children in the same family) are placed together, except where this would not be in one or more of the children's best interests. Where this proves impossible, they should, wherever possible, be placed near each other. The views of each child should be ascertained, as far as is possible given their age and understanding. The regulation uses the term "any other child in the same family" rather than sibling. This highlights the need for awareness of the child's view of 'siblings'. Many families have complex structures with full, half and step siblings and research has shown that children's perception of brothers and sisters and who is in their family is rooted as much in their living experience as biological connectedness.

In order to provide sufficient placements for sibling groups, a strategic approach to placement of children and the recruitment of foster carers is essential. Specific recruitment activity with a focus upon the need to keep siblings groups together may be required. Local authorities should consider recruitment of carers in the wider context of strategic commissioning and how this can help ensure sustainable levels of carers and care placements are available and are available when needed.

Where it is not in children's best interests for them to be placed together, or this has proved unachievable, then it may still be appropriate for frequent contact to be maintained. This should be recognised in its own right and not purely as part of contact with parents. **Where siblings are placed separately, reunification should be considered at the first and all subsequent reviews, particularly where separation was dictated by a shortfall of placements.**

In a small number of situations, the relationship between siblings may be inappropriate or harmful. For example, an abusive family may not have established appropriate sexual boundaries, or excessive sibling rivalry may undermine a child's sense of self-esteem or aggravate their challenging behaviour.

Recent fostering and adoption studies have found higher placement disruption rates for looked after children when one of their siblings remains at home with the birth family. Social workers should be alert to this risk factor, and take steps to help the looked after child understand why it is that they come to be looked after while their sibling remains at home.

CHAPTER 6 – THE DEATH OF A LOOKED AFTER CHILD

RELEVANT REGULATION: 6

IN THIS CHAPTER:

1. Introduction
2. Notifying the Scottish Ministers
3. Notifying Parents and other Relevant Persons
4. Arrangements for the Funeral
5. Support of Staff and Carers involved with the Child and Family

1. INTRODUCTION

Under [regulation 6](#), a local authority is required to notify the Scottish Ministers immediately in the event of the death of a child who is looked after by them. Also, they must, so far as is reasonably practicable, notify every parent of the child and every person who has any parental responsibilities or parental rights in relation to the child, except where the child is living with such a person.

2. NOTIFYING THE SCOTTISH MINISTERS

If **any** looked after child or young person dies (whether he or she was living at home or was placed away from home) the local authority looking after the child must notify the Scottish Ministers (formerly the Secretary of State). This is done by advising the Social Work Inspection Agency, SWIA, whose contact details are:

SWIA,
Ladywell House,
Ladywell Road,
Edinburgh,
EH12 7TB
Telephone: 0131-244 4735
Fax: 0131-244 5496
Website: www.swia.gov.uk

When a child looked after by them dies, the local authority should contact SWIA **within one working day**, by telephone, fax or email. They should give SWIA the following information:

- the name of the child;
- his or her date of birth;
- the legal circumstances in which he or she was being looked after and where; and
- brief details of the cause and circumstances of his or her death, if known.

This information should be confirmed immediately in writing and a copy of the death certificate should be forwarded as soon as it is available. **Within 28 days**, the local authority should send SWIA

a detailed report and supporting information. It may not always be possible to supply complete information at this point if, for instance, a police investigation is still being carried out and/or criminal proceedings are outstanding. However, as full a report as possible should be supplied, with a supplementary report sent in as soon as the additional information is available.

Reports will be acknowledged in writing. The local authority may be asked for supplementary information, including information from other agencies involved with the child. The Scottish Ministers will, through SWIA or any other relevant agency or body, advise the local authority about their conclusions and indicate what, if any, further action they will take or require the local authority to take. The Scottish Ministers may take steps to:

- examine the arrangements made for the child's welfare during the time he or she was looked after;
- assess whether action taken or not taken by the local authority may have contributed to the child's death;
- identify lessons which need to be drawn to the attention of the local authority immediately concerned and/or other authorities or other statutory agencies;
- review legislation, policy, guidance, advice or practice in the light of a particular case or any trends emerging from deaths of children being looked after.

Local authorities should also be aware of their duties to notify “without delay” the Scottish Commission for the Regulation of Care, the Care Commission, about the death of any service user, including a looked after child. This is in regulation 21 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002, S.S.I. 2002/114.

Please note, these functions will be taken over by the new Social Care and Social Work Inspection Service (SCSWIS) from April 2011 who will be based at Compass House , 11 Riverside Drive, Dundee, DD1 4NY.

3. NOTIFYING PARENTS AND OTHER RELEVANT PERSONS

This will obviously require sensitivity and should be addressed as soon and as openly as possible. Where the address of the parents is not known, other statutory agencies may be able to assist in identifying or finding them or other persons concerned; and it may also be appropriate to seek the help of other agencies in notifying the persons concerned where they live some distance outwith the local authority area. It may not be possible to enlist the help of authorities outwith the UK. If a person to be notified has been identified but is living outside the UK, the local authority may have to give the information about the child's death in writing, although this is not an ideal way to communicate it. Where the person is a UK citizen living abroad, the British Consulate in the country concerned may be able to assist.

4. ARRANGEMENTS FOR THE FUNERAL

Where parents retain their parental responsibilities, they have responsibility for all the funeral arrangements unless they delegate that to the local authority or cannot be found. Support and assistance should be provided to parents to help them make arrangements and give other help which may be required, including bereavement counselling. It may be helpful for support to be provided by someone who has been through a similar bereavement.

Where the local authority has parental responsibilities and rights through a permanence order, they should discuss who is to make the funeral arrangements with the parents, and anyone else with responsibilities or rights under the order. Again, support and assistance should be provided to parents and others, including bereavement counselling.

The local authority may arrange for the child's body to be buried or cremated. Generally, however, the local authority should help those with parental responsibilities to take responsibility for arranging the funeral and burial or cremation. Where parents or persons with parental responsibilities cannot be found, efforts to find them should not delay the funeral.

The funeral should be conducted in accordance with the child's religious persuasion. Where parents or persons with parental responsibilities cannot be found but there is information about a child's religious and cultural heritage, advice should be sought immediately from that community to ensure compliance with any requirements. Local authorities are not authorised to cremate a child's body where this does not accord with the practice of the child's religious persuasion.

Sections 28 and 29(2) of the [Social Work \(Scotland\) Act 1968](#) as amended by the 1995 Act enable local authorities to:

- cause to be buried or, unless it is not in accordance with the practice of the child's religious persuasion, cremated, the body of any deceased child who immediately before his or her death was being looked after by the local authority;
- recover from the estate of the deceased person or from any person liable to maintain him or her immediately before his death expenses incurred in connection with the burial or cremation;
- make payments to the parents, relatives or other persons connected with a child who had been looked after by the local authority for purposes of any of those persons attending the child's funeral if it appears to the local authority that those persons would not otherwise be able to attend without undue hardship and the circumstances warrant the making of such payments.

The local authority may recover from any parent of the child, including through summary recovery as a civil debt, any expenses they have incurred through the burial or cremation of a child who was under 16 when he or she died. Whilst many parents will wish to take responsibility for, or contribute towards the costs of the burial or cremation, some may be unwilling or unable to do so. This issue should be handled with particular sensitivity.

The local authority may make payments to any person who has parental responsibilities for the child, or any relative, friend or any other person connected with the child, to pay travelling, subsistence or other expenses incurred in attending the child's funeral, where it appears that the person concerned could not otherwise attend the child's funeral without undue financial hardship and that the circumstances warrant the making of the payment. This provision might apply where the child has been placed a long way from home and the carers and the other children in the placement wish to travel to the funeral, or where the child's family are living on a very restricted budget and have no capacity to cover unforeseen expenses. These payments are not recoverable by the local authority.

Where the child has been looked after away from home, particularly if he or she has been in a long-term family placement, the carers may feel distressed that they are not able to organise the funeral. Depending on the cause of death, sometimes feelings of anger are expressed by parents or carers that more could have been done to prevent the death. Where appropriate, details should be provided in the report to the Scottish Ministers about how such issues have been dealt with if they have emerged.

Information should also be provided in the report to Scottish Ministers about any bereavement counselling that has been made available to parents, carers, siblings, other children in the placement, and to any other persons for whom it may be needed.

5. SUPPORT OF STAFF AND CARERS INVOLVED WITH THE CHILD AND FAMILY

Staff and foster families who have been closely involved with a child who dies while being looked after, or who make the funeral arrangements or provide bereavement counselling, may need support to come to terms with the events. Authorities should make this available where necessary.

The Fostering Network may be able to put foster carers in touch with other foster carers whose foster children have died.

Where necessary, authorities should also provide support to staff and others about dealing with the media.

CHAPTER 7 - RECOMMENDATIONS BY THE LOCAL AUTHORITY TO THE PRINCIPAL REPORTER

RELEVANT REGULATION: 7

IN THIS CHAPTER:

1. Introduction
2. Requirements to outline the options considered
3. Emergency Placements
4. Residential Placements

1. INTRODUCTION

Section 56(2) and (7) of the 1995 Act is the main provision for requests from the Principal Reporter for local authority reports, for investigative purposes and for hearings when these have been arranged. The local authority have a duty to provide that report, including all information they consider relevant. While the Principal Reporter and the local authority are two separate bodies with their own specific responsibilities, the expectation is that all key information should be shared fully and honestly.

Regulation 7 makes specific provision for the part of the local authority report with the placement recommendation for the child, including living at home. There is a list of the different options the local authority may recommend for where the child should live when subject to a supervision requirement:

- (a) live with a parent or someone else who has parental responsibilities or rights; or
- (b) placement with a kinship carer who has been approved under [regulation 10](#) and entered into a kinship carer agreement under [regulation 12](#); or
- (c) placement with a foster carer who has been approved under [regulation 22](#) and entered into a foster carer agreement under [regulation 24](#); or
- (d) placement with someone who is not a “12. Relevant PERSONS ” and where the requirements of [regulation 36](#) are met; or
- (e) placement in a residential establishment.

However, in practice, a recommendation may also be made for a child to live with a “relevant person” who does not have parental responsibilities or rights, although this option is not provided for in regulation 7 (2).

When the local authority are recommending a supervision requirement for the child to live anywhere except with a relevant person, the report also has to meet the requirements of rule 6 of the Children’s Hearings (Scotland) Rules 1996, SI 1996/3261. The report must therefore cover the

needs of the child and the suitability of the placement recommended and the person(s) who will be providing care.

2. REQUIREMENT TO OUTLINE THE OPTIONS CONSIDERED

The local authority should provide information about the placement options considered and why they think the recommended one is in the best interests of the child. This should include, where appropriate, the views of the child on the recommendation(s). Information should cover the efforts made to identify a suitable placement for the child within his or her kinship network, and where this is not the recommended option, the reasons for this.

Where the placement recommended is with a kinship carer already known and has been assessed and approved under Part V of the regulations, the report to the Children's Hearing should summarise a range of matters:

- why this particular member of the child's network is considered best placed to meet the child's needs;
- his or her ability to keep the child safe and care for them appropriately;
- the benefits to the child of remaining within the kinship network; and
- any acknowledged areas of vulnerability where the local authority will offer support.

Where placement with an approved foster carer is recommended, the reasons for this should be stated. While it may not be possible in an emergency placement for details of the foster placement to be provided immediately, when a supervision order is being considered, the specific foster placement being recommended will be known.

The recommendation should include information about the foster placement identified and its appropriateness in meeting the needs of the child. This should be done through a summary of the foster placement, including confirmation that the proposed carer has been approved as a foster carer and the terms of the approval. However, it is not necessary to provide the Children's Hearing with the full assessment report which led to the approval of the foster carer.

Where the local authority is recommending placement with someone who is not a "12. Relevant PERSONS" and where the requirements of regulation 36 (Emergency placement with carer) are met, the report to the Children's Hearing should explain how those requirements are met.

3. EMERGENCY PLACEMENTS

[Regulation 36](#) is about emergency placements, but regulation 7 cross-refers to its requirements, basically as a minimum to be met when making this type of recommendation. The report has to indicate how the person was identified and how the pre-existing relationship with the child was established and evaluated. The person has to be someone who is known to the child and has a pre-existing relationship with him or her.

The report also needs to confirm: that the person has signed a written agreement to carry out the duties in regulation 36(3); that such a placement would not be contrary to any existing supervision

requirement, order, warrant, etc or return the child to a place from where he or she had been removed under an order, etc, regulation 36(4); and that they have provided the person with the information listed in regulation 36(5).

This option allows a recommendation for a child to be subject to a supervision requirement and live with someone whom they know or to whom they are related, but who is not a parent or a relevant person or an approved kinship or foster carer.

4. RESIDENTIAL PLACEMENTS

Where placement in a residential establishment is recommended, the reasons for this should be stated. The recommendation should include information about the residential establishment identified and its appropriateness in meeting the needs of the child.

See also Chapter 4 Section 5 of this guidance.

CHAPTER 8 - LOOKED AFTER CHILDREN CARED FOR BY THEIR PARENTS

RELEVANT REGULATIONS 8 AND 9

IN THIS CHAPTER:

1. Introduction
2. The Aims and Objectives of Home Supervision
3. Drawing up the Home Supervision Plan
4. Planning Home Supervision for consideration by the Children's Hearing
5. After the Children's Hearing
6. The Child's Plan
7. Delivering the Supervision Programme
8. Where the Child's Offending is the Main Concern
9. Where the Child's Protection is the Main Concern
10. Failure to attend School
11. Changes in Circumstances
12. Notification of Occurrences
13. Ending and Withdrawing

1. INTRODUCTION

It is an important principle of the Looked After Children (Scotland) Regulations 2009 that children who remain at home under a supervision requirement are subject to the same care planning regulations in [Part II](#) as children placed away from home. For example, the same care planning regulations should apply to children who are subject to a permanence order and living with their parents, or with other people who have parental responsibilities and rights under the order, such as kinship or foster carers.

The value of [Part IV](#), with its focus upon looked after children cared for by their parents or others with parental responsibilities and rights, is that it draws attention to the potential for adjusting the provisions in the regulations as a whole to take account of this particular group.

There are two broad groups subject to care planning who remain at home:

- Children living in vulnerable situations with risks which are regarded as manageable through supervision. For these children the risks may result from parental behaviour, or from the behaviour of other children in the household;
- Children returning home after a period of being looked after, where there remains a need to continue to monitor the risks that may have caused their entry into the looked after children system.

Where children have been placed and accommodated under [section 25 of the 1995 Act](#) and are returning home, they will at that point no longer be looked after children and any support services that may continue to be helpful should be provided under section 22 of the 1995 Act, services to “children in need”. Where necessary and where there are sufficient concerns, a referral may be made to the Principal Reporter when at, or after the return home of a child, a supervision requirement is indicated.

Where the local authority has a permanence order for the child, and therefore the right to control residence, it is possible at a later date that they may consider that placement back with a birth parent would best meet the child’s needs. In this case, unless the permanence order is revoked, the child remains a looked after child and the local authority retain their responsibilities and rights under the order and looked after duties to provide support and on-going services.

Local authorities should note that they cannot arrange for looked after children to live with their parents, or with other people who have parental responsibilities and rights, when children are looked after and placed in accommodation under section 25 of the 1995 Act, regulation 8(2).

[Regulation 8\(3\)](#) says that any arrangements local authorities make for looked after children to live with their parents, or with other people who have parental responsibilities and rights, must be subject to the terms of any existing supervision requirements, warrants, authorisations, or permanence or other orders. Local authorities must not make such arrangements if they return children to the care of people from whom they have been removed under an order.

2. THE AIMS AND OBJECTIVES OF HOME SUPERVISION

The overall aim of home supervision is to promote beneficial changes in the life of the child while enabling him or her to remain at home. These changes may include reducing offending or reducing the risk of abuse or neglect, or any other alterations in the circumstances for which the child was referred to a hearing in terms of the grounds for referral in section 52 of the 1995 Act.

Home supervision has the following objectives:

- to provide effective measures for the care, protection, support, guidance, treatment or control of children living at home with their families;
- to enable children and their families to recognise and tackle successfully the difficulties and problems which led to the child being referred to a Children's Hearing;
- to reduce offending behaviour where this is an issue;
- to provide protection for children from others or from themselves, where this is an issue;
- to help ensure school attendance where this is an issue;
- to provide programmes of supervision which will maintain the confidence of Children’s Hearing members and the public in the effectiveness of home supervision as an option;
- to provide programmes of supervision which aim to integrate the child in the community and maintain the confidence of the community.

3. DRAWING UP THE HOME SUPERVISION PLAN

Children on home supervision must have a child's plan covering those matters laid out in regulation 5 and Schedule 2, Part I. The child's plan should be drawn up in close consultation, and, wherever reasonably practicable, in agreement with the child and family (see also Chapter 4 of this guidance). It should reflect the fact that the day-to-day care is undertaken by the family. The objective is to clarify and strengthen within the child's plan the arrangements for home supervision, so that all those concerned – the child, the parents and the local authority - know what to expect of the arrangements and what is required of them. Some children and families may resist the drawing up of the plan as part of resisting the need for compulsory measures of supervision. Some children may be too young. It should be recorded if it was not possible to obtain agreement to the plan from the child or his or her family.

The services required to address the needs of a child on home supervision generally are different from those of other children who are looked after. In deciding whether to make a supervision requirement and any conditions related to that requirement, the Children's Hearing will have decided that the child's welfare is best assured by living with their parents. The child's day-to-day care will remain the responsibility of the family. The social worker and others working with the family need to work closely with the child and family, to achieve the objectives for which the home supervision requirement was made.

Supervision requirement conditions set by the hearing may enhance the clarity and focus of the use of home supervision. The plan should build on the statutory requirements and will set out in detail how the objectives identified by the Children's Hearing are to be achieved. The plan should lay out the following:

- clearly who is responsible for doing what,
- what resources or services are to be employed
- expected timescales for the allocation of cases, meetings with the family, drawing up of the child's plan
- anticipated contact between the social worker, child and family during the period of the supervision requirement.

4. PLANNING HOME SUPERVISION FOR CONSIDERATION BY THE CHILDREN'S HEARING

The decision to impose compulsory measures of supervision rests with the Children's Hearing and should be based on a report containing an assessment of the child and family's situation, and an indication of the options and outcomes considered best suited for the child, supported with reasons.

Planning for home supervision will vary depending on the age and the needs of the child and the grounds for referral. The supervision provided for a young child at risk of abuse, for example, will be very different from that provided for a 15 year old who has offended. If home supervision is to be recommended to the Children's Hearing, the social worker needs to discuss this with the family and the child, taking account of the child's age and understanding.

When planning for the home supervision of a child who is the subject of actual or potential abuse, a protection plan will have been developed by an inter-agency child protection case conference, if the

child is registered. This needs to be included in the report to the hearing, and reflected in the child's plan.

If there is an outline or suggested child's plan in existence before the Children's Hearing, this should be included in the report to the Children's Hearing. Where infants or very young children are involved, alongside arrangements to ensure their safety, attention should be paid to the key developmental concerns at this stage, recognising the long lasting impact of poor early attachments, neglect and exposure to domestic violence or chaotic care, even if this is not directed at the child. Growing knowledge of early brain development and the social and emotional needs of children indicate the importance of direct early intervention services to vulnerable children at home under supervision requirements, responding with urgency to any significant parenting deficits.

Where children are of school age, a report from the child's school should, as a general rule, be provided directly to the Children's Hearing. It should give as full a picture as possible of the child's situation as seen in his or her behaviour and performance at school. Liaison between the school and the social worker should take place in the preparation of the report.

The hearing should have information about how home supervision objectives are to be achieved and which techniques and services are to be used. A range of different approaches can be used in any supervision programme and the social worker needs to ensure that they are properly co-ordinated and effective in their delivery. This will require ongoing review. Collaboration between agencies and within the local authority is essential.

The methods used in home supervision may include:

- family-based work;
- one-to-one work;
- group-work techniques;
- the co-ordination of resources in the community.

5. AFTER THE CHILDREN'S HEARING

Once a Children's Hearing has made the decision to make a home supervision requirement, the social worker allocated by the local authority should:

- if possible at the end of the hearing, see the family to discuss the terms of the supervision requirement;
- arrange to visit the child and family immediately where there is a significant level of risk, **but in any case within two weeks**; and
- work with the family and the child to complete and write up the child's plan, specifying the frequency, location and nature of contact with the social worker.

The local authority should allocate a social worker to take responsibility for the case. This should be done immediately if the level of risk requires this or at least within two weeks if a social worker has not already been allocated.

Children's Hearings rightly expect that where they impose a supervision requirement, a child will receive the supervision which is required. **It is unacceptable for a child not to be seen after a requirement for home supervision has been made.** If it is impossible to implement a requirement, for example, by being unable to maintain the agreed contact because of a refusal to co-operate by the child and/or his or her family, the local authority needs to consider the best way to proceed through a looked after child review. If this review concludes that the requirement is not being complied with a request should be made for an immediate review by a Children's Hearing.

6. THE CHILD'S PLAN

Local authorities should consider regulation 5 and the guidance provided on it. See also Chapter 4 of this guidance. For a child looked after at home, the plan should record:

- details of the supervision requirement;
- timescales for meeting of objectives and for reviews;
- how disagreements are to be dealt with;
- occurrences that would lead to a review hearing being arranged;
- any other plans relevant to the child, for example, child protection or a co-ordinated support plan for education.

Regulation 5(2) and (3) states who should be consulted and what the child's plan must include. The plan should, wherever reasonably practicable, be based on agreement between the child (where of sufficient age and maturity), the parents, the local authority and any other relevant parties, for example, the school. The plan will then represent a written agreement to which all can work. A plan must be drawn up even if the child or his or her family do not wish to become involved in this or if they disagree with some aspect of it. The social worker should seek to reach a position of agreement with the child and family on as many of the objectives of the home supervision requirement as he or she can, although the welfare of the child should remain the paramount consideration throughout.

Other family members may be included in the plan and so may the school and other professionals as appropriate, and they may also have statutory or agreed tasks. As a written document, the plan should wherever possible be signed by all the parties and a copy given to each of them. Regulation 5(4) states who must get a copy of the child's plan.

7. DELIVERING THE SUPERVISION PROGRAMME

The responsibility for ensuring that a supervision requirement is carried out lies with the local authority. Where the child's plan identifies roles for departments and agencies, the local authority should ensure they are committed to, and undertake their allocated tasks.

The role of the social worker in home supervision is:

- to maintain contact with the family at the level agreed in the care plan;
- to undertake direct work with the child and ensure that at all points the child's views are sought and listened to;
- to work closely with the child's family, listen to their views and to ensure the child's needs are met and welfare ensured;
- to oversee the implementation of the child's plan and ensure the focus of work is on achieving its objectives;
- to co-ordinate the work of other professionals with the child and family as agreed in the child's plan;
- to ensure that reviews of the child's plan are undertaken at least at the statutory minimum level in regulation 44 (guidance on **CHAPTER 15 REVIEW OF THE CHILD'S CASE**)

8. WHERE THE CHILD'S OFFENDING IS A MAIN CONCERN

Where the supervision requirement is based on offence grounds or where offending is a key issue, the social worker should focus on addressing the reasons for previous offending behaviour. The worker will need to discuss with the child and family any failure to keep to the terms of the supervision requirement.

If this failure is serious, a looked after review should be called. If this review concludes that the requirement is not being complied with, an early review hearing should be requested.

9. WHERE THE CHILD'S PROTECTION IS A MAIN CONCERN

Where protection is a key issue, the social worker should ensure that the child protection plan remains consistent with the home supervision requirement and the child's plan. The social worker should also ensure that the level of contact is maintained by all parties who are part of the protection plan, and keep in contact with other professionals, such as staff at school and health visitors. If further concerns are raised, where necessary, child protection procedures should be initiated.

In less urgent situations, an early looked after review should be held which may then conclude that a review hearing should be requested.

10. FAILURE TO ATTEND SCHOOL

Where failure to attend school regularly is the main problem, the social worker should obtain regular reports from school on attendance. Where school attendance fails to improve, this should initially be discussed with the school, and if there is no improvement again it may be necessary to call a looked after review. If this review agrees that the supervision requirement is not being complied with, an early review hearing should be requested.

11. CHANGES IN CIRCUMSTANCES

During the course of a supervision requirement, the circumstances of the child and family may change. Any new information aggravating the initial concerns should be clearly recorded and acted upon by the social worker. Most changes may be accommodated during the course of the supervision requirement by consulting with the child and family, revising objectives and agreeing to amend the methods and services. Where, as a consequence of these changes, the local authority is of the view that the supervision requirement should cease or be varied, they should refer the case to the Principal Reporter, section 73(4)(a). This may include consideration of altering the child's living situation to have a condition to reside with suitable members of the child's kinship network, or in a placement provided by the local authority.

Where this is a potential next step, wherever possible this should be discussed openly with the family and child, and addressed in a planned manner.

12. NOTIFICATION OF OCCURRENCES

The duties in regulation 9, about notification of occurrences to the local authority, should be carefully explained to parents and others with parental responsibilities and rights, when children and young people are looked after at home. Local authorities' procedures should clarify how these requirements are conveyed clearly and succinctly to parents and children.

Where kinship or foster carers have parental responsibilities and rights under a permanence order, they have duties under this regulation. However, they also have similar duties in terms of Schedules 5 and 6, respectively, as part of the Kinship Carer Agreements or Foster Carer Agreements which they have signed. See also Chapter 9 of this guidance.

13. ENDING AND WITHDRAWING

The overall aim of a statutory supervision requirement is to enable the family and child to function satisfactorily so that compulsory measures of supervision are no longer required. The young person and family should therefore know the timescales to which they are working. **The ending of compulsory measures of supervision does not mean that contact between the child and/or family and the social worker should automatically cease.** During the final reviews, the social worker should discuss whether continuing support may assist the family when statutory supervision ends. Voluntary provision of services could be offered with explicit objectives and methods agreed by the child and his or her family.

When a young person ceases to be the subject of a home supervision requirement on, or subsequent to, his or her school leaving date, then the local authority has a duty under the aftercare provisions to advise, guide and assist the young person unless they are satisfied that his or her welfare does not require it, section 29 of the 1995 Act. For those young people on supervision at home the duty to advise, guide and assist applies just as much as for those placed away from home. Their needs may, however, be different and an assessment of those needs should be made before they cease to be looked after such as under the **Support and Assistance of Young People Leaving Care Regulations 2003**.

The resources needed for high quality home supervision involve both direct social work and a range of services for children and their families. The resources available in any one local authority area will vary and competing demands will affect their availability. Local authorities should, where appropriate, establish shared services and services developed in partnership with the voluntary sector. Nevertheless, resources are finite and Children's Hearing members need to be kept informed about the resources available and any constraints. Discussions between the local authority and Children's Hearing members should take place regularly to discuss such matters.

CHAPTER 9 KINSHIP CARE

RELEVANT REGULATIONS – 10 TO 16

IN THIS CHAPTER:

1. Introduction
2. The Legal Basis for Kinship Placements
3. Definition of Kinship Care
4. The Assessment of Kinship Carers
5. Emergency or Urgent Placements with Kinship Carers
6. Planned Placements in Kinship Care
7. Approving Kinship Carers
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17. Short term placements in Kinship Care
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1. INTRODUCTION

Recent research has consistently demonstrated that placement within a child's own network can be a positive placement option. Key publications on this topic include the following:

- The study by Jane Aldgate and Miranda McIntosh in 2006 for the Social Work Inspection Agency Looking after the Family focused attention on the value of kinship care for many children who become looked after and recognised this form of care in its own right.
- The National Fostering and Kinship Care Strategy published in December 2006 which identified support as central to further development of kinship care.
- Getting it Right for every child in kinship and foster care, published in 2007, confirmed the commitment of the Scottish Government to give attention to the needs of kinship carers.
- Moving Forward in Kinship and Foster care published in March 2009 provides further consideration of the work needed to strengthen kinship care and sets out the outcomes for

children from a strong and professional approach to working with looked after children and their kinship carers.

The Looked after Children (Scotland) Regulations 2009 support this growing research and practice in this type of provision by focusing specifically upon kinship care. In taking this forward, local authorities should ensure that their procedures explicitly address the needs of kinship care and have appropriate processes in place. **This should include an identified lead within the local authority for developing policy and monitoring progress.**

In Scotland, as in other cultures, family and friends have always played an important role in supporting parents and their children at times of crisis. Many of these arrangements may be regarded as informal as the child does not have a legal relationship with a local authority. These regulations do not apply to informal arrangements.

Kinship care arrangements which need to be formally recognised are where the child is “looked after” by a local authority and therefore in a legal relationship with that local authority. The local authority is accountable for the placement with the kinship carers. These are the kinship carers who must be approved in terms of the Looked After Children Regulations.

2. THE LEGAL BASIS FOR KINSHIP PLACEMENTS

For kinship care placements the two main legal bases will be a child for whom the local authority is as follows:

- providing accommodation under s25 of the 1995 Act
- a child is subject to a supervision requirement in terms of s70 of the 1995 Act.

Permanence Orders and adoption will become relevant when considering longer term plans for such children.

3. DEFINITION OF KINSHIP CARE

For the purposes of this guidance, regulation 10 provides a broad definition of a kinship carer as:

- i) a person related to the child by blood, marriage or civil partnership- with no restrictions on closeness of that related status;
- ii) a person known to the child and with whom the child has a pre-existing relationship. This could include close friends or people who know the child well through regular contact and can be seen as part of the child’s network.

Local authorities will need to determine whether a child requires Looked After Children status in order to ensure his or her welfare. For some children and young people, becoming looked after is neither welcomed nor required; for others, particularly where additional scrutiny is required or there are known risk factors, it will be essential to regard the placement as falling within the Looked After Children (Scotland) Regulations 2009. **Local Authorities should ensure that the criteria for making these complex judgments are explicit and transparent.** Local authorities should also have clear information available regarding any support they may be able to offer kinship carers who are not covered by these regulations.

Private Fostering

Local authorities also have a responsibility in relation to private fostering. They should have clear information available about when non relatives may be assessed as kinship carers under these regulations and when they may step in to care for a child in accordance with the wishes of the birth parent(s) and need to be aware of the private fostering requirements. They should encourage such arrangements to be notified to them so that an assessment can be made. Staff should be provided with clear agency guidelines on their responsibilities in this respect.

Professionals providing Care

Where individuals have come to know children through their workplace or a professional contact, local authorities may also need to consider where this is a personal relationship with someone who is stepping in during an emergency as a known person to the child and where it is more appropriate to proceed via a fostering application. Where there is a choice of route, social workers should ensure they seek guidance from their line manager and that all decisions in areas of discretion are clearly recorded.

4. THE ASSESSMENT OF KINSHIP CARERS

Local authorities carry out assessments in various contexts to underpin planning and decision-making in the best interests of children. As with all assessments, balance, clarity of purpose and openness are essential. An understanding of the risks and factors that led to the child becoming looked after needs to be considered alongside the potential of the kinship carers to respond to the child's needs and work in genuine partnership with the local authority.

As a starting point, it is helpful to articulate the potential strengths and values of kinship care and the possible areas of risk or vulnerability against which individual assessments can be evaluated. Such factors are set out below.

Potential Strengths of Kinship Care

The potential strengths of kinship placements include the following:

- Reduction of the upset of separation, greater continuity of care and recognition of the importance of known carers and contacts for the child;
- A sense of 'normality' in the eyes of the child and the community and a lessening of the stigma of being 'looked after by the local authority';
- Maintenance of the child's sense of identity and their place in the family;
- Continuity of culture and heritage; and
- Understanding of the child's history and experiences.

Possible Vulnerabilities of Kinship Care

The potential vulnerabilities of kinship placements include the following:

- Issues around protection of the child when they remain within the family network;
- Managing complex contact across the family network, especially where this has already been a factor in any concerns;
- Handling conflicting emotions arising from the child's situation, particularly initial distress, grief, hurt or anger;
- The extent to which the birth parents' problems are reflected in the wider family - or the degree to which the parents have been isolated or antagonised.

At every stage, the local authority has the responsibility to ensure the child's safety. Local authorities are also aware at any time of broader strategies such as GIRFEC and policy about the aims and aspirations for all children for whom they provide services; and for particular identified groups who may have additional needs or vulnerabilities.

5. EMERGENCY OR URGENT PLACEMENTS WITH KINSHIP CARERS

A number of kinship placements are required urgently, before a full assessment is possible. This has implications for the local authority process in planning their kinship care service. Key implications include the following:

- Family Meetings and Family Group Conferences.

Where children and their birth parents are already known to the local authority either because they are already subject to a home supervision order, or receiving some level of support service, the possibility of a family group meeting or a more formalised family group conference may have already occurred. The optimum timing of a family group meeting may vary. In some situations a family meeting clarifies the need for a kinship assessment; in others it can be helpful to have the assessment about the potential strengths and risks of a certain placement in advance of a family group meeting.

For looked after children, the local authority and/or the hearings will be the decision-making bodies. In these situations family meetings would be providing a recommendation rather than a decision about care placements. However, for all children, family meetings can be valuable in bringing together a plan and decisions on a range of issues (e.g. contact, communication, health etc.).

Family recommendations and decisions can support and stabilise a potential or current placement. The place of such meetings should be recognised within procedures and they will be important in helping to decide the viability of a kinship care placement. They will also contribute to the planning of an assessment and an understanding of the particular perceptions and motivation of the possible kinship carers and who else in the network can add their support.

- Timescales

The urgent assessment of kinship placements should take account of the requirements to review the child's plan set out in Part X of the Regulations. The model of assessment in kinship care should clearly consider the child's needs alongside the capacity of the kinship carer to meet them. As such, it should be linked with the review of the initial arrangements according to the following timescales:

- At three days;
- Six weeks;
- Completion of the kinship assessment in time for the child's review at 4.5 months

Regulation 36 allows the possibility of placement with an unapproved kinship carer in an emergency and other sections of Part X set timescales for the completion of a full assessment and approval.

Altogether, this allows 12 weeks for the process. Local authorities need to have procedures in place to enable these assessments to be planned, allocated and completed within the necessary timescales. How this happens will depend on the size and structure of the local authority.

- Who carries out the assessment

This assessment may be carried out by a member of the family placement team, the children and families team who carry responsibility for planning for the child or, in large authorities, by a team with a particular remit to develop kinship care.

Whoever carries out the assessment needs to be mindful of the specific issues and dilemmas arising from kinship assessments, and supported to use an assessment framework which is clear and objective. In order to achieve objectivity, the assessment should not solely rely upon the views of any one individual child's worker.

- The needs to ascertain the views, wishes and feelings of the child or young person

Although the regulations in Part V do not directly refer to the child's views, the interweaving of the assessment of kinship carers with planning for the child brings to the fore the need at all stages to consider the wishes and feelings of the child as they are able to express them **or as observed in their behaviour and responses.**

- The need to keep the Children's Hearing informed

As many of these placements are initiated by the Children's Hearing, it will be important to keep them informed about the progress of the assessment and in particular to ensure that they are made aware immediately of any concerns that emerge that could compromise the child's safety.

6. PLANNED PLACEMENTS IN KINSHIP CARE.

As with all care planning, the inevitable disruption of an emergency placement should be avoided as far as possible. A period of introduction and familiarisation prior to any placement can assist in reducing the degree of anxiety or distress a child may experience.

Developing strategies and the growing use of family group conferences and other family meetings should help in increasing the use of planned and assessed kinship placements. Members of the child's extended network may be identified by birth parents as an option where a brief intervention in a crisis is lasting longer than expected, or the child's plan becomes a permanent placement. The child may be temporarily placed with foster carers or in a residential unit to provide sufficient time for other family members may come forward for consideration. These potential carers may not necessarily have a close relationship with the child or may live at some distance from them.

While there may not be the same immediate pressure as in an emergency placement, **it is good practice to aim at completing these assessments within the 12 week limit for emergency placements** unless there are identified reasons for requiring a longer period. In such situations, a realistic timescale should be agreed and adhered to in order to ensure that decisions are made within a child centred period.

For young children, the alternative if kinship carers are not suitable is likely to be adoption and this needs to be progressed quickly in the best interests of the child. If there is more than one option to be explored before looking at other options for permanence, these should be identified quickly. Initial assessments should be carried out simultaneously wherever possible to avoid delay from sequential assessments.

For older children with ongoing contact with birth parents, the parents are likely to know of and have views on the possible kinship placement. Their views require consideration in the assessment process.

7. APPROVING KINSHIP CARERS AND REVIEWING NON-APPROVAL DECISIONS

[Regulation 10\(3\)](#) refers to the local authority making an approval decision. It does not define the process. The local authority may decide to use their existing Fostering Panel, a subgroup of that panel focusing on making recommendations about kinship care assessments, or a small group including a manager set up for the purpose. Whatever decision-making process is established, the individuals should be well supported and trained in the distinctive aspects of kinship placements.

Although the pattern of a panel discussion, recommendation and then endorsement by an agency decision maker which is familiar in foster care is not specified, local authorities should consider a form of this process in order to be accountable for these placements. There is no provision in the regulations for review if a kinship carer is not approved but good practice indicates that local authorities should make provision for a similar review of the decision as may be available to fostering applicants.

8. INFORMATION TO BE GATHERED AS PART OF THE ASSESSMENT

The broad areas on which the local authority must satisfy themselves in placing a child with kinship carers are laid out in [regulation 11\(2\)](#). This includes the information that should be gathered under regulation 10(3) including 'as far as reasonably practicable' the information set out in Schedule 3.

The information gathered should enable the assessment to conclude whether the placement with the specific kinship carers is in the best interests of the child and the carer is judged 'a suitable person'. In addition, regulation 11(2) refers to the written agreement in regulation 12 (the kinship carer agreement in accordance with Schedule 5) and also Schedule 4 (the placement agreement). These are covered later, post-approval, but at the outset of the assessment it is important to place working in partnership with the local authority clearly on the agenda.

Although Schedule 3 refers to both kinship and foster carers, workers carrying out assessments will need to be alert to the fact that kinship assessments are always for a specific child or children, tailoring their reports accordingly.

The gathering and assessment of this information will focus upon the child's needs and the plan for the child. The child's perception and understanding of his/her kinship network and the child's place within that network is an important part of this.

Relationships and attitudes within the extended family will inevitably play a central part. Other areas to consider include the following:

- Age

As many kinship carers are grandparents, questions of age and health will need to be approached sensitively. Extra attention may need to be paid to both the support that will be available from other family members and any other additional support services required. The significance of this will depend on the age of the child and the anticipated duration of the placement. Where this is unclear, the issue of long-term capacity to provide care should be addressed and appropriate arrangements made to monitor the situation.

- How the child will be supported to fulfil their potential

In accommodating children, local authorities need to ensure that children are enabled to fulfil their potential. The opportunities provided through kinship care may be less immediately obvious than in foster care, but if a child is less traumatised by a move within a known network, or the kinship placement accords with their wishes, they are more likely to be able to benefit from the care and support that is available. The question then becomes one of identifying the need for any specifically tailored support for the kinship placement.

- Medical Issues of the Prospective Kinship Carers

The request for a medical report should highlight any area which is seen to be significant for this particular kinship carer and the child to be placed.

- The use of an application form

The use of a foster carer application form may appear alien to kinship carers and be unrealistic in an emergency. Workers should be clear about the basic information that must be recorded at the outset, explicit about this with the potential carers and have a simple format available to ensure that the various checks can be carried out in a timely way.

- Household Members and Family Members

Information about all the people in the household may have particular importance as they are all likely to know the child and have views on the situation leading to the need for the placement. Equally, the views of other family members living outside the household, especially parents, will be central to the management of the placement. The kinship carers will need to demonstrate an ability place the needs of the child above any loyalty they may feel towards the parents of the child.

- Accommodation

Accommodation may be important, particularly where there is more than one child to be placed. Unlike the assessment of foster carers where accommodation may dictate the number of children

who may be placed, in kinship care the question may be about what help the local authority can offer to enable adequate facilities to be available if otherwise the kinship placement is in the best interests of children.

- Identity

Issues related religious persuasion, ethnicity and cultural heritage may cause tensions with a proposed kinship placement. For example, the religious persuasion of a birth parent may have diverged from the proposed kinship carer, or a grandparent may disapprove of a multiracial relationship within their family.

The proposed kinship carers' ability to overcome any such tensions in order to prioritise the needs of the child will need to be demonstrated through the assessment process. Surveys of looked after children consistently emphasise that they do not want to be forced into a conflict of loyalty between their primary carers and their birth family.

- Standard of Living

Although there is no minimum standard of living set for any type of fostering the household will need to be able to demonstrate that they have the capacity and potential to enable children to fulfil their potential, and their household is sufficiently financially secure to provide stability for the child placed.

- The impact of the prospective carers' previous experience of parenting.

The capacity of the prospective kinship carer to care for their own or other children and their previous experience of parenting is often a complex area. This may be particularly sensitive when the need for the placement arises from the difficulties experienced by the proposed kinship carer's own son or daughter. Exploring this area may be particularly emotive for these prospective carers. Nevertheless, it is important to address this as thoroughly as possible, as a potential risk factor in the assessment and as an indication of how best to support the placement if approved. Discussion about past difficulties may enable the carers to identify different approaches to caring for the child to be placed.

- Statutory Checks and Confidentiality

Kinship carers require the same checks as foster carers. Particular attention must be given to any child related offence, violence or dishonesty that could provide a poor model for a child placed and affect the relationship of trust that the local authority will need to build with the carer. Any conviction needs to be seen in the context of their overall suitability to care for the child, the child's views and the other benefits of maintaining the particular child within that specific family network. Practitioners will need to consider how best to share information which may arise as part of this process with other members of the family.

There will be a need to strike a balance between privacy and openness, bearing in mind that family members may already be aware of some of this information or have previously decided not to share it with other members of their family.

- Previous Applications to become Kinship Carers

Details of any approvals or refusals of past applications to foster or become a kinship carer need to be examined and the worker must be able to give a clear reasoned statement about whether any past refusal of approval is or is not significant for this current application.

- Exploration of Motivation

In considering motivation, a full discussion with the carers about why they want to become carers for the particular child and their understanding of the task will be needed. For many kinship carers this is an emotive area which may bring forward a number of complex feelings about the family history of the child and his/her parents. The worker's reflection on the issues with their supervisor will shape the analysis of the motivation of the kinship carer.

- Referees and References

The need for references is included in Schedule 3 but the approach may need different planning than for fostering applications. Information from other people should reflect a balance between meeting any other significant members of the child's kinship network and also independent references from non family members. They should seek specific information about the kinship carers' ability to care for the child and the particular dynamics within the family network. A visit to referees is always useful so that the challenges can be explained, particularly when it is a kinship care placement and many people might see this as simply caring for "one of the family". Referees may underestimate the implications of a child's experience of separation and loss. An open and honest discussion of the possible challenges during the reference visit may help the referee to provide an accurate assessment of the prospective carer's potential.

- Behaviour Management

Local authorities across all their children's services, including social work and education, do not allow any corporal punishment to the child. Schedule 5 specifically extends this to kinship carers. This may be a contentious requirement if the family discipline to date has included corporal punishment. This area will need detailed discussion with the kinship carers and clear explanation about the thinking behind this obligation. Work during the assessment should address a range of other strategies to cope with difficult and challenging behaviour.

- The ability to maintain confidentiality

The need to keep information given to the carer in confidence may also need detailed consideration during the assessment. Given the complexity of family dynamics within some kinship placement specific dilemmas and issues may require careful and sensitive discussion.

- Relevance of the assessment to the Task

Research into kinship care has repeatedly demonstrated that prospective kinship carers are often unaware of the purpose or relevance of the assessment process. Throughout the assessment, the content of the discussion should consistently link back to the needs of the child, the child's views

and the way the plan for the child is evolving. The assessment should always seem focused and relevant to the kinship carer, not simply a process for its own sake.

9. PLACEMENT WITH KINSHIP CARERS

Regulation 11 covers planned placements of looked after children with approved kinship carers and should be read alongside regulation 36 on emergency placements. Between them, these two regulations address the requirements when children are placed away from their birth parents with kinship carers. While a number may be emergency placements, particularly through the Children's Hearing, regulation 11 draws attention to the potential benefits of considering ways of developing more planned use of kinship care

Both regulation 11(1) and regulation 36(4) set out similar prohibitions on placements which are contrary to any supervision requirement or any other relevant order or warrant listed there. Once compliance with any current orders has been checked, as these are formal kinship care arrangements, then local authorities should include in their procedures the written agreements to be signed as in the relevant parts of regulations 11, 12 and 36.

10. PLACEMENT AGREEMENTS

With foster carers, normally there will be separation between the following two types of agreement:

- the *general foster carer agreement* following approval covering the obligations of the carer to the local authority, and of the local authority to the carers; and the
- *placement agreements* based on the specific needs of any children placed.

In *kinship* care these two different types of agreements will be closely linked, largely because the kinship carers will be approved for specific children. Where prospective kinship carers are not yet approved these will be preceded by agreement to the areas detailed in regulation 36(3). Local authorities should consider ways in which these different agreements at various stages work together to make sense to the carers.

The Kinship Carer's Responsibilities

The carer has a duty to promote the child's welfare having regard to both the immediate and long-term plans for the child. Where the carer disagrees with the plan, workers will need to help the carer to express their concerns and how they can continue to care for the child safely and well.

Other obligations cover the need to inform the local authority immediately about any serious illness of the child or any serious occurrence. For some carers it will be important to expand that to give examples of what the local authority would see as serious, especially where kinship carers see this as 'family business'.

The duty to notify the local authority of the death of a looked after child is not spelled out in the schedule but that must be built into the agreement so that the local authority can fulfil their obligation to advise Scottish Ministers immediately, and wherever practicable the parents of the

child and every person who has any parental rights or responsibilities in relation to the child-regulation 6. See also Chapter 6 of this guidance.

Sections 4 and 5 in the schedule look at the kinship carers' obligations to the local authority and the child. They are a mixture of administrative duties like informing of changes that may have a bearing on the kinship carers' ability to care for the child placed with them. This includes any convictions subsequent to approval or investigation or changes in the household. Changes in arrangements for the contact of the birth parents with the child will more usually be dealt with through the Looked After Children Review.

The carer must allow the child to be removed from their home where the placement is terminated.

The Local Authority Obligations

Schedule 4 sets out the obligations of the local authority and of the kinship carers in terms of the placement of the specific child with the kinship carers. The key aspects of this agreement are very similar to the placement agreements in use with foster carers and practice surrounding the use of placement agreements applies.

The local authority must give the kinship carer a statement with all the information about the child, which the local authority sees as necessary for the carer to care for that child. **They should also receive a copy of the Child's Plan as outlined in regulation 5 and a copy of any court or supervision order so that the carer is clear about any restrictions or requirements of such an order.**

Given that most kinship carers will already have knowledge of the child's background, it may be that this information is built up together but it is still relevant to ensure that the kinship carer has information which is as accurate as possible about the health and educational needs of the child. Particular sensitivity may be needed in kinship situations where some of this information is under dispute, such as paternity questions, or information has not been shared within the family network.

The agreement must also identify what financial support the carers can expect. With kinship carers this information may not be immediately available and where there are benefit issues, then the carers should be encouraged to discuss their finances with the [CAS National Kinship Care Advice service](#), Citizen's Rights officers, [CPAG](#) or any other sources of specialist advice in this area so that a calculation can be done of what allowances may be best for their family. This recognises that for some, remaining in receipt of a range of benefits for themselves and the child may lead to them being better off than with an allowance from the local authority. (See also Section 13 below).

11. PLACEMENT FOR PERMANENCE

Some looked after children may be placed with kinship carers for the first time following permanency discussions which will be reflected in the placement agreement. Where a Looked After Child review decides that the child already accommodated by the local authority needs a placement that can offer her/him greater stability and that a return to his/her birth parents will not be possible, then permanency plans should be made. The fostering, adoption or permanency panel (depending upon the local authority policy) should be integral to that discussion so that all the legal and health issues are fully explored as well as ensuring that at the time of making the permanence plan, the potential of a kinship care placement has been fully explored.

Local authority procedures should consider the alternative routes to permanency with kinship carers and distinguish between the identification of potential kinship carers as part of permanence planning assessments for accommodated children and the evolution of an emergency or temporary placement into a long-term arrangement with kinship carers. This will have parallels with the development of practice with existing foster carers who have already been through an assessment and approval process and are subsequently offering permanence for a child initially placed on a temporary basis. There are similarities here both in the need to explore the implications of a changed plan and also to develop an approach which builds on the existing care arrangement. A potential difference is in the perception of the term 'permanence' especially for close relatives such as grandparents. They often need careful support in balancing the implications of a commitment to the ongoing stability for a child and their long term hopes for the future for the child's parents.

Permanence planning in this context should encompass the following:

- the need to be able to identify the point where there has been a significant change of direction;
- how this is explored and made explicit with all parties;
- consideration of changing the legal status of the placement;
- any further re-assessment element required and how this will be explained to kinship carers.

In terms of local authority procedures, there should be clarity about the respective roles of the reviewing system for children, the panels and any other forum that the local authority has in place for kinship carer approvals and reviewing. This should balance clarity about the plan with a proportionate process for the kinship carers. At the same time, they may need space to re-evaluate the commitment they are making to the child and what might have to change in their lives to manage that.

12. AGREEMENTS WITH KINSHIP CARERS

The initial agreement signed by an unapproved kinship carer under [Regulation 36\(3\)](#) addresses the basic duties that the local authority requires of them. During the assessment there will be the opportunity to explore more fully the further obligations covered in Schedules 4 and 5 that will need to be agreed following approval. Schedule 5 is the kinship carer agreement and Schedule 4 is the placement agreement that relates to both foster carers and kinship carers. This provides a minimum in regulations that must be addressed and local authorities may add to and adapt these.

A major obligation is contained in paragraph 5(c) of Schedule 5 which relates to the actual care of the child and the carers' commitment to ensure that anything agreed in their Placement Agreement is carried out. Their key responsibility is to provide the child with good care and to make them a full part of their family. Safety and appropriate care are mentioned specifically and **it will be essential that workers provide the carers with training and information about safe care.** A separate paper setting out the expectations of keeping the child safe could be useful rather than the wider statements in the formal agreement.

13. ALLOWANCES AND FINANCIAL SUPPORT TO KINSHIP CARERS

The issue of financial support to carers is addressed in [Section 110 of the Adoption and Children \(Scotland\) Act 2007](#), which provides the power for Ministers to make provision for payments to kinship carers. This is taken forward in Part VIII, regulation 33 of the regulations where kinship carers are included in the general provisions for the payment of allowances. This does not specify amounts or minimum levels of payment. A Concordat between the Scottish Government and local authorities running until 2011 includes an expectation that **kinship carers should receive an equivalent amount to the allowances paid to foster carers but excluding any fee element**. This signals the Government's desired direction for services for kinship carers.

Where a child is being cared for informally, and therefore not covered by the regulations, information should be available about areas such as the use of Section 22 of the 1995 Act for support in kind or cash in certain circumstances; payments under Section 50 of the Children Act 1975 or financial or other supports to assist kinship carers who have some parental rights and responsibilities under Section 11 of the 1995 Act. This is not new, but as local authorities develop their services for kinship carers for looked after children, it will be good practice to monitor support to other informal kinship arrangements where there are comparable needs. Financial and other practical support may be vital in sustaining any kinship arrangement which needs to be addressed alongside the particular circumstances to be taken into account in considering the need for a child to be regarded as 'looked after'.

The impact of kinship care allowances on universal welfare and tax benefits continues to be complex and every kinship carer of a looked after child should be encouraged to seek an expert benefits check to ensure that accepting any allowance from a local authority does not mean that they are worse off. This is a changing area and subject to UK legislation so local authorities will need access to up to date information and also be prepared to explain the Scottish dimension when the use of these regulations means that kinship carers are no longer approved as 'foster carers'. There are various sources of information about this including local authorities' own benefits advice services; the [Citizen's Advice Scotland Kinship Care](#) project; or the [Child Poverty Action Group advice service](#). Social workers advising potential kinship carers should be aware of the issues under debate in this area and provide carers with information about the different sources of information.

While finance may feature heavily in a number of kinship placements, local authorities should also be alert to the potential range of services that may enable these placements to meet the children's need – this includes other practical provision, such as equipment, one off payments for an identified purpose as well as broader support, advice and training.

14. OTHER TYPES OF SUPPORT TO BE PROVIDED TO KINSHIP CARERS

Schedule 5 relating to [Regulation 12](#) starts with clear statements about the obligations of the local authority to provide support and training for kinship carers. **These placements are likely to need at least as much support as that offered to foster carers** both because the children frequently have comparable needs including issues around managing their behaviour and contact and also because

concerns about any deterioration in birth parents' circumstances are likely to have a direct impact on the child and may also be more keenly felt by kinship carers.

There is some evidence that kinship carers do not feel comfortable within support groups established for foster carers often because of sensitivities about discussion of the part played by birth parents when they are also family members. Training opportunities are often not routinely extended to this group. Here too there may be personal resonances when discussing the impact of behaviour such as domestic violence, abuse and alcohol and drug misuse on the care of children and trainers need to be aware of this. Equally, contact issues which feature frequently in training for foster carers often have extra dimensions within kinship care.

Local authorities therefore need to address how they offer support and training to their kinship carers. This is also an area where the service provided may be equally relevant to kinship carers not directly covered by these regulations who are offering comparable care to vulnerable children who are not looked after but are recognised as children in need.

Kinship carers have identified the following as being supportive to them in their role as carers:

- Emergency financial support;
- Support to have Child Benefit transfer arranged as soon as possible;
- Financial advice – access to specialist advice service at start of placement;
- Support for kinship carers in poverty - to enable them to meet basic needs/clothing, food, shelter etc;
- Advice to kinship carers about what legal arrangements would be the most advantageous to the child and them;
- Sound advice about issues with legal documents/passports;
- Responsive services from all corporate parents in a local authority, particularly education, housing, recreation;
- At the initial stage, useful to have separate workers for a child and carers - but at later stage one person working with both child and carer confirms family focus;
- Kinship carers want help when children ask awkward questions - Why am I different? What is happening?
- Importance of the role of a lead professional to help carers to hold everything together;
- Contact with other carers who understand their perspective;
- If long-term, help if necessary in ensuring suitable accommodation;
- Family group conference/Family meetings positive to help the family to meet and discuss issues in neutral supportive environment / opportunity to raise issues and find solutions , identify other family members who could offer some support to the main carers;

- Information, support and training both on the birth parents' issues and handling the emotional and behavioural consequences for the child.

15. THE REVIEW OF KINSHIP CARERS' APPROVAL

The regulations do not lay out requirements for reviews of kinship carers. To some extent, in comparison to foster carers there may be less emphasis for focussing upon development and skills development. However, kinship carers do have similar review needs to foster carers with regard to their support and training needs, and particularly for providing them with space to reflect on their position if the plan for the child's placement becomes more long-term than initially anticipated. Schedule 5 requires the local authority to put in writing their procedures and timescales for reviewing the child's placement with the kinship carers. This can be linked to the looked after reviews for children under the Child's Plan, but should allow time to focus on the carers' needs in their own right.

Good practice indicates that whether or not a child is looked after, if they are cared for within a kinship arrangement and the local authority continues to have some level of role or responsibility, then the carers need the opportunity at intervals to have an acknowledged space to reflect on the impact on themselves of caring for the child and to express any needs for support and advice.

Schedule 5 also requires local authorities to put in writing the financial support they offer and also the procedures available to kinship carers who wish to make representations to them. The details are not covered by regulations but the intention is to have a clearer, more robust framework for these placements. These agreements should be updated as individual local authorities develop their kinship carer schemes.

16. NOTIFICATIONS OF PLACEMENTS

[Regulation 13](#) sets out the responsibility of the local authority to provide notification of a placement with a kinship carer as soon as is reasonably practicable after the placement. The wording is the same as in [regulation 29](#) in respect of notifications of children looked after by foster carers, covering health services, the local authority where the kinship carers live if different from the care authority, and persons with parental rights. Local authorities should already have well established procedures for this. These notifications should indicate the nature of the child's placement. This will link with ensuring good multi agency practice in all aspects of services for looked after children. As children in kinship care form an important group within the wider group of looked after children, all services need to be sensitive to their particular circumstances and familiar with that dimension of care.

17. SHORT TERM PLACEMENTS IN KINSHIP CARE

[Regulation 14](#) replicates regulations governing short-term/ respite placements from the previous regulations which also apply to short term placements with foster carers. It is hard to know how many kinship carers will provide short breaks to looked after children but that may be built into the support plan for a kinship carer and the child.

Family meetings during the child's placement will be an appropriate forum for agreeing respite arrangements within the family and adherence to regulation 14 will be required if respite arrangements are regular and sufficiently frequent.

Local authorities will already have their established services for respite care of children with disabilities which may also support kinship carers. Local authorities should be clear about when they might consider members of a child's kinship network as respite carers and also when it may be appropriate to recognise family members as additional to the main full time kinship carer who may need robust support.

18. CASE RECORDS FOR KINSHIP CARERS

The introduction to this guidance to the regulations provides general comments that apply to all record keeping about looked after children and the different forms of care they need. In this Part, regulations [15](#) and [16](#) define the particular documents that form the basis of the working case record that must be retained, the confidentiality of such records and the period for which they must be retained.

The main content of the record will include the following:

- The agreements entered into between the local authority and the kinship carers as noted in regulation 15(2).
- Details of the children placed with the carers including the dates of the placements and the circumstances in which they ended.
- The information gathered in respect of the decision to approve the carers.
- The recommendations from the Panel and the decisions of the appropriate manager.
- Any other ongoing case records as defined by the local authority in their procedures.

As with any other records, the local authority will be responsible for establishing and maintaining the standard of these records.

The regulations also specify that a record should be kept of any prospective kinship carer, the members of her/his household and family. Although not specified in regulations, local authorities should also maintain a record of the outcome of any such enquiries they made into the suitability of potential kinship carers. Where the local authority decided not to approve kinship carers the record should include copies of any letters written to the individuals informing them of this and the reasons. Where the individuals decide to withdraw, this should be acknowledged in writing and a copy kept on file.

Regulation 16 requires authorities to retain case records for kinship carers compiled under regulation 15 for least 25 years from the date that the placement with the kinship carer is terminated or until the death of the kinship carer, if that is earlier.

Regulation 16 does not mention case records for prospective kinship carers. Regulation 16 focuses on retention starting from the termination of a placement but says nothing about carers who have never had a placement. The parallel regulation for foster carer records does include retention of prospective foster carers' records for 25 years in regulation 32. Good practice would be to retain the

records for prospective kinship carers at least during the period that the child who might have been placed with them continues to be looked after.

Young people who have spent many years being looked after in whatever placement may seek out information at a later date, both about placements made and also why certain decisions were made. This could include placements made at some point with kinship carers, even if they later moved to foster or residential care and also reasons why an offer of care from their family network was not progressed. Looked after children and young people who have been cared for by kinship carers under these regulations should expect the same level of service as all other children for whom the local authority has had responsibility including access to information and their care records.

Original written records or copies of them can be kept or records can be kept in computer systems.

The local authority has a responsibility to secure the safe-keeping of every case record and ensure as far as they possibly can, that the records are kept confidential. Exceptions to keeping the record confidential are specified and include where there is a court order requiring them to be produced or any other enactment that may require the records to be shared.

CHAPTER 10 - RECRUITMENT OF FOSTER CARERS AND THE FOSTERING PANEL

RELEVANT REGULATIONS 17, 18, 19 20

References to local authorities and their duties in the guidance for Parts [VI](#), [VII](#), [VIII](#) and [X](#) include references registered fostering providers, unless the reference relates directly to those local authorities' looked after duties which cannot be delegated. [Regulation 48\(2\)](#) lists the functions which local authorities may delegate to registered fostering services and fostering under Part VII are included in these.

IN THIS CHAPTER:

1. Introduction: The Responsibilities of Local Authorities and Registered Fostering Providers
2. Recruitment of Foster Carers
3. Establishing a Fostering Panel
4. Specific Roles in the Fostering Panel
5. Panel Functioning
6. Consideration of Cases by the Fostering Panel
7. Decision Making

1. INTRODUCTION: THE RESPONSIBILITIES OF LOCAL AUTHORITIES AND REGISTERED FOSTERING PROVIDERS.

References to local authorities and their duties in the guidance for Parts [VI](#), [VII](#) and [VIII](#) include references to registered fostering providers, unless the reference relates directly to those local authorities' looked after duties which cannot be delegated. [Regulation 48\(2\)](#) lists the functions which local authorities may delegate to registered fostering services.

Regulations governing the fostering service are in Parts [VI](#), [VII](#) and [VIII](#) and [XIII](#), with Schedules [3](#), [4](#), [6](#) and [7](#). These cover the fostering panel, the approval, review and placement with foster carers; fostering allowances; and arrangements with registered fostering services. Other regulations are also relevant. These are all in the context of the recognition of the role of foster care in the provision of services to looked after children who require to be placed by local authorities, and the need to ensure an active programme to recruit and sustain sufficient foster care resources.

Fostering is one of the services which local authorities provide directly, or commission from a registered fostering service, to provide for children who are looked after and placed by them. The number and range of children who are fostered in Scotland has grown steadily. It is the primary means of care for children under 12 who are placed away from home; and also provides care for adolescents who have either remained long-term in foster care or for whom it is the first choice when separation from their parents and kinship network is necessary. Specialist carers also provide

short breaks for children with disabilities. Fostering therefore requires a range of well prepared and supported skilled carers for a diverse group of children.

Children's Services Plans should clearly state the role of foster care within each local authority area, the patterns of use and demand for such services and how the local authority intends to meet that demand. This should include any planned use of registered fostering services, the arrangements for this are covered in Part XIII of the regulations.

2. RECRUITMENT OF FOSTER CARERS

The planned development of fostering services should identify the numbers and range of placements likely to be needed, and publicity campaigns should target the full range of people who may be able to provide these placements. Whilst some prospective foster carers will approach an agency directly to offer their services, publicity will be required to attract others. Particular groups may be under-represented amongst foster carers and this could indicate that they are not aware they are eligible to foster, or not aware there may be a need for their services. This may be because of their family structure, background or some misperception of agency criteria. Efforts have been made to encourage groups such as single carers, those on low incomes and potential carers from different religious and ethnic origins to apply. This needs to be backed up by informed and welcoming procedures and careful consideration of how to make best use of such resources.

Previous regulations required that the local authority could only make a foster placement place with a man and a woman living and acting jointly together; or a man or a woman living and acting alone". **There is no such restriction on foster placements in the Looked After Children (Scotland) Regulation 2009.** This means that an assessment may be carried out on applicants, regardless of their family structure, and so includes single applicants, married couples or those in a civil partnership and cohabiting couples. This is subject to applicants' understanding of the tasks, any particular requirements relating to these, such as the need for a full time home based carer for certain specialist schemes, and awareness of the full assessment, preparation and checking procedures.

Publicity should provide a clear picture of the characteristics of children needing foster homes, what the fostering task will entail for the prospective carers, and an indication of the payment, support and training they will receive. Recruitment should be planned and regular. It is most likely to be effective when it draws on the three levels of:

- general, educative information across the UK and Scotland, through country-wide bodies such as BAAF and tFN, government initiatives and the use of national media;
- co-ordinated efforts across groups of agencies with compatible needs and aims, for example, through local consortia;
- focused recruitment by individual agencies.

All inquirers should receive a speedy, informative and welcoming response so that their interest is maintained. Even where the inquirer's preferences do not meet the immediate needs or requirements of the service, some may be prepared to consider a different kind of fostering, or adoption, or an alternative to fostering such as befriending schemes, youth clubs or out of school

schemes. The agency which receives an initial enquiry which does not fit the agency's requirements at that time, should offer the enquirer details of other local authorities or registered providers who may be able to progress the application.

Further information can be found in *Moving Forward in Kinship and Foster Care, 2009.*

3. ESTABLISHING A FOSTERING PANEL

[Regulation 17](#) requires each local authority to appoint a panel, to be known as the "fostering panel", to carry out the functions listed in [regulation 20](#). In large authorities, it may be necessary to appoint sufficient people to the fostering panel to have a suitable pool of members to service more than one sub-panel, each of which should conform to the requirements about meetings in [regulation 18](#).

Regulation 17 requires each fostering panel to consist **of at least six members**, while regulation 18 sets the quorum for individual meetings of the panel at **three people at least**. Where the amount of business being referred to the panel means that more than one sub-group of panel members is needed, the overall group should be sufficient to cover this, and also provide some stability of membership within different individual panels. It is good practice for all panels to have regular planned business meetings to review their overall functioning. This will be particularly important in larger authorities, to ensure consistency across different sub-panels. It should be emphasised that the setting of the quorum for individual meetings of the panel at three is a minimum, and it is expected that authorities will monitor the functioning of their panels to ensure they include enough people with experience and a range of backgrounds to provide robust and independent scrutiny of the business presented.

For very small authorities, there is an option provided in regulation 17(3) for any two or more local authorities to establish a panel jointly, to be known as a "joint foster panel". Where this may be under consideration, careful planning and monitoring will be required to ensure that the authorities involved have a clear shared understanding of all the statutory requirements and have compatible approaches to the matters listed in the paragraph below, including their responsibilities when commissioning such services from registered fostering agencies.

All local authorities should consider the following matters in the establishment and maintenance of their fostering panels:

- professional support to the panel;
- monitoring the quality of reports and presentations to the panel;
- independence and objectivity of the panel;
- procedures underpinning the functioning of the panel, including administrative support;
- recruitment, appointment, induction and training for panel members;
- decision-making processes following panel recommendations and
- dealing with complaints and appeals.

It is a duty on local authorities in regulation 17(5) to satisfy itself about the numbers, qualifications and experience of individual panel members. Attention should be paid to potential sources of fostering panel members, to ensure:

- their understanding of the fostering task;
- the range of different experiences that would provide an informed, objective and independent group and reflect the diversity of the community within which the service is delivered;
- the different users and stakeholders of the service; and
- the aims and objectives of the fostering service.

The panel should have a gender balance and individual panel members should be aware of equality and diversity issues. Issues of gender, ethnicity, religion, sexual orientation, family structure and disability may all emerge in relation to both those who wish to foster and to the children and families using the fostering service.

The panel may be drawn from: staff within the social work service, especially from those with relevant experience of foster care and children who have been fostered; other parts of the local authority such as education and housing; existing experienced carers; adults who have experienced the care system, especially through foster care; other outside organisations relevant to the task; councillors or other community representatives; and independent individuals with relevant professional or specialist experience or knowledge.

Some authorities choose to have some or all of the membership of their adoption and fostering panels in common. This is acceptable, provided that their roles and functions are distinguished and that the recommendations of each panel are minuted separately.

The person within the local authority with responsibility for managing the fostering panel should consider:

- procedures for recruiting and appointing panel members;
- information for potential panel members;
- job descriptions and person specifications;
- expectations of members, including attendance and confidentiality;
- appropriate contracts and length of service;
- review and appraisal of panel members;
- induction and training;
- monitoring panel performance, including complaints and;
- provision for remuneration of panel members.

Limited advertising to voluntary and community groups, followed by an interview and induction process, can bring forward effective panel members who were not previously known to the fostering service. This will reduce the possibility of the panel becoming unrepresentative and also underline its independence.

The terms of appointment should be provided in writing to panel members, including the duty of confidentiality, and they should sign their agreement. Time-limited appointment, for say two or three years, can be helpful, although the option of renewing the appointment of panel members should be retained. Not all panel members should rotate off the panel at once, because there is a need for consistency and continuity of expertise. The local authority should decide by whom the panel members are formally recruited, appointed and re-appointed. Fostering panel members should have induction, briefing and in-service training.

4. SPECIFIC ROLES IN THE FOSTERING PANEL

Chairperson

Each fostering panel should have a chairperson with considerable child placement knowledge and experience in chairing meetings. **This person should be independent of any management responsibility for cases presented to the panel.** This may be through the appointment of a chairperson external to the local authority or someone from another part of the local authority with relevant experience. Where an external appointment is made, there should be a written contract in place detailing the expectations both of the chairperson and the local authority, and terms and conditions. This should include length of appointment, remuneration and means of handling any difficulties that may arise. Provision should be made for a deputy chairperson.

Medical Advisers

Regulation 19 requires the local authority to appoint “such number” of registered medical practitioners as they consider necessary to provide them with medical advice in connection with the exercise of their functions. A similar requirement relates to medical advice to adoption panels. In addition, the local authority will have a range of responsibilities in relation to the health of looked after children. The role of medical adviser to the panel is therefore one part of a wider contracting with colleagues within the Health Service. Such arrangements should be based on a clear understanding of the local authority’s expectations of this role, and the time commitment involved.

The medical advisers’ principal role in relation to the fostering panel is to look at the completed medical information received from the general practitioner for each applicant to foster, to interpret any relevant issues for the panel and to provide advice on these. Complex situations may need significant follow-up prior to the panel meeting, with the GP, any consultants involved and also involve research into the latest information on a wide range of medical issues. Large authorities with more than one medical adviser may wish to have medical advisers who, between them, cover a spread of experience of paediatric and adult medicine. Some of the medical concerns that arise in applications may be controversial and sometimes may lead to appeal if the acceptance of an application is not recommended by the panel. Examples of these include lifestyle issues such as obesity or smoking, and attitudes towards mental health episodes in an applicant’s background.

Legal Advisers

Regulation 19 also makes provision for the appointment of legal advisers, but this is not mandatory. Local authorities have legal services and they may provide legal advice on fostering issues with or without there being a specific legal adviser to the panel. Registered fostering services which do not have a dedicated legal service need to decide whether they appoint a legal adviser to their panel.

The extent of the need for a legal adviser to the fostering panel will depend on the use the local authority are likely to make of the panel in questions of planning for children, and possibly in relation to kinship care situations, if the fostering panel is to be involved in these. The most direct role for the legal adviser is in the plans for children. Where adoption or permanence is planned for children, these matters will be dealt with by the panel appointed under Adoption Agencies (Scotland) Regulations 2009.

Access to legal advice may greatly assist the panel when it is considering recommendations about the approval or termination of approval of foster carers.

Any legal adviser appointed must be a qualified solicitor who is a member of, and has a current practising certificate, from the Law Society of Scotland, or a practising member of the Faculty of Advocates (regulation 19(4) and (5)).

Administrative support

Each panel must make a written record of its proceedings and the reasons for its recommendations. This is a skilled administrative task and the minute taker should be an additional person attending the panel for that purpose. **The minutes are crucial for the local authority's decisions after panel recommendations.** In the event of an appeal, the minute will form part of the evidence of the process. It is important that a clear process exists for the production/scrutiny/approval of minutes and who has access to these.

The ability to take minutes should be included in the job specification of any administrative personnel who may take on that role; and appropriate time, training and support offered to enable them to fulfil the task. It is important that any minute taker has some advance knowledge of the context of the work of the fostering panel. Normally, this is initially through working in a relevant section of the local authority. Where possible, this should be supplemented by training on the role of the panel, the purpose of its discussions and what needs to be conveyed to the agency decision maker, to underpin the agency decision about the case. They also need to be aware of the timescales governing decision making following panel recommendations, in regulations 22 and 26.

5. PANEL FUNCTIONING

Regulations cover the appointment and composition of the panel. In order for the panel to function effectively, it needs to be supported by structures within the local authority. This requires:

- (a) efficient **administrative** support to manage the practical arrangements for the meeting; organise timings and attendance; gather, copy and circulate papers; ensure minutes are completed, signed by the chairperson and reach the agency decision maker within the required time; and keep well ordered records of all the cases considered.

(b) **professional** support:

- to have an overview of the adequacy of the reports submitted to the panel;
- to pick up, prior to the panel meeting, any professional issues which need to be addressed if the panel is to be able to carry out its role or issues which could indicate a need to postpone a panel;
- to alert the chairperson to any sensitive or complex issues;
- to pick up any professional agency issues following panel meetings, as appropriate;
- to review any panel monitoring that is carried out, and bring any comments from those attending panels to members at business sessions.

Large authorities may be able to appoint a panel adviser, or have this as a recognised part of a job description with appropriate time allowed for the tasks. Where the functions need to be shared across different managers or supervisors, their responsibilities need to be clear. In all cases, line managers of those presenting matters to panel need to be clear about the panel's requirements.

6. CONSIDERATION OF CASES BY THE FOSTERING PANEL

In considering 'suitability to foster', the panel must be satisfied that all reasonable checks have been made to ensure the safety of any children placed, and that there is sufficient evidence that the applicants understand the fostering task and have the potential to meet its demands. The twin guiding principles must be:

- firstly, that the fostering service, in the form of its foster carers, can offer care that meets the needs of looked after children and encourage their well-being; and
- secondly, that prospective carers recognise the potential impact on themselves and all their family members and can manage this.

The tests for these will be information about the outcomes for children in foster care and the level of retention and satisfaction amongst foster carers. The panel need to keep themselves informed about these matters.

Many local authorities have a combination of mainstream foster carers who can care for a broad range of children; and more focused schemes or identified carers with particular interests or skills, such as those who care for children with disabilities or children with special therapeutic needs, or those who can offer only time limited short breaks. Alongside each assessment report, panels need information about any specific requirements of particular schemes to ensure that recommendations are realistic. This may be about the availability of a full-time home based carer, separate bedrooms or aspects such as wheelchair access. Panels also must be kept up-to-date on any changing local authority policies relating to criteria for approval, such as smoking policy or policies on other lifestyle issues. Such policies may not bar applicants but may restrict the categories of children who may be placed.

The Fostering Panel has an important role in ensuring that the inevitable pressures placed upon local authorities and Registered Fostering Providers do not result in overloading foster carers. The following issues should always be considered in relation to proposed approval terms:

For new carers

- The impact on new foster carers especially of the demands of 24 hour care for children, and the growing body of research about the impact of secondary stress.
- The need for new carers to have space to grow, reflect on their initial experiences and learn to manage the multiple tasks of fostering.
- Sensitivity to the impact of fostering on the children already in the family, and the need to support them in adjusting to this change to their family life in a way which helps them participate positively.

It takes time for new foster carers to become familiar with the structures within which fostering occurs, and the aspects of the task not directly involved with caring for children, such as record keeping, contributing to meetings, and communicating with a whole range of social workers and other professionals.

For all carers

- Practical considerations in a family home in providing privacy and personal space, with carefully restricted use of sharing bedrooms, especially where there may be many unknowns about a child who has just become looked after.
- The increasing expectations of carers in providing *compensatory* care, addressing educational, social, behavioural and lifestyle deficits.
- Awareness of the emotional impact of separation on children, frequently superimposed on experiences of neglect and abuse; and the long lasting impact of caring for children who have experienced trauma.
- For children with chaotic backgrounds, the need to model a different type of family life and offer a sense of security and safe control.
- The complexity of contact arrangements for different children and the time needed not only to manage these but also to handle and monitor the effects on children before and after the contact.

Although the primary role of the panel is in respect of the approval of foster carers under regulation 22 and reviews under regulations 25 and 26 the role of a fostering panel may be extended to include consideration, advice and recommendations in relation to linking and placement, or consideration of possible applications by foster carers for residence orders.

7. DECISION MAKING

Following the panel recommendation to approve applicants or not approve applicants, the local authority must make their decision **within 14 days** of the panel meeting, [regulation 22\(3\)](#). This decision is made by the agency decision maker, who should be provided with a copy of the panel papers and minutes as soon as possible after the recommendation. Each local authority should have procedures to make sure that these timescales are followed, particularly including the prompt production of the panel minutes. Agencies should consider what procedures they should have for sending a copy of the relevant part of the minutes to the applicants after they have attended the panel.

After the decision is made, the local authority should give notice of it in writing, **within 7 days**, [regulation 22\(7\)](#). The notice of approval should state the terms of approval. Except where breach of confidence would occur, the reasons for any refusal should be explained. Information concerning the local authority's reconsideration or review processes and the complaints procedure should be included with the written notice. The outcome should also be notified to any professionals who have contributed to the assessment. The letter to the applicants should usually be followed up by a visit from a social worker to ensure that its contents have been understood.

The responsibility for decision making is normally delegated to a senior manager with child care experience. Agencies should consider appointing more than one agency decision maker to cover holidays, illness, alternatives for review (appeal) panels and other circumstances.

Both at the panel recommendation stage, and when the reports and minutes of the panel go to the agency decision maker, there is a three-fold task:

- firstly, considering whether a prospective foster carer is suitable to be a foster carer to a child who is looked after;
- secondly, whether he or she would be a suitable carer for a particular child, any child or certain categories of child; and
- thirdly, the maximum number of children a particular foster carer may have placed with him or her at any one time.

It is essential that the decision making process consists of a fresh, impartial consideration of the papers presented to the fostering panel, alongside the minutes outlining the key debates and issues raised in the panel's discussions. Decision making should never be regarded merely as a rubberstamping exercise.

CHAPTER 11 THE ASSESSMENT AND APPROVAL OF FOSTER CARERS

RELEVANT REGULATIONS ?

References to local authorities and their duties in the guidance for Parts [VI](#), [VII](#), [VIII](#) and [X](#) include references registered fostering providers, unless the reference relates directly to those local authorities' looked after duties which cannot be delegated. [Regulation 48\(2\)](#) lists the functions which local authorities may delegate to registered fostering services and fostering under Part VII are included in these.

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1. INFORMATION TO BE GATHERED DURING A FOSTER CARER ASSESSMENT

[Regulation 22\(2\)](#) and [Schedule 3](#) cover the information that must be gathered about a prospective carer and presented to the fostering panel when asking for a recommendation for approval. In deciding whether to recommend approval, the panel should receive the information in Schedule 3 and "such other information or observations" as the local authority consider appropriate. Schedule 3 is very much a minimum of what is required and authorities should have a clear process for the preparation and assessment of applicants to foster, and the format for reporting this to the panel.

Schedule 3 contains three broad areas of information:

- a range of factual information that describes the applicants and their lifestyle;
- information about their identity and the details needed for the range of checks and references;
- 'assessment' aspects termed as 'capacity' and 'an analysis of motivation'.

In considering potential foster carers, authorities need a clear understanding of the nature of the fostering task; the needs and challenges of the children who may be placed; and the qualities and skills required to provide them with safe care which promotes development and addresses the deficits of poor or abusive earlier experiences. Each step of the process, from initial expression of interest to approval, must be consistent with the aim of a robust assessment that prepares applicants for the task and provides evidence of their potential to meet its demands.

Authorities should normally aim to complete an assessment **within six months of receiving an application**. The stage of making an application is therefore an important one. Authorities should have clear procedures about the ways they provide information to potential applicants, enabling them to decide if they wish to proceed to making an application. These procedures should also address the nature of the assessment, general criteria for approval and the checks and references necessary to ensure safe care of children. Authorities may use a combination of general information and an initial interview at this early stage, supporting potential applicants to discuss any personal issues or possible barriers to their application. The aim of these initial discussions is to establish that the applicant has a basic understanding of the fostering task, is applying to undertake a type of fostering that is in demand by the agency and appears not to have a background which would preclude him or her from fostering.

To avoid raising expectations and wasting resources, when there are grounds for believing that health and criminal records may give rise to contentious or problematic issues such checks should be carried out at an early stage, consulting with the fostering panel for advice as appropriate. See also Section 3 of this chapter.

2. WHO CAN APPLY?

Regulations no longer specify the categories of people with whom a child may be fostered. Applications to foster may come from a wide range of different family structures and many authorities make a point of reflecting this openness in recruiting new carers. This needs to be followed through in all the subsequent stages of assessment, approval and placement of children.

The advantages of family based care can be evidenced in a range of different type of households. In particular, the following characteristics may be seen as desirable in any prospective fostering household:

- positive, respectful relationships between adults;
- appropriate relationships and boundaries between adults and children;
- valuing each individual within the family group;
- containing and managing a whole range of behaviours and emotions within the family unit;
- celebrating, supporting and learning to problem solve together.

Some of the information in Schedule 3 will provide a starting point for an individualised assessment which addresses the core issues of each application. This will apply whether the application is from a married couple who may have children of different ages, co-habiting or reconstituted families, single applicants or same sex couples.

Assessment and Diversity

As well as diverse family structures, valuing diversity also relates to welcoming applications from families from different ethnic, religious or cultural backgrounds. Where the applicant is from an ethnic, religious, or cultural minority, or his or her first language is not English, the social worker should be allocated with special regard to this. Expert advice should be sought and, where applicable, an interpreter used. An interpreter should be well prepared by the worker and familiar with the fostering task. The interpreter should be acceptable to the family being assessed, as otherwise they may not be willing to divulge personal information. He or she should not, however, be a member of the applicants' family. It is important in these situations that authorities have given careful thought to the provision of an ongoing service to these applicants, and have considered how they will be used. It will not be helpful to applicants if early expectations are raised, either about the further steps in the process or their active involvement in placements, but which cannot later be fulfilled. This is especially so when there is an expectation of approved foster carers carrying out ongoing tasks for the local authority.

3. MAKING AN APPLICATION

The application form should be based on Schedule 3 of the regulations and applicants should be made fully aware of the range of checks which will be made. Applicants must have to be asked to complete the application form for Disclosure Scotland for an Enhanced Disclosure check. Applicants need to know about the documents which must be seen as proof of identity to support the application, such as passports, driving licenses, household bills, etc. Disclosure Scotland provide detailed information about the process, including completing the forms and checking the identity of applicants for disclosures. <http://www.disclosurescotland.co.uk/> The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, SSI 2003/231, as amended, applies to such checks.

It is also necessary to apply for Disclosure Scotland checks for all other members of the household over 16, and this requires them to complete application forms and produce documents for identification. This is in terms of regulation 22 and Schedule 3, paras 2 and 12, which require authorities to obtain particulars of all adults in the household. In practice, Enhanced Disclosures are the way to obtain this information. Adult means someone who is 16 or over. There may be circumstances in which applicants have shared information about convictions with partners or other members of the household which will require careful consideration.

Any record of convictions should be discussed with applicants. Convictions will not necessarily preclude approval but will require careful consideration of all surrounding circumstances and consultation with senior staff. Authorities and applicants receive a copy of the Enhanced Disclosures, but applicants' ones do not include any additional, non-conviction information. This is provided separately to authorities' recognised counter-signatories. Applicants need to be told about possible restrictions on authorities sharing third party information which emerges from this and other checks, and/or from references.

Local authorities should check their own current and previous records in respect of the applicants and other members of the household. In particular, this is aimed at checking if there is information about any former applications to care for children and whether the outcome was positive or of

relevant concern; and also whether there is any information about concerns about the applicants' care of children in the past. Where applicants live in the area of other authorities, information from and the views of the other authorities must be sought. Where there have been previous applications to foster or adopt, the relevant agencies should be consulted. Application forms should gather all the necessary information about previous addresses to facilitate these enquiries and applicants need to be clear about the different checks that will be made.

4. THE USE OF REFEREES AND REFERENCES

Schedule 3 also requires the agency to obtain references on the character and suitability of the applicants. The purpose of this is to obtain independent corroboration of the information provided by applicants. Authorities' procedures should indicate the minimum required. **This should be no less than two;** and it is recommended that normally two references are obtained from people not related to the applicants and a third one, which may be from relatives who have good knowledge of the applicants and may be offering support to them. **As practice is developing in this area, individual authorities may expand on this and ensure new applicants know what is required.**

Applicants should be given guidance on choosing a spread of referees who:

- have known the applicants for some time;
- between them, have a balanced knowledge of all existing family members;
- may have known them through periods of particular relevance for the assessment, such as former relationships or times of stress;
- will be part of their support network;
- may have information about areas in individual's chronology such as periods abroad when full record checks may not be available; and
- have relevant understanding of the task of fostering.

Best practice requires that contact is made with applicants' former partners especially where relationships involved care of children; and also talking to grown up children living elsewhere. This can be a complex area: social workers carrying out the assessment may need to use their discretion if these individuals cannot be traced or do not respond. Where this arises, reports to panel should include an explanation of the factors taken into account and how workers and their line managers reached a conclusion.

Best practice also requires that contact is made with applicants' employers, including, if appropriate, former employers. This may be particularly relevant when the employment has related to the care of children or vulnerable adults.

5. MEDICAL AND HEALTH ISSUES

The applicants should be informed that they will be required to have a full medical examination. Application forms ask for information about their GP. The role of the medical adviser to the panel should be explained. Where there are any health issues, these could mean that the medical adviser

may need to seek further information from any specialist consultant who was or continues to be involved. Applicants should also be aware from the outset about authorities' policy on smoking, covering both age restrictions on children who can be placed if there is a smoker in the household; and also the broader local authority view of the importance of a smoke-free environment for children, and modelling healthy lifestyles. These issues may broaden to include any local authority policies on other lifestyle issues.

6. STAFF CARRYING OUT THE ASSESSMENT

The quality of the assessment of new foster carers will depend on the knowledge and experience of the staff carrying out the task. The agency must ensure that it has sufficient appropriately qualified social workers to prepare and assess applicants. This includes having the skills, knowledge and confidence to carry out the task, supported by a robust management and training structures. Assessing workers need opportunities, both to develop their skills and to keep in touch with best practice in preparing, assessing and supporting carers and also with information about placement outcomes for children.

This also requires workers to have the following attributes:

- an ability to establish a reflective and open relationship with applicants;
- a commitment to anti-discriminatory practice;
- good communication skills;
- an inquisitive approach to evidence gathering along with the ability to analyse the evidence once gathered;
- a clear awareness of what is needed for the task and how to identify those attributes and skills in others;
- an ability to work with all members of households, children or adults; and
- an ability to balance positives and risks as objectively as possible.

7. THE ASSESSMENT PROCESS

All aspects of the recruitment, preparation and assessment of prospective carers should be carried out in compliance with the regulations and also in line with the National Care Standards: foster care and family placement services ([Care Commission website for the National Standards](#)). The Standards address all aspects of the service to prospective and approved foster carers.

Wherever possible, the assessment process should include both group preparation and the individual home study. The size of the local authority and geography will influence the frequency and pattern of preparation groups. Authorities may wish to form preparation and training groups quite early in the process, so that more informed discussions can take place subsequently in the individuals' homes. Where such groups follow a formal application and are clearly part of the assessment process, the applicants should be aware how their participation is being recorded. Some group preparation material includes formats for applicants to note what they learnt from each session and the implications, as well as feedback from the group trainers.

Prospective foster carers should understand the need for visits from social workers, the timescale of assessment and the information required. Applicants from a culture or background where

alternative family arrangements are made in a more informal manner, or with no direct knowledge of fostering looked after children, may require careful explanation of the foster carer role alongside the statutory responsibilities of local authorities.

A wide range of prospective foster carers should be sought for the wide range of children requiring fostering. However, **no-one has the right to foster** and not all applicants will be able to provide a suitable environment for the care and nurture of children. The decisions to approve applicants as foster carers must centre on an understanding of what is required to fulfil a skilled task. To do this, authorities need to have a framework for the key areas to be covered in the assessment. The assessing workers, their line managers, panels and agency decision makers need to have a shared understanding of the factors that indicate that applicants have the skills and potential to provide care for looked after children.

Timescales

Assessing workers should be given the time to carry out thorough assessments. The recommended time for completing assessments is **six months**, as set out in National Care Standards, Standard 6.4. This should only be disregarded under exceptional circumstances such as where rigorous work by the assessing worker requires the continuation of the assessment for a longer period. This work may require more time or put pressure on applicants who may themselves also need more time. Where more time is needed, this should be negotiated with the applicants and the reasons for any extra work identified, agreed and noted.

Birth Children of Applicants

The perspective of applicants' children and extended family should be actively sought during the assessment process, using a variety of methods including direct contact, family meetings, group work, books and games. Consideration should be given to the establishment of an easily accessible resource bank where workers could access ideas and information about different methods and strategies for working with applicants and children.

Quality Assurance

No single approach to the assessment task fits all situations, but assessing workers must be able to describe and report their method of working and any adaptations for the particular circumstances of the applicants. The perspective of the applicants on the process should be actively sought and reflected in the assessment report. The quality assurance function carried out by supervisors, fostering panels and agency decision makers should be facilitated by a clear distinction in reports between description, analysis and recommendations. Assertions about applicants' capacities should be supported by evidence and examples. Reports should identify why a particular conclusion has been reached so that discussion can take place about the validity/reliability of the final assessment.

At the end of the assessment, the information needs to be presented to the fostering panel which makes the recommendation to the agency decision maker. The local authority therefore needs to have regard to the quality of the reports used for this purpose, and monitor their effectiveness. Two key areas are:

- the rigour with which the line managers of the assessing workers monitor what is presented to panel before signing off reports; and
- the opportunities for the panel to feedback any concerns based on the reports they receive.

A robust assessment will balance the strengths of the application with areas of vulnerability or areas for development. Guidelines cannot resolve such issues, but they must be clearly laid out; and at each stage the conclusions of the different people and bodies who consider the application must be articulated with reasons.

8. THE ASSESSMENT FORMAT

At present, authorities use one of three formats developed by:

- BAAF;
- The Fostering Network;
- The Local Authority, possibly adapting features from other formats.

These all aim at attaining consistency of approach. Some formats emphasise an analysis of the character of the applicants (their lifestyle and experience of being parented; their own experience of parenting); others focus more on the skills they can demonstrate, taking a more competency based approach. In reality, these approaches are not mutually exclusive: some of the evidence for skills, for example, may come from reflecting on significant formative past experiences.

The toolkit developed by the Scottish Recruitment and Selection Consortium for safer recruitment and selection for those working in child care – including foster carers - took a more formal human resources approach to trying to identify the qualities found in ‘good carers.’ These are mirrored by the skills identified within the competency approach, which grouped the necessary skills under four main areas:

- caring for children;
- safe caring;
- working as part of a team; and
- own development.

Regardless of the format used, all assessments should focus upon achieving good outcomes for the children subsequently placed with foster carers, avoiding the risk of becoming advocates for the applicants and instead remaining child-focussed throughout.

9. MATTERS TO BE COVERED IN THE ASSESSMENT REPORT PRESENTED TO THE FOSTERING PANEL

The report on the applicants that is presented to panel needs to state clearly the recommendation made by the assessing worker and be signed by his or her line manager. The assessing worker’s report should also be shared with the applicants, subject to possible exclusion of third party information, before being sent to panel members. They should be asked to sign it and any aspects with which they disagree should be identified and their views on these included in writing with the report.

As part of collecting third party information in the form of references, medicals, statements from former partners, adult children away from home or, current or former employers, there should be discussion with applicants and with those offering their views about any aspects, where information is given in confidence. Where concerns have been voiced from any source, these need to be addressed in the report and the conclusion of this included in the final recommendation. This should be in a separate part of the portfolio of information presented to the panel. It should be clear in the report what has been shared with the applicants with the agreement of the person providing that information, and what is confidential to the panel. Wherever possible, the person expressing concerns should be encouraged to share these with the applicants or allow the worker to do this. Where it has not been possible to share the concerns as expressed by the third party directly with the applicants, an alternative way needs to be sought, to explore the issues identified with the applicants. The recommendation should reflect what has been made explicit within the application and the extent to which any concerns have been addressed or resolved. While every effort should be made to respect the confidentiality of third party information, it must be explained to the third party that, if a particular application is not approved and this is appealed complete confidentiality cannot be guaranteed.

The completed assessment needs to enable the panel to make a recommendation about:

- firstly, whether the applicants are suitable to foster,
- secondly, to state whether the applicants should be approved in respect of a particular child, any child or certain categories of children; and
- thirdly, the number of children whom they may have in their care at any one time.

The issue of maximum number of children who may be placed should be covered in the report by the assessing worker, and then considered by the panel to enable them to fulfil their responsibilities in making a recommendation.

The report should also cover, among other matters:

- how the applicants might address not only the practical needs of children but also have the time and reflective ability to engage with the children's emotional needs;
- how applicants might ensure adequate privacy and space for each child and also facilitate safety for each member of the household;
- how applicants might manage the shifting and potentially uncomfortable relationships between unrelated children, who may enter or leave the household at different times and have varied needs;
- if siblings may be placed, how applicants might manage the different challenges of working with the pre-existing sibling relationships, which may or may not be supportive within the wider group in the household;
- the stage of understanding of the applicants' sons and daughters and how their needs will be monitored in the early stages of fostering;

- explicit discussion with the applicants about the possibility of stress, how they will recognise this and use supports and seek opportunities to maintain their own well-being.

Applicants should be invited to meet the fostering panel. Unlike the regulations for approval of adopters, prospective foster carers do not need to meet with the panel. However best practice regarding the open, transparent and inclusive nature of the fostering service means prospective foster carers should have this opportunity.

10. DERIVATIVE AND DUAL APPROVAL OF FOSTER CARERS

Under [regulation 23](#), it is possible for a foster carer to be registered as an approved carer with more than one local authority. This is called “derivative approval” and should be differentiated from ‘dual approval’, where a carer has been fully assessed and approved by two different authorities. Dual approval is possible but would be unusual.

Regulation 23(1) allows a foster carer to be ‘registered’ with more than one agency, when he or she has already been approved by a local authority or registered fostering service and that approval has not been terminated. It can only apply if the second local authority is approving the carers for a similar range of children, (regulation 23(2)). If the second agency wants to alter the terms of approval, a new assessment and approval process must be carried out. Although the only other action required in this regulation is for the second agency to notify the first agency in writing, regulation 23(3), clearly this is an eventuality that should involve detailed communication between the agencies.

This is intended as an enabling provision in certain circumstances, not as one which should be regularly used. Normally, approved foster carers work in relationship with one agency which ensures they are properly supported and maintains an overview of the needs and numbers of children placed with the carers. In some instances, however, foster carers may move to a new area but continue caring for a child or children who are already placed on a long term basis with them. They may therefore continue to be approved by their original agency for the existing placement, but wish to offer their services in the new area.

In these circumstances, it will be necessary for the second agency to undertake its own assessment and approval processes for the foster carers. It would be expected that, with the agreement of the foster carers, their original assessment report, the minutes recording the panel recommendation, any comments from the agency decision maker and their most recent review would be shared with the second agency. Where a foster carer has been approved by one agency and is in the process of being assessed and approved by a second agency, use of regulation 23 could allow a placement to be made.

The provision should only be used in an emergency situation to facilitate the placement of a specific child. It should not be used to circumvent the approval processes of the second agency.

Following any such derivative approval, an agreement should be established between the agencies covering:

- recognition of the needs of the child/ren already in placement;

- services which the original agency will provide for the child in placement;
- expectations of both agencies about sharing information of relevance to the ongoing use of the foster home;
- confirmation of who is responsible for support of the carers and ongoing reviews, including ensuring the parameters in respect of placements are maintained;
- arrangements about advising the original local authority about any changes in circumstances in the foster home or other matters which may affect the child/ren in placement;
- the requirement in [regulation 25\(5\)\(b\)](#) to give notice of decisions following reviews;
- protocols for managing any concerns or allegations.

Dual approval, where a foster carer has been fully and separately assessed and approved by more than one agency, is a potentially complex situation. It would be unusual but could occur when an agency clearly planned not to place any more children with the foster carer. When a foster carer has been dually approved, it is crucial that attention is paid to the care planning of all the children who are, or may be, placed with the foster carer.

11. AGREEMENTS WITH APPROVED FOSTER CARERS

After a foster carer is approved, the approving local authority must enter into a written agreement with him or her. This is, in effect, the local authority's contract with the carer. It should be distinguished from the specific foster placement agreement [regulation 27](#) and [Schedule 4](#) which is entered into for every individual child placed with the carer.

The foster carer agreement provides written information about the terms and conditions of the partnership between the local authority and the foster carer. The matters and obligations to be covered in the foster carer agreement are set out in [Schedule 6](#).

The agreement covers:

- (a) the services which the carer should expect from the local authority and the main procedures of which the carer should be aware;
- (b) the foster carers' obligations to inform the local authority of any changes; and
- (c) the carers' agreement to caring for any children placed in line with local authority policies and expectations as covered during the assessment.

The matters in Schedule 6 are the minimum that are standard across Scotland. Each local authority may wish to add others which will either apply to all their carers or which may be additional requirements for particular schemes. Every local authority should ensure that foster carers have a full understanding of what is expected of them as foster carers and of the local authority when a child is placed, in relation to the requirements of regulations, this guidance and the local authority's policies and procedures. A foster carer handbook, issued and regularly updated by the local authority, can be very helpful in this regard.

Some aspects included in Schedule 6 are likely to have featured significantly within the assessment. Carers need to be aware of the content of the foster carer agreement throughout that process and understand the complexity of what is included. Wording such as caring for each child “as if the child was a member of that person’s family” (para 6(c)) signals a wish that looked after children should not face further disadvantage or stigmatisation by being fostered but this does not address the children’s identity needs or their feelings about their place within their birth family. Used positively, agreements should indicate that the carers and the authorities have the same hopes and aspirations for looked after children as they would for their own children. But as so many children in foster care have been disadvantaged or damaged by their earlier experiences, they may need additional help beyond that required by carers’ own children.

The content of these agreements should be reviewed at intervals by the authorities and any proposed changes or additions explained and discussed with carers. Equally, carers should have the opportunity to make suggestions and comments to their local authority on any issues of relevance to the agreement between them.

CHAPTER 12 FOSTER CARER REVIEWS AND TERMINATION OF APPROVAL

RELEVANT REGULATIONS 25 AND 26

IN THIS CHAPTER:

1. Introduction
2. When to Involve the Fostering Panel
3. Foster Carer Review Meetings prior to Fostering Panel Consideration
4. When to convene an early Foster Carer Review
5. Who should be consulted in relation to Foster Carer Review
6. The Development of a Recommendation arising from a Foster Carer Review
7. The Function of the Foster Carer Review in relation to the Training and Support of Foster Carers
8. When Foster Carers go beyond their terms of approval on an emergency basis
9. Frequency of Checks within the Foster Carer Review process
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11. Termination of Approval
12. Investigation of Allegations about Foster Carers
13. Regulation 26, Review of Approval: Further Provision
 - a. Differently constituted review panel and agency decision maker
 - b. Further representations

1. INTRODUCTION

As with all the regulations in Part VII, references to local authorities and their duties under this regulation should be taken to include registered fostering providers.

[Regulation 25](#)(1) and (2) provides clear specific timescales within which the first and subsequent reviews of a foster carer must be considered by the Fostering Panel as follows:

- within one year of the original decision to approve;
- every three years following that first review (regulation 25(1)(a) and (b)).

In addition, the local authority must review a carer's approval at panel where they think it "is necessary or appropriate to safeguard the welfare of any child who has been placed with that carer" (regulation 25(1)(c) and (8)).

The current **National Care Standards** state that there should be an annual review to look at all matters including training and support to carers, the information provided to them and the levels of supervision they should receive. Although annual reviews are no longer prescribed in regulation, authorities may have well established annual review or appraisal processes which could be continued as best practice.

Foster care reviews *not* considered by the Fostering Panel may be arranged in a different way from the more formal presentations to panel for review of continued approval in regulation 25(1) and (2). They should balance an appropriate level of objective reflection about how carers are responding to the challenges of the task with an opportunity to value the contribution of the carers. They can identify both what the carers might do to develop their skills and also what the local authority could do in supporting them and providing training opportunities.

2. WHEN TO INVOLVE THE FOSTERING PANEL

Given that not all Foster Carer Reviews are considered by the Fostering Panel, the following should be regarded as indicators that panel involvement is required (in addition to the requirements set out in section 1 above):

- where termination is being considered;
- where there is a request to vary the terms of approval;
- where there are contentious issues or disagreement between carers and social workers;
- where there has been an allegation;
- where there has been a significant change of circumstances;
- to celebrate long service;
- progression to the next level of a skills-based fostering programme, where this exists.

3. FOSTER CARER REVIEW MEETINGS PRIOR TO FOSTERING PANEL CONSIDERATION

[Regulation 25](#)(5)(ii) provides flexibility around the requirement for referral to the fostering panel for a recommendation on the continued suitability of the foster carers. This requires a written report of "any meeting arranged by the local authority at which the approval of the foster carer is reviewed".

This raises the possibility of the review discussion happening *prior* to the consideration by the fostering panel, with a report of the review and supporting documentation brought to panel for the recommendation.

Where the substantive review discussion is happening at a separate meeting, local authority procedures should define how it will be managed. It should be chaired by someone independent of the foster carer, not the line manager of the carer's supervising worker.

4. WHEN TO CONVENE AN EARLY FOSTER CARER REVIEW

Any significant change may signal the need for an early review (i.e. sooner than the prescribed timescales set out in section 1 of this chapter). Factors prompting an early review could include the following:

- a carer's ill health;
- an allegation;
- a significant practice concern (e.g. breach of confidentiality);
- a new relationship; or
- a significant placement disruption.

Given the level of discretion within the regulatory framework, Local Authorities will also need to determine when these early foster care reviews require the oversight of the Fostering Panel. As a general rule, if an issue is sufficiently serious to warrant an early review, the rigour and independence of Fostering Panel consideration will normally be required.

5. WHO SHOULD BE CONSULTED IN RELATION TO A FOSTER CARER REVIEW

[Regulation 25](#)(2)(c) indicates those who should be consulted and asked to provide views in advance of the Foster Carer Review. This should be regarded as a minimum and authorities should have further guidance for staff to ensure that *all* relevant views are considered, covering at least the following:

1. Consideration should be given to how the views of children in foster care are gathered and who should do this in relation to their view of their particular foster home. This includes recording any views expressed by children who have joined and left the foster home during the year. Imaginative and creative approaches to this consultation should be encouraged to avoid this becoming a tick box exercise.
2. The foster carers should be asked to provide their comments in writing in advance of the review.
3. All members of the foster carers' household should have the opportunity to contribute their views. This includes anyone on an adult placement in a household and the sons and daughters of foster carers, who should be given the opportunity to express their views independently of their parents.
4. The foster carers' social worker should be required to provide a report for the review and the local authority may wish to provide a standard framework for this. As a minimum, the format should include details of the original and current terms of approval and an invitation to comment upon the extent to which the foster carers have met the requirements of the role.
5. The social workers for any child in placement during the year under review should be asked to provide a report. When any child leaves the foster home, end of placement comments should be obtained and recorded in the carers' record.

6. Any comments of birth parents and any other members of the children's families may be noted in records, but authorities should also consider specifically how they seek the views of birth family members on their experience of their child in foster care. Creativity and flexibility of approach should be adopted to increase the likelihood of meaningful consultation.
7. As foster carers are encouraged to work as part of a team, note should be made of any other feedback from other workers who have contact with the foster carers and, where relevant, their permission received to share such comments with the carers.

In all feedback from other staff within the local authority and their use of the fostering service, it is important to record not only any issues arising that need to be addressed, but also any commendations which can be made explicit.

6. THE DEVELOPMENT OF A RECOMMENDATION ARISING FROM A FOSTER CARER REVIEW

Regardless of the precise format and procedures for the review, Fostering Panels are required to make a recommendation on the suitability of the foster carers. This is to enable the local authorities, in the form of the agency decision maker, to decide whether to confirm the terms of approval, vary them or terminate the approval. Where authorities have a number of different fostering schemes, additional assessment may be required to establish that the foster carers are prepared and supported to take on additional or specialist tasks, e.g. in relation to disability or therapeutic fostering.

The Foster Carer Review should also consider whether the terms of approval meet the needs of the specific local authority's population. This is to avoid foster carers being under-utilised or over-stretched. See also Chapter 10 of this Guidance regarding the Fostering Panel's role in this context.

7. THE FUNCTION OF THE FOSTER CARER REVIEW IN MONITORING THE TRAINING AND SUPPORT OF FOSTER CARERS

[Regulation 25](#)(2)(b)(i) and (ii) expects the review to address both the continued suitability of the foster carers for the task and also their own development. Regarding learning and development the Foster Carer Review should consider the following

- the availability of opportunities for development to be provided by the local authority;
- the willingness and commitment of carers to access these opportunities.

Each fostering household should have an allocated supervising social worker to offer supervision and support, and regularly monitor and review each foster carer's learning and development needs.

Local authorities should provide a mix of training provision that meets with the needs of their particular size and geographical location. This should include the following:

- regular core areas that all carers need post approval;
- skills development and access to new ideas to extend their abilities;
- child specific training that assists carers caring for specific children (e.g. in relation to disability);

- task specific training that assists carers taking on new roles (e.g. participating in a Children’s Hearing or giving evidence in court)

Such training may be provided internally, by paying for carers to attend external training or by the provision of materials for carers to access at home, including access to online materials. Increasingly, as foster carers are expected to take on professional roles, it will important to explore ways of formally accrediting the training provided to foster carers.

In planning ongoing training and support, attention should be paid not only to the approved foster carers but also to other members of the fostering household, especially children and any adults living in the home. The Foster Carer Review is an important opportunity to reflect upon the needs of the whole fostering household, not just the approved foster carers.

8. WHEN CARERS GO BEYOND THEIR TERMS OF APPROVAL IN AN EMERGENCY

In an emergency, a local authority may place a child with an approved foster carer beyond their approval terms for no longer than 3 working days (regulation 36(1)(b)). In this situation, the local authority should review the carer’s approval at a fostering panel as soon as possible.

In placing a child in an emergency, the local authority must also carry out their duties under regulation 36, and review the child’s case in terms of regulations 38 and 39. (Please also see guidance on **CHAPTER 15 REVIEW OF THE CHILD’S CASE**)

9. FREQUENCY OF CHECKS WITHIN THE FOSTER CARER REVIEW PROCESS

As outlined above, local authorities should consider reviewing foster carers’ approvals annually whether these involve the fostering panel or not. To support this review process local authorities should seek up-to-date Enhanced Disclosures **every two years**. Once the Protection of Vulnerable Groups Scheme (PVG) is in force, carers will be Scheme Members.

An Enhanced Disclosure check should be sought for any young person in the household who **becomes 16 years of age**. This should be carried out when the 16th birthday is reached, and not await the carer’s next review. Such a check should also be carried out when anyone who is 16 or over joins the household, as soon as this happens.

For medical checks, there should be a medical update **as part of every annual review**, considered along with the original medical assessment. In addition, and as a minimum, a full health assessment should be carried out again at the **second three year review, i.e. the seven year review; and thereafter every six years**. A full health assessment should also be carried out when circumstances indicate this is needed; or when there is to be a significant change in the carer’s remit; or when there are significant health concerns.

10. NOTIFICATIONS

Notices of re-approval, revision of approval, or withdrawal of approval must be sent to the foster carer and to any other local authority using the foster home (regulation 25(5)(b)). As a matter of good practice, the outcome of the Foster Carer Review should normally be discussed with any other authorities who may have a child in placement before a final decision is reached. If the outcome is that a recommendation for termination of approval is to be made, plans for ending the placement of

any children placed in the foster home will need to be made and, where relevant, a Children's Hearing review arranged. If a child has to be removed immediately to safeguard and protect his or her welfare, a child care review should be held as soon as possible. If the child is subject to a supervision requirement, such a removal, an 'emergency transfer', must be notified to the Principal Reporter immediately, in terms of s72 of the 1995 Act. There has to be a review hearing within seven days of the move (s72(2)).

The foster carer's right to complain about or ask for reconsideration under [regulation 26](#) of any decisions resulting from a review must be explained to him or her. If a foster carer decides to make a complaint or ask for reconsideration, the child may be allowed to remain in the placement until the complaint is investigated, or the decision reconsidered, provided this will not be detrimental to his or her welfare.

11. TERMINATION OF APPROVAL

The approval of foster carers may be terminated for many different reasons, ranging from the mutually agreed termination – such as retirement, transferring to another local authority or taking up another form of employment – through to more contentious terminations, resulting, for example, from complaints or allegations (see section 12 below).

Whatever the specific context of the termination of approval, the following principles should inform the approach taken by local authorities:

- ensuring that children's interests remain paramount;
- learning lessons from the termination of approval, particularly where there have been upheld complaints and allegations or shortfalls in the support and supervision provided;
- balance and fairness in the management and recording of disagreements.

In arranging a review which is considering termination of approval, the foster carers should understand this in advance. Where carers are retiring, the timing of the review should dovetail with their plans, including the planned ending of any placement and any formal marking of their contribution.

Where the review is being asked to consider terminating approval at the initiation of the local authority, the reasons for this need to be clearly laid out and shared as fully as possible with the foster carers *prior* to discussion at the review. Third part information will usually be withheld unless permission to share has been given. It should be noted that it is not possible to guarantee total confidentiality to third parties.

The carers should be given an opportunity to submit representations and encouraged to provide their views in writing prior to the panel. Representations by carers are allowed when there is a review or appeal panel, regulation 26(c), and this would also be good practice when there is a recommendation for termination of approval at review under regulation 25.

Reasons for seeking a termination of approval include the following:

- where carers are under stress because of events in their own lives and the family placement worker considers they need a break or a suspension for a period;
- where carers have demonstrated very limited skills and are rarely used;
- where investigations into allegations or significant concerns have found them to be upheld.

Regardless of whether the carers have chosen to resign or their social worker is requesting termination of approval, it is important that a recommendation to terminate approval both states the reasons for this, and also makes a statement about whether at a later date the carers would be able to re-apply to that local authority, and what would need to be addressed if this should occur. Carers should also be aware that this information would be shared with any other local authority or agency they might approach in the future.

The aim for any local authority in providing a fostering service should be to keep to the minimum number of contentious terminations of approval. Achieving this first of all requires a robust assessment and preparation process, complemented by high quality support and advice regarding safer caring practices and recording practices. **The high quality supervision of foster carers includes being open about any emerging concerns so that they can be appropriately addressed at an early stage rather than left to escalate to a point where termination of approval become inevitable.**

12. INVESTIGATION OF ALLEGATIONS ABOUT FOSTER CARERS

Having an allegation made about you is a distressing experience for anyone. Given the nature of the role, foster carers are particularly vulnerable to facing allegations about the quality of care provided. This can be particularly stressful for foster carers because their home life is so bound up with their fostering role.

Although harrowing, it is in everyone's interest that all significant allegations are investigated in a thorough and timely way. A rigorous investigation means that on those rare occasions when children are mistreated in foster care appropriate steps to safeguard them can be taken. Alternatively, a thorough and impartial investigation means that a line can be drawn under unfounded allegations so that the reputation of foster carers can be protected.

Successful allegation management means supporting all those parties involved in the process – the child or young person making the allegation, other children in the household, and the foster carer who is subject to the allegation – and carrying out the investigation as quickly, fully and fairly as possible.

The most strenuous checks cannot provide an absolute guarantee of safety. There is always a risk, fortunately small, that adults who intend to harm children will be approved as foster carers. Children and young people may make allegations for the following reasons:

- They've actually been abused in foster care;
- They've been abused in the past and they want to draw attention to this fact;
- They have misinterpreted actions or intentions (e.g. in relation to physical touch);
- They may be seeking to pressurise the social worker into allowing them home;
- They feel abused by the 'care system' and take this out on those caring for them;
- The allegation may gain the attention and immediate visit from their social worker;

- They may have been influenced by a member of their birth family to make an allegation;
- They hold a personal grudge against the foster carer.

Determining which allegations should be upheld, and which are caused by some of the factors outlined above, is a far from straightforward matter, and any investigation into malpractice will inevitably strain the relationship of trust between the foster carer and the local authority.

Particularly care needs to be taken regarding whether a child making an allegation should remain in the foster home while the investigation takes place. This decision should be carefully considered, based upon the fullest possible information, including the following:

- The seriousness of the allegation;
- The immediacy of any risk posed to the child or young person;
- The anticipated resilience and response of the foster carers or other members of the household subject to the investigation;
- The anticipated likelihood of the foster carers or other members of the household placing undue pressure on the child or young person making the allegation, or interfering with or undermining the investigative process;
- The duration of the placement (the argument in favour of continuity of care, for example, may well be stronger for a child who has been settled in a foster home for a considerable time).

Blanket rules about always removing children or never removing children should be avoided, with the specific circumstances of each case carefully considered on its own merits. (Please also see Best Practice Guidance: Responding to Allegations Against Foster Carers).

The support provided to foster carers should include the following:

- Independent Information and Advice (for example, from Fostering Network Scotland, Fosterline Scotland.)
- Confirmation in writing as soon as possible about the nature of the allegation and the procedures being followed;
- Emotional support during the investigation process;
- Regular updates about the progress of the investigation.

If allegations against carers are upheld local authorities should have clear procedures about what further steps they will take, and how the investigation process will lead to a Foster Carer Review and the development of a recommendation. Further guidance on this issue can be found at the child protection Best Practice Guidance.

Unfortunately, the often private nature of fostering means that many investigative processes reach unsatisfactory conclusions, where allegations are left 'unfounded' or 'unsubstantiated.' Local Authorities should seek to be as clear as possible about the outcome of allegation investigation processes and take a balanced and measured approach to the information retained on the foster carer's file.

Sometimes, although a child protection or criminal threshold has not been reached regarding an allegation, practice concerns remain regarding foster carers. Local authorities should develop

specific processes to consider the implications of any statutory investigation for the approval status of foster carers. Sometimes, with more straightforward allegations, this can be achieved through an immediate Foster Carer Review. In other circumstances, further discussion and analysis will be required to establish which, if any, of the arising practice concerns require consideration by the Fostering Panel.

In considering such reports, Fostering Panels will need to take account of the following:

- the seriousness of the allegation;
- the plausibility of its refutation;
- whether, as outlined above, the child or other person making the allegation may have a reason for making a mistaken, false, or exaggerated allegation;
- the previous fostering history of the foster carers;
- the strengths and weaknesses of the foster carers; and
- whether there were any particular stresses in the placement which could have contributed to the situation (for example, a lack of support or over use of the foster carers by the local authority).

Where it proves necessary to review foster carers' approval and this leads to a recommendation for alteration or termination of approval, the reasons and the conclusions the local authority have reached should be explained carefully to them. As with all review decisions, the local authority must give written notice of their decision (regulation 25(5)((b)(i)) and the *reasons* should also be given and explained. Foster Carers should be told of their right to complain and separately to ask for a further review in terms of regulation 26.

13. REGULATION 26, REVIEW OF APPROVAL: FURTHER PROVISION

As with other regulations in Part VII, references to local authorities and their duties under this regulation should be taken to include registered fostering providers.

This is about reviewing decisions of authorities, as listed in regulation 26(1) and (2)(a)-(c):

- to approve applicants as foster carers;
- not to approve applicants as foster carers;
- to vary foster carers' terms of approval; or
- to terminate foster carers' approval.

These may be more generally called appeals against the decisions. The provisions in regulation 25 are for those arrangements by authorities in line with their responsibilities routinely to review carers. Regulation 26 applies to reviews requested by foster carers or prospective foster carers, when local authorities make one of the decisions listed and the carers or prospective carers wish the

decisions to be reconsidered. The right is not open-ended: requests for reviews of appeals against decisions must be made within 28 days of notice being given of decisions (regulation 26(3)).

It must be remembered that the right to seek a review under this regulation applies to prospective carers who have been approved under regulation 22(3), as well as to other decisions about approvals, etc. While carers who have been approved as they wanted are unlikely to ask for a review, there will be carers who have been approved but are not happy with the terms of the approval and wish to have a review.

From the beginning of their contact with local authorities, prospective foster carers should have written information about the difference between complaints against the way the local authority delivers its services and reviews of decisions made in relation to their wish to foster. Regulation 26 is purely about reviews of/appeals against decisions.

Local authority procedures should provide information about the precise steps that prospective and approved foster carers can take. As a matter of course, this should be included in any written communication of decisions about approval, variation or termination. Procedures should include provision for the social workers who may have been assessing or supporting the applicants or carers to be notified about the decisions and the possibility of requests for review, when carers or prospective carers are thought to be unhappy with what has been decided. These workers should make contact with the person(s) concerned, to ensure that they have received notice of the decision. This will help avoid any unnecessary debate about the timescale for making requests under regulation 26. If there has been any delay between the day on which notice of the decision was sent and the receipt of this, the local authority should take note of this and not bar the request.

Regulation 26(4) onwards lays out what the local authority must do when they receive a request for a review. They must refer the case to a fostering panel, a differently constituted one from that which originally made the recommendation (regulation 26(4) and (5)). There is no timescale within which the panel must be arranged although there are timescales about the final stages (regulation 26(8)). After the review panel makes its recommendation, the local authority's decision must be made within 14 days; and the foster carer or prospective foster carer must then be informed of the decision within seven days. Local authority procedures should provide further details of how the review will be conducted and the local authority's time-frame. The review is likely to be an important event for the carer or prospective carer. For some, there will have been a huge emotional investment in the wish to foster, and others may have seen fostering as a career and it is a significant part of his or her identity, particularly if he or she has been fostering for a period. Regulation 26(10) makes it clear that once a decision has been made under this review provision, there is no further right to review, so it is important for everyone, including the local authority, that the process is fair and well managed.

The time-frame between receipt of the request and the date of the panel is therefore important. It must reflect a balance between the avoidance of a protracted process and the need to ensure that the carer or prospective carer has time to consider any further evidence he or she would wish to put forward. **It is recommended that the review panel should be held within a period of one to three months after receipt of the request.**

There are two broad areas for agencies to consider in relation to this regulation:

1. establishing a “differently constituted fostering panel” and a different agency decision maker; and
2. further representations from the foster carer or prospective foster carer.

These are outlined more fully below

Differently constituted review panel and agency decision maker

It is clearly fair that, in the circumstances of a review request, a different panel and an alternative agency decision maker are used. Regulation 26(5) says that the panel must be “differently constituted” and it is good practice for authorities to use a different agency decision maker. They should all have had no part in the earlier recommendation and decision. For large local authorities, this may pose no difficulty. Small local authorities and small registered fostering services need to have established arrangements in advance of any such request, in order to be able to establish the necessary panel. This should ensure that the agency’s procedures and practice are compatible and meet the requirements of the Regulation of Care (Scotland) Act 2001.

In some instances, this may include making reciprocal arrangements with a neighbouring local authority or another comparable agency, service or supplementing existing panel members with an experienced person from another local authority or agency, someone who has expertise in the area of work. Where a specific issue such as a medical concern was a key factor, it will be important to ensure an alternative medical adviser can attend. Legal advice to the panel should also be considered.

Authorities and agencies should consider having more than one agency decision maker as a matter of general policy, to cover holidays, illness, etc. This will also be helpful for making decisions after a regulation 26 review. If a local authority or agency only has one agency decision maker, they should make established arrangements with another local authority or agency, perhaps on a reciprocal basis, so that they are prepared for regulation 26 review decisions

Further representations

Regulation 26(6) details the information that must be provided to the review panel. This is: the original decision and the reasons for it; the information provided to the panel which made the assessment when the carer or prospective carer was assessed under regulation 22; “any further representations” from the carer or prospective carer; and “any other relevant information”. This gives scope for consideration of how the person requesting the review can put forward his or her case. These representations could include additional written information and references, and statements from others supporting him or her. As with other panels, questions may arise again about third party information and its confidentiality. There could be more pressure at this stage, about obtaining further information on the reasons for turning down an application or terminating or restricting approval. It may be necessary to contact individuals who provided significant confidential information, to discuss their concerns further and the extent to which it is necessary to share some of that information. Legal advice should be sought on this.

The carer or prospective carer should also be invited to attend for all or part of the panel, and to bring someone with them for support. Independent advice and information for foster carers may be obtained from the Fostering Network Scotland, through its [Fosterline Scotland](#).

Where this review follows a termination or variation of approval of an existing foster carer, there must be ongoing discussion with the social workers for any children in placement, and any other local authority or agency which may also have children in placement or where there is derivative approval. Regulation 26(11) requires the local authority to intimate the decision after the review to any other local authority or agency which has given derivative approval of the carer; and that other local authority or agency must vary or terminate their approval as well, and notify the carer.

CHAPTER 13 PLACEMENT OF CHILDREN

RELEVANT REGULATIONS 27, 28, 29, 30, 34, 35 AND 36 TO 41

IN THIS CHAPTER:

1. Introduction
2. Placement of Child with Foster Carer
3. Death or Absence of Foster Carer
4. Notification Requirements upon Placement
5. Short Break Placements with Foster Carers
6. Placement of Children in Residential Care
7. Making Emergency Placements
8. Reviewing Emergency Placements

1. INTRODUCTION

Children should not be passive during their journey through the looked after children system. All too often, children and young people who have been in care describe being moved with little or no notice, sometimes with very limited opportunities to understand what is happening to them. The Looked After Children (Scotland) Regulations 2009 emphasise that, even when children have to be moved in an unplanned way, care should be taken to match their needs with the provision selected and that accurate and timely information is provided to the children's new carers as soon as possible.

Given that the placement of a child away from their family in a stranger's home is one of the most important interventions that can be made in a child's life the decisions we make regarding where a child is placed must be based upon the best available evidence, both about the child and the new carer or residential service. Once in placement, significant events and new information need to be reported in a timely way. These are the matters dealt with in this chapter.

2. PLACEMENT OF CHILD WITH FOSTER CARER

Matters to be considered prior to placement

[Regulation 27](#) covers three elements relevant to the placement of a child with foster carers. These are as follows:

- any prohibitions;
- what the local authority must satisfy themselves about before placing a child with foster carers; and
- the requirement for the carer to notify them of certain events.

To some extent, the wording in this regulation is negative. The local authority must not place a child where that would be contrary to a supervision requirement or any order under [Part II, Chapters 2 to 4 of the 1995 Act](#), or a permanence order. They must not place a child where that would return the child to the care of someone from whom he or she was removed by any order, authorisation or warrant. They must not place the child unless they are satisfied about a number of criteria in relation to the placement, as listed in regulation 27(2)(a) to (h). And they must make sure that the foster carer knows that he or she must notify them if the child dies, suffers any serious illness or injury or “absents themselves or .is taken away from the foster carer’s home.”

Clearly a local authority would not wish to place a child in contravention of a legal order. **What is important is that the case records for the child have immediately accessible information about all orders etc. so that these can be checked prior to any placement.**

Notifications once the placement is made

The duties about notifications should have been covered in the foster carer agreement, [Schedule 6, para 6\(d\)](#) and therefore fully explored with the carer in preparation for signing this when approved. The foster carer handbook or any other general agency material for foster carers should also include information about handling such events.

Social work staff should be prepared for responding to such notifications from foster carers. This will include both the responsibility of the child’s worker for what needs to be done for the child; and also the need to make contact with parents or any one else with parental responsibilities, in terms of regulations 9 and 27(4).

Death and Serious Illness

There are particular requirements about the notification of the death of a child, regulation 9. **See also Chapter 6 of this guidance.** In the event of a serious illness of the child, the information about who is able to consent to medical treatment for the child will be needed by the local authority, carers and others.

Missing Children

All foster carers should have general information about what to do if children are abducted or run away. Some foster carers may need additional training or supports if they care for older children and adolescents where this is a more likely event or is a known pattern of individual children.

Steps to be taken prior to a planned placement

[Regulation 27\(2\)](#) is the provision covering what should be considered in foster carer placements which are not emergency placements, including the following:

- When considering whether a placement is in a child’s best interests, local authorities should endeavour to achieve a ‘matching process’, especially where a placement is likely to be open-ended and may last for a significant period or has a defined purpose. It is also useful to have checklist of all the factors listed in section 17(1) to (4) of the 1995 Act, to establish the extent to which the proposed placement meets all those aspects of the child’s needs.

Regulation 27(2)(b) is really a requirement for a 'matching' of the child with particular carer(s).

- At the point at which a foster placement is planned and sought, it should be assumed that the alternatives of a child remaining at home under supervision or moving to kinship carers have been explored and are not appropriate. The alternatives should be re-stated here as the child moves into foster care, so that the carers know how the need for foster placement has been explained to the child and **help the child understand the plan that is in place**. If the plan is to ask for a supervision requirement with the proposed carers, the report for Children's Hearing should cover these matters too.
- At the point at which a foster placement is planned, the foster placement agreement, Schedule 4, should be prepared and signed by the carers and local authority. It will be helpful to have a style of a detailed foster placement agreement, which can be personalised and adapted for each child and placement.

Extending the approval terms of Foster Carers

Part X, Emergency placements, looks at the possibility of extending the terms of approval of foster carers in an emergency. Where there is some scope for planning a foster placement, there is an expectation that this will conform to the existing terms of the carers' approval. However, a child-centred placement service needs to be responsive to the needs of children, which may mean planning a placement where it is both necessary and appropriate to alter the terms of approval of carers. For example, extending a carer's approval terms may be required to keep siblings together in placement or to enable a foster carer who already knows a specific child to provide a degree of familiarity to them.

Given that the approval terms of foster carers are determined through careful consideration and assessment, such decisions to extend approval terms should only be taken for child-centred rather than resource-led reasons.

Risk Assessment Requirement

Local authorities should have a system for risk assessing a proposed placement, including the following factors:

- any health and safety issues;
- any known risks to the child from other people about which carers should be aware; and
- any potential risks to other members of the household, the carers' community and the child themselves from the behaviour of the child or anyone with whom the child has contact.

Siblings

A high number of children who are placed in foster carer have siblings. (Please see guidance on Children in the same family) The regulations are largely written in relation to an individual child. In making a placement where siblings are concerned, the following should be taken into account:

- individual needs of each child and of the sibling group as a unit;

- protective and risk factors within the group;
- longer term consequences of placing siblings together or apart;
- roles within the sibling group;
- the impact of the sibling group within the wider context of the care setting.

Welcoming the Child to the Foster Home

Schedule 4 provides a framework for the foster carer placement agreement which should also include the specific requirements of the individual child. Time should be spent on going through this carefully, if possible with the parents and if appropriate with the child, as well as with the foster carers, so that all the details are in place to facilitate the move of the child into the placement.

The foster carers should be seen as full members of the team responsible for the care of the child. As such, they should have all available information, to consider firstly their ability to meet the child's needs and any safety issues for the child or any other member of the household. They also need to begin planning for how they will support the child's wellbeing and development while in their care; and they will also need to prepare other members of the household for the arrival of the child.

Keeping Information Safe

All foster carers should have addressed issues of confidentiality as part of their preparation and assessment. They will need to identify any particular issues for the individual child being placed. Where they have written information about the child, they should be provided with the necessary means to keep this safe.

Overnight Stays

Schedule 4, paragraph 4 includes the facility to consider when it is necessary for the foster carer to obtain advance approval for the child to stay temporarily with someone else. When longer-term placements are being planned, this is an area of discretion that can help normalise a living situation for children. Overnight stays with friends, or spending a night at the weekend with extended family of the foster carers, is all part of this. Some authorities and agencies also approve family members or close friends of the carers, as regular babysitters or to help out at holiday periods. This can enrich the family experience for the child.

Moving Children On

To the extent that it has been possible to **plan a placement**, it will also involve a **planned move on** for the child. For children and young people, the process of moving, with attendant losses, can have long lasting effects. Local authorities should provide guidance and training for staff and foster carers about best practice in *preparing* children, the carers they are leaving and the new foster carer household for the move and in managing the transition.

3. DEATH OR ABSENCE OF FOSTER CARER

An unanticipated death or sudden absence of a foster carer will need an immediate response from the local authority. Regulation 28 is aimed at providing some breathing space in circumstances

where it would be more disruptive for a child to be moved precipitously from a settled placement rather than be included in the distress of the fostering household. In a household where there are two approved carers and one remains, continuity of care may be possible. The feasibility of this will be influenced both by the attitude of the remaining carer and also by the child's circumstances, such as length of time in the placement and the child's plan.

Where there is a single approved carer, there may still be another adult able to assume a caring role, at least in the short term. This may be an adult child of the carer or another adult in the household who will be known and checked, or a member of the carer's kinship network. In such circumstances it may be necessary to carry out basic checks similar to those in emergency placements. If there is a person willing to look after the child, who knows the child, and it is in the child's best interests to remain in the household at least for an interim period, then the local authority should make an emergency placement under regulation 36. The prospective emergency carer should sign a written agreement to carry out the duties in regulation 36(3).

Steps to take following immediate arrangements

Following the immediate arrangements, including an emergency placement where that is the best course of action, plans should be initiated to explore more fully the longer-term implications of the death or absence, both for other members of the carer's household and for the children in placement. This will frequently call for sensitive handling given that an immediate decision must be made about who will be the main support to the household and will monitor the situation. This person will be responsible for keeping all other relevant staff informed. Further decisions will then need to be made about the continuing placement of children within the changed household and whether this will require a fostering or kinship care assessment or a planned move for the child. If there has been an emergency placement, the local authority must review the child's case as set out in regulations 38 and 39.

4. NOTIFICATION REQUIREMENTS UPON PLACEMENT

Regulation 29 specifies who must receive written notification of the foster placement of the child. Notifications should include "particulars of the placement." There should be procedures in place for notifying the following:

- the health board for the area where the foster carers reside;
- the carers' local authority, including the education department, if the child is being placed outwith his or her own local authority area;
- parents and any person with parental responsibilities or rights.

Notifications must be "as soon as reasonably practicable" and should be recorded. Local authority procedures should ensure that there are checks on the efficiency of their systems.

Notification to Parents

Notification to parents and/or any person with parental responsibilities is not required if they have already received a written copy of the child's plan under regulation 5 (regulation 29(2)). Whether they have received copies of the child's plan should be noted in records. Resultant non-notifications should also be recorded.

The local authority is specifically forbidden to notify parents and/or anyone with parental responsibilities or rights in the circumstances listed in regulation 29(3). These reasons include the following:

- that the local authority is of the view it would not be in the child's best interests; or
- because a permanence order, supervision requirement or other order or warrant specifies that the child's address should not be disclosed.

It will be necessary to record with reasons any circumstances where notifications are *not* made.

5. SHORT BREAK PLACEMENTS WITH FOSTER CARERS

See also Regulation 14 about short breaks with kinship carers and the guidance regarding 17. SHORT TERM PLACEMENTS IN KINSHIP CARE.

The purpose of regulation 30 is to simplify the arrangements for children who benefit from planned short term placements, sometimes called respite, short breaks or shared care placements. The regulations aim to make a distinction between two different types of short-term placement:

- those episodes of short breaks **which are part of an agreed support plan** to families; and
- the more unpredictable periods of short-term foster care made in response to a crisis in the birth family, reflecting a chaotic lifestyle for example.

Short Break placements to those already in the Looked After Children System

This type of provision is not only for birth families. Some children who benefit from planned short breaks may also continue to be looked after as part of a wider plan. These may be children on supervision requirements at home; or some challenging children already in foster carer, where foster carers are sustained by access to short breaks for the children.

Provision to regard episodes of short breaks care as a single placement

Many short breaks schemes were initiated especially to offer support to families caring for a child with significant disabilities or a serious health condition. Short breaks of this nature are most effective when they are based on trust and the quality of the relationship between the child's parents and the carer(s), built up over a sustained period. Regulation 30 recognises this in enabling a **number of planned short-term placements to be regarded as a single placement**, and so not need to be treated as a fresh period of being looked after each time.

This provision applies where no single placement lasts more than **four weeks**; and the total number of days in any given year do not exceed **120**.

In planning and reviewing the expectations of short break services it is important that there is a recognition of the ongoing parenting role taken by the child's birth parents or those with parental responsibility. Reviews, for example, should be carried out with the minimum of bureaucracy while also ensuring that the services provided to the child are high quality and appropriately tailored to meet the child's needs.

Frequency of Review for Short Breaks

The reviews of looked after children receiving an ongoing short breaks service are covered by regulation 45(3), as follows:

- a review within three months of the child first receiving a short breaks service;
- every six months thereafter.

When children are looked after and placed away from home, residential establishments or units are one of the possible placements. The Residential Establishments – Child Care (Scotland) Regulations 1996, S I 1996/3256 remain in force, because they have not been revoked. They are now supplemented by:

- regulations 34 and 35, which are concerned with notifications about placement of children in residential establishments; and
- regulations 37 and 41, about emergency placements in residential establishments. These are covered under the guidance on Part X.

6. PLACEMENT OF CHILDREN IN RESIDENTIAL CARE

Regulations 34 and 35 cover those aspects of residential care that relate to the placement of looked after children in residential establishments. They cover the two areas of notifications of placements and the information to be supplied.

Regulation 34 mirrors the similar Regulation 29 about notifications following placement with a foster carer. The same notifications, including to education and health services, are required when children are placed in residential establishments, under this regulations. See section 4 of this chapter above.

Regulation 35 sets out the information that must be provided to a residential service to enable it to provide appropriate care, in much the same way as Regulation 27 (with reference to Schedule 4) sets out the information to be provided to a foster carer.

The general principle applying to the provision of information for a residential unit is that it **must be as comprehensive as that provided for a child living in any other care setting**. There is the same intention that the local authority and the residential unit must work in partnership for the child's best interests. This needs to be based on a shared understanding of all the relevant issues for the child.

Risk assessment Requirement

In a similar way to placement in foster care, there should be a risk assessment where information is shared about any risk factors arising from either the child's history and behaviour or/and from the composition of the residential unit. Given that it tends to be older children in residential care, the child's views and understanding of the aims of the placement should form a central part of planning.

Behaviour Management and the emphasis upon education attainment

[Regulation 35](#)(b)(ii) highlights the reality that some children are placed in a residential unit because of their challenging or risky behaviour. Discussion of the placement should include consideration of appropriate sanctions and means of managing behaviour, and how the unit and children's social workers will plan interventions together to address children's problems. This must be balanced by a programme to support children's development, building their skills and resilience. This in turn ties in with the specific requirement in regulation 35(b)(iv) to consider children's educational needs.

7. MAKING EMERGENCY PLACEMENTS

Regulations 36 to 41 cover the requirements when children have to be placed in an emergency. While it is the intention of the regulations to avoid as far as possible unplanned and unexpected moves for children and young people, it is accepted that some problems and difficulties cannot be foreseen by authorities.

Local authorities should monitor the number of children who are placed in an emergency, as well as those placed through planned interventions. This should help authorities in the planning of their emergency placements services.

While *individual* emergencies may not be foreseeable, the careful analysis of patterns of need should be used to anticipate the number and broad type of emergency placements and other support services required in any given area.

Contact and withholding child's address

Regardless of where a child is placed in an emergency, immediate arrangements should be made for him or her to have contact with those who are important to him or her and/or familiar. However, this is subject to contact being appropriate and not contrary to the terms of any court order or hearing warrant, etc. The local authority must ensure that social workers and everyone around the child are aware of any restrictions about contact for the safety of the child, and any prohibitions on disclosing the child's address.

Local authorities should ensure they have rigorous procedures to ensure that a child's address is not disclosed when that is prohibited and/or not in the child's interests.

Duty to provide information about the child

[Regulation 36](#)(5) requires the Local Authority to provide the person with whom the child is placed in an emergency with information about the child's background, health and emotional development. Although there is no corresponding duty in regulation 37 (emergency placement in residential

establishment), a local authority should provide similar information to the unit at the time of the placement.

While providing the information may be difficult in some circumstances, local authority procedures at this crucial time for a child should prompt workers to make every effort to obtain as much information as possible, both to ease the transition for the child and to enable the carer or establishment to respond appropriately to the child. This may include ensuring that workers, including out-of-hours staff, have ready access to information already available about the child and his or her family; and also having procedures and systems which give as much space as possible to the social worker to concentrate on the needs of the child and communicating with parents or whoever is available with information about the child. Careful consideration should also be given to the links with siblings when emergency placements are made.

It is also vital to check if there are any important objects, items or photographs that should accompany the child.

Identifying resources in an emergency

Regulations 36 and 37 set out four placement options for consideration in an emergency:

- i. an approved kinship carer, regulation 36(1)(a); or
- ii. an approved foster carer, regulation 36(1)(b); or
- iii. someone who is known to the child **and** has a pre-existing relationship with the child, regulation 36(1)(c); or
- iv. a residential establishment, regulation 37(1).

These implications of four options are outlined in more detail below.

i. Placement with approved kinship carer

This may occur where the need for such a placement has been anticipated, for example where a parent has a deteriorating condition or where a parent's mental health difficulties or substance abuse are known to create crises. The kinship carer should already be approved by the local authority, have signed the kinship care agreement in Schedule 5 and had an opportunity to discuss this fully.

In addition, the carer should have had time to consider the matters and obligations in the Schedule 4 placement agreement about the child who is already known to them. These materials should address the duties on the carer as referred to in regulation 36(3). However, special attention should be given at the time of placement to contact arrangements, especially as there may be specific requirements made by a court or hearing in the case of an emergency placement under a child protection order or hearing warrant.

ii. Placement with approved foster carer

As with an approved kinship carer, any approved foster carer will already have signed a foster carer agreement in Schedule 6. Where the local authority consider that they may want to place a child

with foster carers in an emergency, they may wish to ensure that the foster carer agreement used specifically covers in principle all the carers' duties in regulation 36(3). The Schedule 4 placement agreement **for a specific child** may need to follow later when a child is placed in an emergency, and any more specific details about contact and social work supervisory visits can be added at that point.

However, as with all emergency placements, special attention should be given at the time of placement to contact arrangements, especially as there may be specific requirements made by a court or hearing in the case of an emergency placement under a child protection order or hearing warrant.

In some instances, to keep siblings together, or simply to identify a foster placement, it may become necessary to consider approaching foster carers about a placement which takes them beyond their terms of approval. Where this is being considered in an emergency, the team leader (or other identified person) of the family placement team should be approached first. Many foster carers find it difficult to say 'no' in an emergency, and all local authorities and registered fostering services have a duty of care to their foster carers and their families. Any approach to extend carers' terms of approval must therefore be based on knowledge of their ability to manage an extra placement.

If, by the time of the review in **three working days** (regulation 38(2)), it is clear that the placement is continuing, the **agency decision maker or other senior manager** should be informed of the extension of the carers' remit and asked to approve this. Any such request should include the following:

- an immediate risk assessment;
- any additional supports that are being provided for the carers;
- plans to monitor the impact on the carers, any children of the carers and existing children in placement, as well as the child(ren) placed in the emergency.

The social workers for children already placed should be notified. Where the extra placement in an emergency is short-term or only intended to last until a longer placement becomes available, the emergency extension of the terms of approval should cease once the child has moved on. The carers' support worker should keep in close touch with the situation and ensure the placement does not exceed a maximum period agreed at the outset. If a particular placement settles down and works well for all concerned, consideration of an alteration to the terms of the carers' approval should be addressed at the foster carers' review. Consideration should be given to bringing forward the timing of this review, to allow for objective discussion of the issues before the additional placement becomes a *fait accompli*.

iii. Placement with unapproved carer

An emergency carer in regulation 36(1)(c) will normally be someone who could be a kinship carer but has not yet been approved. This could be because a kinship care assessment is underway but not completed when the emergency placement is needed; or the person may only come forward at the time of the emergency. He or she may be prepared to offer short-term care but not wish to be assessed and approved as a kinship carer, although this is a matter for ongoing discussion between the person and the local authority.

As with all emergency placements, special attention should be given at the time of placement to contact arrangements, especially as there may be specific requirements made by a court or hearing in the case of an emergency placement under a child protection order or hearing warrant.

The first stage of an emergency placement with an unapproved carer concerns what should be done **within the first three working days**. In an emergency, the local authority should have procedures to cover:

- a) steps that must be taken *before* the child actually moves in with the unapproved carer, including a check of local authority records; a visit to the address where the child will be placed, to establish that it is safe for the child and also who is in the household; if the need for emergency placement is about child protection, an explicit discussion about keeping the child safe in the particular context of the carer's position in the child's network.
- b) the agreement that needs to be discussed with and signed by the prospective emergency carer. This should be based on the duties which the carer has under regulation 36(3).

iv. Placement in a residential establishment

Regulation 37 allows for an emergency placement in a residential establishment for a period **not exceeding 3 working days**. The requirements are brief and purely address the need to establish that such a placement is the most suitable way of meeting the child's needs and that full consideration was given to the possibility of placing with a carer under regulation 36. For some children or young people, placement in a residential establishment may be the most appropriate choice, based on the available information at the time or the circumstances leading to the need for a placement. Clearly residential establishments have duties towards children placed under regulation 37 comparable to those laid out for emergency carers in regulation 36. These should be established in line with the appropriate provisions for all registered and inspected units.

Many of the emergency placements in residential establishments will be of older children or young people and the duties laid out for emergency carers in regulation 36(3)(b) to (e) and (5) are relevant for residential units also. In emergency placements, there may be many gaps in information about a child or young person so there is a need to build up the assessment. The circumstances leading to the emergency placement may form a significant part of this. Obviously, young people will vary as to whether a traumatic event will lead them to talk about themselves or close off communication. The establishment will need clear information both about respect for confidentiality and also what may need to be shared with the local authority.

There is a requirement in regulation 36(5) for the local authorities to give information about the child to the carer. A residential establishment will need similar information in order to provide appropriate care for the child **and this should be provided as soon as possible**. If an emergency residential placement continues after the three day review, regulation 41(4) imposes various duties on the local authority, including providing information in terms of regulation 35.

8. REVIEWING EMERGENCY PLACEMENTS

After every emergency placement, the child's case should be reviewed **within three working days**. This is required by regulation 38(2) (for placements with carers under regulation 36); and regulation

41(2) (for placements in an establishment under regulation 37). Wherever possible, the time and date of this review should be set when the child is being placed. Local authority procedures should be clear about where these reviews will be held, so that there is capacity to carry them out in the necessary time frame.

Thereafter, if the child continues in the emergency placement, his or her case must be reviewed **within six weeks**, under regulation 39(3), where the placement is with a carer under regulation 36. Following a child's placement in a residential establishment, a child care review must be arranged **within six weeks** under regulation 45(2)(a), which is part of the general review requirements.

The Role of Independent Reviewing Teams in Emergency Reviews

Many local authorities have established independent reviewing teams and the point at, and means by which, they become involved in emergency placement reviews should be clarified with them. Depending on local arrangements and service capacity, it may be more realistic for the three working day review to be held within the team of practitioners who are already dealing with the situation; and then, if the child continues in the emergency placement, the case may be referred to the independent reviewing officers to arrange the six week review required under regulation 39(3).

Where the local authority does not have independent reviewing officers or they do not become involved until after the six week review, that review of the emergency placement should be chaired by a senior social worker or team leader who has **not** been directly involved in the emergency admission, to establish an element of independence, especially if there are contentious matters.

Who to include in Reviews of Emergency Placements

The key people to include in reviews, in addition to the chair, are:

- the child, if old enough;
- the child's parent(s) and any other person with parental responsibility;
- the child's carers or a staff member from the residential establishment which is caring for the child;
- the child's social worker;
- a social worker from the family placement team or the manager of the residential establishment;
- any other worker who was known to be actively involved in working with the child prior to the emergency placement.

The Purpose and Matters to be covered in the Three Working Day Review

The purpose of and requirements for the three working day review are listed in regulations 38(2) and (3) and 41(2) and (3). The main functions are to cover a range of matters as follows:

- Ensuring that all the requirements in regulations 38(2) and (3) or 41(2) and (3) are met, particularly deciding "whether placement continues to be in the best interest of the child".

- Ensuring that all the practical arrangements for the care of the child have been attended to, such as immediate clothing and equipment needs, transport to school, medication and dietary requirements.
- Obtaining the views of all concerned about the impact on the child of the placement, and in particular to establish the child's views.
- Where there are ongoing child protection concerns, confirming that all relevant people know how to keep the child safe.
- Where a young person's behaviour is placing him or her at risk, considering the management of this.
- Considering whether the particular placement provided for the child is in his or her best interests, and is the most suitable possible one.
- Where the placement is with approved foster or kinship carers, checking that a Schedule 4 foster carer or kinship care placement agreement has been completed.
- Where the placement is with a carer who is not an approved one, ensuring that the initial checks have been made and information gathered for the review. This is crucial because the local authority is unlikely to have detailed information on the carer in the same way as they would for an approved one. Also, this will make it easier to reach an informed decision about continuing with the placement. If the child remains in the emergency placement, these checks and information may form the early steps of a kinship carer assessment.
- Ensuring that the local authority is fully informed about the child's legal status, and about other services and agencies which may have responsibilities towards the child and/or be involved in the child's welfare. These may include: whether there is a pre-existing child's plan or any other support plan for the child or his or her family through the Health Board, education department or any other agency; the Children's Hearing system and dates of further hearings; any ongoing police or other child protection investigations; information about any other court orders for contact or residence in existence through private law applications, including under section 11 of the 1995 Act; and any other relevant issues such as immigration status or visa requirements.
- Where the child is already subject to a supervision requirement, discussing whether a review hearing should be requested, to take account of the child's change of circumstances.
- Where there is a child protection order, ensuring that everyone is aware of dates of hearings and the rights to seek a review of the order.
- Where it is clear that the child continues to require the placement, discussing plans for ongoing contact, where this is appropriate and safe.
- Establishing whether the information required under regulation 3 has been gathered, and whether a comprehensive assessment for the child has been completed under regulation 4 (leading to the child's plan under regulation 5). If there is a child's plan, this should be up-

dated in light of the need for the emergency placement. If this has not been started or completed, and the child continues to be placed, there must be discussion about how the work should be initiated and carried out, including what should be done by the time of the six week review. This is in line with the duties in regulation 38(4).

- Explaining the purpose of the assessment and the plan to the child, as appropriate given his or her age, and to the parents. Particular attention should be paid in this to those families where children may have experienced various brief periods of placement and returning home quickly, with the assessment and planning process often interrupted.
- Identifying any support services that may already be in place and need to be transferred to the child's placement, and/or any new services that are required.
- Establishing whether there are any further options to pursue within the child's network, if the child has not been placed with kinship carers or someone otherwise known to him or her.
- If possible, identifying the arrangements for the six week review. A six week review of a continuing emergency placement with carers is required under regulation 39(3). A six week review of a continuing emergency placement in a residential establishment is required under regulation 45(2).
- Ensuring that everyone is clear about the duties on the local authority when the decision is for the placement to continue, and who is responsible for these. For a placement with carers, the duties are in regulation 38(4), to obtain information, make an assessment and a child's plan (see para 11 above); and regulation 40, notifications of the placement to certain agencies and people. For placement in a residential establishment, the duties are in regulation 41(4). These refer not only to obtaining information, making an assessment and making a child's plan, but also to regulations 34 and 35, about notifications and provision of information.

The Purpose and Matters to be covered in the Six week Review

If the three day review has led the local authority to continue an emergency placement with carers (regulation 39(3)) says there must be another review **within six weeks** of the original date of placement. Similarly, if the three day review has led the local authority to continue an emergency placement in a residential establishment (regulation 45(2)(a)) says there must be another review **within six weeks** of the original date of placement.

The six week review has to look at the matters listed in regulations 38(3) or 45(5) respectively. The issues covered above in relation to the three working days reviews will continue to be relevant. If the child continues to be looked after and placed after the six week review, further reviews will be required in due course under regulation 45(3) for carer placements, or regulation 45(2) for residential placements, **within three months and then a further six months**.

Extension of Emergency Placements with carers

If the three working day review has led the local authority to continue an emergency placement with carers, regulation 39(1) says that the placement **may continue for up to 12 weeks** from the original date. Regulation 39(2) only allows the placement to continue for more than 12 weeks in certain circumstances. If the child is with an approved kinship carer, all the placement requirements for kinship care in regulation 11 must be met. If the child is with an approved foster carer, all the placement requirements for foster care in regulation 27 must be met.

If the child is with an unapproved carer, the placement under this regulation will **not** be able to continue after the 12 week period unless he or she has been approved as a kinship carer by that time (regulation 39(2)(c)(ii)). The local authority also have to be satisfied that the placement is in the child's best interest and that the placement requirements for kinship care in regulation 11 are met. However, if a Children's Hearing make a supervision requirement or vary an existing one and name the unapproved carer as the place where the child is to live, the placement could continue on that basis. The local authority report recommending this would have to set out that this is in the best interest of the child and that the terms of regulation 36 were met, under regulation 7(2)(d).

Suitability of placement in longer-term planning

Emergency placements are at the other end of the spectrum from the careful matching in adoption or permanent placements. For all looked after children placed by local authorities, there are the systems for the review of children's plans and needs, regulations 44 and 45. Where children are placed with kinship carers, one of the key themes throughout is intertwining the threads of the children's needs with the ability of the kinship carers to respond to those needs. For other children who are placed by local authorities, there are also the annual reviews of foster carers and the inspections of fostering services and residential establishments. Of course there are overlaps and sharing of information, but the regulations for emergency placements highlight the importance of asking at an early stage whether this resource (possibly the best option at a time of crisis) continues to be suitable for a longer placement. It is important to acknowledge this issue early on in placement, so that the child and carers are not left in an uncomfortable limbo and that active plans are made to seek a more appropriate placement in a positive manner.

Considerations to be made when assessing the long-term viability of emergency provision

There are various issues to consider for longer-term planning, of which the following are examples.

- Type of Provision (Family Placement or Residential Care)

Efforts are usually made to find foster placements for younger children, while adolescents may be more likely to be placed in a residential establishment. This may be based on limited knowledge of individual children and young people, with restricted time to discuss the options with them. Further assessment may indicate that, for some young children, a family is a difficult environment to which they can find it hard to adapt and they will instead require the space a specialist residential placement may offer. On the other hand, some teenagers may flourish given individual attention in a family placement. **Views of the most suitable type of placement may therefore be influenced by greater knowledge of the individual.**

- Purpose of the Residential Unit

There are particular challenges for residential establishments, especially if they have a broadly defined remit, to cater for a mix of incoming children and young people while trying to provide stability for longer term residents.

- Siblings – Together or Apart

Many children are accommodated as sibling groups. For larger groups, the dilemma often starts when they are accommodated in an emergency. Is it more important to keep them together, even if this means residential care for very young children? Or would it be better to split them up, so that the little ones have a more manageable family experience? If children require long-term care, or eventually plans for permanence or adoption are made, such arrangements at the outset of placements may have a significant impact on all the plans thereafter. This calls for early attention to sibling relationships, including contact arrangements between separated siblings in their own right, apart from contact with parents.

Attention also needs to be paid to those situations where sibling relationships are so distorted as to put certain children at risk, especially if they share a bedroom. At the same time, there are other siblings whose relationship has been adversely affected by dynamics within their birth family and who need to learn together about healthier ways of interacting. Where siblings have been split in an emergency, and it is clear that the aim should be to reunite them while they continue to need placement, there needs to be an active plan to achieve this.

- Cultural and Religious Identity

Some children may have particular needs arising from their ethnicity, religion or culture but which cannot be immediately met in an emergency. Support to them and education of their carers may be of immediate help, but attention must be given to finding more suitable alternatives if long-term arrangements are likely. This is better for the children and their welfare than leaving them in a less well-suited placement, and then facing further dilemmas about uprooting them from foster carers with whom attachments have been formed.

- Sustainability of Placement

Foster carers may be very willing to help out in an emergency but then find that a placement is lasting longer than anticipated. This may cause the equilibrium of the household to be unsettled, with ongoing stress for themselves, their own children, other children in placement and the incoming child. Foster carer support workers need to be alert to these situations and help carers contribute to early reviews, so that placements which may not be sustainable are identified early and ended in a planned way, minimising the negative consequences for the child and family.

Strategic consideration of emergency provision

Although careful matching of placements may not be realistic in an emergency, local authorities constantly need to review their number and range of resources, and those they may call on from registered fostering providers. This is to enable them increase their potential to offer children placements which meet their needs as fully as possible in emergency, temporary situations.

CHAPTER 14 CASE RECORDS AND ALLOWANCES

RELEVANT REGULATIONS 31, 32, 33, 42, 43

IN THIS CHAPTER:

6. Introduction
7. Records in relation to Foster Carers
8. Records in relation to Looked After Children
9. Allowances

1. INTRODUCTION

Good record-keeping is not just a procedural requirement. It is the foundation of all high quality social care with children, both in relation to the children we serve and those directly caring for looked after children. Good record-keeping increases accountability, encourages reflective practice and promotes better decision-making. Children, parents and foster carers should be aware of what information is held about them and who will have access to this information.

Equally importantly, the placement of children should be sufficiently resourced to enable them to fulfil their potential and avoid being further disadvantaged by entering the Looked After Children system. Recording and financial support are the two issues addressed in this chapter.

2. RECORDS TO BE HELD IN RELATION TO FOSTER CARERS

Regulations [31](#) and [32](#) detail the specific requirements for the establishment and retention of records on foster carers. They should be read in the context of the overall responsibilities of local authorities for all case records.

In establishing such records, agencies need to consider two broad groups:

- Approved foster carers who have had children placed with them, regulation 31(1) to (3)
- Prospective foster carers, regulation 31(4) and (5).

There is no specific mention of approved foster carers who have not had children placed with them, but it would be good practice for authorities and agencies to treat their records as they would treat those of carers who have had placements. Approved carers who have not had placements will be rare, but they are not just prospective carers so they should be treated as falling within the scope of regulation 31(1) to (3).

Regulation 31(2) and (3) defines the information which must be included in the record for approved carers. Local authority procedures should include any further information that will add to the usefulness of records. It is particularly important to ensure that records are clear about the reasons

for all decisions taken, from the initial approval, variations of the terms of approval, through to any allegations and termination of approval (for whatever reason). Carers should be aware of the range of information in their records and their rights of access to them, especially if there are any contentious issues.

Regulation 31(3) addresses what should be in foster carer records about the placements they have offered. Agency procedures should be clear about the information which should be held in carers' records, as opposed to in the children's records. The provision specifies the basic information about children placed, with names and dates and also the circumstances of any terminated placements. The information gathered for carers' approvals and reviews should be in the carers' records, and this would include information from children's social workers, and also the views of children placed with the carers.

Retention of Day to Day Records

Many foster carers also keep daily diaries or logs. **Local authorities and agencies will need to ensure that information contained in these, including that kept on computers, is retained in such a way as to be accessible in the future.** This information is often very important to formerly looked after adults and/or when there are issues about the care received by children.

Records related to Prospective Carers

Authorities and agencies must also keep records on prospective foster carers and these are covered by the same retention requirements as other foster carers' records, in regulation 32. An enquirer should be treated as becoming a prospective foster carer when the local authority or agency commences preparation work. A prospective carer who is not approved by the local authority after assessment is covered by the term, as well as one who has withdrawn, for whatever reason, before going to the panel.

Authorities and agencies need to have clear procedures for the range of records they keep about prospective foster carers at the different stages of their applications. As well as conforming with the regulations, it is essential for management purposes to have information not only about prospective carers but also the way in which the applications are processed and progressed.

Some people may only make initial enquiries and go no further, so that no specific individual information on their circumstances will be known beyond name and address. The key point for starting an individual prospective foster carer record will be when he or she provides fuller information about his or her circumstances and preparation work is started. This will normally be through an initial interview or when they complete an application form.

When prospective foster carers do not progress to approved carers, there should be consideration, firstly, about closing any record started; and secondly, about clarity for doing this. This may be a simple note that they did not wish to take their interest further, and which may or may not be accompanied by a reason for this decision. Other prospective foster carers may not proceed on the advice of the agency; a difficulty affecting their application may have been identified or there may have been a clear decision not to approve them.

Where a prospective carer has been refused approval, the full report to the panel and others papers, along with the agency decision maker's reasons **must be retained in the records**.

Both the prospective foster carer and the local authority or agency need to be clear about the status of any information in these records and any disagreements should be noted. There are many reasons why prospective foster carers do not become approved foster carers. Some may enquire again, either to the same local authority/agency or to another one. Where information is being shared, it must be fair and accurate so that genuine concerns are identified to protect children, but prospective foster carers are not lost because there is an inaccurate or distorted record. Procedures should also cover how consent is obtained to share such information between authorities and agencies. Where local authorities are involved this will be addressed through explaining the use of local authority checks.

Retention of Foster Carer Records

Regulation 32 states that records on approved and prospective foster carers should be retained for **25 years**. There is a requirement for keeping them in an accessible form; and they are confidential, with access only through the relevant legislation, [the Data Protection Act 1998](#) or a court order.

3. CASE RECORDS FOR LOOKED AFTER CHILDREN

Regulations [42](#) and [43](#) set out the requirements in relation to case records for looked after children.

It is important that records include:

- A chronology of significant events in the child's life to which all relevant services contribute;
- Consistent recording of all staff contacts with children and families, including details of when the child has been seen;
- Decisions taken and reasons for these;
- A distinction made between facts and opinions;
- Outcomes of interventions; and
- Details of the child's views.

Records for children, including child protection, should be regularly reviewed and monitored by managers or others with a quality assurance role.

The importance of Chronologies

Chronologies are a useful tool for identifying, analysing and responding to patterns or an accumulation of concerns which contribute to the overall assessment of risks and needs and supporting informed decision-making about children's lives. These must be kept up-to-date and accurate and regularly reviewed.

The range of information which local authorities must include in their case records for looked after children is listed in regulation 42(2). In thinking about the effectiveness of these records, both as a

working tool and also for looked after children to access in the future, local authority procedures should also highlight the principles of good record keeping to all staff and carers. It is important to consider both the quality of the content and the accessibility of important material. The manner in which records are kept should facilitate anyone legitimately accessing them, to identify the planning pathway for the child while he or she is looked after, and to understand the child's development and progress.

Questions to consider when auditing case files

There are some key questions to ask when considering the information identified in regulation 42(2) and how carefully and effectively it is prepared and collated.

1. Do the reports demonstrate, both internally and to other agencies (especially the Children's Hearing system and courts) why the local authority decision was 'in the best interests of the child'? How did they balance the benefits and risks in difficult decisions; what was their evidence; whose views did they seek; and how did they evaluate opposing views?
2. How well do and did the local authority consistently carry out their responsibilities for the wellbeing and development of the child, whether in line with their general duties under [section 17 of the 1995 Act](#) or in terms of parental responsibilities and rights under a Parental Responsibilities Order or permanence order? Did they always act as a 'concerned parent'?
3. Would an adult who had been looked after as a child gain a sense that they and their parents had been listened to, even if the local authority did not always do as they wished? Would they be able to get an understanding of their time in the care system, why certain plans were made and also what their life was like? This is the sort of information which can fill in gaps in a disrupted childhood.

Retention of Records

Records for looked after and placed children are now on a similar footing to those for adopted children in terms of the length of time they have to be retained by local authorities. Regulation 43(1) requires a child's records to be kept for **100 years from the his or her date of birth**, unless the child dies before the age of 18, in which case the period for retention is 25 years from the date of death. While the time as looked after may be brief for many children, others may spend many years of their childhood in various care placements. Their future needs for access to information about their past history may therefore be comparable to that of adopted adults. There is now a growing awareness of the issues around post-care access to records.

Linking of Sibling Records

Particular attention should be paid in local authority procedures to recording links to other records and information, given the frequency with which plans must be made for different members of sibling groups. In complex families comprising full, half and step siblings, children may have been accommodated at different ages and at different stages of the family history. One family may include siblings who were for example:

- brought up by paternal relatives who have little contact; or

- in kinship care; or
- adopted together or separately; or
- fostered; or
- in residential care.

There may possibly be other siblings who remained at or returned home. For many adults whose birth families have been fragmented, **there is as strong a wish to find out about their siblings as about their birth parents.** It is therefore logical that there are similar procedures to cover all the records for all the children concerned, when the local authority has been involved in planning their placement. This is true whether the children were ultimately adopted or remained looked after and placed.

Retention of Records for those Looked after at Home

[Regulation 43](#) regarding the retention of records applies to children who are placed by the local authority. For children who are looked after at home, there will obviously need to be an active working record while the local authority are involved. Local authorities should consider how long to retain these records once a case is closed.

The minimum period should be **while there are still children or young people in the family under the age of 18.** Children in the family may be referred or re-referred for support or move elsewhere and come to the attention of another local authority. In keeping records for longer periods, the local authority must consider the reasons for doing so. Apart from legitimate research purposes, possible requests for access may relate to older children who were adopted or accommodated before a more recent family history of children looked after at home. There may also be challenges to local authorities from adults who remained at home under supervision and who later question why they were not removed for their wellbeing or safety. Overall, it would be good practice to retain the records of each child looked after at home for a minimum period of **30 years from the date of the child's 18th birthday.**

Assistance in relation to Access to Records

Access to children's looked after records is governed by the Data Protection Act 1998 and the [Data Protection \(Subject Access Modification\) \(Social Work\) Order 2000, SI 2000/415](#). Local authorities should have clear, robust and sympathetic procedures and systems to assist people who wish to access looked after children's records:

- adults who were looked after in the past;
- young people who were and are still looked after; and
- the parents of younger children who wish to access their children's information.

Access by a young person under the age of 16

A young person who is under 16 has the right to seek access to his or her own records, in terms of [section 66 of the 1998 Act](#), when he or she "has a general understanding of what it means to

exercise that right.” There is no lower age limit. A young person who is 16 or over has full adult capacity to exercise rights under the 1998 Act.

Local authorities should ensure that their procedures and systems for accessing looked after records reflect the recommendations about these matters in the Shaw Report: *Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995*, led by Tom Shaw, and published on 22 November 2007.

Further information and advice about data protection issues generally may be obtained from the [Information Commissioner](#) for the UK

4. ALLOWANCES

Regulation 33 covers payments to both foster and kinship carers. Guidance for kinship carer payments is under [Part V](#). The aim of the Concordat with local government, which runs to 2011, is that this group of looked after children **should be on an equal footing** with those in foster care so far as financial support is concerned, because similar issues apply to them as to children in foster care.

Regulation 33 makes provision for the local authority to pay such allowances “as they see fit” to a range of people:

- (a) a foster carer or kinship carer;
- (b) the carer of a child subject to a supervision requirement from the Children’s Hearing, when he is she is not the child’s parent; and
- (c) anyone with parental responsibilities and rights under a permanence order with whom the child is residing.

In considering the payment of allowances, the local authority should be conscious of their overall responsibilities towards children who are looked after and accommodated by them. There is a strong expectation that the care provided will reflect the quality of care that children would receive from concerned parents. The emphasis on family-based care reflects a belief in good parenting. This places an expectation about the provision of care by foster carers. This is within the context of the wider governmental strategies at any time, about the aspirations for all Scotland’s children and any additional concerns about vulnerable groups of children.

Expectations to be made of carers in relation to allowances

Foster carers are therefore charged with providing not just basic care but optimum care for looked after children. This includes:

- a healthy diet and good physical care;
- opportunities for stimulation and exercise;
- development of social skills and participation in activities in the community;
- building self esteem, including good presentation and acceptability by peers;

- a safe and comfortable environment;
- full inclusion in special celebrations such as birthdays, Christmas or other cultural or religious events;
- promoting and developing educational opportunities.

Fostering allowances should ensure that children are offered high quality physical care and provision, and also that they have the opportunities to fill some of the gaps in experience that are often found in looked after children. Within the fostering household, children should not experience any sense of disadvantage, nor should the lifestyle of the foster family be financially disadvantaged by the placement.

While there is no statutory amount stated for allowances, the Fostering Network provides a [recommended rate](#) for children at different ages and stages, and this is updated annually. This guidance recommends that local authorities pay attention to this in setting their own allowances.

Allowances and Benefits

The issue of the interplay between fostering allowances and benefits is complex and open to continuing change in the wider benefits system. Added to this is the question of fees, where these are offered, and tax implications. Social workers who assess and support foster carers should have basic information about the range of financial implications for carers and be able to access more extensive advice on such matters.

Fee Payments

[Regulation 33](#) does not make any reference to fees to foster carers. In order to sustain some very challenging children in foster care, extra financial support was offered originally through enhanced allowances. There were concerns about this approach of identifying and potentially labelling children as “difficult”, and the potential for such payments to cease as a result of the improvement in children’s development attributable to good foster and residential care. It is open to local authorities to decide whether to offer a reward element for foster carers, over and above the allowances paid for the cost of providing care. An increasing number do this, normally as fees, so that foster carers are regarded as self employed. There are a number of reasons for this including:

- the growing recognition of the level of skills required for fostering and an expectation that carers participate in ongoing training;
- the inclusion in the criteria for approval of foster carers of their ability to work as part of a team, and therefore be included as a full member of the local authority team alongside professional staff;
- the range of tasks expected of foster carers being extended beyond direct care of children, to provision of reports; record keeping which may be evidenced in assessments, care planning and court processes; and participation in meetings;

- the need to recruit an increasingly resourceful and skilled pool of foster carers leading to consideration of foster carers as an alternative home-based career for people who had the necessary attributes. Foster care needed, therefore, to be a realistic and viable alternative.

Local authorities and registered fostering services should ensure that their handbook for foster carers covers these issues.

Payments to non-approved carers

Local authorities should also have schemes and systems for paying allowances to those covered in regulation 33(1)(b) and (c) if such carers are not foster or kinship carers.

CHAPTER 15 REVIEW OF THE CHILD'S CASE

RELEVANT REGULATIONS 44 TO 47

IN THIS CHAPTER:

1. Introduction
2. Looked After Children Reviews
3. Frequency of Reviews
4. Focus of Reviews
5. Framework for Reviews
6. Reviews for Children in Kinship Care
7. Reviews when Planning for Permanence
8. Local Authority Visits to the child in placement
9. Ending the Placement

1. INTRODUCTION

Although the matching and placement of children are key variables in improving outcomes for children, how we support and review children and young people once they are in placement are also important factors.

This chapter outlines the regulatory expectations in relation child care reviews, the visiting requirements made of all local authorities and the process for the termination of placements.

2. LOOKED AFTER CHILDREN REVIEWS

The expectations in relation to Looked After Children Reviews are set out in Regulations [44](#) and [45](#).

The purpose of looked after children reviews is to ensure that the identified needs of each child are being met in the short and longer term. It is important for local authorities to consider how they carry out these responsibilities in ways which contribute to children's sense of continuity.

The need for flexibility of approach

Local authorities should think about imaginative ways to carry out reviews, taking account of the range of different situations for looked after children. Children, carers and others need to know how concerns may be raised. However, there is a balance between appropriate monitoring which allows discussion about concerns and unnecessary over-intrusion, particularly when children are settled in long-term, stable and legally secure placements. Local authorities need to consider a range of ways to obtain children's views, without necessarily insisting that every child must attend review meetings. Similarly, there should be facilitation of looked after children's participation in their foster carers' reviews.

The statutory basis of the Review

Reviews are a statutory requirement. They are the mechanism whereby the local authority ensures that they are fulfilling their obligations to care and plan for the child. Any decisions made by the review about the local authority services should be duly progressed. Some conclusions of discussion at reviews may need to be referred elsewhere. These can include a request for a Children’s Hearing review if a change in the supervision requirement is indicated, or a referral to an additional scrutiny body within the local authority, in particular to the adoption or permanence panel.

3. FREQUENCY OF REVIEWS

Regulations 44 and 45 differentiate **three** groups of looked after children and there are slightly different provisions about the frequency of their reviews. The following Table provides an overview of the different frequency of review requirements for each group:

Group	Group 1		Group 2	Group 3
Regulation	44		45	45
Definition	Children at home on Supervision Requirements	Children subject to Permanence Order when carers have some parental responsibilities	Children placed in a non-emergency situation with approved carers or approved foster carers or a residential establishment.	Planned short-term placements with kinship and foster carers. Children placed with carers on an emergency basis.
Minimum Frequency	Within six weeks and within twelve months of previous review	Every six months (as a best practice recommendation)	Six week review, then within three months of the previous review, then within six months of previous review	First review within three months of the placement or the six week review, then within six months of previous review.

For further guidance in relation to the review expectations for each group see below.

Group One, defined as follows:

Children who remain at home with birth parents under a supervision requirement; **and also** those for whom the local authority have a permanence order and the child’s carers have some parental responsibilities and/or rights under that order. Their reviews are covered by regulation 44.

Regulation 44(5) and (6) allows for flexibility, as the local authority must agree the frequency of reviews with the child and the person caring for him or her, regulation 44(5). There is a fall-back provision when there is no agreement, regulation 44(6): the first review must “**within 6 weeks of placement**”, and “**subsequent reviews within 12 months of the previous review.**”. Placement for these purposes should be treated as the date the supervision requirement or the permanence order was made

In reality, regulation 44 covers two very different groups where the potential for flexibility may be helpful but will be exercised in different ways.

- *Children at home on supervision requirements.*

Once the supervision requirement is made, there should be a meeting between the local authority, the parents and the child, depending on age and maturity, to lay down ground rules including frequency of reviews. More detail of the content of the work with these children and families is in the guidance for 2. The aims and objectives OF HOME SUPERVISION. Early work is likely to be actively addressing the assessment and care planning requirements in regulations 3 to 5. This may lead on to considering contracts with the birth parents and, if appropriate, children and young people, about areas to address, changes required and services to be provided.

Good intervention will also require a careful monitoring and review of progress to reinforce improvements, to maintain momentum and to look at agreed aims and targets. This will require active reviewing, beyond the minimum fall-back frequency indicated in regulation 44(6). Where the use of a supervision order is proving effective, there should be a clear picture of this to bring to the annual Children's Hearing review, together with an assessment of the need for continuing compulsory supervision. Where there are areas of contention, looked after reviews will need to consider these, and where necessary request an early Children's Hearing review. Where the situation has been stabilised, there should be a looked after review prior to the annual Children's Hearing review, to clarify the local authority view on continuation of the order. If it is agreed that the supervision is working effectively and should continue, this is the point where there may be consideration of reduction in the frequency of looked after reviews.

Similar considerations apply when a child who has been placed returns home under a supervision requirement. This is often a vulnerable situation, where allowing a child to remain at home, or returning them to the care of birth parents, includes a balancing of benefits and risks.

- *Children subject to a permanence order when carers have some parental responsibilities.*

Where the child is already with permanent, kinship or foster carers who have some parental responsibilities for the child under the permanence order, the aim is to underpin the stability of the placement by a less intrusive reviewing process. This should be balanced with the need to ensure that the carers are receiving all the necessary support in caring for the child, and that the child's need for direct services is recognised. It should not, therefore, be assumed that a more limited number of reviews is required. However, arrangements for reviews should allow as much flexibility as possible, particularly about whether the child attends, how his or her views are obtained and the venue. Where the child is living with kinship or foster carers who have some parental responsibilities but a permanent placement for the child is still being sought, it is very important to ensure that focus continues on completing the permanence plan. It would therefore be best practice to try to agree with the child and carers to have reviews as frequently as for other looked after children under regulation 45(3), that is, every six months.

Group 2 defined as follows:

Children who are placed in a **non-emergency situation** with approved kinship carers or approved foster carers or in a residential establishment. This group includes children for whom the local authority has a permanence order but the carers do not have parental responsibilities and/or rights under that order. These children's reviews are covered by regulation 45(2), (4), (5) and (6). However, this group does **not** include children placed with a carer under regulation 39(1), for up to 12 weeks.

Regulation 45(2) and (4) sets out the pattern of reviews for children placed in non-emergency situations with kinship carers, with foster carers and in residential establishments. Regulation 45(3) and (4) sets out the pattern of reviews for children placed by virtue of regulation 39(1) in emergency situations, with kinship carers, with foster carers and with non-approved carers. Local authorities should ensure that their procedures for reviews under this regulation are tied in with those in regulations 38, 39 and 41, for reviews of emergency placements, to make certain that they achieve the correct inter-relationship between the various regulations. Please see guidance on 8. _____ Reviewing EMERGENCY PLACEMENTS.

The provisions in regulation 45(3) and (4) also apply to children placed in short-term placements (often described as 'respite' arrangements) with kinship carers under regulation 14 and with foster carers under regulation 30.

Children reviewed at the frequencies in regulation 45(2) or (3) will be:

- accommodated under section 25 of the 1995 Act, on a 'voluntary' basis, including most children on short-term placements; or
- subject to supervision requirements from the Children's Hearing, under section 70 of the 1995 Act; or
- subject to orders, warrants, or authorisations from the sheriff or the Children's Hearing system, under the 1995 Act; or
- subject to permanence orders under section 80 of the 2007 Act, when the carers have no responsibilities or rights under the orders.

Children who have been placed under court orders, hearing warrants, etc will usually have been reviewed under the emergency review provisions, regulations 38, 39 and 41. However, those provisions do not run beyond the six week review for emergency placements with carers, or the three day review for emergency placements in residential establishments. Many Children's Hearing cases involve warrants for a considerable time until grounds for referral are established or not established. Therefore, the review system under regulation 45 could easily start to apply to children in that situation. Within six weeks of an emergency placement in a residential establishment, a review will be required under regulation 45(2)(a). The reference to regulation 39(1) in regulation 45(3) recognises that the review within six weeks is already provided for when children are placed

with carers in an emergency. However, within three months of that six week review, a further review will be required under regulation 45(3)(a).

Regulation 45(2) provides for the first review **within 6 weeks of a planned placement**. The next review should take place within **3 months of that 6 week review, i.e. within 4½ months of the placement**. Thereafter, there should be further reviews within **6 months** of each previous review. A number of local authorities may hold reviews at shorter intervals in the early stages of looking after children, especially where they are planning for young children with an intensive intervention or support programme, to establish if return home is feasible, and if so, followed by active planning for stability and permanence for the children. The wording in regulation 45(2) (and in paragraph (3) as well) is about the periods **within** which reviews must be held, not the precise time at which they must occur.

Group 3 defined as follows:

Children who are placed in short-term placements (often 'respite' arrangements) with kinship carers under regulation 14 and with foster carers under regulation 30; **and also** children placed in an emergency with a carer by virtue of regulation 39(1), for up to 12 weeks only. These children's reviews are also covered by regulation 45, but the frequency of them is set out in regulation 45(3).

Regulation 45(3) provides for reviews of:

- children in a series of planned short-term placements with kinship carers (regulation 14);
- children in a series of planned short-term placements with foster carers (regulation 30); and
- children placed with carers on an emergency basis.

In summary, the first review should take place **within three months** of:

- the placement, in short-term arrangements; or
- the six week review under regulation 39(3).

In other words, the first review will be **within 4½ months** of the placement. Thereafter, there should be further reviews **within 6 months** of each previous review. As with reviews under paragraph (2) local authorities may hold reviews at shorter intervals, particularly for placements which were made on an emergency basis.

So far as children in short-term placements or on short-term breaks are concerned, the matters for discussion at reviews may often be different from those when children are placed away from home. There are now a wide range of short breaks schemes. Some may cater for children who are already looked after, either on home supervision requirements or as a support to foster carers looking after very challenging children. Others have been established as services for families who are caring for children with significant disabilities or ongoing medical conditions. A number of these arrangements may last many years. The ethos and purpose of reviews at regular intervals in these situations needs sensitive consideration.

Circumstances prompting further reviews

Further review requirements are imposed for every child covered by regulation 45, whether their reviews are under paragraph (2) or (3). These are in paragraph (4), which requires local authorities to arrange reviews:

- (a) before they make a decision to seek a Children’s Hearing review for a child whose supervision requirement they think should be varied or terminated;
- (b) before they apply for a permanence order; and
- (c) under any other circumstances, when a Children’s Hearing is arranged for the child.

It is clearly important, when the local authority is providing a report to a Children’s Hearing, that they have had an opportunity to discuss their up-to-date position in preparation. In some cases, the date of a looked after review may be decided in relation to anticipated steps involving Children’s Hearings; in other cases, a parent may request a Children’s Hearing review following a contentious looked after review where the local authority position is clear.

4. FOCUS OF REVIEWS

Regulations 44 and 45 lay out very similar requirements about what reviews should be considering and looking at, who to consult and what to assess. Every review should provide the opportunity to:

- take stock of the child's needs and circumstances at regular, prescribed time intervals, and ensure the local authority are fulfilling their responsibilities for the child’s development and well being;
- consult formally with parents and children, acknowledging and taking into account their views;
- assess the effectiveness of current plans as a means of securing the best interests of the child;
- oversee and make accountable the work of professional staff involved; and
- formulate future plans for the child.

While reviews generally need to address the two main strands in the Child’s Plan – the planning process and the child’s personal progress and development in response to the local authority service – the emphasis will vary depending on the type of situation being reviewed and the stage in the case. The local authority should have in place mechanisms for ensuring that reviews are carried out efficiently and effectively for the range of situations of all looked after children. This requires a framework for all types of reviews covered in regulations, and an overview of how they fulfil their purpose in individual situations.

5. A FRAMEWORK FOR REVIEWS

The regulations are clear about frequency of reviews, who to consult and the broad areas to address. They are not prescriptive about how they should be carried out. This should be laid out in local authority procedures. A significant number of local authorities have independent reviewing officers who ensure a well run reviewing process and have contributed significantly to the development of this important area of work.

The differing sizes, structures and geographical aspects of local authorities in Scotland mean that some variation in the exact provision for carrying out reviews is possible, as long as authorities can demonstrate that they meet the requirements and fulfil their functions. There may also be some variation within individual authorities if these contribute to the effectiveness of reviews. This would provide scope for reviews that are tailored to meet the needs of certain services such as short breaks for families that include a child with severe disabilities, or newly developed kinship care projects. It may be that slightly different provision is more likely to be responsive to work with children looked after at home under a supervision requirement as opposed to those in a local authority placement. Different provision will be necessary for children looked after on permanence orders with long-term carers, particularly when those carers have some parental responsibilities and rights

What should be common to all reviews is:-

- chairing of the review by someone who has **no direct day-to-day responsibility for the case**, to maintain the objectivity and accountability for the management of the case;
- a clear written record of the outcome of the review and any decisions made, in line with regulations 44(4) or 45(6);
- explicit information about the decisions that may be made at the review; those which may be discussed but where the Children's Hearing make the decision; and those where the decision at the review needs to be referred to the adoption/permanence panel for additional scrutiny before becoming an agency decision about permanence;
- guidelines, based on the expertise of those conducting reviews, about handling aspects such as how children, birth parents and carers are involved and supported in contributing to the review, and how conflicting views will be managed; and
- procedures governing the range and format of information brought to different types of review.

Local authorities need to ensure oversight, at intervals, of the operation of their reviewing processes, considering the ways in which they maintain momentum in implementing plans for children, and lessons for improving services.

6. REVIEWS OF CHILDREN IN KINSHIP CARE

From the children's point of view, the circumstances which led to them no longer living with their birth parents may be comparable to that of other children who are placed by the local authority with foster carers or in residential establishments, and this is reflected in the reviewing requirements in relation to each child's plan. The approach to kinship care covered in the guidance on the **CHAPTER 15 REVIEW OF THE CHILD'S CASE** is based on the intertwining of children's needs and the ability of the identified member of their kinship network to respond to those needs. This covers the process of approval of kinship carers.

There is no separate review process in the regulations for kinship carers in the way there is for foster carers. The ongoing appropriateness of the placement will be part of the child's review. Kinship carers themselves, however, may have their own concerns or needs that do not sit comfortably as part of children's review. These may include training and support issues for them as carers; and personal events and changes in their circumstances that are not appropriate to discuss within a group established to focus on the child's needs. There should be space annually, therefore, for kinship carers to reflect on their own needs in relation to caring for children, and this element may be planned and linked to the children's reviews.

7. REVIEWS WHEN PLANNING FOR PERMANENCE

Looked after reviews are clearly the key forum for developing the plan for a child, for monitoring progress and for identifying where change is required. This may be to remain at home without the need for a supervision requirement, or to return home, or not to return home if progress has not been achieved. **It should be clear from the start of each child's involvement in the looked after system that the aim of local authority involvement is to achieve stability and security for the child,** in an environment where they are safe and their developmental needs met. Parents should be clear about the efforts they are expected to make to achieve this, how they will be supported in this and also to recognise that if this cannot be managed, alternative plans will be made.

It would normally be expected that within a timescale of six months there should be a clear picture of the direction in an individual case. Where a child is placed by the local authority and he or she has not returned home by this stage or if significant progress towards that has not been achieved, then the review should consider whether a plan for permanence away from birth parents is required. Where the review at this stage decides:

- (a) the plan should no longer be the return of the child to the birth parents; and
- (b) the child would benefit from growing up in an alternative family or in another long-term, stable placement; and
- (c) this requires a legal change to underpin the security of a placement,

the programme of work required should be set out, including referral to the adoption/permanence panel for it to consider a recommendation to make this a full agency decision.

Core Elements of the Early Preparation for Permanence

- Explaining to the child, in an age-appropriate way, that returning home is no longer planned; and providing opportunities for the child to express his or her views, or if too young to do this verbally, observing and also asking the carers to look out for any reactions. **Consideration should be given to offering the child access to a child advocacy service or other provision to support him or her in expressing views.**
- Clarifying the change in the child's plan with the birth parents, and explaining the reasons for this, the different stages in going along this path and how they can make their views known at each stage. As well as advising them on seeking their own legal advice, consideration should be given to the allocation of a separate worker to work with the parents through the process, or to seeking other options for counselling and support, depending on local availability.
- Where a child is already with kinship carers, discussing their position now that long-term care is needed.
- Where the child is placed with foster carers, exploring whether there are other members of the child's kinship network who could offer permanent care.
- Establishing with the child's current carers whether they wish to continue looking after the child on a permanent basis.
- Meeting the local authority's legal adviser to explore the options available and the evidence for these.
- Gathering together all the information required for the referral to the adoption/permanence panel and writing the report for this.
- Completing the next stage of presenting the case at the adoption/permanence panel and receiving the agency decision.
- Where the child is subject to a supervision requirement from the Children's Hearing, considering whether a Children's Hearing review should be held at this stage, prior to any advice Hearing after the agency decision.

The need for timely progress towards Permanence

In making the decision to go down this route and setting out the next steps, the looked after review should also state the timescale within which these are to be achieved. **The maximum time to complete all these steps should be by the next six month review, but may be sooner for a young child and where much of the information is already clear.** A small but significant group for whom this is particularly important is young infants when there have been pre-birth child protection conferences, because of the strength of information about older children of these parents and the consequent risks to any other children. Where there has been a child protection order from birth followed by a supervision requirement and no evidence of change that would enable any

consideration of a return to birth parents, the early reviews should already be actively addressing the need for a permanent alternative.

Local authorities should also consider permanent plans when they are reviewing children whose parents are dead or have disappeared, and whom they are looking after under section 25 of the 1995 Act. This will be comparatively straightforward when the child is an abandoned baby, all efforts to trace the parents have failed, and the alternative is adoption. However, a local authority should also consider permanent plans for an older child in this position. If no other family members are able to be traced, or are unwilling to care for the child, long-term care under section 25 is not a satisfactory option. There will be no-one who may exercise parental responsibilities and rights for the child and no-one to question the care arrangements. The local authority should consider applying for a permanence order, or planning for adoption, depending on the age of the child and other factors.

8. LOCAL AUTHORITY VISITS TO THE CHILD IN PLACEMENT

Regulation 46 provides for local authority visits to children in placement with foster carers, kinship carers and residential establishments. It also specifically includes placements by virtue of regulation 39(1), which are emergency placements under regulation 36 which have continued after the three working day review. These placements may be with people who are known to the children but are not approved kinship carers, as well as with approved kinship or foster carers.

Regulation 46(2) sets a minimum of a visit **within the first week of placement and thereafter at least every three months**. Regulation 46(3) specifies certain situations when the local authority must carry out visits. Regulation 46(4) requires written reports for all visits undertaken.

Visits may fulfil a number of functions which are important for the child and may cover some of the following matters.

Oversight of the safety and wellbeing of the child.

The first visit at the beginning of a placement should set the foundation for this, in recognising any potential risks or stress areas in the placement and also beginning to identify how the carers will meet the particular care needs of the child and promote development. Foster homes and residential establishments are complex environments which may already be managing very differing needs within themselves, and a new distressed or traumatised child will inevitably have an impact. Planned moves may have already identified any potential stress areas but these have to be checked in reality. A significant percentage of kinship placements are made in an emergency before an assessment can be completed. Although the child may be familiar with the environment in which they are looked after, the local authority has a responsibility to ensure it is safe and appropriate for the child, and that any risks from the child remaining within the kinship network are fully addressed.

Regulation 46(3)(a) emphasises this with the duty to ensure that visits are made when it is “necessary or appropriate to safeguard or promote the welfare of the child”. This should go beyond a reactive response and the minimum visiting requirements to a more pro-active approach of explicitly recognising both the opportunities and risks in any placement, and also establishing clear lines of communication. **For children placed for the first time, this will include explaining to them**

the role of their social worker and age-appropriate ways of keeping in touch with their wishes and needs.

Children placed in foster or residential care

Where children are being accommodated in foster or residential care, this will be a huge disruption in their lives. Anxiety and stress are normal for anyone entering a new environment, and this will be particularly so for vulnerable children who may be placed in distressing circumstances with little preparation. The children's carers will, of course, play a vital role in helping them through this period of transition. The particular value of social workers at this point is frequently the link back to the children's birth families and connections with their familiar environment. The intensity of this may alter over time as the children become accustomed to the new environment, but questions about what is happening to family members and contact issues will remain. For more planned moves, and where children are moving between different care placements, this may seem less intense; but during any move to somewhere new, there is a particular role for known social workers who can be a bridge between children's old and new environments.

It is especially important to consider these issues when children are being placed at a distance.

Regulation 46(2) refers to visits on behalf of a local authority. Local authorities may consider that at least some of the task may be carried out by an appropriate person from another agency in the area, as long as it is clear that the placing authority remains responsible for the children, that this is a service for the children and that the written reports required under regulation 46(4) are supplied. At the same time, it is these children who are at most risk of feeling cut off from their family, home area and community.

While this type of issue may be easier for children going to kinship carers, there will still be adjustments to be made to family relationships. Very strong views may be held and expressed within that network, and these may surface during moves into placements, causing extra tensions.

Children's views

At all points of the assessment and planning for the child, the child's wishes and feelings must be addressed. The social worker is responsible for the reports required and these views must be included. A significant part of these should be based on the worker's own direct observations and communication with the child. This will not be wholly dependent on the visits to the placement. For a young child, the day to day observations by carers of the child's behaviour and reactions may be more revealing. An older child, for instance, may share as much through email and telephone contact as face to face. Visits must, however, play a part in the child's perception of participating in the decision making process.

Supporting carers

Regulation 46(3)(b) makes provision for visits to support the child's carer in safeguarding and promoting the child's welfare. Foster carers and staff in residential establishments should have strong support mechanisms in place, recognising carers' needs. Inevitably, these work best in partnership with the child's social worker who is responsible for the service to the child. Some support may be about accessing further services for the child and visits are only one part of the means of communication with carers. For many children and young people, however, this works

best if they see their social worker and carers sit down together, and with them as well, to sort out issues such as contact arrangements, setting the ground rules for managing certain behaviours or making future plans.

Visits requested by children or carers

Regulation 46(3)(c) makes provision for the child or carer to reasonably request further visits. Sometimes this may be part of a plan or programme at a particular point, at other times it may be an expression of a feeling of lack of support. Wherever possible, any request should be addressed through the existing channels such as a line manager or team leader or the review process, to find a feasible arrangement that can be sustained and is acceptable to the carer and/or child. Where there are real problems in resources at an operational level, senior management should be alerted.

Timing of Visits

Overall, in considering the purposes of local authority visits, there are times when they will be particularly important. These times include:

- the start of a placement;
- times of transition;
- times when there are significant events or potentially traumatic circumstances for the child;
- periods when the child may need a particular intervention such as life story work;
- and when there are plans for changes such as moving into independence.

All of these are likely to require more than the minimum visits.

At other times, the need for visits may be seen more as maintaining a relationship with the child and keeping in touch with their development, where a 'lighter touch' may be more appropriate and acceptable to a child who is settled in a placement. Local authority procedures should acknowledge this, especially in relation to areas such as unannounced visits or expectations of seeing a child on his or her own, so that the child receives a service that both ensures safety and wellbeing while he or she is looked after and also is sensitive to the child's own views of that experience.

Other forms of communication with the child in placement

Where arrangements are being made to supplement face to face visits with computer or mobile telephone links with a child, care needs to be taken to discuss the details of this with the child's carers. Each local authority should have up-to-date guidelines on the appropriate use of such communications, both their positive potential and also the steps that may be needed to safeguard each child as much as possible. These types of links should be addressed at the outset of a placement and reviewed as necessary, taking account of both differences in policies etc when a child is being placed outwith the local authority, and also the individual circumstances of each child.

Responsibility to visit when placed with Registered Fostering Provider

Regulation 49 also has provisions about local authority duties to visit children. These are specific duties when a looked after child is placed with carers from a registered fostering provider. They include duties for an officer of the local authority to visit, so cannot be delegated to staff of another agency.

9. ENDING THE PLACEMENT

Regulation 47 enables a local authority to terminate a placement if it appears to be no longer in the child's best interests. This possibility should have been discussed in relation to signing the kinship carer agreement in Schedule 5 or the foster carer agreement in Schedule 6. The primary responsibility of the local authority is obviously to act in the best interests of the child. An abrupt termination of a placement will cause great concern and be distressing for a child, so **termination requires a careful decision-making process, even when there is only a short period of time**, with clear management accountability and a clear record made of the reasons for such a termination.

Part X of the regulations, on emergency measures, refers at intervals to the importance of asking – following an emergency placement – about whether the placement continues to be in the best interests of a child. A placement may need to be made at short notice when there is limited choice available. At the time, it may also be recognised that this is not the most appropriate placement in the longer term, either because of a mismatch in the known skills and interests of the carers, or because the child had to be placed separately from siblings or with a family not equipped to meet needs arising from the child's ethnicity, religion or culture. It is important to address such issues actively, to avoid conflict at a later date when carers and child have become attached but the plan is to move the child.

Similar issues may arise when a young child is placed in an emergency with a registered fostering service, the carer becomes attached, the plan for the child becomes placement in a permanent family and the local authority wishes to move the child to a different placement. **The best interests of the child must remain paramount and should make sense to the child both at the present time and in the future.**

A key reason for this provision is the recognition that, in a small number of cases, the care provided for a placed child is not safe or is inadequate. If there is a real risk to a child, there is no question about the need to act and this would be handled under child protection procedures. More complex questions arise in situations where there are allegations which must be explored, but which relate as much to poor practice rather than abuse. The risks arising from an allegation must be balanced against the potential damage to a child of a precipitate move, especially if the child resists this. The whole area of investigating allegations goes beyond what can be covered in this guidance. Please see the **Best Practice Guidance: Responding to Allegations Against Foster Carers**.

Keeping the child at the heart of the decision-making process

In any situation where termination of a placement is being considered, there should be a clear record of the reasons for this step, the risk assessments made and the plans to address the impact on the child. Consideration should be given at the outset to who is best placed to carry out the direct work with the child in ascertaining his or her views and explaining what is happening, whether the termination is a result of an allegation or other developments. Equally, where a foster or kinship carer has asked for a child to be removed, the same attention needs to be given to minimising the shock of a quick move for the child and introducing as much of an element of planning as may be feasible.

Moving a child who is subject to a supervision requirement

Where a child is subject to a supervision requirement, a planned termination of placement will require a Children Hearing review to vary or terminate the requirement, and allow the move. If the child is placed away from home and has to be moved urgently, the local authority may arrange this under section 72 of the 1995 Act. The Principal Reporter must then be notified immediately, so that a children's hearing review may take place within seven days of the move.

CHAPTER 16 ARRANGEMENTS WITH REGISTERED FOSTERING SERVICES

RELEVANT REGULATION 48

IN THIS CHAPTER:

1. Introduction
2. Definition of a Registered Fostering Service
3. Delegation of Functions and Overall Responsibility
4. Strategic Oversight of Local Need
5. Written Agreements
6. Additional Local Authority Visiting Requirements

1. INTRODUCTION

To secure positive outcomes for Looked After Children it is essential that Local Authorities and Registered Fostering Services work collaboratively and on a clear and mutually understood basis. Regulation 48 clarifies those functions as follows:

- Part VI (Fostering Panels);
- VII (Fostering);
- VIII (Fostering and Kinship Care Allowances); and
- X (Emergency Measures)

2. DEFINITION OF A REGISTERED FOSTERING SERVICE

“Registered fostering service” (RFS) is defined in [regulation 2](#). It must be registered as a fostering service under Part 1 of the [Regulation of Care \(Scotland\) Act 2001](#), that is as a service in terms of section 2(14)(b) of the 2001 Act.

It must be a voluntary organisation, in terms of section 7(6) of the 2001 Act. Section 77(1) of that Act says that “voluntary” means it is **not operated for profit**. The requirement for a registered fostering service to be a voluntary organisation is repeated in section 59(3) of the Public Services Reform (Scotland) Act 2010.

A Registered Fostering Service must comply with the regulatory expectations of Parts VI, VII, VIII and X when they refer to the ‘Local Authority’ (unless the context implies otherwise).

3. DELEGATION OF FUNCTIONS AND OVERALL RESPONSIBILITY

It is important to note that, although a Local Authority may choose to delegate some of its fostering **functions** to a Registered Fostering Service, it is the Local Authority which retains **overall responsibility**.

In deciding whether to enter into an agreement with a RFS, regulation 48(3) tells the local authority what steps they must take. There are four requirements. The local authority must:

- I. be satisfied about the capacity of the RFS to discharge duties and functions on their behalf (paragraph (3)(a));
- II. be satisfied that the arrangements are the most suitable way for them to discharge their duties and functions (paragraph (3)(b));
- III. have a written agreement with the RFS about the matters in Schedule 7, Part I, (paragraph (3)(c); and
- IV. must make a written agreement with the RFS for every child they place through the RFS, about the matters in Schedule 7, Part II, (paragraph (3)(d)).

4. STRATEGIC OVERSIGHT OF LOCAL NEED

Every local authority, in their Children’s Services Plan, has a responsibility to monitor, review, and plan for a whole range of services for vulnerable children and their families. This includes the nature and range of services required and how these will be provided.

As part of their strategic planning, the local authority should have a clear understanding of the following:

- the numbers and needs of looked after children in their area;
- the changing patterns of looked after children; and
- the number and nature of fostering services required in meeting those needs.

For fostering, this will include ongoing debate about how much of these services the local authority will provide directly themselves and the extent to which they will use the RFS. Both cost and quality will be key factors, as local authorities have a responsibility for both good financial management and ensuring a quality of provision in foster care that meets all their duties under the regulations and National Care Standards. Local authorities also require to take account of concerns expressed in different Scottish Government strategies about the outcomes for looked after children.

Regulation 48(4) requires the local authority to review their arrangements with a RFS at intervals **not more than 12 months**. A local authority’s arrangements with a RFS must be appropriate and the criteria for reviewing them under this paragraph should follow on from that. Regular review is vital to ensure the following:

- continuity in planning for children so that both the local authority and the RFS may plan ahead;
- minimising the need change contracts at short notice; and that
- proper provision is made for individual placements if a contract alters.

Different Patterns of Commissioning

For some authorities it may be helpful to include Registered Fostering Services on their list of approved suppliers for use in emergency situations, as needed.

Other local authorities may wish to make an arrangement for a RFS to provide a defined number of placements each year, or to focus on a particular type of fostering placement such as foster carers

for adolescents, children who need therapeutic foster care or short term assessment placements. Where this is the case, there should also be a mechanism within the local authority for deciding which children they wish to refer to the RFS, and agreed procedures for commissioning such services. This would ensure that the RFS is conforming to all necessary regulations and standards.

Quality Assurance

Each local authority which enters into an agreement with a RFS must be satisfied that the RFS can discharge the duties and functions defined in the agreement. In terms of quality, the annual report from the external scrutiny bodies will provide the foundation for assessing this. This should give information about the organisation and management of the RFS and a number of indicators about the quality of delivery.

5. WRITTEN AGREEMENTS

There are two types of agreements provided for in regulation 48(3)(b) and (c) and Schedule 7, Parts I and II. A Part I agreement between a local authority and a RFSs must obviously be carefully negotiated and the expectations and requirements of both sides recorded in writing. The basic elements of such an agreement, the contract between the local authority and the RFP, are contained in Schedule 7, Part I. This covers the general matters and obligations, and both parties would benefit from legal advice. The Part I agreement should include confirmation that a **Part II agreement must always be made for every child placed by the local authority**, setting out the following:

- the foster carer with whom the child is to be placed;
- any services the child is to receive;
- the proposed foster carer agreement under Schedule 6; and
- the proposed foster placement agreement for the child under Schedule 4.

6. ADDITIONAL LOCAL AUTHORITY VISITING REQUIREMENTS

The intention of regulation 49 is to require a local authority to make sure that one of their “officers” visits a child when the local authority has placed him or her with a foster carer approved by a RFS. These visits are **in addition** to the visits to children in looked after placements, required by regulation 46. Regulation 49 visits **must** be carried out by someone from the local authority. **They cannot be delegated to the RFS.**

Regulation 49 requires the local authority to visit a child place with RFS carers:

- within 28 days of the child’s placement;
- within 14 days from when the RFS tells the local authority that the child’s situation requires a visit; and
- within three days from when the local authority is told that the child’s welfare is not being safeguarded or promoted.

These visits are in the context of the agreement made by the local authority with the RFS, to carry out certain duties and functions on their behalf. The expectations of that RFS should be in line with the looked after duties on local authorities. The visits under regulation 49, from the child’s own local

authority, **should be seen as additional to other visits**. The importance for the child of a tangible link back to their birth family and home area should be borne in mind in any such arrangements. This is discussed in the guidance about the child's plan .

Inevitably crises will happen, and this regulation underlines the overall responsibility of the local authority to children they place. In practice, efforts should be made to keep such events to a minimum by good communication between the fostering service and the local authority, so that any stresses or tensions surrounding the placement are identified and responded to quickly.

Where a RFS has agreed to carry out some of the functions of visiting the child in placement on behalf of the local authority, under regulation 46, it should be clear that these are visits for the **child** separate from the RFS's support to their foster carers and reports should be provided to the child's local authority.

CHAPTER 17 ADOPTION - THE LEGAL AND POLICY CONTEXT

IN THIS CHAPTER:

1. Introduction
2. The Regulatory and Legal Context
3. The Adoption Agencies (Scotland) Regulations 2009

1. INTRODUCTION

This guidance is written to accompany the new sets of regulations introduced following the passing of the Adoption and Children (Scotland) Act 2007. This Act replaces the Adoption (Scotland) Act 1978 and the amendments made to it by the Children (Scotland) Act 1995.

It follows and reflects the work carried out by the Adoption Policy Review Group (APRG) which operated in two phases between 2001 and 2005. The report of the second phase of this group 'Adoption: better choices for our children' is largely reflected in the subsequent legislation. This recognised first of all that there remained a place for adoption and that while some modernisation was required, a lot of the basic system should remain.

Adoption is no longer exclusively a service for the placement of infants. This guidance attempts to explain how adoption has a role to play alongside other routes to permanence for a broad range of children.

2. THE REGULATORY AND LEGAL CONTEXT

There are a range of regulations and orders about the adoption system, some of which are substantive and others which are brief and specific.

The three major sets of regulations covered in this guidance are:

1. Adoption Agencies (Scotland) Regulations 2009, SSI 2009/154 as amended by Adoption Agencies (Scotland) Amendment Regulations 2010, SSI 2010/172.
2. Adoption Support Services and Allowances (Scotland) Regulations 2009, SSI 2009/152.
3. Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009, SSI 2009/268.

The transitional provisions for the 2007 Act are also relevant to adoption matters. They provide that any freeing in place on 28 September 2010 became a permanence order with authority for adoption on that date. The deemed Permanence Order with authority to adopt includes the mandatory provisions and provides all other parental rights and responsibilities in the Local Authority. The transitional provisions are in the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009, SSI 2009/267.

Other relevant regulations and orders are referred to where appropriate within the guidance. They are:

1. Period to Prepare an Adoption Allowances Scheme (Scotland) Order 2009, SSI 2009/168.
2. Adoption and Children (Scotland) Act 2007 (Supervision Requirement Reports in Applications for Permanence Orders) Regulation 2009, SSI 2009/169.
3. Applications to the Court of Session to Annul Convention Adoptions or Overseas Adoptions (Scotland) Regulation 2009, SSI 2009/170.
4. Adoption and Children (Scotland) Act 2007 (Modification of Subordinate Legislation) Order 2009, SSI 2009/429.
5. Adoption and Children (Scotland) Act 2007 (Modification of Enactments) Order 2010, SSI 2010/21.
6. Adoption and Children (Scotland) Act 2007 (Consequential Provisions) Order 2010, SI 2010/2469, providing for recognition of permanence orders with authority for adoption in England, Wales and Northern Ireland, from 2 November 2010 for eight months.

Intercountry Adoption

There are also a number of regulations and orders about overseas and intercountry adoption. These are:

1. [Adoptions with a Foreign Element \(Scotland\) Regulations 2009](#), SSI 2009/182, as amended by the [Adoptions with a Foreign Element \(Scotland\) Amendment Regulations 2010](#), SSI 2010/173.
2. [Adoptions with a Foreign Element \(Special Restrictions on Adoptions from Abroad\) \(Scotland\) Regulations 2008](#), S.S.I. 2008/303.
3. [Special Restrictions on Adoptions from Cambodia \(Scotland\) Order 2008](#), S.S.I. 2008/304.
4. [Special Restrictions on Adoptions from Guatemala \(Scotland\) Order 2008](#), S.S.I. 2008/305.
5. [Special Restrictions on Adoptions from Nepal \(Scotland\) Order 2010](#), SSI 2010/130.
6. [Special Restrictions on Adoptions from Haiti \(Scotland\) Order 2010](#), SSI 2010/341.

These will be the subject of separate guidance.

3. ADOPTION AGENCIES (SCOTLAND) REGULATIONS 2009

The [Adoption Agencies \(Scotland\) Regulations 2009](#) have eight parts covering

- I General (citation and commencement and interpretations)
- II Adoption Panels
- III Assessment of Prospective Adopters

IV	Duties of an adoption agency when considering adoption for a child
V	Consent certificates
VI	Application for a Permanence Order giving authority for adoption
VII	Placement for adoption
VIII	Case Records

While this guidance follows these parts to a considerable extent, there are occasions where it assists to draw in other aspects and cross reference to the appropriate regulations. Some of this reflects the complexity of adoption in its various forms as we know it in the 21st century. Factors contributing to this complexity can be summarised as follows:

- The application for an adoption order is under private law, an action taken by the prospective adopters, not an application under public law by a public body. There is a distinction between agency and non-agency placements, with one group of non-agency adoptions being by step parents or close relatives as defined in [section 119\(1\)](#) of the 2007 Act. By definition, these non-agency cases do not require the applicants for the adoption order to be approved by an agency as adopters. They do not, therefore, come before the adoption panel or go to the agency decision-maker. The local authority does, however, have a duty, when notified of an intention to adopt by a step parent or a relative, to investigate and report to the court on the welfare of the child.
- Other non-agency cases concern inter-country adoptions. The prospective adopters require to be assessed and approved in a similar way to domestic adopters so that there is an agency responsibility for this process. There is, however, no agency involvement in the matching and placement of the child as this occurs in the sending country and not in Scotland. There are also separate regulations for adoptions with a foreign element.
- These regulations cover all agency adoptions of children by non-related adopters. A small number of these will be relinquished infants but an increasing number will be children who are already looked after by a local authority and the plan for adoption comes at a key point in the planning and reviewing process. Much of the stimulus for the change in legislation came from concern about developing a structure which is effective in addressing the needs of the very varied and complex backgrounds of many of the children being placed for adoption now. This structure needs to be sufficiently flexible to accommodate the needs of relinquished infants within a system where this is no longer the predominant type of adoption.

While this guidance relates primarily to regulations, it should be read in conjunction with the 2007 Act and with National Care Standards for Adoption Agencies.

CHAPTER 18 ADOPTION PANELS

IN THIS CHAPTER:

1. Introduction
2. Function and Regulation of Adoption Panels
3. Specific Roles on an Adoption Panel
4. Principles underpinning Adoption Panels and Decision Making

1. INTRODUCTION

An Adoption Panel must be appointed by each local authority and registered adoption service which is carrying out the functions specified in the regulations. This chapter sets out the establishment, functions and considerations of the Adoption Panel, including the matters that fall within its auspices.

Duty to Provide, and definition of, an Adoption Service

Section 1 of the 2007 Act states the duty of the local authority to provide an adoption service and indicates the range of persons for whom the service is, or may be provided and the nature of the services to be provided. Section 2 enables the local authority to use a registered adoption service to provide or help provide their services under section 1. Only registered adoption services or local authority adoption agencies may make agency arrangements for adoption.

“Registered adoption service” is defined in s.2(3) of the 2007 Act as an adoption service or agency as provided for in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (as amended by the section 7 of the 2007 Act), and registered under Part 1 of the 2001 Act. A registered adoption service must be a “voluntary” agency in terms of s.7(6) of the 2001 Act, and s.77(1) of that Act says that “voluntary” means it is not operated for profit.

The requirement for a registered adoption service to be a voluntary organisation is repeated in s.59(3) of the Public Services Reform (Scotland) Act 2010.

2. FUNCTION AND REGULATION OF ADOPTION PANELS

Part II of the Adoption Agencies Regulations (Scotland) 2009 looks more specifically at those functions which should be scrutinised by an adoption panel and how those panels should be regulated.

Key Functions

The key functions of an Adoption Panel can be summarised as follows:

- formally recommending adoption for a child;

- approving adopters;
- matching a child with approved adopters; and
- any other matters referred to them which are relevant to the agency's functions under the 2007 Act, such as adoption support plans and adoption allowances.

In appointing such panels, agencies need to be clear about the purpose of the panel in relation to these functions. These are major decisions with life-long implications for children, their birth parents and adopters. They may also involve the agency in a legal action and also be open to appeal.

Recommendations and Decisions

The **decision-making function** of the agency is carried out by a designated **Agency Decision Maker** and there should always be at least two. The purpose of the panel is to provide an objective view of each case, ensuring that all the work required to reach a decision has been completed and to make a **recommendation** based on discussion of the information provided.

Quorum and Constitution

Regulations require there to be at **least six panel members appointed** and a quorum **of at least three** for any meeting of the panel. They further require the appointment of a medical and a legal adviser to the panel. These advisers have an important role but they are **not** included in the quorum for panel business. Agencies therefore need to appoint sufficient members to the panel to cover the requirements.

Experience and Background of Panel Members

One of the values of an effective panel is the breadth of experience members bring to frequently complex areas. The panel should therefore be drawn from a selection of people with wide professional or personal experience relevant to the task. This may include the following:

- experienced social workers with practice or managerial knowledge of child care and family placement;
- others from allied professions such as education and psychology;
- counsellors;
- experienced adopters; and
- adults who have been adopted or placed a child for adoption.

The panel should reflect the community from which children and families may come and may include councillors. Attention should be paid to the balance of membership of the panel - such as gender. The backgrounds of both the children for whom adoption may be planned and the applicants coming forward for assessment as adopters are wide ranging and panels need to be informed and sensitive to issues around ethnicity, beliefs, sexuality and lifestyles. While panel members may be offered anti-discriminatory training there should be some evidence of experience in this area.

Recruitment to the Adoption Panel

The principles which are applied for the safe recruitment of staff also apply to the recruitment of panel members who are considered within the regulations as “working” in the adoption agency. There should be agency procedures and processes in place for appointing and monitoring panel membership. These could include the following:

- job and person specifications;
- terms of appointment including expectations of panel members;
- the signing of confidentiality statements;
- period of appointment; and
- fees and expenses.

Regulations allow for the termination of the membership of a panel by giving notice in writing with reasons. Good practice should also include appraisal which recognises any areas for development of panel members alongside recognition of their contribution. Panels should also routinely seek feedback on their operation.

Combined Panels

Providing a robust framework for the functioning of both adoption and fostering panels is vital to good decision-making. As there are similarities between both – and in small agencies there may be **combined panels**. It will be useful to also look at the guidance for the Looked After Children (Scotland) Regulations 2009.

Learning and Development requirements of Adoption Panel

There should be induction arrangements for new panel members, especially where they are appointed because of particular expertise or understanding they bring but are not routinely involved in adoption arrangements.

All panel members should be included in training opportunities to ensure that they are up to date with legislation, best practice and agency policy. They should also have the opportunity, at intervals, to meet as a panel to consider both business and practice issues arising from individual cases. This should be **at least annually**, but normally six monthly.

Declarations of Interest

The objectivity of panels should be transparent. Panel members should be clear about when they need to declare a conflict of interest either because of previous professional involvement in a case or personal prior knowledge. Agencies should provide panel members with guidance on this.

3. SPECIFIC ROLES ON AN ADOPTION PANEL

Certain roles within the panel need to be defined. The two covered by regulations are the **medical and legal adviser**. In addition, although it is not specified in regulations, there is an expectation of the appointment of an appropriately qualified **chairperson** to ensure the effective functioning of the

panel. In addition, the accurate taking of minutes is an essential component of sound decision making. The **minute taker**, therefore, is an important role.

Medical Adviser

Regulations require this to be a registered medical practitioner. Medical information is required on both prospective adopters and children for whom adoption is planned, therefore the primary role of the medical adviser is to look at all medical reports and interpret any medical issues for the panel.

Registered adoption services who principally bring applicants to adopt normally seek someone who will focus on adult health matters and their potential implications for adoptive parenting. This is often a GP with interest in the area.

Local authorities in their adoption agency capacity frequently place emphasis on the needs of looked after children and identify a medical adviser through the Health Board, often someone with a community paediatrics background. Some authorities may have more than one medical adviser with different areas of expertise.

It is the responsibility of the adoption agency prior to appointment of a medical adviser to ensure firstly that the person understands the context within which they are providing advice and also the extent of the role. With regard to adult medicals, medical advisers may be required to follow up any information with specialists where there are identified medical conditions and some agencies might look to the medical adviser to meet prospective adopters prior to a panel if there are complex issues arising.

A paediatrician acting as a medical adviser may carry out a medical examination. Medical advisers may also be expected to speak to adopters about the health needs of a child with whom they are linked.

The Sharing of Medical Information

The panel does not need to see the full medical on adoptive applicants as part of the paperwork for the meeting but members should receive the summary sheet giving the medical adviser's view. It is recommended that agencies use a pro forma which will ensure that all relevant health information is brought together and a summary of the short, medium and long-term implications of this. As noted above, the medical adviser is not part of the quorum for the panel. It is up to the agency to decide whether s/he is a voting member of the panel.

Legal Adviser

Regulations require this to be a qualified solicitor with a current Practising Certificate or a practising advocate.

This role will vary considerably between registered adoption services and the local authority as an adoption agency. A registered adoption service may occasionally be providing the service to a relinquishing birth parent and will therefore need to provide legal advice to the panel on the plan for adoption for the infant. Beyond this, their main role in relation to panel business is likely to be about

advising the agency on aspects such as application of criteria for accepting applicants for assessment, and appeal and complaints procedures.

Registered adoption services may also turn to their legal adviser when there is a possibility of adopters approved by the agency being linked or matched with a child where the legal route is highly contentious. Approval may be required in advance for any costs incurred.

Clearly, the role of legal adviser is much greater in local authorities where adoption may be considered for a wide range of children who are already looked after, and where adoption was not the original intention of intervention or the parents' request. The regulations specify a number of areas which the panel must address in reaching its recommendation and which may later be scrutinised in court. It is therefore important that legal advice is clear and robust to ensure that all recommendations are legally competent and that the Agency Decision Maker may be confident in reaching a decision that could involve the authority in a complex legal process.

The regulations do not specify how the legal advice should be provided to the panel but wherever possible it is good practice for the legal adviser to attend the panel and be available to clarify any questions for panel members. This should be the expectation for all cases where the consent of parents or those with parental responsibilities and rights may not be forthcoming. Given the number of legal issues that may need to be considered at the panel and the requirement for accuracy, the legal advice should be provided in writing and wherever possible accompany the papers for the panel. This is for the information of panel members and should not be incorporated into the report provided by the social worker and shared with the birth parents.

Similarly to the medical adviser, the legal adviser does not form part of the quorum and because of their potential role in taking forward a legal case they should **not** be regarded as a 'voting' member.

Chairperson

Although not required by the regulations a chairperson should be appointed by a senior officer of a local authority or the chairperson of the Management Committee in the case of a registered adoption service. The panel chairperson does not have to be present for the panel to be quorate, but a deputy chairperson should also be appointed by the agency who can chair the panel in the absence of the chairperson.

The adoption agency should have comparable procedures for appointing a chairperson as they have for panel members. To establish credibility in the objectivity of the panel, a growing number of agencies are appointing independent chairs to their panel. Where chairs come from outwith the agency, they should have a thorough understanding of the structure and policies of the agency and be aware of the financial and organisational procedures in respect of adoption.

Apart from their ability to chair, the person appointed should have a thorough and extensive knowledge of all aspects of adoption. This is particularly important where agencies have made efforts to bring in a diverse range of skills and experience and need to ensure that these are utilised. The chairperson must also co-operate with other staff within the agency to ensure that the recommendation reaches the Agency Decision Maker in a form and within the timescales to enable the decision to be competently made.

Minute Taker

Although this role is not specified in regulations, there is a requirement for a written record of the proceedings of the panel and the reasons for its recommendations and also a written report in relation to particular recommendations. This places importance on the quality of the record or minutes of the panel and what must be covered within them. Agencies need to ensure that minute takers are carefully chosen for the task, that they have the necessary skills and are given appropriate training, support and protected time to complete the task within the necessary timescales.

4. PRINCIPLES UNDERPINNING ADOPTION PANELS AND DECISION MAKING

The following principles underpin the operation of effective Adoption Panels and Decision Making:

- I. Recommendations and decisions should only be made on sufficient information
- II. Adoption should only be chosen when it is in the best interests of the child
- III. All routes to Permanence should be given robust and balanced consideration
- IV. The Life-long implications of Adoption should be carefully considered

These four underpinning principles are explored more fully below.

I. Recommendations and decisions should only be made on sufficient information

Where the panel considers that they do not have sufficient information to make a recommendation, they may defer consideration until the additional information identified is obtained.

Where the panel has made a recommendation and the Agency Decision Maker believes additional information is required, a decision must still be made **within 14 days**.

II. Adoption should only be chosen when it is in the best interests of the child

Throughout the interventions of agencies into the lives of children there is a general duty to regard the child's best interests as paramount and this clearly continues through to adoption. The duty on the adoption panel is to make a recommendation on whether adoption is in the best interests of the child. To do this there must be **positive** reasons to recommend this step. The panel should be aware of developing practice and research on the outcomes of adoption and whether and how this can be achieved for the individual children presented to it.

For all children discussed at the panel there should be explicit consideration of the benefits of the legal security of adoption for growing children (if their birth parents are not able to provide it) and a recognition of the **life-long aspect** of adoption. For each individual child there needs to be clear evidence of why this is not available to them within their birth family or kinship network **and** sufficient understanding of the needs of the child to be confident that s/he can become a full member of another family.

This should be rooted in the history of the child's life thus far and a comprehensive assessment of their future needs. Where it becomes necessary to consider grounds for dispensing with the consent of the birth parents to the adoption, these are listed in section 31 of the 2007 Act. Adoption agencies need to ensure that everyone playing a part in planning adoption has the opportunity to explore these concepts covered by the grounds and consider the evidence to look for and measure

against the most up to date knowledge of the effectiveness of adoption. This may be incorporated in the philosophy of the agency and encapsulated in the local authority adoption plan as required in section 4 of the 2007 Act.

III. All routes to Permanence should be given robust and balanced consideration

Regulation 6(3) also requires the adoption panel to provide “a written report of the consideration given by it to the alternatives to adoption”. This will normally be part of the minute and confirm what is already contained in the reports presented to the panel or provide further information of how the panel reached their recommendation. This should build logically on the earlier assessment, planning and reviewing which was aimed at establishing safe and sustainable care for the child and avoiding drift.

The Looked After Children Review that decided on the need for permanent placement of the child outwith the birth family should have done this on the basis of firm evidence of the need for that level of intervention and exploration of all the possible ways forward.

- **Decision not to return home**

The first key decision that will have been made at the review will have been the conclusion that the previous efforts to return the child to the care of his/her birth parents had not succeeded or that it was never possible in the first place and there was no substantive indication that this was likely to change.

- **Subsequent decisions in relation to achieving permanence**

The subsequent decisions following on from this should address the following key points:

- whether for the child in question, given his/her needs and wishes, the best alternative would be to establish them within an alternative permanent family;
- whether, in order to provide legal security for the plan, some or all of the parental responsibilities and rights should be transferred.

While adoption is one such alternative it is not the answer for every child in these circumstances. It would be in the spirit of the 2007 Act that the **majority** of cases where children cannot return home and need a secure family placement should be treated similarly and be referred to the adoption panel for consideration of the plan for permanence. Local authorities should provide guidance to staff regarding the exceptions to this presumption of Adoption Panel consideration, e.g. young people who became looked after in middle to late adolescence and, although unlikely to return home, have no motivation to achieve permanence with a new family.

Any decision to apply for a court order is significant, warranting the additional scrutiny that presentation to the Adoption Panel brings. The use of the Adoption Panel in this way is intended to ensure that:

- birth parents are made fully aware of the plans, their rights and responsibilities in the process, including the right to take legal advice and the likely timescales;

- the child's current carers are aware of the plan and process, able to respond to the child's questions and in a position to help prepare the child;
- identification of the support which a future placement will need;
- clarity about the specific support arrangements, including legal and financial ones which the agency will provide.

The main purpose of the adoption panel is to add an **additional objective forum**, independent of the case thus far, to look at all the circumstances before it becomes confirmed as the agency decision. It therefore makes sense for this body to be free to consider all the alternatives for permanence for the child.

A small piece of research carried out for the first stage of the APRG sought the views of young people who had grown up within the care system. While they expressed clear perceptions of the difference between adoption and fostering, **the overall impression was that the different options had not been explored with them**. Some indicated that adoption might have been of interest to them if it had been raised while others were clear that it was not for them.

Equally, research has shown that while the risks of possible disruption increase with the adoption of older children who have had very difficult early experiences, this is not straightforward and one significant contributory factor in 'older child adoption' is whether the child actively wants to be adopted or still feels a loyalty to his/her birth family.

- **Kinship and Adoption**

In considering the alternatives to adoption, in addition to the nature of the placement required, the panel should also ensure that all possibilities of retaining the child within their family network have been checked. The guidance to the LAC regulations contains fuller information about the steps in approving and reviewing kinship care placements. Each local authority should have a process for the approval of kinship carers for looked after children, including the independent scrutiny of their assessment prior to agency approval. The ongoing review of a kinship placement should include confirmation that the kinship carers continue to be able to meet the needs of the child. Where it subsequently emerges that one of these arrangements is likely to be permanent, it is equally useful to ensure that there are clear channels to confirm the plan and clarify that this is the agency decision. Where this plan extends to adoption, the appropriate forum would be the adoption panel.

In most instances now, however, adoption by kinship carers, who are frequently grandparents, is not the first choice as it can distort family relationships - but at times this may reflect the wishes of grandparents and children. Other forms of securing the placement may be preferable and the agency may direct these to the adoption and permanence panel but other similar independent foras may be considered, depending on whether the local authority has other arrangements for overseeing kinship care.

Where children are already placed with foster carers when the plan for permanence is made, the question of kinship care should be revisited. Relatives who are at a distance or do not know the child well may not feel it is appropriate to offer care initially but **may come forward when adoption is on the agenda**. An absent birth parent – especially a birth father with parental responsibilities and/or

rights that have not been exercised - may take a more active interest at this stage or his relatives may feel enabled to enter into discussions. Any new interest would need to be assessed and presented to the adoption/permanence panel.

Agencies need to ensure that they have made proper provision for addressing **all the alternatives** for permanence for a child as the context within which the panel can provide its reasons for recommending adoption. The legal terminology is clear – where there is a better practical alternative for the child the agency **must** not make arrangements for adoption. Therefore the **agency decision must reflect the reasons why adoption is the best option.**

IV. The Life-long implications of Adoption should be carefully considered

Section 14 of the 2007 Act lays out all the considerations that the court or adoption agency must bear in mind in making a decision about the adoption of the child. Reference has already been made to the best interests of the child and in section 14(3) this is stated as “the need to safeguard and promote the welfare of the child **throughout the child’s life** as the paramount consideration”. This confirms the life-long dimension that identifies adoption amongst the other options for permanence.

- **Stability**

Equally, section 14(4)(d) makes one of the considerations “the likely effect on the child, throughout the child’s life, of the making of an adoption order”. Central to much of this is what is understood by “the value of a stable family unit in the child’s development”. In what is now regarded as ‘traditional’ stranger adoption, this was easier to define when the birth mother’s relinquishment of an infant meant that the child’s birth family was not available to her/him and the expectation was that adoption would mean the child was accepted into a two parent family who were viewed as conforming to the social and moral values of the time. In deciding whether there is sufficient evidence that the birth parents cannot provide a stable family unit for the child and that this has, or is likely to have a detrimental effect on the child’s development, agencies need to demonstrate a robust rational approach to this. Equally, in assessing prospective adopters and long-term/permanent foster carers the information presented to the panel and going on to the Agency Decision Maker should pay attention to how the potential for applicants to provide this can be evidenced. The 2007 Act lays out the range of people who may apply to adopt which clearly indicates that ‘a stable family unit’ is not defined by any specific legal structure of the family. Some useful areas to look for include:

- positive, respectful relationships between adults
- appropriate relationships and boundaries between adults and children
- valuing each individual within the family group
- containing and managing a whole range of behaviours and emotions within the family unit
- celebrating, supporting and learning to problem solve together
- valuing family relationships across generations

- maintaining a sense of being part of the family through challenges and disruptions.

Adoption is not the only option with the potential to provide a secure family environment for a child – this may also be possible through kinship care or long-term fostering with a PO. The question is whether a particular child could respond and would benefit from being transplanted into a new family where they can put down roots, begin to thrive and have a sense of belonging. Section 14(4)(b) also requires the agency to consider the child’s ascertainable views. Where a child is not of an age or maturity to convey views directly, consideration should be given in the assessment to what is indicated by his/her responses, behaviour and evidence with regard to their need and ability to form new primary attachments – or consolidate existing ones with foster carers.

- **Identity and Culture**

In whatever form it takes, adoption represents a significant disconnection in a child’s life. Section 14(4)(c) restates the principle from the 1995 Act in relation to regard for the child’s religious persuasion, racial origin and cultural and linguistic background. This principle has a very immediate impact in temporary care when the child is expected to maintain active contact with the birth family, although they may be living in a different environment. **The potential impact in adoption is much more long-term.** An infant or very young child may make a transition to a very different family culture with relative ease. As they grow up, over time they will need to integrate their adoption and identity in relation to both their birth and adoptive families. This is one of the life-long issues of adoption. Adopted people will vary considerably in the extent to which this is a concern for them but the responsibility for the agency is, wherever possible, to have regard for the level of discontinuity between the birth and adoptive family, to try and find placements that keep this to a minimum and where this is not possible, to ensure that the adopters are sensitive to the concerns and equipped to meet the child’s needs in this respect.

- **Contact**

Contact will have been an important area on the agenda from the time the child became looked after. This is clearly articulated for the adults in the responsibilities and rights in sections 1 and 2 of the 1995 Act. For looked after children who move into the permanence route this may have featured as an area for debate, often in terms of questioning whether parents have fulfilled their responsibilities to their child in ‘maintaining personal relations’ or in parents seeking an extension to their ‘rights’ to see their child.

Clarity about the purpose of Contact

From the outset in planning it will be helpful if information about contact also places emphasis upon the **purpose** of contact and the different ways it can contribute to the welfare of the child. This should be incorporated explicitly in any information to birth parents about the centrality of the best interests of the child and how the ‘responsibilities and rights’ language of contact will be interpreted in that context. It is this language of the ‘best interests of the child’ that surrounds any consideration of ongoing contact when planning adoption for the child. This calls for robust evidenced assessments about the value – and potential harm – of contact.

Just as it is helpful to identify how contact may be used to progress the plans towards a positive return home, the purpose of contact in adoption needs to be understood. The information provided

to the adoption panel should enable them to provide in writing in the minutes **the reasons why any continued contact is in the best interests of the child.**

The dynamic nature of contact

The regulations in this respect do not define whether this is direct or indirect contact. They also only refer in regulation 6(4) to continued contact with the child's parent or parents. In practice, any panel considering a plan for adoption should look at all possible contact for a child, direct or indirect with any family members – including siblings elsewhere, grandparents and other relatives - as well as any other significant carers such as the child's foster carers. Some of this contact might have most relevance in the early period of placement to ensure links with familiar people during and following transition. Other contact may have greater possible relevance when the child is older and has questions for which they are seeking answers.

All contact in adoption is seen in the context of the expectation that the child will be aware of their adoption and that it will be the responsibility of the adopters to support their child in understanding their origins. This is confirmed by the requirement in regulation 24(2) of the Adoption Agencies (Scotland) Regulations 2009 about written advice to the adopters on the need to inform the child about their origins. This thread should be running through all preparation and assessment of adopters and every effort made to encourage and enable them in the ongoing task of talking about adoption and life-story work. The information provided to adopters under regulation 24(2)(a) will be what is available at the time of placement. It may not answer all of the child's questions. New information may be relevant to add following the adoption. This may be particularly so if further children are born and may also need an adoptive placement – either to explore the possibility of the new child joining an older sibling or setting up new sibling contacts. Other events may be relevant to share when thinking ahead to offering guidance to an adopted person who is seeking access to further information in their own right and considering tracing their birth parents.

Properly managed indirect contact arrangements (often under the heading of 'letter box contact' which greatly underestimates the complexity of this area) will identify channels of communication that may be utilised for the child. This could include consideration of direct contact at some future date if this was agreed to be in the child's best interests. Managing this would be part of the post-adoption support service. Any such steps would need to be well prepared and supported.

The long-term implications of contact

The distinctive feature about consideration of contact in adoption is that while it may be addressed at the particular time when legal adoption is being considered, the adoption plan itself must address the child's needs, **both during their childhood and those that are life-long.** Any need or interest in contact is likely to change over time and in relation to developmental needs. **This would indicate the need for flexibility and an emphasis on understanding the principles underpinning contact rather than trying to set out specific parameters about its form and frequency.** Increasingly the views and wishes of the child will play a greater part as they become more able to express these.

In order to reach a balanced view regarding the issues and dilemmas of contact the panel and the Agency Decision Maker should have the following:

- an assessment of the quality, content and pattern of contact over a period of time and what contact tells us about the parent/child relationship – and any other family relationships;
- information about how contact contributes to the child’s understanding of their situation;
- a perspective from carers about impact on the child before and after contact and questions raised;
- the parent’s ability to keep the child’s needs at the centre in contact;
- the potential for compatibility between the permanence plan and the proposed contact.

This will, first of all, inform the nature of the permanence plan for the particular child. Where there is clarity that adoption is in the best interests of the child, the panel and Agency Decision Maker need to distinguish between situations where there should be careful management of contact during a transition period, including resolution of a contested adoption plan and circumstances where some regular ongoing direct contact might be supportive and reassuring for a child. The most effective post-adoption arrangements are those where all parties are positive about its value and make an investment in working together in the child’s interests. This indicates a need for some structure to support and monitor any type of contact arrangement and access, where appropriate, to mediation. This is particularly important given that, unlike the provisions for reviews of looked after children and reviews of supervision requirements in the hearing system, there is no similar statutory base for routinely reviewing post-adoption contact. National Care Standards will assist in promoting external scrutiny of arrangements made for such support.

The regulations place the emphasis on the role of the adoption panel in situations where contact with birth parents is being proposed post-adoption. It is equally important to consider situations where there are clear contra indications to such contact either because of any risk posed to the child by links with their former environment or because of evidence of the potential for contact to threaten the stability of the adoption. In reaching its decision the agency should be explicit about its position in this area. In contentious cases contact may become central, with the possible difficult legacy of a compromise that does not satisfy any of the adults and leaves tensions which continue to unsettle the child. Building sufficient confidence and trust between the adults requires time and skills if, in the longer term, contact can serve its purpose for the child or young person.

The responsibility of the adoption panel is in respect of the permanence plan for the child and the role of contact in adoption. The legislation permits the situation where a child moves to live with a family who can offer adoption before the question of the parents’ consent is resolved and this is also reflected in the terminology of the regulations. Agencies often have to consider the best legal route in these situations. One practical consequence is that in the interim, until the full legal decision is made, contact arrangements, usually made by the Children’s Hearing, remain in place. Agencies need to ensure that they have mechanisms in place to support all parties in this and to ensure that the **changing needs of the child** are fully addressed. Addressing the following questions will assist with these considerations:

- How will the child understand the contact in the context of the work in preparing them for a move to a new family?

- Does the level of support need to alter so that the child is not caught up in the tensions?
- How involved should the proposed adoptive family be, given that this is an important time for them to build up trust with the child and demonstrate that they will be there for the child during possibly stressful times in their life?
- If 'transitional' contact arrangements with birth family continue well into the child's placement with adopters, does this in itself affect the picture? The Looked After Children reviewing system needs to be sensitive to such issues coming up during this new phase in achieving permanence for a child.

CHAPTER 19 THE ASSESSMENT, APPROVAL AND REVIEW OF ADOPTERS

IN THIS CHAPTER:

1. Introduction
2. Who to Assess: Assessing Local Need
3. Who to Assess: Publishing and Supporting Criteria.
4. Content of the Assessment
5. The Approval Process
6. Appealing against an Agency Decision
7. Reviewing the Adopter's Approval Status

1. INTRODUCTION

The guidance in this chapter is related to Part III of the Adoption Agencies (Scotland) Regulations 2009 and Part I of Schedule I of those Regulations. The areas covered in this chapter are:

- who to assess;
- content of the assessment;
- approval process;
- review of approval;

2. WHO TO ASSESS – ASSESSING LOCAL NEED

Section 4 of the 2007 Act requires each local authority to prepare and publish their adoption plan, either as a stand-alone document or as part of their Children's Services Plan. This obviously relates to the whole range of adoption services that should be provided across the country but a key part will be about the effectiveness of the authority in completing adoption plans for those children for whom it is in their best interests. This should include information about:

- the numbers and characteristics of the children placed each year;
- children waiting for adoption with no family in mind;
- any children where adoption might have been considered if there was a realistic prospect of finding an adoptive family.

Alongside this there should be information about the number and nature of approved adopters available. On the basis of this the local authority should plan for access to a sufficient pool of adopters to meet the needs of the main group of children likely to be placed and explore ways of extending this pool to encompass the more varied needs of those children who require greater efforts to be made on their behalf.

This may include making agreements with registered adoption services about the provision of some of these services or making use of consortia or other arrangements for securing inter-agency

placements. On the basis of this plan the local authority and any registered adoption service should firstly decide about the information they offer to prospective adopters who approach them and whether they need to include some minimum requirements about the range of children applicants can consider in their general criteria. Secondly, they should consider the need for active recruitment plans to meet any shortfall, including any specific focus for recruitment. They may do this individually, in partnership with other agencies who have similar needs, or through a local consortium or other established local or national grouping. Any such planned recruitment should address the necessity for adequate provision for following up all enquiries through the information, preparation, assessment and approval stages.

3. WHO TO ASSESS – PUBLISHING AND SUPPORTING CRITERIA

Each adoption agency must prepare and publish their general criteria for determining whether they will accept persons for assessment as adoptive parents and review these from time to time. There are two sides to this. Firstly, it is an opportunity to ensure that all potential applicants have accurate information about the wide range of people who can legally apply for an adoption order. The most obvious areas are age and marital status where some people may have been deterred from applying in the past by the impression that ‘you can’t adopt if ...’ which may not be true. This is where there is an opportunity to explain the changes made by the 2007 Act in relation to who can adopt jointly and how the agency will respond to applications from couples in a civil partnership and those who are living in an “enduring family relationship” as if married or as if civil partners.

Updating criteria in light of changing legislation and reviewing this will provide an opportunity to consider:

- Any training needs for staff in carrying out these assessments, both about exploring the stability and security of any relationship given what it is hoped adoption will achieve for a child, and also any practical issues that should be discussed with couples if their relationship breaks up before the child is adult. There should already be expertise within the agency about assessment of single applicants and families which already include birth or other children such as half or step siblings but any such review of criteria provides a useful prompt for consideration of how well the agency responds to the different family structures amongst potential applicants.
- Whether those assessing prospective adopters also need to engage in further dialogue with colleagues who may be seeking adoption placements for children. There is already some evidence that certain adopters wait longer for a placement and that this may be influenced not just by perceived capacity but also by views of their family structure, for example single adopters. This is particularly so when there is an expectation of choice for a young, pre-school child. It is very discouraging and ultimately may deter future applicants if approved adopters wait a long time for a placement and feel this is less about their ability than about attitudes to their particular type of family. This is a complex area and touches on how children are prepared for a new family – or a ‘new mum and dad’ – as well as working with birth parents who may not have thought about the range of people who might apply to adopt or foster. This is where agencies need to think about the channels of communication and joint training between adoption and fostering staff and social workers who concentrate

on working with the children and families who may need to use the adoption or fostering service.

Legal criteria in terms of being domiciled

Another legal aspect of criteria is whether the applicant(s) is/are able to apply to adopt in Scotland. The 2007 Act says that applicants must either be domiciled in the United Kingdom or have resided in the UK for one year up to the date of the court application, (s.30(6)). When the applicants are a “relevant couple” (s.29(3)), the 2007 Act says that either one of them, at least, must be domiciled in the United Kingdom or they both must have resided in the UK for one year prior to the date of the court application. It is not necessary for prospective adopters to have British Nationality.

Domicile is about which country an applicant is most closely associated with for legal purposes. A person may be domiciled in Scotland without living here as domicile is not the same thing as where someone lives.

Prioritisation of Enquiries

A further aspect of criteria concerns those factors that are not legal requirements but come from either knowledge of the needs of children requiring adoption and the care and parenting challenges they bring. Agencies need to be clear about how they express this and check with their legal adviser. **Agencies may state certain criteria that are essential for everyone who applies and should be able to state their reasons for these.**

Potential applicants may not like this or agree but the agency are entitled to state their position. An example would be those agencies who will not accept applications to adopt children under five years of age from smokers and can cite from the research on passive smoking. In other areas, agencies may want some flexibility and the scope to consider applicants with certain issues in their background on a case by case basis – this may be about something that could come up in a police check or a medical that might cause concern but not be an absolute bar.

Responding to applicants undergoing infertility treatment

There is also general agreement that any adoption assessment should not start while the potential applicants are actively undergoing infertility treatment. Adoption agencies should keep in touch with their local medical services about this – given advances in possible treatment, more protracted contact with clinics and the possibility of recall as medical knowledge advances there may not be a clear end point in treatment. If this is not an essential criterion applicants may wish an assessment to proceed, even if they recognise that in the end it may not be successful. In this situation an applicant may have grounds for appeal and ultimately, if they felt that the local authority had not handled their case appropriately or fairly, may consider a judicial review.

Requirement to notify the enquirer in writing

If the agency does not accept an application from someone because he or she does not meet their criteria they must notify that person in writing. Where it seems likely that another agency would accept the application it is helpful to pass this information to the applicant.

Additional Criteria for Inter-country adoption

Clearly, the general criteria above apply where applicants are considering domestic adoption. Where prospective adopters are considering an inter-country adoption they need to be aware of the requirements both within this country **and** those of the sending country.

Adoption agencies should have information available based on eligibility to adopt in the Adoptions with a Foreign Element (Scotland) Regulations 2009 and also the stages depending on whether it is a convention or non-convention country. Any such applicant will also need to be aware of any additional requirements made by the country from which the applicant hopes to adopt. This may change, as may the extent to which any other country will consider adopters from other countries.

From time to time there may also be special restrictions placed on adopting from certain countries due to concerns about the situation in 'obtaining' children for adoption. Both staff and enquirers should have information about sources of up to date information to ensure that any such application is realistic. It is clear in the regulations that all inter-country assessments should be handled in accordance with the Adoption Agency regulations.

Clarifying when an enquiry becomes an application

Alongside laying out their criteria for applicants, agencies should consider the point at which applications may be made. Many people approach adoption with limited understanding both of why there are children needing adoption now – and all the implications of this for potential adopters – and of the extent of the assessment process. It therefore makes sense to provide enquirers with ample information in advance of the point of application. Agencies should have clear procedures covering the provision of written information and the arrangements they make for individual interviews or group information sessions.

The point of application should mark a clear move to the next phase, by which time the agency will have ensured that the applicants have a sound understanding of all that is involved and the applicants feel sufficiently informed to make that step. If the applicant's circumstances change or, on further discussion, they conclude that they no longer wish to adopt, they should be asked to state in writing that they wish to withdraw. It should be noted at this point if this was a personal choice and was no reflection on their suitability to adopt.

Where concerns are identified during the assessment that could lead to a report to the panel recommending that the applicants are not approved this should be fully discussed with the applicants who may choose to withdraw, which again should be requested in writing and a note made of the circumstances.

Where the applicant wants to continue with the application, this should be brought to panel when any areas of concern have been fully explored, including any independent sources of additional information and an evaluation made of the significance of the concern and how it may be balanced against positive aspects of the application. The aim should be to provide sufficient information to enable the panel to conclude whether or not they should recommend that the applicants are not

suitable to adopt with reasons that can be stated and are open to review on appeal if the Agency Decision Maker decides against approval.

4. CONTENT OF THE ASSESSMENT

The regulations and the schedule cover the range of information to be gathered and what needs to be submitted to the panel to enable them to make their recommendation. From the perspective of the adoption agency this is about having a well thought out preparation process covering both the challenges of adoption generally and the more specific issues arising from the needs of the majority of the children now needing an adoption placement. This should be followed by more focussed work with applicants to assess and evaluate what they bring to this.

Initial Mapping of the Assessment

The assessing worker for this home study phase should discuss at the outset the main areas that will be covered that are common to all adoptive applicants and how these may be addressed and also spend time identifying with applicants the areas that are specific to their application. For applicants applying for a child known to them it will be important to explore their knowledge of the child and their attitude to his/her family of origin. For prospective inter-country adopters, this includes both the additional factors common to all inter-country adoption, such as the potential risks from limited information and the challenges for children and their parents when a child is separated from their original culture especially where they do not share their adopter's ethnicity and religion, and also any particular issues arising from adoption from the country chosen.

For all adopters there may be a number of areas that are relevant to the individual application including:

- their particular family structure and who is in the household;
- extent of their experience of children, and especially the views of any children in the household;
- significant events and experiences in their background;
- any issues likely to come up through third party enquiries.

This initial mapping of the areas for assessment will always be open to adjustment if new issues arise, but setting a broad agenda establishes a way of working together that is open, helps the applicants to think about the relevance of the different aspects of the assessment to the task and to consider their input to the process. The agency should have a range of tools, information and materials they can draw on both in preparation groups and in the home study for staff to use.

Preparation Groups

Preparation groups form a significant part of the process in most agencies and they will have both tried and tested models to use, adapt and update and will also have patterns that they can monitor about frequency and organisation of such groups. Some of this needs to be flexible to take account of the size and geography of different agencies. This is not prescribed in regulations but is an area that should be kept under review to ensure that prospective adopters are not faced with undue

delay and that any groups they attend take account of their needs. This may call for a range of practical and creative solutions such as combined groups for potential foster and adoptive applicants with some sub-division or separate sessions or joining with neighbouring agencies to run a joint group – for example, inter-country adoption.

In some areas it may make sense to use some of the group preparation material with a group formed from the family and friends of applicants. **Applicants need to be clear at the outset as to whether and how their participation in a group may be part of the assessment.** This may be a formal point at the end of the groups when there is discussion of the next steps and the group leaders can identify with both the applicants and their assessing worker any particular issues arising from the preparation groups. Where groups are identified by the agency as a fully integrated part of the assessment they may also incorporate feedback sheets on each session to be picked up in the home study. By this stage applicants should have moved on from awareness of the general criteria for eligibility for assessment to a firm understanding of what the agency will be addressing in considering their suitability to adopt. The National Care Standards: adoption agencies, (March 2005) Standard 23.1 specify the assessment should be completed within **six months** for the assessment process from the date of initial interview to recommendation to adoption panel.

Checks and References

Early in the process applicants should be aware of all the information that will be gathered from other records and people and arrangements made for the timing and means of obtaining this. This should cover everything listed in Schedule 1 Part 1(14) the Adoption Agencies (Scotland) Regulations 2009 as well as medical information and references. Established good practice goes beyond what is included in regulations and has been informed by reports into situations where approved adopters did not provide safe care for children.

Clarity about this **investigative aspect of the assessment** and the need to obtain confirmation of the honesty and accuracy of information should be openly discussed at the outset so that this can be integrated helpfully into the overall process. Agencies should be explicit about the following:

- expectation in relation to approaching employers for a reference;
- contacting former partners; and
- interviewing adult children who have left home.

Agencies should specify how this will be done, by whom and the process for evaluation of the information and whether this will be made available to the applicants. Where this is unrealistic, attempts should be made to contact other people who can comment on the particular circumstances at that time.

Where people have lived abroad for a period there should be **early** enquiries about possible checks in other countries. If this is not feasible referees or employers may be able to confirm that there were no concerning issues at the time and information about this attached to the report. This will enable the panel to comment on the robustness of the checks.

Referees

Agencies should gather the names of a number of potential referees at the beginning and then prioritise who they will follow up at a later stage when there is greater clarity about the areas where comments from referees would be valuable. Applicants should be encouraged to think of possible referees who have known them individually or, if a couple, together over a period of time, including during significant times in their lives. As well as people who are not close relatives as required by the Schedule, consideration should also be given to meeting members of the applicants extended family both because they may have an additional perspective on any difficult areas arising during the assessment and also because of their potential support role.

The question of the confidentiality of this information is complex. Regulation 7(5)(f) provides for the report that is presented to the adoption panel to be shared with the prospective adopters on the basis that it shall exclude any information provided in confidence. Assessing workers should be clear about the different aspects of confidentiality so that they can explain this to applicants at the outset. This includes understanding the perspectives of other agencies and professional bodies as well as their own agency approach. Disclosure Scotland has its own guidelines about the handling of any additional information that may accompany an enhanced check. The medical profession has its own code of practice that addresses both access to medical records and also any restricted reports where there is a duty of care. Personal referees and other individuals may tentatively raise concerns but be reluctant to go further if they were to be identified as the source of negative comment.

Issues and Dilemmas related to non-approval on the basis of third party information

Regulation 8(6)(b)(i) states that where there is a decision that a prospective adopter is not suitable to adopt, they must be sent the reasons for this decision. It is obviously likely that a concern from third party information may feature here. Any such situation needs a well considered approach with time to attempt to resolve the concerns posed – if necessary by deferring panel consideration. This will require discussion with the individual providing the information in question and exploring ways in which the issue can be opened up with the applicant. In some cases this may be about the provider of the information agreeing to communicate with the applicants, in other situations it may be about thinking of ways of finding out more about the issue from other sources or bringing it into the open without identifying the source. This is often unsatisfactory as the source may be obvious to the applicant or it may divert attention to wondering who might have made an adverse comment.

In many situations it is, however, possible to negotiate a way forward that allows a full satisfactory inquiry into the difficulty raised. These situations often cause anxiety for workers who will need support and guidance on ways forward. Robust and consistent supervision by a senior Social Worker can provide this, and other guidance when necessary in order to ensure that timescales and pressures are met.

Agencies may also deliberately leave the final choice of referees to follow up with an interview and also the use of a standard visit by a second worker or supervisor to a later stage to provide further opportunity to consider difficult aspects of an application. **Ultimately there is no absolute guarantee in these complex situations that confidentiality can be protected if cases are appealed.**

Every effort should be made in managing these cases to address issues raised thoroughly while respecting as far as possible the concerns of individuals providing information about confidentiality and with sensitivity to their anxieties. A clear record should be held at all stages of the discussion of such issues and the conclusions reached.

Civil Partnerships and Cohabitation

The 2007 Act extends the framework for joint applications to a wider range of couples including civil partners and cohabiting partners. Adoption agencies already have experience of assessing these applications but on the basis of only one partner making the application to adopt while the other partner may look at other alternatives to secure their status in relation to the child. The legislation and regulations help to regularise this position and the Schedule directs attention to some specific pieces of information where there are two prospective adopters. The phrase that will require some consideration is the need to establish when a couple are in **'an enduring family relationship'**. Finding ways of testing and articulating this will be helpful in considering any relationship – simply stating that people have been married for a number of years can no longer be taken as any guarantee of this. Adoption agencies will need to keep in touch with other areas of social work and counselling to ensure that they are aware of any models that could inform their practice in this area.

Children already in the household

While adoption is still seen as a particular option for families with fertility issues, and a high proportion of applicants are childless, there are also a number of applications from those with children already. These will range from those embarking on a second – or subsequent – adoption, through families where secondary infertility is an issue, to those who have plenty of parenting experience through children born to them and have responded to the needs of children waiting for an adoptive family. There are a growing number of tools now available for use with children in the household when an adoption assessment is being completed.

One of the known risk factors in adoption is the impact of the addition of a child through adoption on a child already in the family, especially if they have extra needs in finding their place within the family unit. This should always be carefully and explicitly addressed and attention paid to the way in which children are directly included in the assessment. The 2007 Act requires local authorities to assess the needs of these children for support services on request, and the children should be made aware of this opportunity.

Religion and Culture

Part 1 of Schedule 1 brings in the reference to the prospective adopter's religious persuasion and observance. The specific area of religious practice expressed in the Schedule concerns the prospective adopter's ability to have regard to the child's religion, ethnicity and cultural and linguistic background. This is mirrored in Part II in the information about the child.

The adoption agency needs to ensure that a prospective adopter's practice is genuinely non-discriminatory with a clear emphasis upon the needs of children who may be placed. An acceptance and understanding of the child's background and identity are essential attributes for all adopters. All adopted children will experience difference and ultimately will need to come to terms with their dual family status: being part of an adoptive family, but also having a birth family. Prospective

adopters will need to demonstrate the potential to help a child make sense of their past, including their religious and cultural identity, rather than trying to ignore or downplay the importance of a child's religious and cultural roots.

Financial Information

The adoption agency should be clear about its requirements for financial information. The assessment of detailed financial information should always be made in the context of ensuring stability for children. Alongside these considerations, information should be provided to applicants regarding potential financial support that could be available through adoption allowances.

Health

The Schedule makes reference to the prospective adopters' ability to care for the child throughout childhood. This directs attention in the assessment to the whole period of a child's dependency and their transition to adulthood. Factors such as age and health may be relevant here. It is important to recognise however that circumstances change in families and that adoption support services have a role to play when these changes occur.

5. THE APPROVAL PROCESS

The key steps in this and the timescales are clearly laid out in the regulations. Agencies will have an agreed format for presenting the completed assessment to a panel – which is normally a standard format familiar across agencies to facilitate inter-agency placements and also to ensure that all the requirements in the regulations are covered. This must be shared with the prospective adopters in advance of the panel excluding any information provided in confidence and they should sign it.

Sufficient Time to amend Reports

Agencies should have their own procedures and timescales to ensure that the applicants have sufficient time to look at the report on their application and if necessary add comment on any concerns or inaccuracies and also to ensure the papers reach panel members in plenty of time to prepare for the panel.

Attendance at Panel by Applicants

The attendance of the applicants for part of the panel is well established practice. Agencies should have information available about the purpose of the panel, when and how the applicants will have the opportunity to meet with the panel and whatever practical information that will help them to participate. This could include the following:

- written information with some brief details of panel members;
- opportunity to meet the chairperson before being introduced to the panel;
- feedback on the positive elements noted by the panel in their application before asking any questions;
- an indication of the areas that the panel would like to discuss with them at the outset.

Their assessing social worker should have discussed with them in advance that the panel can **only make a recommendation which goes to an Agency Decision Maker** who cannot be a member of the

panel and also the timescales for the agency decision to be made. This should be confirmed at the panel itself.

Timescales for Approval and Non-approval Decisions,

The timescales are laid out in regulation 8. The agency should have procedures to ensure that the papers and a minute of the panel covering all the areas that must be in writing reach the Agency Decision Maker in time to make the decision **within 14 days**. It should be noted that where the recommendation is for approval, and this is agreed by the Agency Decision Maker, there is a **further 14 days** to write to the applicants confirming this. If, however, the decision is not to approve the applicants, they must be notified within **seven days together with the reasons for this** and also the adoption panel's recommendation if they had considered the applicants suitable. They should also receive written information about timescales and process should they wish the decision to be reviewed. The agency must therefore be able to demonstrate clear reasoning throughout this process.

Further Panel Considerations beyond the Approval Recommendation

The regulations are expressed in terms of the applicants' suitability to adopt. In addressing this, there are two further areas that the panel may wish to comment upon and which link with the later function of the panel with regard to the placement of a particular child or children with the adopters. These are set out below.

- **The age range and number of children who may be placed.**

Adoption agencies normally make some recommendation on the parameters of the children who may be placed but the regulations are silent on this. Agencies should therefore decide the extent to which they would seek to add such recommendations to the overall suitability to adopt. The aim of leaving flexibility is that some adopters may develop their confidence in considering a wider range of children once they are approved. Adoption agencies need to continue working with adopters post approval to develop their ability to consider the real needs of children known to be awaiting adoption. Many agencies use BAAF formats to start exploring the whole range of aspects of a child that form part of the matching considerations and this will be part of the evidence shared with the panel. This goes beyond age and ability to consider siblings and issues around contact; background factors; developmental concerns, disabilities or health needs; heritage and genetic factors and a wide range of emotional, social and behavioural challenges. The agency should decide whether they will seek to make recommendations within specific parameters or will make reference to the broader ongoing work in relation to matching characteristics which will be continued during the period prior to any proposed match.

- **Anticipated support needs**

In any recommendation for approval there should be strong positive reasons to consider that the applicants have the capacity to meet the life-long needs of children awaiting adoption. This places the initial emphasis on the strengths of the applicants. There are always areas where applicants have less experience, are less confident or have personal experiences that may increase their empathy for a child's circumstances but also could leave them vulnerable. **A good assessment will evaluate and balance these different attributes to reach a recommendation on 'suitability'**. One of the main thrusts of the 2007 Act is the recognition of

the level of support that should be available to adoptive families to equip them to manage the child's changing needs and also to address the significant extra challenges that often arise from the background and history of the children placed. The growth of skills and practice in this area highlight the need both for all adopters to recognise their potential need for support at times but also more specific awareness of likely areas where this may be needed. This should be built in to the matching process and should therefore be recognised from the point of approval.

6. APPEALING AGAINST AN AGENCY DECISION

Applicants should be afforded a period of **not less than four weeks and not more than 12 weeks** to make representation about the decision.

The procedure for this is clearly laid out in the Regulation 9. The adoption agency should have arrangements in place to enable them to have a **differently constituted adoption panel** within the required timescale. This should also conform to Regulation 3. The existing pool of adoption panel members may be sufficiently large to service this if necessary but small agencies will possibly need to establish reciprocal arrangements with another agency to ensure that there is a sufficient pool to draw on to provide a different chairperson, legal and medical adviser as well as panel members.

Most agencies already have provision for an **alternative Agency Decision Maker** to cover holiday and illness but may also designate their chief executive or similar as an additional Agency Decision Maker for such eventualities. The prospective adopters should be given the opportunity to make representations to the adoption agency. Regulations do not specify the means for doing this but a fair process would allow them to put their views in writing, add any other views and comments from other sources in support of their appeal and speak to the adoption panel that is making the fresh recommendation.

7. REVIEWING THE ADOPTER'S APPROVAL STATUS

Regulation 10 addresses when an adoption agency must review adopters following their approval. Agency procedures should be clear how this will be carried out. Two sets of circumstances are identified when this will be necessary:

- I. when adopters have been approved for two years and no child has been placed
- II. where a child has been placed in accordance with regulation 18 for the purpose of adoption, no application for adoption has been made and the agency considers a review of the approval is necessary to safeguard the child.

Each of these circumstances is explored more fully below.

I. When adopters have been approved for two years and no child has been placed

Where no child has been placed within two years of approval, this should be addressed initially by the team responsible for the assessment and approval of adopters. There may be a number of reasons for this, such as:

- there may have been no children within the parameters the adopters were willing to consider needing adoptive placement

- there are factors in relation to the adopters which have meant they have not been the family choice for any children needing placement
- for personal reasons they were unable to consider a placement for part of the time, for example move of house, so they were temporarily unavailable.

The review needs to consider whether their continued approval is realistic and a placement may still be anticipated. In advance of this review, the agency is required to **re-assess** the adopter's suitability to become an adoptive parent. The adoption agency should maintain contact with all their approved adopters during the time when they are awaiting placement and have established how they will do this. This is particularly important where an assessment has been carried out by an independent worker on behalf of the agency.

If there are **significant changes** in the prospective adopters' circumstances these should be addressed at the time and where these have implications for their approval, the case should return to panel for re-consideration.

Adopters should be aware that if no child has been placed with them, their situation will be reviewed after two years. Their contact with the adoption agency should support them in thinking about the possible reasons for this. In particular, they may need to reflect on whether this relates to their own hopes and expectations or their capacities at the time of approval – and whether there is anything further they or the agency can do to address this. The re-assessment required for a two year review should concentrate on any changes and development during the waiting period and its implications in relation to the original assessment. In some instances, agency criteria may also have moved on – for example guidance on passive smoking has led some agencies to change their criteria for placement of young children within non smoking households as the requirement for all under five's rather than under two's.

Attention should also be paid to the efforts made by the agency to find a suitable link for the adopters. There are various arrangements in place to facilitate links between agencies in different parts of Scotland, across the whole of Scotland and the UK. As well as recognising the needs of waiting families, this also acknowledges that a protracted wait for a placement may undermine the confidence of families and in some circumstances the loss of a potentially valuable family for a child. As part of their required plan for the provision of adoption services, local authorities should include in their review of such plans both their approach to resource sharing and any necessary changes to practical arrangements for this. Waiting adopters should be actively involved in how a link may be identified for them and understand the implications of an inter-agency placement.

Updating Checks and Medicals

Agency procedures should also specify the frequency of updating statutory checks and medicals. The most obvious point is to update checks for the two years review but this will require to be monitored in line with any subsequent guidance from Disclosure Scotland and also with the introduction of the Vetting and Barring changes system which came into force in 2011 under the Protection of Vulnerable Groups (Scotland) Act 2007. Procedures should also be in place for updating medical information. **Full medicals should only be necessary after five years** or if there has been a significant health issue in the intervening period which has been identified by the agency in the course of ongoing contact with the approved adopters.

When the Review concludes that re-approval is not appropriate

Regulation 10 thereafter lays out the necessary steps to be taken if the conclusion of the review is that the prospective adopter may no longer be suitable and the need to refer the situation back to the adoption panel. In practice, agencies may choose to discuss all reviews of adopters waiting for two years at the panel so that the panel builds its awareness in this area. The review report in these circumstances should provide the following information to panel:

- a summary of the prospective adopters and the panel recommendations at the time of their approval; any change in circumstances;
- reasons why no placement has been made with them;
- the current view of the assessing social worker about their continued approval; and
- the discussion at the review that concluded they may no longer be suitable.

The regulations provide for the sharing of that report with the **prospective adopters and their opportunity to submit representations**. They should be encouraged to provide their views in writing prior to the panel and the agency should consider the provision of the opportunity to meet the panel as in their original approval. The route thereafter is similar to the initial approval process including the possibility of appeal if the Agency Decision Maker decides the prospective adopters are no longer suitable to adopt.

Further Reviews of Approval

The regulations do not define the need for further reviews but this should be clear within agency procedures. Where the agency and the panel, if involved, are happy to recommend the continued approval of the adopters they should indicate when any subsequent review should take place if no placement is made. This would normally be within a **maximum of two years** unless individual circumstances indicate an earlier review.

II. Where a child has been placed in accordance with regulation 18 for the purpose of adoption, no application for adoption has been made and the agency considers a review of the approval is necessary to safeguard the child.

The situation where a child has been placed, no order has been made and the adoption agency considers a review is necessary to safeguard and promote the child's welfare is more complex. Obviously if any real risk to the child is identified, child protection measures will be implemented and if necessary the child removed. Some of the children placed for adoption have very complex histories with all the challenges to carers that can also occur in foster care. In a similar way prospective adopters may struggle to find appropriate ways to manage very difficult behaviour, be open to allegations and be at risk of secondary traumatic stress.

Although these placements may have been with the intention of adoption, the placement initially may have been made on a fostering basis. The child will continue to be looked after and should be reviewed in the normal way with reference to the Looked After Children (Scotland) Regulations 2009. It is this review that should consider the way forward for the child. The challenge for local authorities, whether acting as an adoption agency and with all the wider responsibilities, or working in partnership with a registered adoption service, is to find the most effective ways for the looked

after reviewing system, the adoption service and the application of different aspects of the general fostering provisions all to work together.

Dual Approval Status

A number of local authority and registered adoption service agencies specifically approve prospective adopters as foster carers as well, if they consider it is likely they will have a child placed through the Children's Hearing. If a registered adoption service approves adopters as foster carers as well, it will require to be registered as a fostering service as well. The expectation is that they will only be foster carers for a child who they would hope eventually to adopt. They do, however, need to be clear about all that is involved in acting as a foster carer for an agency and sign a Foster Care Agreement and a Foster Placement Agreement and understand the implications of that. At the same time, a system that is accustomed to handling struggling foster placements and very challenging children must be sensitive to the perspective of prospective adopters who started off wanting to make a child a full member of their family and began by thinking themselves into the role of parents to the child.

Changing the status of a placement

In the midst of this, decisions may need to be made about whether the point has been reached where alternative arrangements should be made for the child and the placement disrupted or whether the best that can be achieved is the continuation of the placement on a fostering basis. The adoption agency may wish to consider, under regulation 6(2)(e), the extent and role of the adoption panel in these circumstances. The agency may wish to use the panel's experience in permanency issues to consider change of status in these situations or address the need for more extensive adoption support services. This may be at an earlier point than is indicated in regulation 10(3), which would otherwise follow on from a Looked After Children Review at which the liaison worker from the adoption agency who supports the prospective adopters would be present and which concludes that the planned adoption is no longer viable. This should separate out the child's plan from any consequent change needed to the approval of the adopters.

CHAPTER 20 CONSIDERING CHILDREN FOR ADOPTION

IN THIS CHAPTER:

1. Introduction
2. Relinquished Infants
3. Adoption by Step Parents and Relatives
4. Adoption of Looked After Children

1. INTRODUCTION

This chapter address the considerations for the adoption of three groups of children.

- relinquished infants
- adoptions by step-parents and relatives
- adoption of children who are looked after (where this was not a voluntary adoption request from the birth parent or not the plan at the outset).

2. RELINQUISHED INFANTS

There is clearly provision in the legislation and regulations for involving relinquishing birth parents fully in the adoption process, setting out how this will be done and the relevant timescales for notifications and giving consent. The adoption service itself should begin, if possible, well before the infant is born.

Timescales and Delay

The period around the birth and immediately thereafter is recognised as an emotional period. For this reason, the legislation states that any consent by the mother is ineffective if given **less than six weeks after the birth of the child**. At the same time, the best interests of the infant will be served by ensuring they are settled in their permanent placement as soon as possible. In some instances this may include direct placement after birth on a fostering basis with a family who are also approved to adopt. It is therefore vital both for fairness to the birth parent and to offer the best service to the child that there is ample time to explore all the implications of adoption **without undue delay**. Considering this approach, and the need to explore all the implications of adoption, apply equally to the other two groups of children.

Response to Birth Parents requesting Adoption

Each local authority, as part of its adoption plan, should be clear about where and how such requests for adoption are handled. This should include the following:

- written information for birth parents considering adoption;
- the choices available in seeking advice and counselling; and
- clear and accurate details about accessing these services.

Services to birth parents may be located within a Local Authority or undertaken by a Registered Adoption Service.

Details of the Services to be provided to Birth Parents prior to the Birth

Services offered pre-birth should include the following:

- time to reflect on the options available and the implications of these;
- discussion of any barriers perceived by the mother in considering caring for the child herself;
- beginning to gather the information in Schedule I Part III with explanation of the reasons for this;
- consideration of the involvement of the birth father and other family members including whether they could/should be made aware of the birth and whether they could contribute information about the child's origins or be given the opportunity to care for the infant;
- clear explanation of each step in the process and opportunity to see the memorandum on the adoption of children in Schedule 2 with time to consider all the information contained in it;
- consideration of the life-long needs of adopted children and the implications of this for a relinquishing birth parent;
- practical arrangements in preparation for the birth;
- identification of any matching considerations, both potential issues arising from the information about a child's ethnicity or any genetic or medical concerns and any views expressed by the birth parent.

As far as possible, specific explanations for the birth parent's decision to relinquish the infant should be sought. The subsequent need that the adopted child will have to make sense and understand the parent's decision should always be kept in mind.

Involving other family members, including Birth Fathers

Where the birth mother is resistant to sharing information about the pregnancy with the birth father or family members every effort should be made to encourage her to think about the importance of

this to the child and support her in managing this. This should be carefully recorded as, like many aspects of adoption, there must be a balancing of the potential risks and benefits. In this case the balance is between breaching the confidentiality of the birth mother, deterring her from making what she considers the best plan for her child and questioning her request for a service on one hand; and on the other, losing for the child some potential avenues to pursue to find a place for her/him with birth relatives, missing some sources of knowledge about the child's history and any medical or genetic information.

There is also the potential for legal challenge from anyone who might wish to obtain some parental responsibilities and/or rights. Legal advice in these situations should comment on whether the agency has made sufficient enquiries and has reached a logical and well founded conclusion. On the other hand, from 4 May, 2006 birth fathers named on the birth certificate also have parental rights and responsibilities and should be actively involved in the planning. Efforts should always be made to engage birth fathers, both for the potential long-term benefit for the child in knowing about them and their views and as a possible support to the birth mother.

Where adoption has been requested for an infant, the baby may first be placed in foster care to give the mother time after the birth to reflect on her decision and be confident about proceeding. Most birth parents prefer to have some idea of stages and timescales. The next step will normally be the review at **six weeks** which coincides with the point at which a birth parent may legally give their consent.

Legal Status of the initial placement in Foster Care

Registered adoption services may offer a direct service to relinquishing birth parents and also have foster carers who specialise in this type of placement. However, this will be in conjunction and under agreements with local authorities. Relinquished children will be looked after by the local authorities. These types of looked after placement will almost always be under **section 25 of the 1995 Act**, but children may sometimes be subject to supervision requirements in the hearing system.

This will be an appropriate point at which to decide whether to proceed to an adoption panel to confirm the adoption plan for the child. Clearly in a voluntary relinquishment the birth parents can seek more time to be certain of the decision. If the birth parents are ready to proceed, consideration should be given to sharing information about possible families for their child and the possibility of meeting prospective adopters. Encouragement should also be given to them providing information and mementos for the baby.

Assessment of Parenting in relation to Relinquished Infants

The consideration in this part of the legislation is that adoption on request is **not** dependent on any assessment of the parents' abilities to care for the child. This would only become an issue if at a later stage parents sought the return of an infant and concerns had emerged about the safety or welfare of the child. Once the child is born the adoption agency must ensure that all the next steps are carried out thoroughly, at a pace that is sensitive to the parent's needs **but does not cause undue delay for the child**. There may well be concerns about the long-term effect of the decision on the birth parent, or a sense that, if a particular hurdle could be removed, then the child could be

reunited with birth parents. **Realistic planning involves doing the best possible within the confines of the situation and not risking leaving a child in limbo.**

Presentation to Adoption Panel

Presenting the plan at panel will require the completion of the necessary reports including legal advice and a full medical examination. The agreement of birth parents should be sought to obtain their medical information as part of the information required in Schedule I part III.

Regulation 12(4) provides for any representations from the child or their parents or guardians. Whether birth parents attend the adoption panel will be part of the wider procedures of the agency, although an increasing number make this provision and as a result of this consider that it should be standard practice for birth parents to be given the opportunity to attend panel. For relinquishing birth parents it is important for the panel to be aware of their wishes for their child. For these birth parents, if they attend the panel this should be seen as a way for them to be actively involved in contributing to making the plan for the child's future well-being and be consistent with the agency approach to supporting and working with parents. The panel chair should ensure that the parents understand the role of the panel in making a recommendation and what will happen next.

Consideration of Potential Match

Regulation 6(6) enables the panel to make more than one recommendation at the same time so it **would be possible to consider a potential match with adopters at the same panel.** It will depend on individual circumstances whether this should happen or whether there should be a space before moving on to exploring with the birth parent their views on potential adopters.

Legal Challenges to the Proposed Adoption

It would be anticipated that in these adoptions all the stages would move forward with the agreement of the parents and that there would be no need to apply for a PO with authority to adopt. Point 3 in the memorandum in Schedule 2 does however include reference to this possibility if the birth parent does not consent to the adoption. Regulation 16 spells out all the requirements about what needs to be sent to the birth parents and the timescales for this, including both the forms in Schedules 3 and 4 and also the provision for checking whether a parent who does not have parental responsibilities and rights intends to seek these. If challenges to the plan emerge and a PO with authorisation for adoption is considered the best alternative route, this can only be sought by a local authority. Normally, if the service to date had been delivered by a registered adoption agency they would already be doing this in conjunction with a local authority. Otherwise, regulation 15(2) does provide for the referral of the case to the local authority for the area where the child resides.

3. ADOPTION BY STEP PARENTS AND RELATIVES

These are not covered by the Adoption Agencies Regulations (Scotland) 2009. They do not come to an adoption panel or through the adoption agency decision-making process. These are non-agency placements where sections 18, 19 and 75 of the 2007 Act apply. The local authority has not had responsibility for placing the child and the adoption petitioners have not been approved as agency adopters. Section 75 is relevant because it restricts who may arrange adoptions.

The local authority responsibility under the 2007 Act is laid out in section 19, following the notification under section 18. These notifications signal the start of a legal process. What will not be clear, until contact is made with the proposed petitioners, is the extent of discussion, advice and consideration that has already taken place before they took that step. Many will have sought legal advice, although it is possible to lodge a petition without using a solicitor. Some may have sought extensive information as part of their own deliberations or contacted an organisation such as the Citizen's Advice Bureau. Others may have initiated a legal process that makes sense in their circumstances and with a clear intention but may not have had the opportunity to discuss all the implications fully with someone with knowledge of adoption. It is therefore important that there are procedures in place within the local authority to ensure that these notifications receive a **prompt response** and are directed to the appropriate staff within the authority that have experience and knowledge of these adoptions.

Legal Context of Step Parent Adoptions

The social worker carrying out the enquiries into the situation should be clear about the legal requirements in these situations. In particular one of the changes in relation to step parent adoptions is that the step parent may apply if they are part of a **'relevant couple'** and their partner is the parent of the child to be adopted. This means a step parent adoption is now possible if the petitioner is in a civil partnership or living together with the child's parent in an **'enduring family relationship'** – using a similar approach to assessing this as in any other adoption application. 'Relative' in adoption is defined in section 119(1) of the 2007 Act.

In other situations where a child is, or will be, placed with approved kinship carers or foster carers who do not meet this definition of relative this may be covered by permanence planning procedures in kinship care leading to an agency placement. However, a proposed adoption by kinship or foster carers may proceed as non-agency adoption, although the adopters are not "relatives" as defined.

Explanation for the Adopted Child

One area that is common to step parent adoptions and adoptions by relatives is the explanations to the child. In agency placements all approved adopters will have had, as part of their preparation, a lot of information about their responsibilities in talking to their child about their adoption which will inevitably prompt discussion. A number of non-agency adoptions concern much older children and if the child is **12 or older** the petitioners should be aware that the child must also give their consent. Where petitioners are applying to adopt younger children this is an area which will need active consideration if the child is unaware of the nature of their relationship with the adults parenting them. They may need time and support to consider how to manage this.

Estranged Parents and the Wider Family

Another complex area is the potential views of estranged parents. It will clearly be a legal concern if an estranged parent has parental responsibilities. Some parents in this position struggle with the management of this, especially if the estranged parent has been out of touch for some time. From the point of view of the local authority, consideration about efforts to see an estranged parent and record carefully the decisions made in each circumstance should be made.

Both types of non-agency placements are likely to bring up complex questions about the child's links and possible contact with other family members. This may be about the relationship the child's parent in a step parent adoption had with the separated or estranged parent of the child. Where this has been acrimonious or embarrassing it can be hard to share this with the child. There may be resistance to opening up this area even if the absent parent has parental responsibilities. With adoption by relatives there can be difficulties managing relationships with a birth parent within the broader context of the whole kinship network.

For the reasons outlined above, step parent adoption should not be mistaken for a straightforward or unimportant part of the work of adoption agencies.

4. ADOPTION OF LOOKED AFTER CHILDREN

The largest, most diverse, group of children for whom adoption services need to be provided are those who initially need to be looked after – where their parents are struggling to offer safe or nurturing care. The decision on the need for adoption as the plan for permanence will come through the Looked After Children reviewing process. This is covered more fully in the guidance in **CHAPTER 15 REVIEW OF THE CHILD'S CASE.**

Considerations of the Looked After Child Review

One of the important steps that should have been triggered by the Looked After Child Review is a meeting with the legal section of the local authority. Such a meeting provides an opportunity for both the social worker and the legal adviser to review the robustness of the evidence to dispense with consent if the birth parents do not consent to the adoption.

Dispensing with Parental Consent

The grounds for this are laid out in section 31 of the 2007 Act. This is a complex section and one where early discussions with the legal adviser will help identify the subsections that apply and consider the procedures and processes required. From the perspective of the social worker one of the aspects that will benefit from detailed discussion is the parental responsibilities and rights laid out in sections 1 and 2 of the 1995 Act. This is central to any consideration of the alternatives in planning adoption or permanence.

The following questions may assist with these considerations:

- Is this parent choosing to surrender all their responsibilities and rights through adoption?
- If not, for each responsibility and/or right, have they exercised it and if so, was it done in a way which promoted the best interests of the child?

Answering these questions should clarify whether the full transfer of rights through adoption is in the best interests of the child, or whether there are some responsibilities and rights it would be in the interests of the child for the parent to retain or share.

If some sharing of these responsibilities and rights is indicated then there needs to be more detailed working out of how this should be reflected in a PO. This should form part of the advice going to the adoption/permanence panel.

Questions to be Addressed by the Panel when considering the best route to Permanence

Three basic questions that need to be addressed by the adoption/permanence panel are as follows:

- Is there enough evidence to support the conclusion that the child cannot return home?
- If the best option is a secure foster placement underpinned by a PO, what sharing of ancillary responsibilities and rights should be reflected in the order?
- If adoption is the best way of securing the child what is the best legal route? This may be by direct adoption or via a PO with authority to adopt.

The discussion between the social worker and the legal adviser prior to the panel should inform the report and legal advice that is presented.

As part of these discussions there should be clarification of the timescales that apply both to the adoption agency in each step of the process and also within the court rules.

Permanence Order with authority for Adoption

If the parent does not give their consent in by signing either the relevant memorandum under Schedule 4 (adoption) or 7 (permanence order with authority for the child to be adopted) then an application for a PO with authority for adoption is the next step, unless the child is already with adopters who are ready to petition to adopt. The effectiveness of the use of the PO with authority for adoption will depend on all parties working to ensure that the court decision is made fairly and without undue delay.

The aims of this provision are as follows:

- to avoid the child being in limbo for any length of time;
- avoiding prolonged uncertainty for the birth parents and giving them their opportunity to make their case in court without unnecessary delay; and
- reducing the pressure of an unresolved legal situation for the adopters who need to concentrate on caring for the child.

The social workers and the managers responsible for the case, as well as the legal department, need to be well prepared for court and should begin that preparation through meeting to discuss this route as early as possible, and *before* the adoption/permanence panel. Links with Legal Advisers are important in order to make permanency decisions quickly and robustly. It is also important to ensure that birth parents are advised on their right to seek legal advice and encouraged to do this as soon as possible. Consideration should also be given to appointing separate social workers for the child and the birth family.

Areas to be considered when concluding adoption is in a child's best interests

Regulation 12(2) indicates all the areas that the adoption agency should consider in concluding that adoption is in the child's best interests, from what is required in preparation for the panel, through to presentation to the panel and on to the Agency Decision Maker. **National Care Standards 13-17 apply to this area of practice.** The adoption agency should consult and record the views of the child,

taking account of their age and maturity, and the child's parents from their initial involvement leading to the child becoming looked after. These should be fully reflected in the reports to the panel.

Attendance at Panel by Birth Family Members

An increasing number of adoption agencies are inviting the birth parents of a child to the panel considering adoption or permanence plans and agencies should give positive consideration to this.

National Care Standard 14 relates to this area of practice. Consideration should also be given to other people who might be invited in certain circumstances, e.g. older children or key members of the family with significant views on the plan. Where this is done there should be clear procedures about managing this with some flexibility to take account of the range of possible scenarios.

Birth parents should have information in advance, preferably in writing but also through careful explanation, about the purpose of the panel and how they can contribute. Some parents may see it as just another meeting like the LAC reviews or wonder what its purpose is if the decision was made at a review. It is normally most helpful to have a defined period when the panel can concentrate on hearing the views of the parents and have some general areas that they cover for which the parents may be prepared. Usually this is about confirming they have seen the social worker's report to the panel so they can comment on its accuracy and highlight any areas where they feel misrepresented and then establish their views on the plan for their child and any alternatives they propose.

Other ways for Birth Parents to comment on the proposed adoption

If parents are not attending in person there should be evidence that the report was shared with them and if they do not agree to sign the report they should be able to put any contrary views in writing. Some birth parents may need help in accessing or understanding the report and every effort should be made to support them with this. Consideration should also be given to other support services for birth parents or advocacy services to help them express their views to the panel.

Attendance at Panel by Children or those who know them

Where adoption agencies have established procedures for birth parents attending panel it is logical to consider a similar provision for children also. This would apply to children who are old enough to understand the purpose of the panel and wish to express their views directly. Otherwise care needs to be taken by the panel to understand the child's views as demonstrated by their behaviour and responses as well as any views expressed verbally or in writing.

It is usually helpful for the child's current carers to attend the panel, both to explain their perception of the child's views as well as to talk about their overall needs and elaborate on the information about the child that will contribute to careful matching with adopters. A child's emotional stability and their ability to engage with a move to adoption may lag behind the professional assessment of the need for such a plan and this needs to be taken into account both in recommendations about the nature of the plan and the timing for moving forward.

Required Information when considering adoption

The information that the agency is obliged to obtain is in Parts II and III of Schedule I. Much of this will have been gathered when the child became looked after. It should be checked for accuracy and special attention should be paid to the child's development since they were separated from their birth parents.

As the decision following the recommendation from the panel will lead to a legal process it is also vital to ensure that every effort has been made to identify and contact anyone with parental responsibilities and rights, even if they have been out of contact for some time and also clarify the position of any birth parent – usually a father – who may currently have no rights but could seek to obtain them.

If a chronology of the child's life has not been done this should be completed for inclusion with the report and include moves and changes while at home and in the care system. Such a chronology will assist for example in identifying children at risk through repeated, albeit brief periods of accommodation.

The commonly used formats for reports to the panel should cover all the areas specified in Parts II and III of the Schedule. It should be noted that, in addition to the specific medical and educational information required, there is a need to include the **personality, social, emotional and behavioural needs of the child**. The reality of the children being placed for adoption indicates the importance of good information in these areas to share with prospective adopters.

All the children will have experienced some disruption of care and frequently also neglect, abuse or trauma. For some whose needs have been particularly challenging there may be a Child and Adolescent Mental Health Service (CAMHS) report from a psychiatrist or psychologist or, through educational services, an educational psychologist's report. For other children the agency should consider ways to get a good profile of the child's needs and who can contribute to this process. The My World Triangle and resilience matrix developed as part of the GIRFEC initiative are important tools in this area.

Medical Information

Medical information is obviously important. At this stage, birth parents may not consent either to a medical examination of the child or to the provision of medical information about themselves and any history of genetically transmissible or other significant disease in the family history of either the father's or the mother's family. The concept of a pre-adoption medical makes sense for relinquished babies but for children who may have already spent some time looked after by a local authority there should already be a body of medical knowledge gathered together to ensure that the child's needs are already being met. Some of this may have been completed earlier by a registered medical practitioner and where a local authority has a Looked After Children nurse they may have a good medical picture of the child. Therefore if the medical practitioner cannot carry out a full examination because there is no medical justification for doing this without consent there should be sufficient information available to proceed. Seeking the views of the medical adviser early on should ensure a view on this and prevent unnecessary delay.

Requirement to Disclose Specified Medical Information

Regulation 11 of the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 provides that where an adoption agency has been unable to obtain information about a transmissible genetic or other significant disease in the family history of the child, any registered medical practitioner holding such information **must disclose it to the adoption agency on request where it will be held on the case record relating to the child**. Adoption agencies, including medical advisers, need to think about how and when they might make use of this new facility.

Religious and Cultural Identity

Throughout the regulations, as in the legislation, there is reference in different forms to the religious persuasion of the child and parents, including any details of any ceremonies pertinent to that religion, as well as their ethnicity, culture and any linguistic needs. This should form an important part of articulating the child's needs in seeking an adoptive placement. However it should not form a barrier to a placement suitable on other grounds.

Where the agency may have difficulties in identifying adopters who could meet a child's needs arising from their religion, culture, ethnicity or any other needs the panel recommendation should highlight this so that the Agency Decision Maker can authorise the resources for a search for an appropriate family beyond the local authority's own resources. There are many options for this in the different resource sharing mechanisms established to link children with approved families through local consortia, across Scotland and also UK wide. Some adoption agencies might also wish to consider specific recruitment initiatives. This should be identified and acted upon early **so that there is no undue delay** for the child. It should be remembered that research has shown that a stable, secure placement found early in a child's life is more important to their welfare than delaying for a "perfect" match

Where panels do not have expertise in this area they should be seeking a wider membership sensitive to diversity issues and also providing ongoing training for panel members. For an individual case they should check that the social worker has sought advice and information from the appropriate minority religion, culture or ethnic group.

CHAPTER 21 PERMANENCE ORDERS WITH AUTHORITY TO ADOPT

IN THIS CHAPTER:

1. Introduction
2. Children not Subject to a Supervision Order
3. Referral to the Reporter
4. Considerations when applying for a Permanence Order with Authority to Adopt
5. Expectations at different stages of seeking a Permanence Order

1. INTRODUCTION

Part VI of the Regulations is entitled 'Application for a permanence order' but, being part of the adoption agency regulations, it is written in terms of how the adoption agency carries out its activities and includes reference to seeking authority to *adopt*. Given that the legislation introduced this new option not as *replacement* for freeing for adoption or for a PRO but to have a new flexible order to make long-term plans that suited each individual case, a similar process should be used whether or not authority to adopt is being sought.

Court rules ask you which sort of PO you are applying for, but thereafter the timescales for the process are the same whether the aim is to obtain a PO as the means of securing the plan for the child or a PO with authority for adoption. It would therefore be logical for local authorities to approach both forms of PO similarly within their processes and timescales.

The distinction drawn between regulations 21 and 22 depends on whether or not a child is on supervision, and this chapter of the guidance takes account of this distinction in its structure.

2. CHILD NOT SUBJECT TO A SUPERVISION ORDER

This is likely to be a **minority of cases** where planning for the child has been in co-operation with the birth parents but they have then withheld their agreement to the plan.

It is based on the initial notice to the parents about the agency decision to proceed with an adoption plan for the child or to apply for a PO with authority to adopt and will follow on from consideration at the adoption panel. The adoption agency should clearly record the following:

- the date of the adoption panel;
- the agency decision;
- the notification to the parents with the certificates as laid out in Schedules 4 or 7; and
- the date either of when the birth parent certified they did not agree with the decision; or
- when the **28 days** following the receipt of the certificate by the birth parent has passed and the parent has not responded.

The notification to the birth parent should be done in a manner whereby the agency can identify the date it was received.

Response to any challenge from a Birth Parent

The timescales available to the adoption agency mean that there needs to be a quick decision about the best way to respond to the situation where a birth parent has changed their mind and no longer wishes the child to be adopted. If the child has not been placed for adoption, then if the parent wishes the child returned to their care, plans should be made accordingly unless there are clear concerns that this is not in the child's best interests. If an infant has already been placed in anticipation of the agreement of the birth parents this will clearly be a distressing situation for everyone which will need urgent discussion. If the infant has been accommodated **for less than six months** the birth parent may seek the immediate return of the child, unless the adoption agency or the prospective adopters take immediate action to address this.

Local Authority responses to address removal

The other options open to the adoption agency only apply if the agency is a local authority so any registered adoption service in this position will only be able to take this forward if it is done by the child's local authority. This means that there would need to be grounds for referral to the reporter for a supervision order or grounds to apply for a PO immediately. If the child has been accommodated for **more than six months**, the birth parent should give **14 days notice of removal**.

In reality, therefore, the provision of **28 days to make application for a PO** in line with regulation 21 will only be applicable if the birth parent is **not** actively seeking return of the child or the child's situation has become protected by the Children's Hearing.

Alternative Option available to Prospective Adopters

The alternative option open to prospective adopters, if the child is looked after by the local authority and already placed, is the lodging of an adoption petition. Adopters will need both counselling and access to legal advice if they wish to consider proceeding with action to adopt the child. The grounds for dispensing with parental consent for adoption in section 31 of the 2007 Act and for a PO in section 83 are similar and can be summarised below.

- If the parent is dead, cannot be found or there is independent evidence that they are incapable, the lack of consent should have been anticipated and plans made for the next steps towards achieving adoption – which may well be by direct petition. Where there are already known grounds for considering that birth parents are unable to satisfactorily discharge their responsibilities or exercise their rights then a local authority who has gone ahead on the basis that the parent has agreed with the adoption plan – but there are good reasons for going ahead if this is withdrawn – should be ready to establish that legally.
- 'The welfare of the child otherwise requires the consent to be dispensed with.' This may be argued when a child who is or may be identified as vulnerable has established strong attachments and it would be detrimental to remove them from a well established placement. The counter-argument - that when the child at a later date sought further information about their adoption they may struggle with knowing that their birth parent

wanted to resume their care and this was opposed by their adopters – will require careful consideration.

Summary of the Provision

In summary, the provision in regulation 21 is most likely to apply when a parent who had agreed to the child's original accommodation had disappeared or did not agree to the adoption plan but made no effort to assume care of the child. In such a case, the pre-panel discussion between the social worker and the legal adviser would be particularly important given that the application for the PO with authority to adopt would need to be made within the required **28 days from the receipt of the notification as a maximum** – and less if the parent returned the certificate earlier signifying they did not consent. This application must include both the request that the order includes the provision granting authority for the child to be adopted and also the ancillary provisions referred to in section 82(1)(a) of the 2007 Act.

It is therefore likely that the majority of the applications for a PO will be for a child already on a supervision order.

3. REFERRAL TO THE REPORTER

These steps apply to adoption agencies who are local authorities. Where the adoption agency is a registered adoption service they will already have been required to refer the child to the local authority where the child resides under regulation 20(2)(b) if they are not already acting in agreement with the local authority and the parent does not consent to the adoption. Regulations 22 and 23 basically refer to what is known as the 'advice hearing'.

Requirement for Referral to Reporter

Part VI refers to the need for referral to the reporter when applying for a PO with authority to adopt. The legislation provides other situations when an advice hearing is required as laid out in section 73(4)(c)(i) or (v) of the 1995 Act. This brings in adoption without applying for a PO and application for a PO where that is the long-term order proposed and does not include authority to adopt. This again underpins the similarities in planning for the long-term security of a child through adoption or through a PO.

As part of developing procedures within the local authority for putting these two legal routes on a similar footing, consideration should be given to notification to parents about an application for a PO following on from an agency decision and similar timescales should be followed. This will both confirm officially to the birth parent the direction of planning and also establish the path to be taken giving them the same legal opportunities to put forward their views as in an application that includes authority to adopt. In all these situations the direction of the local authority planning for the child **should not come as a surprise.** This will be dependent upon the clarity of the assessment and the plan for the child throughout the time the child has been on supervision and the openness at any hearing review between the LAC review and the adoption panel.

The report to the adoption panel should summarise the reasons presented by the social worker endorsed by their line manager. The minutes of the panel should include comment on the robustness of these reasons and should be the basis of the reasons referred to in Schedule 8.

Local Authority actions following referral for an Advice Hearing

Following on from the referral for an advice hearing the next timescales vary depending on whether or not the hearing agrees with the local authority plan. This allows for time for the local authority to review its decision if the children's hearing does not support the adoption decision.

The regulations do not define the steps the adoption agency should take in reviewing its decision but do say it should take into account the report from the hearing and 'any further recommendations it may wish to seek'. Agencies may include in their procedures the possibility of further discussion at the adoption panel before the Agency Decision Maker makes a decision on whether or not to proceed.

In considering any recommendation and decision about applying for a PO the agency should be clear about the need first of all for the transfer of the mandatory right to determine residence and the responsibility to provide guidance appropriate to the child's stage of development. **The local authority has responsibility to provide guidance until the child becomes 18** unless the PO is revoked under section 98(1) or automatically ends with the granting of an adoption order under section 106 of the 2007 Act. **All other rights and responsibilities only apply until the age of 16** as a result of sections 1 and 2 of the 1995 Act.

Where the local authority continues to be responsible for a child under a PO they are therefore in a similar position to any parent with a young person who may wish to make their own decisions such as leave home. **Their duties towards a child who remains looked after continue as do the after-care responsibilities until the young person is 19.**

Local Authority Requirement to support through to adulthood

Consistent with the whole concept of the use of a PO to provide security for children who need long-term care is the expectation that Local Authorities will provide support through to adulthood. Although adoption may not be the best solution or feasible – and the child may not want a legal break from their birth family – they have at least as much need for support and guidance into adulthood, and are frequently more vulnerable than their peers.

In the use of the Looked After Children reviewing system for these young people and also the introduction of after-care services, the local authority procedures need to reflect the significance of the role played by the child's carers in providing the child with long-term security and the reality of having family support through this transition, as well as demonstrating the support and guidance they have assumed towards a child who is not just 'looked after' but for whom they have taken clear responsibility. Obviously, where a PO includes the authority to adopt these mandatory rights and responsibilities will transfer to the adopters on completion of the adoption.

The need to ensure Parental Responsibilities are held

The making of an application for a PO under section 80 of the 2007 Act must also include consideration of the ancillary provisions. The court must ensure that every parental responsibility and every parental right is held by a person. 'Person' here includes a local authority.

These responsibilities to the child in section 1 of the 1995 Act are to:

- safeguard and promote his or her health, development and welfare
- provide direction
- maintain contact
- be the legal representative if required.

The rights in section 2 are to:

- control, direct and guide the child
- maintain contact
- be the legal representative if required.

There is also a parental right to regulate residence, but these are automatically removed when a PO is granted, Section 87 of the 2007 Act. Alongside the responsibility to provide guidance, this forms the mandatory provisions of a Permanence Order

The use of Ancillary Provisions

The use of the ancillary provisions in the 2007 Act enable the local authority to consider whether it would be in the best interests of the child to share these responsibilities with the birth parent, vest them in another person – in particular the carer of the child – or remove them from a birth parent who has failed to carry them out and is not regarded as likely to carry them out in the interests of the child within the foreseeable future.

Where the application for a PO does not address a specific responsibility or right the ‘default’ position will be to leave it with the birth parent, except the responsibility to regulate residence, which is automatically removed and vested in the Local Authority, and the responsibility to provide guidance which is also vested in the Local Authority. This is where it is vital that this is fully discussed with the legal adviser in preparation for moving forward following the agency decision on the plan. This also needs to be part of the discussion with both the birth parents and the child so they have a clear picture of the local authority’s intentions and can express their views accordingly.

In these cases the application for a PO with authority for adoption may seek the transfer of all responsibilities and rights to the local authority, both mandatory and ancillary, until these are transferred to the adopters through an adoption order. Where the application is for a PO to underpin a long-term fostering or residential placement or other accommodation of a child there needs to be a focussed discussion of the responsibilities and rights that may be shared or left with a birth parent and where it is necessary to seek their removal from a birth parent who has been unable to keep a child safe or act in their best interests.

Legal routes in the event of opposition from birth parents

Where the plan is adoption there will continue to be a need to make choices about the legal route where the child is not voluntarily and actively relinquished. This is basically between the application by the local authority for a PO with authority for adoption and a petition by the prospective adopters with local authority support including timescales in the event of active opposition by the birth parents. The guiding principles are that the intentions of the plan and any placement made with

potential adopters are **open and transparent** and that the route will enable a fair presentation of the evidence and any opposing views in court **as soon as possible**.

4. CONSIDERATIONS WHEN APPLYING FOR A PERMANENCE ORDER WITH AUTHORITY TO ADOPT

The following considerations should be made when applying for a Permanence Order with Authority to Adopt.

- Where the views of the child are clear and they are prepared for a move, delay may be particularly damaging.
- Where the child is continuing to have contact with contesting birth parents pending the hearing of an application, work with the child may be affected by conflicting views amongst the people around her/him. This will have different implications depending on whether the child is with temporary carers or with a family who may adopt her/him.
- Where birth parents are actively opposing the plan and seeking the return of the child to their care they are likely to view the process as fairer if the child is not placed with adoptive parents until they have had their opportunity to put their case in court.
- Some prospective adopters may be fully aware of the risks of a contested case and feel confident about going ahead themselves and in control of initiating the legal process, others may be unhappy about embarking on a legal process which places them in direct conflict with a child's birth parents.
- Where there are no suitable adoptive families immediately available for the child the added security of a PO with authority for adoption may be helpful in finding a possible family.
- Where the route to adoption involves placing a child initially on a fostering basis, the agency will need access to a pool of adopters which includes those who understand the differences between fostering and adopting a child and are prepared and approved for both tasks in relation to a child where the plan is adoption but this is not legally secure. Research has consistently found confusion amongst practitioner regarding the terminology in this area. The agency should have a clear understanding of the differences between terms such as:
 - concurrent planning;
 - twin track planning; and
 - fostering with a view to adoption in contested cases.
- The advantages of avoiding unnecessary moves by placing the child on a fostering basis with approved adopters.

5. EXPECTATIONS AT DIFFERENT STAGES OF SEEKING A PERMANENCE ORDER

Once the local authority has followed all the timescales for notifications, completed the referral to the reporter for the Advice Hearing and received its report and lodged the petition for the PO there

will be a period during which the responsible local authority, the Hearing and the court will all have a role.

The Local Authority will obviously continue to have responsibility for the day to day care of the child and also the statutory Looked After Children Reviews will continue. Where the local authority considers that some change of circumstances is required after the application has gone to the sheriff for a PO they will need to go back to the Hearing who will prepare a report for the court.

Interim Arrangements

The court will then decide whether to hold a court hearing at that point or send it back to the Hearing. **At this stage the Hearing cannot change what is happening in the sheriff court but the sheriff court needs to take account of the Hearing.** It may be that a child needs to move placement immediately or a particular issue has arisen which indicates a change in contact arrangements. If the court is not at a stage where they can resolve the PO application it may either make an interim decision itself or refer the matter back to the Hearing to make an interim change to the supervision order. It is important that during this period the local authority and the reporter continue to monitor the timescales for review of a supervision order – while the case is pending in the court this will continue to be the legal security for the child. If the court case is delayed the minimum of an annual review of the supervision order is still required, otherwise that order will expire.

Actions upon the granting of the Permanence Order

Once the PO is granted the court is required to terminate the supervision requirement if it considers it will 'no longer be necessary'. Local authorities should therefore state clearly in their application as to whether the supervision requirement continues to be necessary or not.

It is anticipated that normally the requirements will be terminated but there is some discussion in the annotated version of the 2007 Act in relation to section 89 about the situation in the event of an appeal. Where an authority considers there is a risk of an appeal they may request continuation of the supervision order until it is clear there will be no appeal and then ask the Hearing to terminate it.

The 2007 Act makes provision, mainly in sections 82 and 91, about the use of the ancillary provisions in a PO which are particularly relevant when some of these may be shared. Where authorisation to adopt has been granted it would normally be expected that it is accompanied by termination of the rights and responsibilities of the birth parents. **These will be held temporarily by the local authority along with their mandatory provision until they are transferred to the adopters by the granting of an adoption order.**

There is a strong responsibility here on the local authority to secure the future well-being of the child. While an authority may hold a general duty to a child under section 17 of the 1995 Act to act as a responsible parent, when the child is looked after but not on a PO, this is alongside birth parents who still hold their parental responsibilities and rights and often also with the involvement of the Hearing who can supersede some of those rights in the interests of the child. Children who are subject to a PO with authority for adoption will be one group within the wider group for whom the local authority hold responsibility through a PO. Good practice would indicate that authorities should consider generally their policies, procedures and services for children subject to POs, and

within this monitor their effectiveness in completing adoption arrangements for those children where this is the plan.

Likelihood of placement

Section 83 of the 2007 Act lays out all the conditions to be met in seeking a PO with authority to adopt. One that is specific to this form of PO is the requirement to satisfy the court that the child has been, or is likely to be, placed for adoption. The range of children now placed for adoption is very diverse and there are a multitude of factors that adoption agencies consider in linking and matching children including the following:

- age;
- the need for placement with siblings;
- ethnicity;
- contact needs;
- medical conditions and disabilities;
- developmental risk factors; and
- a broad range of emotional, social and behavioural challenges.

There are sources of information about children already placed, especially through the different resource sharing arrangements across the country. The growing body of post-adoption research also illustrates the reality of the diverse population of adopted children, especially where this research has paid particular attention to the effectiveness of adoption for older children or those with additional needs.

The key challenge for adoption agencies concerns their planning, preparation, recruitment and support strategies. The success of placing a broad range of children for adoption will be determined by how successful adoption agencies are in extending the range of need that can be met through adoptive placements. The assessment of likelihood, therefore, will need to be based upon local practice experience and knowledge, placed in the context of a strategic understanding of need and placement patterns.

The balanced assessment of need and sound recruitment strategies, however, do not *guarantee* success in individual family finding. Given the challenges of finding adoptive families for some children it may be necessary to keep open the option of long-term fostering. This is where it may be valuable to consider a PO to establish a more secure legal basis for planning permanence and also make a clear statement about no longer considering return to birth parents, **but with some flexibility to explore the best options.**

At a later stage, if adoption becomes feasible and right for the child, there will be the option of seeking an amendment granting authority for the child to be adopted in accordance with section 93 of the 2007 Act or direct petition to adopt. The important aspects of taking this approach to planning for a child, where the likelihood of adoption is under question, are as follows:

- it should be transparent so that the birth parents know the range of options being considered for their child and can express their views in any legal action taken as a route to achieving permanence;

- the child, both when plans are being made and in looking back on the process at some future date, should know that all possible avenues were actively considered in trying to act in their best interests;
- for the agency, it keeps adoption on the agenda even if this seems difficult or unlikely to be achievable.

Local Authority responsibilities prior to placement with Adopters

Where a PO with authority for adoption has been granted but the child has not been placed with adopters the child should continue to be reviewed at least every six months to ensure that the plan for permanence is actively progressed. This is laid out in regulation 26. The local authority which has obtained the PO with authority for the child to be adopted should decide whether such reviews should be carried out through their established Looked After Children reviewing structure or at the adoption panel – and if the Looked After Children system is used, whether the adoption panel should be notified of this.

The requirements of this regulation are to take into account the views of the child to the extent they can express these and also the views of any person with responsibilities and rights under the order. At this stage, this will usually just be the local authority.

Expectation that the Local Authority will remain pro-active

There is an expectation, set in section 26(3)(b), that local authority's will be pro-active in relation to the needs of children. More specifically, local authorities are expected to:

- continue to assess the child's ongoing needs;
- question the reasons as to why no placement has been made; and
- look at the action that should be taken not just to safeguard the child's welfare but also to promote it.

In considering the arrangements for reviewing these children it will therefore be important to bear in mind the responsibility to actively monitor progress, make the case for additional resources if these are necessary to achieve the necessary outcome for the child and **ensure there is no unnecessary drift.**

Where it appears that a permanent fostering placement is the best option for a particular child, this should be referred back to the adoption/permanence panel to discuss the need to apply for a variation to the PO to remove the authority for adoption and to reconsider the ancillary provisions.

CHAPTER 22 PLACING CHILDREN FOR ADOPTION

IN THIS CHAPTER:

1. Introduction
2. Matching
3. Work following the Matching
4. Duties of the Adoption Agency following Placement
5. Case Records

1. INTRODUCTION

There are two stages covered in the regulations in relation to the placement of children for adoption as follows:

- the preparation for the matching of a child with a family – which is one of the duties of the adoption panel – this is reflected in regulation 18;
- the next steps in making a placement as covered in Part VII, which are about notifications and the duties of the agency following placement.

2. MATCHING

Regulation 18(1) provides a list of information that must be presented to panel at the time of a match. A significant amount of this information will have already been presented to the panel at an earlier stage when the prospective adopters were approved and also when the plan was made to seek adoption for the child.

Some areas will need updating, in particular the medical information on the adopters if this is **more than 12 months out of date** and also whether there has been any additional information from a 'relevant local authority' as defined in section 18(6). Any other updates will depend on individual circumstances. For example if the prospective adopters have moved during the waiting period, the accommodation should have been visited and where necessary a new health and safety check completed.

The most important new information will be related to the proposed match and is reflected in the first two requirements of regulation 18 as follows:

- the work that has continued with both child and prospective adopters since they were considered individually;
- the *compatibility* between the needs of the child and the assessed capabilities of the adopters.

These two areas of work are explored in more detail below.

Work with adopters following approval

For many adopters during the assessment stage, the main focus of their energies will have been on their approval. Once that hurdle is over they can begin to explore more fully the reality of the placement of a child. Adoption agencies need to consider how they can make most productive use of this period to ensure that families are ready for the next step and also explore in more detail their potential to take on the increasingly complex challenges presented by children awaiting placement. Regulations do not specify the contact agencies should retain with adopters during the waiting period but individual agencies should establish their own standards and procedures to ensure that they have a resourceful and supported pool of adopters available.

Work with children prior to matching

For children, the local authority will have its ongoing responsibility to provide a direct service. It is important for good timing of the linking process to ensure that there is ongoing work with the child that enables them to begin to understand the plans that are being made and explores their views, in whatever way they may be able to express them.

Moving a child into an adoptive placement when they are confused or hostile to the plan increases the potential for the placement to disrupt, so consideration of matching should take into account the timing of any link. Training and resources should be available for staff who may be responsible for these cases on preparing children for adoption.

The largest group placed for adoption remains pre-school age children. There is sometimes resistance to beginning this work early as it becomes equated with telling a child about the search for an adoptive family for them. With young children social workers are reluctant to raise expectations until a family has been identified. This is only one part of preparation and is a final piece. **This waiting period between the making of the plan for adoption and arranging the placement is not neutral.** Children need simple explanations of what is happening and whether or not it is intended that they will return home. If they have been told it is not planned for them to return home, it is important to explain the **purpose** of any ongoing contact with birth relatives. Temporary foster carers often play a key role in this and may need support in how to respond to a child's concerns and in handling both their own and the child's distress. This calls for good communication systems between the child's social worker, the foster carer's support worker and the family finding team who are looking ahead to identifying the adoptive family.

For very young children there may be limited direct preparation needed or possible, and the skills required are about helping a child move and careful transference of attachments and trust. For other children, preparation may have reached a point where the next obvious stage is the introduction of the new family.

Selecting the Family

Once a plan for adoption for a child has been made by an agency it should be clear who has responsibility for family finding for that child. Considerations here include the following:

- Where the pool of approved adopters within the agency includes a number of potential adopters for a particular child, agency procedures should be clear about how a choice will be made. Regulations require the agency through the panel and Agency Decision Maker process to be satisfied that the placement with the prospective adopter(s) is in the best interests of the child. This does *not* require a choice to be presented to the panel. Panel discussion should focus on the needs of the child and the capacity of the identified adopters to meet those needs. It will be helpful to provide the panel with a matching report that indicates the steps leading to the identification of the adoptive family considered most appropriate to meet the child's needs as well a clear articulation of the compatibility between the child's needs and the adopter's strengths and the views if any of birth parents.
- Where there are no suitable families in the waiting pool of adopters, and no immediate prospect of this, it will be important to acknowledge this as quickly as possible and where necessary obtain agency approval for widening the search – which may be through a service level agreement with other agencies, a local consortium or other Scottish or UK linking mechanisms.

Factors to take into account when matching

For some children there may be a number of factors to take into account in matching, and decisions must be made about possible compromises, risk factors and the balancing act when none of the available families has strengths in all the areas of a child's needs.

- **Racial and Cultural Factors**

Some particular dilemmas that arise concern the priority given to seeking a family who will meet the cultural needs of a child, especially one which actively reflects a child's ethnicity and/or religion. Staff involved in this area of work should keep up to date with current research on the experiences of adopted people who grow up within families who do not share their ethnicity and the current profile of adopters in their area and across Scotland. These will inform decisions about how long should be given before considering adopters who may not fully reflect a child's culture but who have identified strengths in supporting a child from a different background. Racial, Cultural and religious background should not be a barrier or delay in placing children in stable and secure permanent placements as early as possible.

- **The Placement of Siblings**

Other dilemmas can arise in seeking a match for siblings. The regulations are framed in terms of individual children. For a number of the children waiting for adoption the first choice is for them to be placed with siblings. While this may be possible for many – and be a preference for some adopters – some groups will present special challenges. These include groups of more than two children; siblings who have been separated in foster care and have a range of different attachment needs; siblings with a wide age difference; situations where one sibling has particular additional needs such as a different ethnicity, disability or medical or development concern; siblings with varying views of adoption or levels of preparedness.

- **Factors related to the adoptive families**

Alongside the diverse challenges of the children now being placed for adoption there is recognition of the diverse range of family structures amongst adoptive families. Factors that require consideration may include the following:

- single parenting;
- the impact upon a single birth child; or
- specific discrimination that that may be experienced by same sex adopters.

Such considerations should have been addressed during the assessment and approval stage but may come to the fore again when the child's worker is exploring similar issues in relation to a specific child.

The Importance of Support

The nature of support to adoptive households can be divided into two: *informal* support, drawn from the adopter's own networks of friends and family; and *formal* support, provided by the adoption agency and other professionals.

- **Informal Support**

The quality of the informal support network to the adoptive household is a crucial variable for placement success. Equally important is the support network's understanding of the role they are to play, and the support networks' expectations of a child placed for adoption. A common factor in placement disruption is that the anticipated support from an adopter's own networks failed to grasp the implications of the child's experience of trauma and loss, leaving the adopter more isolated than they expected and less able to cope. With a specific child in mind for matching, such factors can again be explored in detail, enabling exploration beyond generalised statements of support through to a more precise assessment of support that will be available.

- **Formal Support**

The 2007 Act highlights the importance of support in adoption and extends the range of support that should be considered. Alongside identifying the strengths in a particular match this is the point where any immediate support needs should be identified. Consideration should be given to the need to accompany the presentation of a proposed placement to panel with a support plan. This is covered more fully in the guidance to the Adoption Support Services and Allowances (Scotland) Regulations 2009 but will be a part of the consideration of any match.

Considerations of the Adoption Panel at the point of Matching

In carrying out its earlier functions in relation to the approval of adopters and recommending adoption for the child, the panel should already have considered the quality of the information relating to those decisions.

At a panel considering a *match* the emphasis of the additional information will be about the quality of the linking process. The panel will need to consider whether, taking all factors into account, this is the best available option for the child at the point when it is important to progress the plan, and whether there is sufficient evidence to recommend that the match is therefore in the best interests of the child. For an adopted person looking back on this part of the process there should be clear reasons why the particular family was chosen to adopt them – such as matching reports/minutes of linking meetings.

3. WORK FOLLOWING MATCHING

Once a decision on the match has been made there are a number of requirements laid out in regulation 24 as about:

- I. the information in writing about the child that must be given to the prospective adopters;
- II. notifications to other services and parents; and
- III. information to parents (as defined in reg 24(7)).

These three components are explored in more detail below.

I. Information for adopters

When agencies have made the decision to match adopters with children, regulation 24(2) lists the information which must be given to the adopters, in writing. Agencies should consider the best formats and language for each prospective adopter. Agencies should also consider how they may provide the information in a range of other accessible formats.

In summary, adopters should be given written (and other as appropriate) information about:

- the child's background, parentage, health and development;
- the need to tell the child about the adoption and his or her origins;
- the adopted person's right to obtain information linking the adoption birth certificate with the original birth certificate, along with the right to receive counselling;
- the availability of adoption support services for the adopters and their family; and
- health information about the child.

It would be expected that, during the preparation period, adopters would have had the opportunity to explore fully the need to talk to their adopted child about their adoption and their origins; and would also have received general information about an adopted person's right to obtain information from the Registrar General for Scotland under s.55(4) of the 2007 Act, that is information showing the connection between his or her original birth certificate and the adoption birth certificate. **The requirement here is that this should be confirmed to them in writing once a match is made.**

It is important that agency staff are clear about how much information should be shared with any prospective adopters at different stages in the linking process. This is particularly important when a number of families are being considered in the early stages. **Once a family has been identified as the potential match, as much information as possible (including photographs) should be shared.**

Availability of Adoption Support

The vital issue of support for the adopters should already have been fully covered during the preparation and assessment period. For some children the need for an active support plan for them and their adopters from the outset may have been clear and already agreed. For all other adopters, **at the point of matching the availability of support services should be confirmed in writing** along with details of what is currently available and how support may be accessed at any point in the future. This may be included in the letter to the adopters confirming the decision on the match. As

adoption agencies develop their adoption support plan they should be building up more written information about the nature and provision of those services to share with adopters.

The other major body of information for adopters is about the particular child/ren that are to be placed with them. Much of the relevant information may have been shared prior to the completion of the match in order to establish whether the adopters feel equipped to offer a home to the child. Some may have responded to some form of recruitment that highlighted the need of the child for a new family and will also have retained that. Adoption agencies should pay careful attention to the way in which they share information with adopters so that they have time to absorb the written information and begin to explore the implications for themselves and the child.

Ensuring the information is conveyed in an appropriate format

The main report written for presentation to the adoption panel in making the adoption plan for the child is the principal vehicle for bringing together the child's background and also an assessment of the child and her/his needs. Agency guidelines for staff need to be clear about sharing this or other such reports with the adopters. There is no question about the need for adopters to have full information about the child they are adopting and adoption agencies should ensure they are not open to challenge about withholding information. At the same time, some reports written primarily for agency or court purposes may not be in the most helpful form for adopters, either for their own understanding or for sharing with children in the future. It is recommended that agencies consider carefully whether identifying information about members of a child's family is routinely shared, especially if there is very sensitive information about them in their own right.

Other, more user friendly, formats such as a background letter written by the agency for the child at a later date (sometimes called the 'later life letter'), or a life story book, may be good starting points but do not necessarily cover everything that the adopters might need at a later date, especially if the child requires more intensive therapeutic help. For children with complex backgrounds, techniques such as life appreciation days may also be considered as a way of helping adopters see the information through the child's eyes, or visual tools such as an illustrated timeline may be used to supplement more formal reports

The Importance of Health Records

The regulations also provide specifically for the health records of the child to be provided both to the adopters and to their general practitioner. In the case of the general practitioner it specifies this must be sent in writing before the child is placed.

II. Notifications

Regulation 24 also outlines the written notification about the placement that must be sent to others. This separates out the general notification to the Health Board and the local authority for the area where the adopters live, if that is different from the agency making the placement, from the notifications that must be made *prior* to placement if a child has a problem of medical significance or additional support needs within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004.

Whether a local authority is developing its services for children along the lines indicated in the GIRFEC strategy or through other inter-disciplinary arrangements, there should already be established communication about looked after children who need a range of support services from different agencies. These agencies should have been involved in the assessment of the child's needs, the work leading up to the adoption plan and the proposed placement. They, or similar agencies in another area, are likely to continue to be offering a service and frequently the direct involvement of the individuals who know the child can ensure effective communication of information alongside the necessary formal notifications.

III. Information to Parents

If a birth parent agrees with the plan for adoption then they should have been involved in the choice of adopters. There may be plans for a meeting between birth parents and adopters once the match is made and the formal notification is a confirmation of the predictable progress towards completion of securing the child.

It should be noted from the outset when planning adoption whether there are any other people who may have an interest in the child who would either wish to know that plans are progressing or might consider taking action in the event of an adoption placement. This includes any acknowledged parents who do not have responsibilities or rights but whose whereabouts are known, any guardian of the child if their whereabouts are known and any parent whose responsibilities and rights have been removed by a PO which did not include provision granting authority for adoption.

4. DUTIES OF THE ADOPTION AGENCY FOLLOWING PLACEMENT

Regulation 25 addresses the minimum frequency of visits to the child following placement for adoption up to the time when the adoption order is granted. The main requirement is the visit **within one week of placement**, thereafter the regulations require that these are at a level necessary to supervise the child's well-being. It is also required that a written record be kept on such visits in accordance with regulation 27 on case records. The key points here are as follows.

- This emphasises the need for visits to the child which are **separate** from the support to the adopters. As time goes on, the petition for adoption is moving ahead and the child and adopters are building attachments, it is likely that the main emphasis will move to seeing the family as a unit. In the initial stages, however, it is necessary to ensure that the differing needs of the child and the adopters following placement are acknowledged.
- Children who are placed for adoption under these regulations but who are also subject to POs or POs with authority for adoption or supervision requirements also **continue to be looked after** until the order or supervision requirements are terminated or revoked or cease when adoptions are granted. **This means that the Looked After Children (Scotland) Regulations 2009 apply as well as these regulations**, and the frequency of visits has to take account of this.
- Times of transition are particularly stressful for children. Links with familiar people who supported them in foster care will be reassuring. The move itself may stir up thoughts and memories about the past which their social worker may be best placed to handle. A move into an adoption placement is usually carefully planned and should feel very different from

any earlier experiences of sudden or unplanned moves. It is important therefore that during this period there is continuity for the child.

- It would normally be expected that the child's worker continues with this role following the move to adopters. This may be more difficult where it has been necessary to look further a field for adopters for a child. Where alternative arrangements have to be made for visiting the child, it is important to recognise the need for the service to the child in their own right, even if this is taken on by the adoption agency who provided the family. Where distance is a factor this may also be an added stress for the child who could feel abandoned in a strange area. Other ways of maintaining contact with the child's home area may be needed during the period of transition.

5. CASE RECORDS

The introduction to the Looked After Children (Scotland) Regulations 2009 covering services to looked after children, kinship carers, foster carers and adopters, includes the general legal framework and the principles relating to all these records.

Regulations 27 and 28 in Part VIII of the Adoption Agencies (Scotland) Regulations 2009 cover the requirement to create a case record for each child in relation to whom an adoption panel recommendation has been made that adoption is in their best interests and each prospective adopter. The content of that record is very broadly defined in regulation 27, including both specifically defined items (any report, recommendation or decision made by the adoption agency or panel) and more generally 'any information obtained by that agency'.

Retention of Records

The discretionary regulation 27(4) applies primarily to administrative or duplicate records and not primary material which it is vital that the agency retains. Regulation 28 provides the link with the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009. It also states that the indexes to all case records and the case records themselves should be preserved in secure conditions **for at least 100 years** where an adoption order has been made and **for 10 years in respect of a prospective adopter** in relation to whom an adoption order is not made.

Other case records should be kept in secure conditions by the adoption agency for 'so long as it considers appropriate'. Regulation 28 also allows the use of computer records or any other systems that comply with the requirements for the security and confidentiality of adoption records. Regulation 27(3) covers the continuation of the maintenance of records already established under the Adoption Agencies (Scotland) Regulations 1996.

Expectations of Agency Procedures in relation to Adoption Records

Agency procedures for adoption records should address two key areas:

- their effectiveness as working tools throughout the adoption process
- their value as records when people return for access after they are closed.

Adoption agencies should have procedures that prescribe the standard for quality record keeping and a system of monitoring that these are carried out. This should cover both paper and electronic record keeping.

Records need to illustrate the agency planning process which led to the adoption plan for a child. In creating a record under regulation 27 the agency must consider, alongside the report presented to the panel and the Agency Decision Maker to establish the adoption plan, which earlier reports should accompany it. Reports to panel frequently summarise earlier work.

When an adoption is contested, the original assessment when the child became looked after; any contract made with birth parents; subsequent reviews of progress and reports from other sources such as external agencies are all part of the necessary evidence.

The Importance of Records for Adopted People

For many adopted people, returning to see their original records plays a crucial role in their understanding of the process, satisfying a fundamental need to understand why and how important decisions were taken. **Adoption records should always reflect this ethical and moral responsibility.**

In articulating the 'best interests of the child', whether for an adoption panel, the Hearing or a court, the records also need to demonstrate an understanding of the child and her/his needs. For the adopted person returning, there is often a need to fill in gaps in their knowledge both of their birth family and of themselves as young children. Adoption agency procedures should be clear about both expectations of the process for gathering and keeping the information about a child which will be vital for them as an adult.

Consideration needs to be given to both third party information and to very sensitive information where there may be a duty of care to the recipient in sharing this at a future date.

Accessing Adoption Agency Records

There are different rules about how adoption agency records and looked after records may be accessed. Adoption records held under the Adoption Agencies (Scotland) Regulations 2009 are 'subject access' exempt in terms of the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000, S.I. 2000/419 and the Data Protection (Miscellaneous Subject Access Exemptions) (Amendment) Order 2000, S.I. 2000/1865. Access to information in them is under the 2009 Regulations. Looked After children records are accessed through procedures under the Data Protection Act 1998.

CHAPTER 23 ADOPTION SUPPORT

IN THIS CHAPTER:

1. Introduction
2. Strategic Planning of Adoption Support Services
3. Assessment of Adoption Support Needs
4. Making Adoption Support Plans
5. Responding to a request for Assessment

1. Introduction

This guidance is based upon The Adoption Support Services and Allowances (Scotland) Regulations 2009. The Adoption and Children (Scotland) Act 2007 broadens the range of services and duties of local authorities to provide support in both domestic and foreign adoptions. The legislation requires the local authority to prepare and publish a plan for the provision of the adoption service in its area. This guidance outlines the regulatory expectations in relation to these support services.

2. The Strategic Planning of Adoption Support Services

An adoption service is defined in section 1(4) of the 2007 Act and **clearly includes adoption support services**. One of the values of the plan for adoption services is the requirement for the local authority to consult both the Health Board(s) and any voluntary organisation which either represents the interests of those likely to use the adoption service or may provide services in the area. Just as good inter-agency and multi-disciplinary working is important in other parts of the Children's Services Plans, so will it be an active part of adoption support services.

The local authority plan will also reflect both the social work and education responsibilities in this area. Although the legislation only refers specifically to the requirement to consult certain bodies and organisations, it is expected that this will also include efforts to obtain the views of the **consumers** of adoption support services, whether or not there is a particular voluntary organisation in the local authority area.

Persons to be Considered

In preparing this part of the adoption services plan, local authorities should consider all the persons listed in section 1(3) of the 2007 Act in relation to the nature of the services they might seek and what should appropriately be available. In particular, the adoption support service needs to think about both those members of a **'relevant family'** as defined in regulation 45(7) who can seek assessment for an adoption support plan, and the wider range of people with adoption related issues who may require certain services. In shaping this part of their adoption services plan, therefore, it will be helpful to look at:

- the range and nature of resources required following the preparation of support plans for members of relevant families; and
- the provision of adoption support services to others in section 1(3) who request an assessment under section 9 of the 2007 Act.

Definition of a Relevant Family

A '**relevant family**' as defined in regulation 45(7) includes the following parties:

- a child who is placed for adoption or has been adopted, where a child in this legislation means under the age of 18;
- the person or persons with whom the child has been placed for adoption or who have adopted the child and any other children in the household.

The appetite for placing adoption support services on a sound legal basis stems from a growing awareness of the needs of adopted children. Even young children placed for adoption may have experienced significant trauma and loss. While the regulations do not define the full *range* of adoption support services that may be required for these families, a realistic consideration of their anticipated needs is implied throughout.

Other Persons to be Considered

Other persons listed in section 1(3) of the 2007 Act, who are not members of a relevant family, include the following:

- adults who have been adopted;
- birth parents;
- siblings and other members of the birth family of children who were subsequently adopted;
- others who have cared for the child subsequently placed for adoption;
- persons who are considering adopting a child
- and other persons affected by an adoption.

For some of these persons, there are already well established services especially in relation to tracing, as well the use of the Adoption Contact Register for Scotland. Other needs may be less well recognised or under-reported. Without measures to raise the profile of adoption amongst professionals, there is a danger that the extent and prevalence of the adoption support requirements of birth parents may well be under-estimated. Their adoption-related concerns and problems, for example, may be overshadowed or masked by apparently more generic mental health or substance misuse issues.

Under section 4 of the 2007 Act Local Authorities are obliged to consider whether services for the above parties are delivered directly by them, or whether services should be commissioned from the independent sector. A specific person should be identified within each Local Authority to reach an overview of adoption support needs and to plan services in response.

Requirement to Consult Health Board and the Voluntary Sector.

Given the range and complexity of adoption support services, inter-agency consultation and collaboration is essential. Where looked after children are subsequently adopted they will already have had a Child's Plan which is likely to have included carefully negotiated multi-agency working.

Children who have experienced neglect, for example, or parental drug use are likely to require an inter-agency response at some stage during their adoption. Adoption support plans therefore need to identify how best to respond and collaborate with Health Boards and the voluntary organisations to provide the specialist and responsive services they require.

3. ASSESSMENT OF ADOPTION SUPPORT NEEDS

Requests and Procedures for Assessment

Regulation 5 of the regulations concerns *requests* for an assessment or reassessment and regulations 6 and 7, the *procedures* for this. Regulation 5(1) indicates that where a person falling within section 9(1) of the 2007 Act requests an assessment, this may be adequately assessed by reference only to a particular service.

Assessing the support needs adopted children and adopters

This is where the clarity of the local authority audit of requests and services will be helpful. For some of the persons listed in section 1(3) of the Act, their entitlement to an assessment is covered in other parts of the regulations and guidance. This particularly relates to the services for assessing the needs of children who may be adopted and the assessment of those who may adopt a child.

Assessing the support needs of birth family members and adopted adults

The two main groups here are **adults who have been adopted** and the whole range of **birth parents**, other birth family members, especially siblings not placed with an adopted child and guardians or other individuals who, prior to the adoption, treated the child as their own. Agency guidelines should address at what point and to what extent these enquiries ultimately require a full assessment.

Many of these start initially as a request for information, for example when individuals seek details of tracing services and the use of an adoption contact register. Once people have achieved their initial goal they may become aware of further aspects of a support service that they wish to access. This could concern the need for counselling on an adoption issue; support groups where they may meet others in their situation, or action they wish the agency to take on their behalf about contacting another party in their adoption triangle. In this way an information request can rapidly translate into a request for an adoption support assessment.

Consideration of an Adoption Support Assessment

Regulation 6(1) lists a number of considerations in carrying out an assessment but recognises that the agency should have regard to those that are 'relevant to the assessment'. For a number of the

requests it may be adequate to record sufficient information to establish under regulation 6(1)(a) 'the needs of the person being assessed and how these might be met'. Agency procedures may include guidelines and/or a brief pro forma for accessing specific services which will include an element of assessing eligibility of the person and the appropriateness of the service to the enquirer's needs.

Timescales for Assessment

The requirement in regulation 5 is to **start** an assessment as soon as practicable and **no later than four weeks from receiving the request**. The effectiveness of this level of assessment and service provision relates to the quality of the bank of information held by the local authority or other agency acting on their behalf, the skill and training of the person in a position of receiving and responding to such requests and the ease with which individuals requiring an adoption support service can be directed to an appropriate source.

Issues and Dilemmas in Adoption Support

There are now a number of well established services for those separated by adoption. They frequently started up to manage the growing numbers of adults who were relinquished for adoption as babies many years ago who wished to trace birth family members, and birth parents – usually mothers – who desperately wanted to know how their adopted child fared.

The *number* of people accessing these services has been matched by the *growing complexity* of the issues and dilemmas they have had to grapple with. Examples include the following:

- young adults with vulnerable lifestyles who have been through the care system and want to see a younger sibling who has been adopted – perhaps by adopters who are resistant to getting involved;
- angry adopted adults who want to deal with that anger by facing the birth parent who 'failed' them;
- adults recently diagnosed with a genetic condition and have come face to face with the implications of the biological separation of adoption;
- birth parents who may be chronically or terminally ill.

These sorts of situations will fall outside the provisions of section 45 of the 2007 Act to make an adoption support plan although they may, in some cases, also have implications for an adoptive family with an adoption plan in their own right. Realistic planning needs to monitor and take into account the demand for *all* forms of adoption support services, not just where there is an agreed adoption support plan.

4. MAKING ADOPTION SUPPORT PLANS

There are three main points at which adoption agencies need to consider the possibility of an adoption support plan. These are as follows:

- I. at the point of matching;
- II. when the adoption order is granted;

- III. when the adopters approach the agency after an adoption seeking support that goes beyond general advice and information.

These are set out more fully below.

I. At the point of matching

Although there is no *requirement* to present an adoption support plan to the panel which is considering the match between a child and a particular family, there is a *requirement* that requests for support will be assessed, and preparation and assessment prior to approval will have established that expectation. It will be good practice to be explicit with adopters at this point about the agency view of the importance of planned support alongside the family's own identified support network.

The Adoption Agencies (Scotland) Regulations 2009 do provide a basic requirement in regulation 25 about visits to the child to ensure their welfare. Where children are being placed on a fostering basis with a view to adoption, the prospective adopters will be asked to sign a Foster Carer Agreement which has, as its first item, the agreement that support and training will be given to the foster carers. Adopters embarking on a placement need equal assurance of the support that will be offered to them.

Where agencies have a structured co-ordination process to oversee the introduction of a child to the family, the details may be clarified in that setting and will cover:

- the transfer of any existing support for the child as identified in the Child's Plan;
- additional support to the child and family during the transition period;
- the frequency of visits by the family's support worker;
- any agreed financial support;
- tasks to be completed by the agency prior to the granting of the adoption order;
- interim and long-term arrangements about any contact with birth family members and former foster carers, either direct or indirect;
- the right of the adopters to request an assessment for an adoption support plan.

Where there are known elements that will require ongoing adoption agency involvement after the granting of an adoption order, an adoption plan should be formally considered at this point to provide an agreed contract about how these will operate. This will be the case where an adoption allowance was agreed at the time of the match and/or where part of the matching considerations was the need for post adoption contact. In addition, some adopters may be aware of extra therapeutic support being provided for the child while in foster care and will want assurance that this will continue to be available and funded in the future.

II. When the adoption order is granted

The extent of formal support at the point of the granting of an adoption will vary from family to family. Some adoptive families will welcome the opportunity to disentangle themselves from the statutory scrutiny that remains prior to adoption. Others, in contrast, will require the reassurance of a formalised support plan before being able to make the commitment to adoption.

At the point when the adoption order is due to be granted, therefore, the agency should *explicitly* address the possibility of an adoption support plan if this has not already been considered. Where adopters do not identify a need for such a plan, they should be given information **in writing** about their right to seek this support in the future. The tone of this communication will be important in establishing both their *entitlement* to support and also the *understanding* of the needs that could arise. In practical terms, there should be clear understanding about how the agency and the adopters will keep in touch and also who will be responsible for providing a service if they move.

III. When the adopters approach the agency after an adoption seeking support that goes beyond general advice and information.

All current prospective adopters should receive information about **their right to request an assessment**. Any adopters with whom the agency has contact who have completed the legal adoption and who qualify as a 'relevant family' should also receive this information. Once a local authority has procedures in place for assessing adoption support needs and has audited their adoption support services they should consider, as part of their adoption services plan, how they will inform families of this provision.

The nature of adoption support services

The 2007 Act lists in section 1(5) as the meaning of adoption support services the provision of counselling, guidance and 'any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers appropriate in the circumstances of that case'. The regulations provide more details about use of adoption allowances and the range of financial support that may be made available but **does not further define the nature of services that may be considered**.

This allows scope for creativity in developing services. The suggested options provide a foundation for defining more clearly the range of services that should be available across Scotland. These can include:

- support to groups of adopted children, adopters and birth children
- assistance, including mediation, in arrangements for contact between adopted children and their birth parents, siblings and other relatives
- services to meet the therapeutic needs of adopted children
- assistance to adopters such as training to meet special needs and respite care
- mediation and other services if there is a disruption in an adoption placement, or risk of one.

This provides a suggested starting point for developing a robust range of services across Scotland. The consideration of support services should be included in the agency adoption service plan. Any such articulation of a range of services required should reflect the support needs of relevant families. In making an assessment, the five key areas to bear in mind are:

- the child's needs;

- the adoptive parent's needs;
- the impact on the family as a unit including other children;
- integrating knowledge of the child's background and heritage including contact;
- financial needs.

5. RESPONDING TO A REQUEST FOR AN ASSESSMENT

The four main steps to consider in any response to a request for an assessment are as follows:

- I. the initial response;
- II. notice of the proposed plan;
- III. notification of a decision;
- IV. reassessment and reviews.

These are set out in more detail below.

I. Initial response

The initial approach may be a formal request for an assessment or may start off as a cry for help. The legislation makes it clear that where a support service is required immediately, this can be provided without an assessment. If a family is in crisis they may need an emergency intervention, but it is important to establish as quickly as possible a timescale for starting a fuller assessment of the situation. The regulations indicate that an assessment should start as soon as possible and **within four weeks of a request**.

In urgent situations an assessment should begin as soon as an intervention is required. The aim should be to complete an assessment **within three months** and where the assessment is for a particular service with its own criteria, it may be much less.

Regulation 6 lays out the considerations in making an assessment and what the local authority must do. The local authority should explain clearly how they will carry this out. Points to consider are set out below.

The Provision of Accommodation to Support an Adoptive Placement

The intention of this part of the legislation is to provide responsive and robust adoption support services to reduce the risk of disruption. The hope is that a speedy and informed response will enable a placement in crisis to continue. If it is clear that stress is at a level where the adopters and child need a break from each other, the first consideration, as for any other child, would be to consider the child's kinship network in their adoptive family. Where accommodation by the local authority is needed thought needs to be given to how to arrange this.

If the adoption has *not* been completed, the adoption/family placement team will be working alongside the child's social worker. If the adoption *has* been completed the adopters are likely to see the adoption support worker as their first point of contact. Whatever the context, all services carrying out an assessment will need to be sensitive to the adoption context.

Responding to Disruptions

The regulations do not address the possibility of disruption but given the known risk factors in some placements, agency procedures should include guidelines for handling these situations. There are three major areas to cover:

- the role of the local authority;
- the legal status of the child; and
- the implications for all parties in the adoption triangle – the adopted child, the adopters and the birth parents.

Procedures should be explicit about the distinction between a *placement in crisis* and a *placement disruption*. The response to a disruption should always include convening a disruption meeting to look at the contributory factors as well as, most importantly, seeking to minimise the inevitable trauma for all parties. In order to manage the intense feelings of anger, guilt and hurt such meetings can sometimes generate, consideration should be given to appointing an independent chair.

Following a disruption, careful consideration needs to be given to the implication of sharing this significant information with the birth family. This news, for example, may provoke their renewed involvement in a child's life. Local authorities should be aware of the change in legislation in the 2007 Act which no longer bars birth parents who have lost all their responsibilities and rights through adoption from returning to court under section 11 of the 1995 Act seeking contact. They are required, however, to seek the leave of the court to do so and need to establish good reasons.

The Three Year Rule

Regulation 4 establishes the responsibility of a local authority for adoption support services for a child, his/her birth parents, the adoptive parents and any other children in the adoptive family **for a period of three years or until the child reaches 18, including if they reside outside the local authority area**. This is, of course, in addition to the needs of children and their adoptive families who remain in the one local authority area.

Depending on distance and established communications, adopters requesting an assessment may approach the local authority which placed their child, the adoption agency who assessed, approved and supported them, if different, or other local adoption services if they have moved since the child was placed or adopted. In any situation where more than one agency is involved, there should be clarification of the separate issues of who holds responsibility for financial provision for services and who will carry out the necessary work. This calls for good communication which keeps the needs of the adoptive family at the centre of decision making.

Where a local authority has placed a child outwith their home area they will have already have notified the adopters' home local authority. Some discussion should have already taken place about any post-placement or post-adoption services. This is likely to have included information about what is available locally to meet the needs of a particular family and who will meet any financial costs. Any subsequent requests for an assessment for further adoption support services should build on this initial understanding.

Regulation 4 also includes the proviso that a local authority can provide an adoption support service to persons outside their area **after three years if it considers it appropriate to do so**. This regulation puts in place the recommendation in the APRG report that ‘in general, a local authority placing a child for adoption should retain responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order, after which point, if the adopted person is under 18 years of age, the responsibility would become the responsibility of the local authority where the adopted person and family lives’. This covers all dimensions of the support service including adoption allowances and contact. These raise particular issues that need to be negotiated given that the implications will often stretch well beyond the three year period. **The availability of an adoption allowance may be an important factor in a particular match and adopters need to know that a change in the responsible authority will not affect their eligibility for an allowance or significantly alter the amount.** In making contact arrangements, these may be anticipated as lasting for a number of years and experience of managing such arrangements indicates the need for support for all parties. A child and his/her adopters may move but the birth parents and other relatives, including siblings, may remain within the placing authority’s area. This again calls for good inter-agency working rather than a clear cut transfer of all responsibility.

Aggregated or Individual Support Plans

Section 45 of the 2007 Act details a number of other areas to which staff undertaking an assessment should pay attention. Agency procedures should include a framework for ensuring that all the information in both legislation and regulations is covered. It should be clarified at the outset whether there is agreement to prepare one single support plan in respect of all members of a relevant family rather than individual plans for each member. This requires the consent of all family members **aged 12 or over**.

Part 1 of the support regulations includes the requirements on sending notices to children and alerts authorities to the position of children aged 12 and over. Agencies need to be sensitive to young people from the age of 12 who seek a service in confidence.

Secondary Traumatic Stress

There is a growing understanding of the impact on carers of secondary traumatic stress and the difficulty carers may experience in recognising and talking about this. Seeking an assessment for adoption support services can be even more difficult for adopters than foster carers as they may be approaching social workers they do not know or be returning after a long gap when their last contact with the adoption agency had been when everything was going well. Initial presentation therefore needs to be understood in the context of any former assessments.

Consultation and Collaboration with Health

The procedure in regulation 6 draws specific attention to the requirement to consult with the Health Board where they consider that the person may require services from the Board. This should be in the context of ongoing discussion with the Health Board and any other relevant services about the provision of **therapeutic services for children** in adoptive families.

Regulations 6 and 7 about the procedure for assessment and reassessment are in general terms about the need for adoption support services. The next stages of notice of the proposal to provide

services and notification of decisions bring in a significant number of references to adoption allowances. Factors that are specific to adoption allowances **Error! Reference source not found.** will be covered separately in this guidance.

II. Notice of the proposed plan

The final stage of any assessment will be the written report which should be shared with the person(s) who requested the assessment and in line with any agreement on whether or not it is a single plan for the whole relevant family. This should include the assessment of the need for support services; whether or not, as a result, the local authority proposes to provide adoption support services; and if so, what these are. This notice should be accompanied by a draft support plan. Local authority procedures should include the timescales and process for making representations and how any decision will be reached.

Representations in relation to a Proposed Plan

Regulation 8 requires that **no less than two weeks should be allowed for representations**. The person(s) seeking support should be encouraged to give a clear response to the proposed plan by either indicating they are satisfied or making further comment on what they would hope to see or where they disagree. Some elements of an adoption support plan may be clearly defined. For example, the regulations require the local authority to lay out the basis for determining adoption allowances and any conditions. Other services are evolving and developing and are not available across Scotland. There are, for example, a growing number of different therapeutic interventions that may be suggested for children or as a basis for working with families. These include:

- play therapy;
- art, music or drama therapy;
- psychotherapy;
- cognitive behavioural techniques;
- brief interventions;
- family therapy;
- training and consultation for adopters.

During this period of notice of the proposals there may need to be some debate about the range of options considered and offered by the local authority and the views of the person(s) seeking the service.

The likely starting point for the local authority in considering a support plan will be their knowledge of the services available within reasonable reach of the adoptive family. Adopters frequently make their own enquiries about options and may wish to suggest alternatives that they consider more likely to meet their assessed needs. The broad wording in regulation 10(2)(a) offers the possibility of adopters establishing a need for an adoption allowance to fund a particular therapeutic intervention 'where it is necessary to ensure that the adoptive parent can look after the adoptive child'.

The Potential for Single Payments or Payments in Instalments

Regulation 12 allows local authorities to make a single payment or payments by instalments as opposed to an ongoing periodic allowance in order to provide a flexible response.

Extending the period for making representations

A satisfactory and workable adoption support plan is most likely to be achieved when there has been sufficient time for all parties to discuss the implications fully and also where the adoptive family feel their needs are recognised and there is no unnecessary delay. The timescales should therefore include both the **regulatory minimum of two weeks and also a maximum time of six weeks** for making representations and within which a decision should be made.

Agency Decision Making in relation to Adoption Support Plans

Each local authority should have an identified person as the Agency Decision Maker on adoption support plans who may be the person who acts as Agency Decision Maker for the adoption panel. The agency can decide whether and in what circumstances they would wish to involve the panel in consideration of adoption support plans. The Agency Decision Maker will be assisted in the process if Adoption Support Plans form part of the matching considerations at panel. The agency will need to make budgetary provision for adoption support plans which should be monitored by the Agency Decision Maker and reflected in the local authority review of adoption plans. However, budgetary provisions should not be a limiting factor on the support services which are provided to meet the Adoption Support Plan as this forms an integral part of the adoption service required by the 2007 Act.

III. Notification of a decision

As noted above, local authority procedures should cover the mechanism and timescales for making decisions on Adoption Support Plans after completion of the period for making representations. **All** members of a relevant family who have agreed to the assessment for an Adoption Support Plans should have written notice of the agreed plan. **This includes a child aged 12 and over** unless, in the opinion of the local authority or registered adoption service, the child 'is not of sufficient age and understanding for it to be appropriate to give that child such notice'. This point should be an explicit part of the assessment for an Adoption Support Plans. **The assumption should be that a child aged 12 or over should be fully involved unless there are identified contra indications which must be recorded.**

The notification of the decision should be accompanied by the final version of the Adoption Support Plans. Particular attention should be paid to situations where the final plan differs from the draft plan and demonstrate how any representations by the person requesting the assessment were taken into account. **Conveying this information may well be sensitive for a family which has postponed seeking support for some time, and the task should be approached with appropriate sensitivity.**

IV. Reassessment and reviews

The procedure for reassessment of Adoption Support Plans is contained in regulation 7. The provision for reviews is in sections 47 and 48 of the 2007 Act. Local authorities **must** review all Adoption Support Plans from time to time and whenever they become aware of a change in the circumstances of a relevant member.

- 3) Where Adoption Support Plans are primarily about counselling, guidance or therapeutic input, much of this is likely to be face to face and in ongoing discussion with the adopters and other family members. Review procedures should be consistent with that approach and reflect an agreed frequency for all parties to sit down together and take stock of progress.

CHAPTER 24 ADOPTION ALLOWANCES

IN THIS CHAPTER:

1. Introduction
2. Circumstances in which Allowances may be Paid
3. Financial Assessment
4. Remuneration for Former Foster Carers and Kinship Carers
5. Notification of decision and conditions for payment
6. Review and Termination

1. Introduction

This guidance is based upon The Adoption Support Services and Allowances (Scotland) Regulations, predominantly Part 3. Each local authority was required to prepare an adoption allowances scheme in line with the legislation and regulations stemming from the 2007 Act by 28th December 2009. The main areas covered by regulations are:

- circumstances in which allowances may be paid;
- financial assessment;
- remuneration for former foster carers and kinship carers;
- notification of decision and conditions for payment;
- review and termination.

This chapter is structured around these five main areas.

2. CIRCUMSTANCES IN WHICH ALLOWANCES MAY BE PAID

Regulation 10 covers two aspects:

- the *types* of allowances that may be paid; and
- the *circumstances* in which an allowance may be paid.

It makes it clear from the outset that allowances may be agreed either as part of supporting and enabling the placement of a child or to support the continuation of an adoption after the order is made. This opens the prospect of an assessment for an adoption allowance to adopters where the need **only emerges well after the point when the child was placed.**

Another aspect of the application of regulation 4 on Adoption Support Plans for persons outside the area is that some families **who do not live in the local authority area** of their child's placing authority may return for support when they have encountered a change of circumstances. There should be **early** dialogue between the home authority and the placing authority about completing an assessment where there is an indication that initially one authority would hold financial

responsibility with the second authority taking over after an agreed period. However, while responsibility for adoption support services would normally transfer **after three years** to the local authority adoption agency where the child and adopters live, **responsibility for an adoption allowance remains with the placing authority**, although another one may be prepared to take this over.

The financial support considered under regulation 10 includes

- an ongoing adoption allowance in one of the circumstances in regulation 10(2)(a) to(c);
- an allowance for the specific purpose of meeting costs incurred in travel for contact;
- defined initial costs prior to the completion of the adoption – legal costs; costs relating to the introduction of the child to the family; a ‘settling in’ grant for furniture, equipment and other necessary items for the child.

Criteria for an Adoption Allowance

Clearly, the area that will be of most concern to agencies is the *ongoing* provision of adoption allowances as in regulation 10(2)(a) to (c). There is a combination here of specific criteria and more general wording. The specific criteria are as follows:

- that extra efforts should be taken on behalf of children for whom it is more difficult to find a family because of age or the need for an appropriate ethnic match;
- the need to maintain important relationships for the child by placing him/her with a sibling or other child s/he has lived with;
- the child has special care needs. The wording of this has widened in recognition that many children placed do not have diagnosed medical needs or disabilities but have ‘emotional or behavioural difficulties or the continuing consequences of past abuse or neglect’.

There is also a general criteria that an allowance may be payable ‘where it is necessary to ensure that the adoptive parent can look after the adoptive child’. This is where local authorities have discretion to consider circumstances where there is acknowledged stress caused by the adoption and where one support option is some financial support, perhaps to obtain outlets for the child; enable a parent to extend their time at home with a child without a financial burden or for adopters to access their own supports. The possibility of an adoption allowance should be included as part of the wider assessment for an Adoption Support Plan.

3. FINANCIAL ASSESSMENT

Regulation 13 clarifies when a financial assessment is required. In all situations, the adoption agency is required to take account of any other grant, benefit or allowance available as a result of the adoption of the child. Beyond that, a more extensive assessment is required **except** in the following circumstances:

- where the allowance is for reasonable legal costs, including court fees, or for costs incurred during introductions, the agency **must** disregard the other factors of the financial assessment;

- where the allowance is in respect of a settling in grant, ongoing costs to facilitate contact or for the special care or special arrangements under regulation 10(2)(b) or (c) in relation to an adoptive child they **may** disregard those factors.

This clarifies the areas in which local authorities may exercise discretion. Where a full financial assessment is required regulation 10(2)(a) sets out three factors to consider:

- the adopter's income,
- outgoings; and
- the financial needs of the child.

These are broad factors, interpreted differently by different agencies. Given current interpretation adopters will need sensitive support in understanding how the criteria and factors are to be applied, these discussions should be early in the adoption process.

4. REMUNERATION FOR FORMER FOSTER CARERS AND KINSHIP CARERS

When adoption allowances were first introduced, one of the major groups that was highlighted were foster carers who were appropriately offering to care for children on a permanent basis and where strong attachments had been formed. A barrier to the completion of adoption was the potential loss of income from fostering, although foster carers recognised that adoption would be the best option for a child in their care.

Initially a number of foster carers did go ahead to adopt when allowances became payable. The policy context altered with the growth of the payment of fees to foster carers and this reward element was specifically excluded from adoption allowances. Regulation 11 now allows the continuation of the reward element for existing foster carers **for two years and in exceptional circumstances beyond this**. This regulation also includes kinship carers although in practice allowances paid to kinship carers normally would not include a fee element and so this would not apply. Where children are placed on a fostering basis with approved adopters as a legal route to adoption they would also not normally receive a fee over and above the fostering allowance, so again they would not be included in this provision.

In each situation there will need to be consideration of the circumstances of the foster carer who is offering adoption once that becomes the agency plan for the child. Some foster carers who adopt a particular child may also continue fostering other children and their fostering fee may continue. This regulation is aimed at offering the option of adoption of children by their foster carers where this would mean that the carers would lose a significant part of their family income and in order to meet the ongoing needs of the child/ren they could not immediately replace it by other means.

Examples where this provision could be particularly relevant include the following:

- the adoption of a sibling group which precluded the placement of any further children;
- the need for a particular child to have a period on their own to establish their place in the family before the carer could consider other foster placements; or
- a child who needed a full time home based carer for a considerable period of time before the carer could consider alternative employment.

In each case where adoption by an existing foster carer is the proposed plan and the carer is in receipt of remuneration over and above fostering allowances there should be an assessment of the impact of this on the achievement of the plan agreed as in the best interests of the child. Regulation 13(5)(b) makes it clear that it is **not** necessary to carry out a full financial assessment of the factors on regulation 13(3). Advice should be sought first of all about any other grants, benefits or allowances that the foster carers would be entitled to if they adopted the child. Consideration should be given at the outset to the assumption that the remuneration element will cease after two years and a plan made about how the family will use that period to restructure their finances so that they can continue to support the child. There are likely to be various options, including a resumption of fostering and the eligibility for a fostering fee again or a change to another form of employment when it is possible to do this.

5. NOTIFICATION OF DECISION

The notice of a proposal to pay an adoption allowance and the notification of the decision are included in the wider regulations 8 and 9 in relation to Adoption Support Plans.

At the proposal stage the local authority must ensure that the adopters have information about the basis upon which an adoption allowance is determined, the amount payable and the conditions to which they must agree and which are laid out in regulation 15. These apply to allowances which are paid periodically or by instalments and include the information which they must provide to the adoption agency about identified changes in circumstances and an annual statement in a form defined by the agency about their financial circumstances, the needs and any other resources for the child and confirmation that the child is still living with them.

Agencies should ensure that the written information they provide about their adoption allowances scheme includes not only the details of eligibility and the nature of the financial assessment but also the circumstances in which it ceases to be payable and the agreement they enter into with the agency about the conditions in regulation 15 and the consequences if they do not comply with these.

Once the agreed time has been allowed for representations regarding the proposal the adopters should be notified of the decision. The emphasis in these regulations is on giving adopters time to make representations in relation to the proposed adoption allowances and the prospect of an appeal may be restricted to situations where there is extra information that the adopters wish to be taken into consideration or where the reasons for the decision are unclear. The agency legal adviser should ensure that the format for notification complies with all the requirements of regulations 9, 14, 15 and 16 and that there is provision for the agreement to be signed by both a representative of the agency and the adopters.

6. REVIEW AND TERMINATION

In considering their arrangements for review the agency should consider and discuss with the adopters both the particular financial updates required in writing and where these should be sent and also any other review arrangements that would be helpful to the adoptive family in thinking of an overall Adoption Support Plan.

Some families may welcome the aspect of financial support but at least initially be happy to retain independence from any other support. An administrative or financial review process might feel adequate or more comfortable and the priority is its efficiency. At the same time, as needs change they may need to be reassured about the response they would meet if they wished further support. Regulation 15(4)(a) makes provision for a reminder if an annual statement has not been received from the adopters.

Good practice would indicate that the agency should be proactive in contacting adopters in receipt of allowances with news and information about the agency's developing Adoption Support Plans and any changes in what is offered, and in so doing set a tone that eases the way for any adopters who need further support. Agency procedures should be clear about where this originates; who sends it out and who monitors both the allowances and the adoption support plans.

Particular attention should be paid to the time when a young person **is approaching the age of 16**. While adoption allowances can continue until age 18, and beyond if the young person is in full time employment, some of the other conditions in regulation 14 may apply earlier. This is also an area which may change in relation to changes in benefits and other provision for young people. Adopters may need guidance so that they do not unwittingly run into problems. Times of transition also frequently cause extra challenges for vulnerable young people and their parents so this is also a time when some extra advice and support may be welcome.

In all instances where there may be differences in views between the agency and the adopters, whether this is about the original plan, a reassessment, a variation following a review or the point of termination, the written information to the adopters needs to state clearly:

- whether at a particular stage there is scope for making representations, if so how and within what timescale;
- once a decision is made what options there are, if any, for seeking immediate reconsideration of the decision;
- how a particular decision was reached;
- future options in the event of a change of circumstances.

Agency procedures need to demonstrate a balance between an open process that enables the adopters' views to be fully considered and the need for the agency to make clear, fair and well reasoned decisions without undue delay.



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