

# **Consultation on the Care Planning, Placement and Case Review Regulations; Statutory Guidance on Care Planning, Placement and Review; Practice Guidance on Short Breaks; Independent Reviewing Officer Handbook; and Statutory Guidance on the Sufficiency Duty**

## **Enquiries**

For questions relating to the policy content of the consultation via email to [careplanning.consultation@dcsf.gsi.gov.uk](mailto:careplanning.consultation@dcsf.gsi.gov.uk).

Contact details for enquiries related to the DCSF e-consultation website or consultation process in general, you can contact the Consultation Unit by email: [consultation.unit@dcsf.gsi.gov.uk](mailto:consultation.unit@dcsf.gsi.gov.uk) or by telephone: 0870 000 2288.

## **1. Executive Summary**

As a result of the new duties inserted into the Children Act 1989 by the Children and Young Persons Act 2008 and a prior commitment to revise the entire suite of Children Act 1989 Regulations and guidance, we are embarking on a programme of work to revise, strengthen, update and streamline Regulations and guidance under the Children Act 1989.

As part of this we are issuing the first set of documents for consultation which consist of:

- new Care Planning, Placement and Case Review Regulations and statutory guidance;
- guidance on the new sufficiency duty in the new section 22G;
- practice guidance on short break care;
- the role of independent reviewing officers (the IRO Handbook) statutory guidance; and
- Statutory guidance on the new sufficiency duty for local authorities.

As a result of these new regulations there will be consequential revocations and amendments to other regulations as set out in Schedule 9 to the Care Planning, Placement and Case Review Regulations.

## **2. Background and Context**

Section 22C of the Children Act 1989 inserted by section 8 of the Children and Young Persons Act 2008, is concerned with the provision of accommodation and maintenance for looked after children. It is quite broad ranging, and among other things it:

- updates the duty on local authorities to provide accommodation for children looked after by them and to maintain looked after children in other respects;
- expands and clarifies local authority decision making responsibilities with regard to placement choices for looked after children.

*Care Matters: Time for Change* set out the intention to bring together all requirements for care planning, placement and reviewing of cases into one set of Regulations, with accompanying statutory guidance. At present these requirements are imposed through

several different sets of Regulations and corresponding statutory guidance. The White Paper stressed the importance of improvements to assessment and care planning as being at the heart of reforms to improve the experience of looked after children.

In preparing the draft Regulations on Care Planning, Placement and Case Review (Care Planning Regulations), the Statutory Guidance, the IRO Handbook, the Sufficiency Duty Statutory Guidance and the Practice Guidance for short breaks, we have already consulted key stakeholders from the statutory, voluntary and private sectors and children and young people, to try to ensure that the provisions that we have set out are as coherent and helpful as possible. Stakeholders were also consulted on the shape of the practice guidance to accompany the care planning regulations.

Our aim in this consultation is to enable us to review whether the broad direction of travel and proposed content of the draft Regulations and statutory guidance are right, as well as whether the requirements that we have introduced in the draft Regulations are the right ones and whether the statutory guidance provides a useful and relevant framework for putting the regulations into practice. We are also interested in your views as to whether there are any key barriers to implementation at a local level and how we might be able to help you address these.

**We are aware that there are a large number of questions within this consultation, and we do not anticipate that you will want to answer all of these. The full list of questions are at the end of this document. We would be grateful however, if you could answer the questions in those areas where you have particular expertise or professional interest.**

### **3. Proposals**

#### **Part One: Draft Care Planning, Placement and Review Regulations**

Improvements to care planning, placements and case reviewing is core to improving outcomes for looked after children, and these draft Regulations will form the 'central spine' of the new Children Act Regulations and guidance. The current suite of Regulations were developed in 1991, during a period where the critical importance of effective care planning to improving outcomes for looked after children had not been as fully recognised as it is today. In addition, incremental changes to care planning and reviewing have been made in the intervening period, often as a result of new legislation, e.g. Children (Leaving Care) Act 2000 and the Adoption and Children Act 2002.

At present there are 9 sets of Regulations that relate directly to responsibilities of local authorities for looked after children, as well as the Children Act guidance which has been supplemented by a number of local authority circulars. Whilst much of the content of these has stood the test of time, our aim in the draft Regulations and supporting guidance is to:

- streamline the processes in order to place the child at the centre;
- increase the emphasis on effective care planning;
- capture new duties set out in legislation;
- improve the clarity, cohesion and internal consistency of the regulatory framework for looked after children.

The aim of the draft Regulations is to produce one comprehensive set of Regulations for local authorities that sets out in a clear and streamlined way the local authority's core duties as a responsible authority in relation to delivering effective assessment, care planning, placement decisions and case reviews for looked after children.

The draft Regulations have been structured in the following way in order to achieve the goals above:

- Part 1: General
- Part 2: Arrangements for looking after a child
- Part 3: Placements – general provisions
- Part 4: Provision for different types of placement
- Part 5: Visits by the responsible authority's representative
- Part 6: Reviews of the child's case
- Part 7: Arrangements made by a local Authority for ceasing to look after a child
- Part 8: Independent Reviewing officers and Independent Visitors
- Part 9: Miscellaneous

The aim of this structure is that the draft Regulations mirror the journey of a looked after child:

- the development of a care plan which is based on a thorough assessment of the child's needs;
- as part of the care planning process developing a high quality placement plan that sets out the purpose of the placement in contributing to the care plan and how the child's needs will be met during the placement;
- ensuring that the termination of a placement is triggered by the child's needs and not the interests of the authority; and
- that any decision made by an authority to cease to look after a child is properly considered and planned and informed by a case review chaired by an IRO which:
  - ensures that services have been provided to meet identified need and are achieving the planned outcome; and
  - identifies whether changes are needed to the care plan.

### **Part One: General**

The draft Regulations aim both to consolidate existing Regulations, such as the Placement of Children with Parents etc. Regulations 1991 and Contact with Children Regulations 1991, and to bring them up to date so that they reflect any new or amending Regulations and best current practice. The drafting approach is also consistent with the Better Regulation agenda and responds to the expectations so that the Department should wherever possible reduce the number of separate statutory instruments made.

We have set out below some of the core changes and improvements that have been introduced by the draft Regulations, under a number of headings that follow the structure of the Regulations. We have also set out a number of questions for you to consider. We have drawn these questions together, for you to respond to formally, at the end of this consultation document.

### **Part Two: Arrangements for looking after a child**

#### **The care plan [regulations 4 to 6 and Schedule 1]**

The draft Regulations make provision in relation to the development of a written care plan both for children in care and for all other children who are looked after. For children subject to section 31A, the care plan must be prepared within the time frame of the court. The draft Regulations set out clearly what the care plan must include and in particular that it must set out the arrangements made to meet the child's assessed needs in accordance with the 7 dimensions of developmental need (health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self care skills), tying in with the framework provided in the statutory guidance on the Framework for the Assessment of Children in Need and their Families Department of Health et al (2000) (the Assessment Framework). Previous guidance LAC (99) (29) contained guidance on the preparation of care plans in care proceedings.

They also clarify for the first time in Regulations that all looked after children should have a Personal Education Plan and set out in broad terms what this should cover.

### **Health Care [regulation 7]**

The draft Regulations have been drafted in line with revised statutory guidance on Promoting the Health and Wellbeing of Looked After Children issued in November 2009 and in particular the requirements for assessing and meeting looked after children's health needs.

### **Parts Three and Part Four and Schedules 2 to 6: Placements – General Provisions and Provision for different types of placements**

Section 22C of the Children Act 1989 and the draft Regulations set out the local authority's duties in relation to placement decisions for individual children. The Regulations specify that all children who are to be accommodated by the authority must have a placement plan, and set out in broad terms what should be included within this, the purpose being to ensure that the child's needs are effectively met.

The detailed requirements are set out in Schedule 2. This includes in particular:

- how the child will be cared for on a day by day basis and how his welfare will be safeguarded and promoted;
- the arrangements made for the child's health, education and training;
- visiting arrangements – both from the registered authority and an independent visitor if appointed;
- and the circumstances in which it is necessary to obtain in advance approval for the child to take part in school trips or stay overnight away from the placement.

### **Avoidance of disruption in education [regulation 10]**

Regulation 10 sets out a clear process that authorities must follow before making a placement decision that could disrupt the education or training of a child in key stage 4.

### **Placements out of area [regulation 11]**

Regulation 11 sets out clear processes that authorities must undertake before placing children out of area. This includes ensuring that the decision must be made by the Director of Children's Services (DCS), or an officer nominated by them in writing to act on their behalf.

### **Placement back with parents [regulations 15 -21].**

Regulations 15 to 21 set out clear processes that authorities must undertake before placing children with their parent, a person who has parental responsibility for the child or a person in whose favour a residence order was made before the making of a care order if the child is in care. These processes must be signed off by the DCS or nominated officer before a child can be placed back with parents or others set out in section 22C (3) of the 1989 Act.

### **Notifications [Regulation 13]**

The responsible authority should also notify named individuals about the arrangements for placing a child, before any placement is made, and clarify the arrangements for terminating placements.

### **Foster Care [Regulations 22 to 27]**

The draft Regulations bring together for the first time regulations relating to the placement of all looked after children. As a consequence, the Fostering Services Regulations 2002 (FSR), which at the moment make provision, amongst other things, for the placement of a child with a local authority foster parent, will have been amended. The draft Regulations enable local authorities to place children in an emergency with a foster parent whose approval is not consistent with the placement, for a period of 24 hours, after which the placement must be terminated unless the terms of the foster carer's approval has been amended so as to be consistent with the placement.

The regulations also aim to improve the framework for the assessment and temporary approval of family and friends carers ('connected persons') as local authority foster carers. They clarify the status of the connected person as a foster carer once the necessary checks have been undertaken and extend the time period for undertaking the full assessment as a local authority foster carer. If the carer fails to gain full approval as a local authority foster parent within the specified timeframes, then the placement must be terminated. This provision is intended for exceptional circumstances where the most appropriate placement for the child is with a relative, friend or other person connected with the child in line with duty in section 22C(6)(a) and (7)(a) of the Children Act 1989 and where it is not possible to undertake all the required processes for approval of a foster carer before placement.

### **Placement of children in other arrangements [Regulation 28]**

Regulation 28 and Schedule 6 specify the matters to be taken into account when placing a child in accommodation in an unregulated setting to ensure that the accommodation is suitable and where possible the child has had the opportunity to visit it in advance of the arrangements.

### **Part Five: Visits by the responsible authority's representatives**

Regulations 29 to 33 set out the arrangements that responsible authorities must put in place for visiting children who are looked after, in order to promote their welfare. It sets out how often visits must take place according to the different circumstances and legal status of the child, that responsible authorities must provide a written report of each visit, the broad content of the report and consequences if the report highlights that the child's welfare is not being adequately safeguarded and promoted.

## **Part Six: Reviews of the child's case**

### **Case Reviews [Regulations 34 to 40]**

Regulation 34 requires local authorities to carry out reviews of children's cases in accordance with the Regulations. In particular authorities must not make any significant change to the child's care plan unless the change has been considered at a review of the child's case unless this is not reasonably practicable. Regulation 35 sets out the timescales in which reviews must be carried out; the first within 20 days of the child becoming looked after, the second no more than 3 months after the first, and setting out that subsequent reviews must be carried out on a 6 monthly basis.

Regulation 36 requires local authorities to have a clear written policy setting how a review will be carried out. And Schedule 7 sets out the considerations that authorities must have regard to when reviewing a child's case. This includes such considerations as the impact of any changes in the child's circumstances since the last review, arrangements for contact and whether there is any need for changes in relation to these, the child's educational progress and their leisure interests for example.

They also specify the role of the IRO for the child in relation to reviews, and clarify that the IRO may adjourn the review meeting if they are not satisfied that sufficient information has been made available.

The draft Regulations include a requirement that case reviews must happen before a decision is taken to cease to look after a child.

### **Part Seven: Arrangements made by the local authority for ceasing to look after a child [Regulations 41 to 46]**

Regulation 41 makes specific provision for a plan to be put in place where a child who is not in the care of the local authority is ceasing to be provided with accommodation. The plan must include details of advice, guidance and support which will be provided for the child in these circumstances.

#### **Eligible children**

The draft Regulations clarify that the care plan must be maintained for looked after children who are also "eligible children" (i.e. those children who remain looked after and are eligible in addition for leaving care support as they are aged 16+ and if they have been looked after for the prescribed minimum period (13 weeks)). The care plan should incorporate the child's pathway plan to ensure that whilst these children continue to get the full support required for all looked after children, this support will include planning and preparing them for the time when they are no longer looked after.

## **Part 8 – Independent Reviewing Officers and Independent Visits**

### **Role of IRO [Regulations 47 to 49]**

Regulations 5, 47 and 48 aim to address concerns about the effectiveness of the Independent Reviewing Officer function, by specifying that:

- the name of the child's IRO must be included in the care plan, ( specified in regulation 5) underlining the new requirement in section 25A of the Children Act 1989 (inserted by section 10 of the Children and Young Persons Act 2008) that a named IRO must be appointed for each looked after child

- setting out the circumstances in which the IRO must consider referring the child's case to a CAFCASS officer,
- enabling the IRO to adjourn review meetings if they are not satisfied that the review has all the information necessary to make a properly considered judgement about the viability of the child's care plan,
- requiring the IRO to meet the child before the review to discuss the matters to be considered at the review so that the child is fully consulted.

### **Independent Visitors [Regulation 49]**

Regulation 49 sets out what is meant by 'independence from the Authority' for independent visitors appointed under Section 23 ZB (1) of the Children Act 1989.

The Regulations update the definition in the current Regulations of 'independent' in particular to take account of civil partnerships. This will mean that in addition to spouses, individuals cannot be an independent visitor if they are the civil partner of anyone connected with the local authority.

### **Short breaks**

Regulation 50 sets out the planning requirements for children who are looked after in a series of short periods in the same place under a voluntary agreement with parents. The aim is to have a system of care planning, placement and review which is proportionate to the needs of the child and family and recognises the continuing active role played by parents. The circumstances in which the new arrangements apply have been narrowed. It is proposed that no single short break episode may last more than 14 days and no more than 60 placement days is permitted in any 12 month period. This is to ensure that the easements of planning requirements for children in short breaks only apply to those children who genuinely spend short periods away from their families. Regulation 50 will not apply to children looked after for more than 60 days in any 12 month period.

### **Children for whom there is authority to place for adoption**

In setting the framework for the Care Planning, Placement and Review Regulations, there is a possibility of overlap for children for whom there is authority to place for adoption with the requirements of the Adoption Agencies Regulations 2005.

## **Document Two: *Putting Care into Practice*: Draft Statutory Guidance for local authorities on care planning, placement and case review for looked after children**

### **Part One**

The aim of the draft statutory guidance is to bring together all existing guidance related to care planning, placements and case review into a single comprehensive document that sets out in a streamlined way guidance for practitioners and managers of a local authority's core duties in relation to delivering effective assessment, care planning, placement decisions and case reviews for looked after children. The guidance therefore brings together relevant elements of existing statutory guidance, with

guidance on the new provisions inserted by section 8 of the Children and Young Persons Act 2008 and the Care Planning, Placement and Case Review Regulations.

We have set out below, the key changes and improvements included within the guidance, alongside a number of key consultation questions for you to consider.

## **Part Two – Arrangements for looking after a child:**

### **The Care Plan**

The Guidance sets out the rationale for the preparation of a written care plan for children in care and for all other children who are looked after, and sets out in more detail what the care plan should contain. It sets out the purpose of care planning for children in care and those who are accommodated and specifies the content of the plan. It also addresses permanence planning in the context of care planning duties to ensure that the child's need for a secure attachment is kept in focus.

### **Health**

It draws out and clarifies local authority and Primary Care Trusts' responsibility with regards to supporting and promoting the health of looked after children. The guidance is consistent with the statutory guidance on promoting the health and well-being of looked after children, in particular the requirements for carrying out regular health assessments, what the health assessment should include, the requirement for a written health plan which should form part of the child's care plan, and the requirement to regularly review this.

### **Education**

The guidance also sets out the priority that local authorities must give to the education implications of any placement and planning decisions that they make with regard to looked after children.

In particular, it specifies that the care plan must include a record of the child's education and training, 'the personal education plan' (PEP), as an integral part of the care plan. It sets out the information that must be included within the PEP and the timescales for ensuring that all looked after children have one. The Guidance clarifies which professionals need to be involved in developing the PEP, alongside the core elements that it must cover.

The guidance sets out how the different parts of the authority understand how they contribute to the way the authority as a whole meets its statutory duty to promote the education of looked after children, setting out in particular different officers' and practitioners' roles in relation to this. It also sets out, for looked after children who are in school years 10 and 11 (Key Stage 4), the particular efforts that authorities should take to ensure that a child's education is not disrupted as a result of a placement move. It specifies that all other options to maintain the educational placement must have been explored and exhausted before disrupting the placement takes place.

This includes for example:

- being satisfied that the provision will promote the child's educational achievement and is consistent with the PEP;
- giving due consideration to the child's wishes and feelings;
- consulting with the designated teacher for looked after children at the child's school;
- and informing the IRO.



## **Planning and Contact**

The guidance describes local authorities' responsibilities with regard to contact for looked after children in the context of wider family and social relationships, and sets out:

- who should be included;
- contact arrangements, including contact with parents, siblings and others who are important to the child.

It also further expands on the specific requirements on the local authority in relation to the refusal of contact, departure from the terms of an order made under section 34 of the Children Act 1989 and notification of variation or suspension of contact arrangements made under a section 34 order. It highlights that contact arrangements where a child is authorised to be placed for adoption are made in accordance with section 26 of the Adoption and Children Act 2002.

## **Independent Visitors**

The Guidance provides further detail on section 23ZB of the Children Act 1989 governing the appointment and function of independent visitors. In particular, it sets out further detail on the impact of section 23ZB of the Children Act 1989, in broadening the set of factors that authorities should take into account when considering which children might benefit from an independent visitor and addresses such issues as the selection of Independent Visitors and their role and function.

## **Part Three – Placements – General Provisions**

### **Placement Decisions**

The guidance sets out local authorities' new duties under section 22C of the Children Act, about the way in which decisions about placements are to be made, and includes within this the specific considerations that responsible authority must have regard to. These are:

- the general rehabilitation duty, which requires the responsible authority to first enable the child to live with a parent, a person who holds parental responsibility or person with whom a residence order was in force before the making of the care order;
- to give preference to a placement with an individual who is a friend or relative or other person connected with the child and who is also a local authority foster carer;
- after which to consider placing with a local authority foster carer who has no previous relationship with the child (an unconnected foster carer, or a placement in a children's home or placements under section 22D which are 'other arrangements', subject to specific criteria set out in section 22C(8).

It sets out some of the considerations authorities may have regard to, when making a decision about the best possible placement for a child, setting out further guidance for authorities in those circumstances where they are faced with difficult choices and where the Authority is not able to meet all the criteria set out in section 22C (8). The guidance stresses that where an authority needs to consider a number of different placement options, the most important criteria must be 'how far a placement meets the

needs of a particular child given their previous history and their current circumstances rather than to stick rigidly to a theoretical position about what is best for most children'. It gives a number of examples for authorities to consider – not as exemplars that authorities must follow, but to highlight the fact that responsible authorities need to take into account a range of factors when making placement decisions, which place meeting the needs of the child or young person centre stage.

The guidance sets out further detail on the duty to avoid disrupting looked after children's education, setting out some of the measures that authorities must take in order to avoid disrupting children's education or training, particularly the duty to avoid disrupting the education of a child at key stage 4.

### **Out of area placements**

The guidance provides further detail on regulation 11, setting out the factors that local authorities have to take into account when making a decision to place a child 'out of the responsible authorities area'. It includes within this, those circumstances in which a placement out of the area could be the most suitable for a child, such as:

- where the child has complex treatment needs;
- where the child's needs for safeguarding requires a placement out of the home area;
- or where this is the most appropriate way to meet the duty to return the child to a parent or other person connected to the child.

It also provides further guidance on emergency placements out of area, setting out the arrangements for fulfilling the requirements set out in Regulation 11 where the child is placed out of the responsible authority area in an emergency.

## **Part Four: Provision for different types of placement**

### **Placement of a child in care back with parents**

The Guidance gives further clarification to the duties set out in regulations 15 to 21 when a child on a care order (or an interim care order) is being placed with a parent, other person with parental responsibility who is not a parent, or in the case of a child subject to a care order a person in whose favour a residence order was made before a care order was made. It provides a framework for good professional practice in relation to such placements, and within this clarifies the factors to be taken into account when assessing the suitability of a parent to care for a child, specifying in particular:

- parenting capacity;
- previous experience of looking after children;
- family and environmental factors; and
- that the overarching aim of the authority with regard to such placements should be as a part of a plan to discharge the care order.

The guidance also addresses the issues which must be addressed where a child is being returned to parents before all the assessment requirements can be completed.

### **Placement of a child with Local Authority Foster Parents (LAFP)**

The guidance sets out a further explanation of regulation 23, the conditions to be complied with before placing a child with a local authority foster parent. It sets out those factors that responsible authorities must take into account in order to choose the

most suitable placement for a child, alongside setting out the conditions that must be complied with before a child is placed with a local authority foster carer.

The Guidance also sets out a further explanation of regulation 24 (1) and (2), concerned with the placing of a child in an emergency with a local authority foster parent, and in particular the need to terminate such a placement after 24 hours unless the terms of the foster carer's terms of approval have been amended.

### **Temporary Approval of a connected person**

The guidance sets out further clarification on regulations 25 and 26 regarding the temporary approval of a connected person. It explains what is meant by a 'connected person' as set out in section 22C (6)(a) as being a 'relative, friend or other person' connected with the child. It also clarifies that temporary approval should only be used if the need for a placement with a 'connected' person is urgent and it is not possible to fulfil all the requirements of the Fostering Services Regulations 2002 to approve the connected person as a local authority foster parent. It sets out the factors that the authority must take into account when assessing a connected person under the temporary approval provisions, the visiting requirements when a child has been placed with a connected person and the requirement for a care plan and a placement plan, which has to be agreed with the connected person who has been temporarily approved.

It sets out that the regulations are to be used exceptionally and in circumstances that could not have been easily foreseen. The guidance also sets out the significant changes to these arrangements that the regulations have made, and in particular:

- temporary approval lasting in the first instance for 16 weeks to reflect realistic timescales for obtaining CRB and other checks;
- and a further extension of 8 weeks in exceptional circumstances or until the outcome of an decision of the Independent Review process is known.

If the connected person is not approved at the end of these timescales then the child must be removed from the connected person.

### **Placement of a looked after children in 'other arrangements'**

The guidance sets out the responsible authorities duties with regard to a child being placed in other arrangements under section 22(6)(d) of the Children Act 1989, such as hostel provision or supported lodgings. It sets out the process that an authority must follow before placing a child in such arrangements; including those factors that they must take into account as part of their planning to ensure that the planned move will meet the child's needs. It specifies that these must be set out in their care plan (including their pathway plan) and clarifies the issues that must be included in the placement plan (set out in Schedule 3) of the regulations.

### **Placement plan**

The guidance sets out further clarification on regulation 9, the requirement for a placement plan to be drawn up before a child is placed by a responsible authority. The guidance gives clarity to the purpose of the placement plan; setting out in detail how the placement plan is intended to contribute to meeting the child's needs as set out in the care plan. And that the primary focus of this is to:

- provide the framework for ensuring that there is clarity for the child and carer (whether a foster carer or residential social worker) about how the day to day parenting tasks will be carried out; and
- setting out clearly how the different arrangements between the carer, registered provider and responsible authority will be discharged so as to meet the child's needs.

It states that a placement plan must include:

- information about the child's family, race, religion and culture, any disabilities and other special needs;
- information about the circumstances leading to the child becoming looked after, and the child's previous experiences;
- what the long term plan for the child may be;
- what the objectives for the specific placement are and how these fit in with the care plan.

The guidance clarifies what detailed information is required about the 'day to day' arrangements for the child (as set out in Schedule 2 paragraph 1 (1) to (8)). It also highlights the requirement for additional information where the child in care is placed with parents etc, under Schedule 2, paragraph 2 of the Regulations.

### **Visits**

The guidance sets out further detail relating to the requirement for local authorities' visits to children who are looked after in regulations 29 to 33 (Part Five). The guidance sets the visits within the broader framework for supervising the child's placement and promoting their welfare. It sets out the requirements for supervision in relation to visits, the purpose of visits and highlights the requirement to provide a report of each visit.

### **Part Six – Reviews of a child's case**

The guidance sets out in further detail the way in which looked after children's care plans should be reviewed. It clarifies the purpose of holding reviews, alongside the required timing for holding reviews and the maximum intervals that may separate them.

In relation to this, the guidance clarifies that the regulations set out a minimum standard, and that reviews should take place as often as the circumstances of the individual child requires; for example:

- where there is a need for substantial changes to the care plan;
- where a social worker's report indicates that the placement is not consistent with the child's welfare;
- where the child has been remanded into care or remanded into custody;
- where there is a proposal by the authority to cease to provide accommodation for the child and accommodation will not be provided by the parent.

The guidance also clarifies that an IRO can direct a review at any time where there is a change in circumstances that may impact on the current plan, for example:

- a proposed placement out of area;
- a placement that disrupts education, particularly at key stage 4;
- the termination of a placement otherwise than in accordance with the care plan;
- a proposal that voluntary accommodation ceases;
- or a proposal that a child returns home.

## **System for reviews**

The guidance sets out that authorities are required to have a written policy setting out how they will conduct reviews, and the factors that authorities must include within this, which includes;

- the appointment of an IRO;
- the full participation of children and their parents;
- a structured and co-ordinated approach;
- and the full participation of the child's carers, subject to the wishes and feelings of the child where appropriate.

It sets criteria authorities should consider in preparing for a review including those individuals they should consult with before holding a review. It also sets out matters for consideration at the review, not to be prescriptive, but to ensure that the child's placement and arrangements to meet their needs 'in the round' are as effective as possible.

The guidance also clarifies the role of the IRO in relation to review meetings;

- setting out that the IRO must speak to the child before the meeting, about matters to be considered, unless the child refuses to do so or in the IRO's view it is inappropriate;
- that following the review, the IRO must advise staff at an appropriate level of seniority of any failure to review the case in accordance with the regulations or a failure to implement any decisions; and
- that if the IRO considers that the authority has failed to provide sufficient information to the meeting, that the IRO may adjourn the review once for up to 20 working days.

## **Record of reviews**

The Guidance sets out in further detail what the record of the review should contain, stressing that high quality recording of information obtained in a review is essential to ensure that practitioners involved with supporting the child can continue to meet their needs effectively.

## **Disagreements**

The Guidance sets out that the IRO must advise staff at a senior level, if the responsible authority has failed to meet a looked after child's needs as a result of:

- failing to review the case in accordance with the regulations;
- failure to implement any of the decisions made at a review.

The guidance also describes the circumstances the power of the IRO to consider a referral to CAFCASS if he or she considers it appropriate to do so.

## **Short Breaks**

The statutory guidance describes how responsible authorities should come to decisions about whether to provide short break accommodation under section 17(6) or section 20(4) of the 1989 Act. Some aspects of care planning and reviewing do not apply for children in a planned series of short term breaks, in order to have a proportionate response to the needs of the child and family where parents are able appropriately to discharge their parental responsibilities.

The appropriate legal status of the child will be identified following an assessment of these needs. It is important that the framework of regulation and guidance provides appropriate levels of safeguards, while not intruding unnecessarily in family life. Practitioners and families will be aware of the particular vulnerabilities of disabled children who are more susceptible to bullying, to abuse and to mental health disorders.

### **Looked after children within the youth justice system**

The guidance sets out Local Authority's responsibilities in relation to care planning, placement and review for looked after children in contact with the youth justice services, including looked after children who are sentenced and children who become looked after by virtue of their contact with youth justice services such as children on remand to local authority accommodation. The guidance sets out how the care, planning, placement and case review duties are carried out for this group of looked after children. In particular it:

- Sets out the responsible authority's duty to contact the secure establishment to provide information about the child;
- A requirement for the child's social worker or a representative of the local authority, to visit the child within one week of them being placed;
- Timescales for subsequent visits and the purpose of such visits;
- Actions to be taken if the responsible authority is concerned about the child's safety or welfare; and
- A process for the responsible authority to follow, where issues cannot be resolved at establishment level.

The guidance sets out the local authority's responsibilities in relation to planning for release, giving a greater priority to ensuring that there is clarity as to who is responsible for each element of the child's plan and the arrangements for communication and enforcement. It sets out clearly that the responsible authority **must** remain a presence in the child's life during the period of supervision by a YOT.

### **Document Three: Practice Guidance for Short Breaks**

#### **Short Breaks Practice Guidance; how to safeguard and promote the welfare of disabled children using short breaks**

The practice guidance describes a proportionate approach to ensuring that short breaks safeguard and promote the welfare of children. Many children receiving short breaks will be outside the Children Act 1989 requirements, others can be safeguarded under section 17 of the Act, others should be looked after under the specific short breaks regulation, and others should be afforded the higher levels of safeguards which apply to all looked after children. This document outlines a proportionate approach based on a sound assessment that takes into account the particular needs of the child, the capacities of the child's parents and the length of time the child will be spending away from home.

The guidance brings together into one place existing relevant guidance with a view to ensuring improved compliance with current requirements. Greater clarity about the legal requirements is timely because the pattern of short breaks has changed substantially since the publication of the Children Act 1989 guidance. There has been a shift away from longer periods in residential or foster care to shorter periods often in the child's own home or community.

## Document Four: IRO Handbook

Section 25B of the Children Act (inserted by section 10(1) the Children and Young Persons Act 2008) created a new power for the Secretary of State to issue statutory guidance to Independent Reviewing Officers and their managers. This guidance will replace the 2004 Independent Reviewing Officers Guidance and should be read in conjunction with the draft Regulations, which in turn revoke The Review of Children's Cases Regulations 1991.

This Guidance meets the commitment the Government gave during debate on the Children and Young Persons Act 2008 to produce statutory guidance addressed to each Independent Reviewing Officer (IRO) about how they should discharge their distinct responsibilities to looked after children. The Guidance provides advice and clarification for the IRO in respect of their enhanced role.

## Document Five: Sufficiency Guidance

**Section 22G of the Children Act 1989** (as inserted by the Children and Young Persons Act 2008) places a general duty on local authorities to take steps that secure sufficient accommodation to meet the needs of looked after children ("the sufficiency duty"). The aim of the draft statutory guidance is to provide clarification and further support for local authorities on the most effective way of meeting this duty, in order to improve outcomes for looked after children.

The Children Act 1989 already places on local authorities a number of duties that have strong links with the sufficiency duty:

- the general duty to provide a range and level of services appropriate to the needs of children in their local area (section 17);
- the duty to provide accommodation for children in need within their area who appear to them to require accommodation (in accordance with section 20 of that Act); and
- where a local authority makes arrangements to place a child who they are looking after, once it comes into force section 22 C(9) will require the placement to be such that the child is provided with accommodation within the local authority area unless this is not reasonably practicable.

There is therefore, an implicit assumption within these duties that the local authority **must ensure there is sufficient accommodation to meet needs locally**. Prior to introduction of sufficiency duty, there was no specific statutory duty on local authorities to **act strategically** to address gaps in provision and meet needs through diversity of provision.

The Statutory Guidance sets out core requirements for local authorities in relation to this, which involves:

- supporting and maintaining a diversity of provision to better meet the needs of looked after children;
- placing children within their local authority area where reasonably practicable;
- supporting the market to deliver more appropriate placements locally.

The purpose of the guidance is to encourage a 'step change' in commissioning practice, so that the:

- whole range of accommodation needs of looked after children are considered; and
- universal, targeted and specialist services are redesigned and configured to maximise outcomes for children and young people.

### **Clarification of sufficiency**

The guidance clarifies what we understand by 'sufficiency'. It states that accommodation should be sufficient not simply in relation to the numbers of beds that are provided but also in respect of the diversity and quality of provision available through Children's Trust partners to support children and their carers, in line with needs identified through the assessment. Provision should also be available for children at risk of care or custody and include a whole system approach to early intervention and prevention alongside more traditional services for looked after children.

### **Reasonably Practicable**

Section 22G of the Children Act 1989 requires that local authorities show that they are taking steps at strategic level to secure accommodation **so far as reasonably practicable**. The Statutory Guidance therefore also provides clarification on this requirement. Local authorities should not assume, for instance, that it is 'not reasonably practicable' to secure appropriate accommodation because it is difficult to do so or because there is a lack of resources.

The Statutory Guidance provides that the new sufficiency duty will require local authorities to:

- be active in managing their market, e.g. developing new provision in response to emerging trends;
- have access to limited, surplus provision or planned standby accommodation – to accommodate emergency placements;
- be able to demonstrate how, through working with their Children's Trust partners, it has done all it can to secure sufficiency.

### **Role of Commissioning in meeting the Sufficiency Duty**

The Guidance sets out key expectations regarding the standard of commissioning that local authorities and their partners are expected to practise to meet the sufficiency duty. These have been developed in conjunction with local commissioners and providers and include:

- the expectation that Authorities are actively engaged in the following strategic needs assessment to prepare for the sufficiency duty;
- market management – including resource analysis and workforce development;
- individual assessments – the importance of robust needs assessment to inform children's Care Plans and commissioning process;
- commissioning decisions – to be informed by strategic assessment, resource analysis, individual assessment, and child's views.

The Guidance also clarifies the 'techniques' that commissioners are required to consider in order to maximise outcomes, which include:



- the range of procurement and other commissioning mechanisms;
- evidence of effectiveness;
- performance management – based on needs and outcomes described in children’s individual assessments;
- And being evidence based.