



Welsh Assembly Government

Consultation Document

Fulfilled Lives, Supportive Communities:

Implementation of the Children and Young Persons Act 2008

Accommodated Children Visiting Arrangements –
Draft Regulations and Statutory Guidance

This consultation seek views on draft regulations to be made under section 86A of the Children Act 1989 and statutory guidance, to strengthen arrangements for children in long term residential placements who are not looked after.

Date of issue: **19 March 2010**

Action required: Responses by **19 June 2010**

Number: FLSC1

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This consultation seek views on draft regulations to be made under section 86A of the Children Act 1989 and statutory guidance, to strengthen arrangements for children in long term residential placements who are not looked after.

Date of issue: **19 March 2010**

Responses by: **19 June 2010**

Overview	<p>This consultation seek views on draft regulations and statutory guidance, which set out the duty on local authorities who have been notified in respect of the accommodation of a child in a long-term residential placement, to make arrangements in accordance with the regulations for the child to be visited by a representative of the authority.</p> <p>The regulations make provision about:</p> <ul style="list-style-type: none"> (a) the frequency of visits; (b) the circumstances in which the child is to be visited; and (c) any additional functions of the representative or visitor.
How to respond	<p>Consultation responses should be completed using the questionnaire at the back of this document and returned to Robert.Hobbs, Children’s Health and Social Services Directorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ or e-mail Robert.hobbs@wales.gsi.gov.uk</p>
Further information and related documents	<p>Annex 1: Draft Regulations: The Accommodated Children Visiting Arrangements Regulations [2010]</p> <p>Annex 2: Statutory Guidance: Accommodated Children Visiting Arrangements:</p> <p>Annex 3: Out of Area Notification Protocol</p>
Contact Details	<p>For further information contact</p> <p>Jacqui Moyle, Children’s Health and Social Services Directorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ</p> <p>Email: Jacqui.Moyle@wales.gsi.gov.uk</p> <p>Telephone: 029 20823101</p>
Data Protection	<p>The Welsh Assembly Government is the data controller for all personal data relating to your consultation response.</p> <p>The Welsh Assembly Government intends to publish a summary of the responses to this document and where practicable, the responses. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives</p>

credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us.

The Welsh Assembly Government will share consultation responses with officials across the Department to inform the preparation of all future consultations.

What are the main issues?

There have been long standing concerns about the welfare of children, who are not looked after, placed in long term residential placements at some distance from their families. Most of these children are placed away from home because they are disabled and need specialist facilities for their care and education. Many have communication difficulties and/or learning difficulties that make them exceptionally vulnerable to abuse, poor outcomes and dwindling contact with their families.

Where are we now

Currently, if a child is accommodated by a Local Health Board or Local Education Authority for three months or where the intention is to do so, then those agencies must notify the responsible authority (the authority where the child is ordinarily resident prior to placement). The responsible authority must then 'take steps as are reasonably practicable' to determine that the child's wellbeing is being promoted and safeguarded and must consider to what extent they should exercise any of their functions under the Children Act 1989 (section 85). Anyone who runs ('carries on') a care home or independent hospital is also under a duty to notify the local authority if a child is provided with accommodation in that institution, and the local authority must take similar steps (section 86).

http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_15#pt12-pb1-l1g85

There is evidence that the existing measures in sections 85 and 86 of the Children Act 1989 are not being rigorously implemented and there remain unacceptable risks to the welfare of these children living away from home.

There is evidence that parental contact with children in long term residential placements can fall away over time, but equally many parents of children in these placements can be heavily involved in the care of the child.

Why are we proposing change?

Sections 18 and 19 of The Children and Young Persons Act 2008 amend the Children Act 1989 to strengthen arrangements for children in long term residential placements by introducing a duty on local authorities to arrange for a representative of the authority to visit these children at regular intervals and to provide support services to help ensure they maintain contact with their families.

http://www.opsi.gov.uk/acts/acts2008/ukpga_20080023_en_3#pt2-pb4-l1g18

The draft regulations which are the subject of this consultation set out the duty on local authorities who have been notified in respect of the accommodation of a child in a long-term residential placement to make arrangements in accordance with the regulations for the child to be visited by a representative of the authority. The regulations make provision about:

(d) the frequency of visits;

- (e) the circumstances in which the child is to be visited; and
- (f) any additional functions of the representative or visitor.

The regulations will be made under section 86A(4)(1) of the Children Act 1989 by the Secretary of State for Children, Schools and Families and the Welsh Ministers, acting jointly.

Consultation Response Form

Accommodated Children Visiting Arrangements Draft Regulations and Statutory Guidance

Name:	
Organisation (if applicable)	
E mail/telephone number	
Address:	

Consultation Questions

Question 1	Please tick	
Is the guidance clear about the difference between section 85 and Section 86 in respect of the notification arrangements?	Yes	No
Comments		

Question 2	Please tick	
Do you agree that a voluntary notification protocol along the lines of the one developed by the Welsh Assembly Government would be helpful?	Yes	No
Comments		

Consultation Response Form

Question 3	Please tick	
Is the guidance clear about the frequency of visits?	Yes	No
Comments		

Questions 4 & 4a	Please tick	
Is the suggestion about local authorities co-operating realistic?	Yes	No
Do you think the responsible authority should itself visit to ensure proper links with the family and with other resources of the responsible local authority?		
Comments		

Question 5	Please tick	
Is the guidance clear about the functions of the visit?	Yes	No
Comments		

Consultation Response Form

Question 6	Please tick	
Should the visit have any other functions?	Yes	No
Comments		

Question 7	Please tick	
Is the guidance clear about the required skills and experience of the visitor?	Yes	No
Comments		

Question 8	Please tick	
Is the guidance clear about the support to enable the child to maintain contact with their family?	Yes	No
Comments		

Consultation Response Form

Question 9	Please tick	
We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:	Yes	No
Comments		

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

2010 No. []

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

The Accommodated Children Visiting Arrangements Regulations [2010]

<i>Made</i>	- - - -	<i>March 2010</i>
<i>Laid before Parliament</i>		<i>May 2010</i>
<i>Coming into force</i>	- -	<i>1st December 2010</i>

The Secretary of State for Children, Schools and Families and the Welsh Ministers, acting jointly in exercise of the powers conferred by section 86A(4)(a) of the Children Act 1989(b), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Accommodated Children Visiting Arrangements Regulations 2010 and come into force on 1st December 2010.

Interpretation

2. In these Regulations—

“the 1989 Act” means the Children Act 1989;

“C” means an accommodated child within the meaning of paragraph 8A(2) of Schedule 2 to the 1989 Act(c);

“R” means a representative of the responsible local authority;

“responsible local authority” means—

- (a) where a notification has been made under section 85(1)(d) of the 1989 Act, the responsible authority as defined in section 85(3);
- (b) where a notification has been made under section 86(1)(e) of the 1989 Act, the local authority within whose area C has been accommodated;

-
- (a) Section 86A was inserted by section 18 of the Children and Young Persons Act 2008 (c. 23) (“the 2008 Act”). Section 86A(5) provides that Regulations under section 86A are to be made by the Secretary of State and the Welsh Ministers acting jointly.
 - (b) 1989 c. 41.
 - (c) Paragraph 8A of Schedule 2 was inserted by section 19 of the 2008 Act.
 - (d) Section 85(1) was amended by section 66(1) of, and paragraph 36(5) of Schedule 9 to, the National Health Service and Community Care Act 1990 (c. 19); section 2(1) of, and paragraph 118(9) of Schedule 1 to, the Health Authorities Act 1995 (c. 17); section 34 of, and paragraphs 75 and 81 of Schedule 4 to, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); section 17(1) and (2) of the 2008 Act; and by S.I.s 2000/90 and 2007/961.
 - (e) Section 86(1) was amended by section 116 of, and paragraph 14(1) and (2)(b) of Schedule 4 to, the Care Standards Act 2000 (c. 14); and by section 17(6), (7)(a), (b) and (c) of the 2008 Act.

“working day” means any day other than a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971^(a).

Visiting arrangements

3. Where a notification has been made in respect of C, the responsible local authority must make arrangements to ensure that R visits C in accordance with these Regulations wherever C is accommodated.

Frequency of visits

4.—(1) Where C’s needs for the purposes of the 1989 Act have not been assessed before notification is made under section 85(1) or 86(1) of that Act, the responsible local authority must make arrangements to ensure that R visits C—

- (a) within seven working days of C being accommodated; or
- (b) within seven working days of being notified that C has been provided with accommodation; and thereafter
- (c) at intervals of not more than six months.

(2) Where C’s needs have been assessed before notification is made, the responsible local authority must make arrangements to ensure that R visits C—

- (a) within three months of C being provided with accommodation; or
- (b) within three months of being notified that C has been provided with accommodation; and thereafter
- (c) at intervals of not more than six months.

(3) In addition to visits in accordance with paragraphs (1) or (2), the responsible local authority must make arrangements to ensure that R visits C—

- (a) whenever reasonably requested to do so by C; and
- (b) whenever circumstances may require C to be visited in order to safeguard and promote C’s welfare.

Circumstances of visit

5. On each visit, R must speak to C in private unless C, being of sufficient understanding to do so, refuses or R considers it inappropriate to do so, having regard to C’s understanding and the particular circumstances of the visit.

Reports of visits

6.—(1) R must provide a written report of each visit to the responsible local authority

(2) R’s report must include R’s assessment of—

- (a) C’s wishes and feelings about the accommodation, so far as R has been able to ascertain them;
- (b) whether C’s welfare is adequately safeguarded and promoted by the accommodation;
- (c) whether further visits by R, in addition to those prescribed by regulation 4(1) or (2), are required in order to safeguard and promote C’s welfare;
- (d) any services which R considers appropriate to be available with a view to promoting contact between C and C’s family; and
- (e) any other steps that should be taken by the responsible local authority exercising its functions under the 1989 Act to safeguard and promote C’s welfare.

(a) 1971 c.80.

- (3) The responsible local authority must give a copy of the report to—
- (a) C unless it would not be appropriate to do so, having regard to C’s age and understanding;
 - (b) any parent of C’s and any person who is not C’s parent but who has parental responsibility for C unless to do so would place C at risk of significant harm;
 - (c) where different from the responsible local authority, the local authority in whose area C is accommodated; and
 - (d) any other person with responsibility for safeguarding and promoting C’s welfare under the 1989 Act.

Date *Name*
Parliamentary Under Secretary of State
Department for Children, Schools and Families

Date *Name*
Minister for Health and Social Services
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 86A of the Children Act 1989 (“the 1989 Act”), which imposes a duty on local authorities to make arrangements for “accommodated children” (that is, children in respect of whose accommodation the local authorities have been notified under section 85 or 86 of the 1989 Act) to be visited by a representative of the authority. Section 86A of the 1989 Act is a new provision which was inserted by section 19 of the Children and Young Persons Act 2008.

Regulation 3 sets out the duty of every local authority who has been notified in respect of an accommodated child under section 85 or 86 of the 1989 Act to make arrangements for the child to be visited in accordance with these Regulations.

Regulation 4 prescribes the frequency with which a representative of the authority must visit the accommodated child.

Regulation 5 requires the representative of the authority to speak to the accommodated child in private during each visit, unless it would be inappropriate to do so.

Regulation 6 requires the representative to prepare a report of each visit. It also prescribes the contents of the report and the persons to whom the local authority must give a copy.



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Accommodated Children Visiting Arrangements: Statutory Guidance

1. Introduction

- 1.1 Sections 17 to 19 of the Children and Young Persons Act 2008 (the 2008 Act) amend the Children Act 1989 (the 1989 Act)¹ to strengthen local authorities' duties to ensure the welfare of children is safeguarded and promoted when they are placed in health, education and other establishments for consecutive periods of three months or more.
- 1.2 The amended provisions in the 1989 Act require the local authority to:
 - visit, in accordance with regulations made under new section 86A of the 1989 Act, these vulnerable children, maintain contact and intervene when there is any significant change in the child's circumstances; and
 - offer a tailored package of services suitable to meet their needs, in particular to support the continuing active involvement of parents in their child's life.
- 1.3 Though the amended provisions are new, they do not in themselves impose significant new burdens. They reinforce existing duties to safeguard and promote the welfare of children accommodated under sections 85 and 86 of the 1989 Act.
- 1.4 These provisions apply when a child is provided with accommodation for a consecutive period of at least three months or when there is an intention to provide accommodation for that period. The consecutive three month period would not be broken if during that period the child were to visit their family for the occasional weekend. Section 85 of the 1989 Act applies in respect of children provided with accommodation by health authorities or local authorities acting in the exercise of education functions. Section 86 applies in respect of children provided with accommodation in care homes or independent hospitals, including hospices.
- 1.5 This guidance is issued under section 7 of the Local Authority Social Services Act 1970, and therefore local authorities are required to act in accordance with this guidance. The Welsh Assembly Government will shortly be issuing draft Accommodated Children Visiting Arrangements Regulations for consultation. Once available the Care Planning guidance should be read alongside this guidance.
- 1.6 This guidance does not apply to children provided with accommodation by local authorities under section 20 of the 1989 Act or to children subject to care orders under section 31 of that Act. The statutory guidance for local authorities on Care Planning, Placement and Case Review (forthcoming) will provide guidance in relation to looked after children. The CPPCR guidance applies to children in different circumstances but parts of it that relate to looked after children are also relevant to improving practice in

¹ Sections 17 to 19 amend sections 85 and 86 of the 1989 Act and insert new section 86A and new paragraph 8A in Schedule 2 to the 1989 Act.

relation to the children who are the subject of this guidance who are also living away from home. Aspects of the CPPCR guidance which the reader may find helpful in relation to children living in health, education and other establishments include the paragraphs about the child's wishes and feelings which are attached at annex 1 for reference.

Duty to co-operate

- 1.7 Sections 85 and 86 of the 1989 Act² place a duty on local authorities to safeguard and promote the welfare of children provided with accommodation by education, health and other establishments. It is important that health services co-operate with the local authority in order to improve the well-being of these children living away from home. Section 25 of the Children Act 2004 (the 2004 Act) (section 10 of the 2004 Act in relation to England) is relevant in respect of these children, many of whom will have significant health needs. Sections 25 and 10 of the 2004 Act require local authorities to make arrangements with Local Health Boards (LHBs) and Primary Care Trusts (PCTs) to promote co-operation with a view to improving the well-being of children and requires LHBs and PCTs to co-operate with the local authority in this regard.

2. Background

- 2.1 Children who spend long periods of time living away from home in residential settings are vulnerable to abuse, to a range of poor outcomes and to dwindling contact with their own families. In 2005 a DfES report³ estimated that about 12,000 disabled children were living away from home in England, and of these about 1,500 were looked after by local authorities. Most of these 12,000 children have learning and communication impairments which increase their vulnerability. In Wales we estimate that there are around 720 children in such placements.
- 2.2 The 1989 Act introduced measures in sections 85 and 86 to ensure that the welfare of children placed away from home for periods of three months or more was properly safeguarded. Where a child is provided with accommodation, or there is an intention to provide a child with accommodation, by a health authority or local authority acting in the exercise of education functions, for a period of three months or more, there is a duty to notify the responsible local authority. The authority so notified then has a duty to take steps to ensure that the child's welfare is safeguarded. However, evidence indicates that these measures were not being rigorously implemented and that there remain unacceptable risks to the welfare of these children living away from home.
- 2.3 Historically there have been three main routes by which children are placed in residential settings:
- under Part 4 of the Education Act 1996 when a child has been assessed as having special educational needs and provision is required in a residential school;
 - under Part 3 of the 1989 Act when a child is provided with accommodation by the local authority; and
 - in a health setting facilitated by the Local Health Board or Primary Care Trust or.
- 2.4 Where children with special educational needs (SEN) and disabled children are provided with accommodation in residential schools or education establishments, authorities should have regard to the guidance in paragraph 8.72 of the SEN Code of Practice and the SEN Code of Practice for Wales, which advises that local authorities 'will, so far as reasonably practicable and consistent with the child's welfare, seek to

² Sections 85 and 86 of the Children Act 1989 came into force in October 1991.

³ Pinney, A., *Disabled Children in Residential Placements; a report for DfES*, November 2005

ensure that residential placements are near the child's home'. (Paragraph 8:72 of the SEN Code of Practice).

- 2.5 For the health service *Healthy Lives, Brighter Futures*⁴, the strategy for children and young people's health in England states the aim to provide care as close to home as possible (paragraph 6.40). Some children with disabilities or serious health problems may spend substantial periods of time receiving care and treatment in a health facility but it is against Government policy that such children should be placed for long term residential care in a hospital setting. A placement in a health setting is for assessment and treatment which cannot be provided in another setting and should not constitute a permanent placement. If health provision is required long term and cannot be provided in the community, for example in the case of life limiting illness, it should be provided in homely, locally based units. In Wales the key aim of *Towards a Stable Life and a Brighter Future*⁵ is to ensure that children are placed close to home in placements that meet their needs, including any special health and education needs.
- 2.6 The Children Act 2004 introduced a number of measures to improve co-operation between local agencies, to encourage integrated planning, commissioning and delivery of children's services as well as to increase accountability. These measures, especially the establishment of Children and Young People's Partnerships in Wales, Children's Trusts in England, pooled budgets and integrated assessment processes, should result in fewer occasions when children are placed away from home without a holistic multi-agency assessment of their needs.
- 2.7 The 2005 report for DfES summarised research as follows:

“Residential placements play a valuable role in the spectrum of provision -offering the highly specialised support required to meet some children's needs and enabling others to spend time away from a damaging home environment. Research indicates that in many cases, young people and their families are pleased with their placements which are often made after a difficult time at school or at home. However there are a number of concerns about such placements, namely:

- *the impact of living away from family and home community;*
- *vulnerability to abuse and neglect;*
- *difficult transitions beyond residential provision;*
- *inappropriate use of residential placements;*
- *high costs; and*
- *poor outcomes for some.”*

Specialist placements are likely to serve large catchment areas and therefore be a long way from home for many children and families. Difficulties in families and placing authorities remaining in contact are likely to persist.

- 2.8 Reports by the chief inspectors into safeguarding arrangements for children⁶ have highlighted the particular vulnerability of disabled children living away from home. The

⁴ *Healthy Lives, Brighter Futures*, Department of health 1989

⁵ *Towards a Stable Life and a Brighter Future*, Regulations and Guidance to strengthen arrangements for the placement, health, education and wellbeing of Looked after Children (2007)

⁶ Commission for Social Care Inspection (2005) *Safeguarding children; the second joint chief inspectors report on arrangements to safeguard children*. Ofsted 2008, *Safeguarding children: the third joint chief inspector's report on arrangements to safeguard children*.

2005 report focused on groups of children where there were particular concerns including children with disabilities in educational settings and children who spend a long time in hospital.

3. Looked after status

- 3.1 Where local authorities are involved in decisions to place children away from home they should consider whether the welfare of the child would be better safeguarded and promoted if the child were to be looked after under the 1989 Act. Once a child is looked after there are a number of requirements, including visits and reviews, to ensure that there is proper planning to promote improved outcomes for the child. For further information see NAFWC 29/2003 and LAC (2003)13 which state:

'Children should not normally be maintained in schools by social services departments unless they are looked after, whether under section 20 or section 31. This will ensure their progress is regularly reviewed and their welfare safeguarded. However it will not be necessary or desirable for all children known to/funded by social services and placed in residential schools to be looked after. This judgment should be made following a thorough assessment of the needs of the child and family. It will consider whether the child needs the local authority to take responsibility for the provision of accommodation, with attendant looked after status. In particular it will need to take into account the length of time spent away from the child's family, the degree of contact between the child and his family, the quality of the child's primary attachments and any particular vulnerabilities of the child. Where this assessment concludes that section 20 criteria are not met, the local authority may then consider providing financial support for the placement under section 17.'

- 3.2 The authority should explain the advantages as well as the implications of the child being looked after and should understand the parents' possible fears about their child being 'in care'. Authorities must be clear and transparent in their discussions with the child and family. It should be explained that when a child is looked after under section 20 of the 1989 Act, the local authority does not acquire parental responsibility which remains with the parents. It should also explain that being looked after imposes a number of requirements on local authorities which aim to ensure that the child's welfare is safeguarded and promoted; for example, holding regular reviews which parents should attend, a social worker having to visit, an independent reviewing officer being appointed, and the entitlement to further support when a child leaves care. The local authority should also be clear about its expectations of parents.

4. Notifications

- 4.1 With the increasing emphasis on multi-disciplinary assessments, improved information sharing and multi-agency co-operation there should rarely be occasions where a child is placed in a residential setting without consultation between local authority education and social care staff and with health professionals. The Children and Young Persons Act 2008 amends sections 85 and 86 of the 1989 Act to strengthen the existing notification requirements.
- 4.2 The notification requirement in section 85 is different to the requirement in section 86. Section 85 requires that the authority to be notified by the health authority or by the local authority in the exercise of education functions that places the child, is the local authority for the area where the child was ordinarily resident before being accommodated. Where the child was not ordinarily resident in any authority the notification should be made to the local authority within whose area the accommodation is situated. Where a child is placed by a local authority exercising its education functions, notification will only be required where the child is placed outside the authority's area.

- 4.3 Section 86 provides that the authority to be notified by the establishment accommodating the child is the authority within which the establishment is situated.

Please use the questionnaire provided when responding to the consultation questions which follow.

Consultation question 1

Is the guidance clear about the difference between section 85 and 86 in the notification arrangements?

Children provided with accommodation by health authorities or local authorities exercising education functions under section 85

- 4.3 Section 85 applies:

- i) where a local authority in the exercise of its education functions accommodates (or intends to accommodate) a child in the area of another local authority for a consecutive period of at least three months; or
- ii) where a health authority provides a child with accommodation (or intends to do so) for the same period.

In these circumstances, section 85 requires these “accommodating authorities” to notify the Director of Children’s Services (or in Wales the Lead Director of Children and Young People’s Services) for the local authority area – the “responsible authority” - where it appears to the accommodating authority that the child usually lives (has “ordinary residence”).

- 4.4 The (draft) guidance on ordinary residence states ‘where a local authority has placed a young person in accommodation in a different local authority area under the 1989 Act, they remain ordinarily resident in their ‘placing’ authority. (DH, 2009, WAG 2010), Consultation on Ordinary Residence Guidance, Directions and Cross Border Arrangements). Where it appears to the accommodating authority that the child was not ordinarily resident in any local authority it shall notify the authority in which the establishment is situated.
- 4.5 Determining ordinary residence is straightforward for those children who have lived with their families in one place all their lives. However for many children who are placed in residential settings determining ordinary residence can be more complicated. For those children placed in accommodation or accommodated out of their area of ‘ordinary residence’, regulations⁷ state that the LHB or PCT of Origin (the LHB or PCT that made the arrangement to place the child) or the responsible LHB or PCT immediately before a local authority makes such an arrangement will maintain responsibility for the provision of secondary health care for certain categories of children placed out of area (in the Host LHB/PCT area) by a local authority or a LHB/PCT. Similar arrangements apply in England and apply to cross border placements in Wales/England.
- 4.6 The accommodating authority has a duty to notify the Director of Children’s Services when the child is provided with accommodation and again when the child ceases to be provided with accommodation. In Wales the notification should be sent to the Director of Social Services. The requirement to notify the DCS, or DSS in Wales, is to ensure that there is clear accountability for receiving and responding to notifications.

⁷ *The National Health Service (Functions of Strategic health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 (SI2002/2375), Local Health Boards (Directed Functions) (Wales) Regulations 2009 (SI 2009/1511).*

Children placed in Wales from out of area including from across the border in England

- 4.7 The Welsh Assembly Government continues to be concerned at the high number of children placed from outside the authority area in Wales, including from across the border in England, without prior notification. A number of serious incidents have been reported which raise concern about the suitability of placements in meeting the child's welfare and specialist health and education needs.
- 4.8 In Wales the Welsh Assembly Government is developing a voluntary protocol with the children's residential care sector whereby the children's home notifies the local authority and the local health board in the area in which the home is situated that a child has been placed there from outside the area. The voluntary protocol is intended to supplement rather than replace statutory notification duties. A suggested protocol is attached at annex 3.

Consultation question

Do you agree that a voluntary notification protocol along the lines of the one developed by the Welsh Assembly Government would be helpful?

Children accommodated in care homes or independent hospitals under section 86

- 4.9 In situations where a child is placed in a care home or independent hospital for a continuous period of at least three months, section 86 requires that establishment to notify the local authority where the establishment is situated.
- 4.10 Whether notification is made under section 85 or section 86, once notified of the accommodation, the authority notified – the responsible authority - must make arrangements to visit the child to ensure the welfare of the child is safeguarded and promoted in accordance with the Accommodated Children Visiting Arrangements Regulations 2010. Prior to the changes to the 1989 Act inserted by the 2008 Act the local authority was required 'to take such steps as are reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while the child is accommodated'. The main change in the new legislation is to require the responsible local authority to ensure that the child is visited.

Timing of notifications

- 4.11 Notifications should be made without delay so that the responsible authority can fulfill its duty to visit to ensure the welfare of the child is safeguarded and promoted. In planned placements the responsible authority should be notified before the child is provided with accommodation. In other circumstances the notification should be made on the day the child is first provided with accommodation or as soon as practicable thereafter.

5. The local authority duty to visit children in long-term care

Assessment and Planning

- 5.1 Most children who are likely to require residential placements for consecutive periods of more than three months should have had a holistic multi-agency assessment of their needs. This should be the case whether it is planned to place the child in an education, health or other establishment. The plan arising from this assessment should consider how to maintain and improve the child's relationships with his parents, and others who have been caring for him, for the period while the child is away from home. The local authority staff responsible for services for children in need under the 1989 Act should be involved in the decision-making about any residential placement

being considered by their education colleagues. It will equally be good practice for health staff to consult routinely with local authority children's services before long term placements in health establishments are made. In many situations the statementing process and the use of the continuing Care Guidance (DH forthcoming, WAG forthcoming) will ensure there is a holistic picture of the child's needs arising from multi-agency assessment and planning, having regard to chapter 7 – 9 of the SEN Code of Practice and the relevant section of DH and WAG continuing care guidance.

- 5.2 The plan arising from the multi-agency assessment of needs should specify the visiting arrangements to the child by the authority and his family.
- 5.3 For each child placed in a health, education or other establishment there should be a plan which clearly states: the desired outcomes of the placement;
 - who is responsible for monitoring and review;
 - the health, education and care needs of the child;
 - the communication needs of the child;
 - the behaviour of the child; and
 - contact arrangements with parents, family members and other significant individuals in the child's life.
- 5.4 In exceptional circumstances, that is, where a child does not have a holistic multi-agency assessment of needs, for example arising from a family crisis or a medical emergency, a placement may be made quickly before such an a multi-agency holistic assessment has been completed. When placements are made in an emergency essential information should be made available as soon as possible to ensure that those staff looking after the child can do so safely and sensitively.

Frequency of visits

- 5.5 The responsible local authority must visit within three months of the child being placed in accommodation or of being notified of the placement. As set out in paragraphs 4.2, 4.3 and 4.9 above For children placed by health authorities or local authorities exercising education functions, the responsible local authority is normally the authority where the child is ordinarily resident. Where the child does not appear to have a place or ordinary residence, then the authority which must be notified is the authority within whose area the accommodation is situated. For children placed in care homes or independent hospitals, the responsible local authority is the authority in which the establishment is situated. Subsequent visits to the child in the accommodation provided must be at intervals of not more than six months.
- 5.6 In the exceptional circumstances described in paragraph 5.4 above the responsible local authority must visit within seven working days of the child being accommodated or within seven working days of being notified of the accommodation. As with planned placements subsequent visits must take place within an interval of no longer than six months.
- 5.7 These time limits for visiting are minimum requirements. The local authority must also make arrangements to visit whenever reasonably requested to do so by the child and whenever circumstances require a visit to ensure the child's welfare is safeguarded and promoted. The local authority should visit more frequently may indicate it is necessary to visit than the statutory minimum when concerns about the child's welfare are expressed by the child, the child's parents, by the establishment caring for the

child, or by the child's advocate. Many children in long term residential placements will have communication impairments and may benefit from the support of an advocacy service which is skilled in methods of non-verbal communication.

Consultation question

Is the guidance clear about the frequency of visits?

5.8 Where establishments provide a highly specialised service it may be necessary for children to be placed a long way from home. In these circumstances the responsible authority may wish to make an agreement with the authority in which the establishment is located to carry out its functions under these regulations on its behalf. The Care Planning, Placement and Case Review guidance will also address how local authorities can co-operate.

Consultation question

Is this suggestion regarding local authorities co-operating realistic? Do you think the responsible authority should itself visit to ensure proper links with the family and with other resources of the responsible authority?

Functions of the visit

5.9 On each visit the representative of the authority must speak to the child in private, unless this is inappropriate having regard to the child's age and understanding. In order to carry out this duty it will be essential that the representative of the authority understands the child's preferred method of communication and is competent in its execution. In most cases it will be necessary to see the child alone to ensure that any views given are genuinely held by the child and not unduly influenced by those caring for him. Occasionally a child may express the view that they do not want to see the visitor alone. This may be due to a number of factors, for example anxiety about meeting people and being the centre of attention during a relatively formal interview. By building up skills in working with disabled children and developing a good relationship with the child, such reluctance to see the visitor will be increasingly rare. Before deciding to agree to the child's wish not to have a private interview, the visitor should assess to what extent this is a considered view given the child's age and understanding, and consult as appropriate with the child's parents, those providing accommodation to the child, and a more senior officer from the responsible authority.

5.10 On each visit the representative of the authority should ensure that the plan is being implemented and the intended outcomes for the child are being achieved. Regular visiting should ensure that a child's needs are met, not just at the point of placement but in the event of any change of circumstance during the placement, until the placement finishes.

Consultation question

Is the guidance clear about the functions of the visit?

Should the visit have any other functions?

Consulting the family

5.11 Before each visit the visitor should it will be good practice to consult the child's parents and find out their current views about how their child is progressing. There may be good reasons to conduct the visit jointly.

Transition

5.12 Once children with SEN statements are in year nine, about the age of 13 to 14, there are statutory duties on head teachers and local authorities to draw up transition plans to plan for their transition to adult services. Transition plans should cover the young person's curriculum needs during transition, how they can play a role in the community and which professionals need to be involved in their transitions to adult services. The plans should be person-centred, taking full account of the young person's views and aspirations. Transition plans can also be drawn up for young people with SEN but without statements. (More guidance on transition planning can be found in the SEN Code of Practice, Chapter 9 and the SEN Toolkit, Section 10 which is England only. <http://www.teachernet.gov.uk/wholeschool/sen/sentoolkit/>)

Skills and experience of the visitor

5.13 It is essential that the representative of the responsible local authority has the skills and experience to fulfill the statutory requirement to visit. These skills will include:

- the ability to communicate with the child and the child's parents, this may include competence in different forms of non-verbal communication;
- an understanding of any specific impairment of the child and the impact of disability on family life;
- an understanding of child development and the impact of separation on a child's attachments;
- the ability to identify any safeguarding concerns;
- and an understanding of how to promote contact between the child and family.

In most cases qualified social workers should be undertaking the visits.

5.14 It is very important that, wherever possible, the same person visits the child in order to build and maintain a relationship with the child and family and to develop an understanding of the behaviour and communication methods of the child. It will not always be possible for the child to be visited by a qualified social worker with whom the child has developed a trusting relationship. Under some circumstances it may be better for the child to be visited quickly by another professional known to the child, for example, an unqualified social worker. Whenever possible the views of the child should be ascertained about the individual who they would prefer to carry out the visits.

Consultation question

Is the guidance clear about the required skills and experience required of the visitor?

6. Support for accommodated children to promote contact with their family

6.1 Paragraph 8A of Schedule 2 to the 1989 Act requires local authorities to promote contact between families and children living apart from their families because they have been accommodated under sections 85 or 86. The services provided under paragraph 8A may in particular include:

- a) advice, guidance and counseling;
- b) services necessary to enable the child to visit, or be visited by, members of their family;

- c) assistance to enable the child and members of the family to have a holiday together.
- 6.2 Nothing in paragraph 8A affects the duty imposed by paragraph 10 of Schedule 2. This requires local authorities to take such steps as are reasonably practicable to enable children in their areas who are in need and whom they are not looking after to live with their family or to promote contact between them and their family if it is necessary to do so in order to safeguard or promote their welfare.
- 6.3 It is clearly in the interests of children in all but a small minority of cases to promote contact between the children and their families.

“Contact in the sense of personal meetings and visits will generally be the most common and, for both families and children, the most satisfactory way of maintaining their relationship. But other means which can help to keep family bonds alive should be borne in mind: letters, telephone calls, exchange of photographs. Modern technology offers greater opportunities than ever before for separated people to maintain links and responsible authorities and carers should work together to explore how electronic media can support positive relationships for children.”⁸

However for many children with communication difficulties face to face contact will be essential.

- 6.4 Children living away from home will benefit from contact not only with parents and brothers and sisters but also with members of the wider family. It will be important to ascertain from the child and family which significant relationships should be promoted.
- 6.5 Often families will require support and encouragement to maintain contact with their child. They may feel sadness, distress, guilt or other emotions which may lead to a degree of withdrawal from the child. A supportive relationship with the parents, perhaps from a voluntary organisation or specialist disability organisation, can help the parents come to terms with what has happened and become more proactive in maintaining contact.
- 6.6 Such advice and counselling services can be provided by the local authority as well as practical services, such as help with transport costs and costs of a family holiday.

Report of the visit

- 6.7 Regulation 6 of the Accommodated Children Visiting Arrangements Regulations requires the representative of the authority to provide a report of each visit to the responsible local authority and sets out the people to whom the local authority must give a copy of the report. The child's views must be set out alongside the social worker's assessment of whether the child's welfare is being adequately safeguarded in the placement.
- 6.8 The report to be written by the visitor must set out their assessment of:
- a) the child's wishes and feelings about the accommodation, so far as the visitor has been able to ascertain them;
 - b) whether the child's welfare is adequately safeguarded and promoted by the accommodation;
 - c) whether further visits, in addition to the statutory minimum, are required in order to safeguard and promote the child's welfare;
 - d) any services which the visitor considers appropriate to be available with a view to promoting contact between the child and their family; and

⁸ *Care Planning, Placement and Place Review Statutory Guidance* paragraph 2.90, DCSF 2010

e) any other steps that should be taken by the responsible local authority exercising its functions under the 1989 Act to safeguard and promote the child's welfare.

6.9 The report should confirm that the child was seen and if not why not, and if the child was seen alone. It should also comment on the child's welfare and the success of the placement including any comments made by the child or those caring for the child. Any matter for concern or difficulties should be highlighted so that the need for any necessary action can be discussed with the visitor's supervisor. Where there are serious concerns about the child's welfare and there is dwindling contact with the child's family, the question of the appropriate legal status of the child should be re-considered.

6.10 Regulation 6(3) requires the responsible authority to send a copy of the report to:

- a. the child, unless this is not appropriate given age and understanding;
- b. the child's parents and any person with parental responsibility unless to do so would place the child at risk of significant harm;
- c. the local authority where the child is placed where different from the responsible authority;
- d. any other person with responsibility for the child's welfare, this could be extended family who keep in touch or possibly a previous foster carer.

Consultation question

Is the guidance clear about the support to enable the child to maintain contact with their family?

Do you have any further comments?

**Children's Health and Social Service Directorate
Welsh Assembly Government**

Extract from forthcoming draft statutory guidance for local authorities on care planning, placement and case review for looked after children which will be issued for consultation shortly

The Child's Wishes and Feelings

1.1 Before making any decision with respect to a child whom the local authority are looking after or proposing to look after, the authority must, so far as reasonably practicable, ascertain the wishes and feelings of the child in accordance with its duty under section 22(4) and in making any decision in relation to the child, take those wishes and feelings into consideration, having regard to the child's age and understanding (section 22(5)).

1.2 It is particularly important for children to feel that they are active participants and engaged in the process when adults are trying to solve problems and make decisions about them. When plans are being made for the child's future, they are likely to feel less fearful if they understand what is happening and that they have been listened to from the beginning. Close involvement will make it more likely that they feel some ownership of what is happening and it may help them understand the purpose of services or other support being provided to them, their family and carer. Where a child or young person has difficulty in expressing their wishes and feelings about any decisions being made about them, consideration must be given to securing the support of an advocate.

1.3 There are further practical reasons for ascertaining children's wishes and feelings:

- many children have an understanding of what is causing their problems and what underlies their needs;
- they may have insight into what might or might not work in the context of their current circumstances and environment;
- they often know what sort of support they would most value and be able to access;
- engaging children helps to recognise their difficulties and develop their strengths and to help promote their resilience.

The UN Convention

1.2 Articles 12 and 13 of the UN Convention on the Rights of the Child reflect this duty. In particular Article 13 spells out the need to be creative in enabling children to express their views '*either orally, in writing or in print, in the form of art, or through any other media of the child's choice*'.

1.3 All the duties on local authorities set out in primary legislation, associated Regulations and reflected in the statutory guidance, depend on the exercise of professional judgement by social workers and other practitioners, informed by their direct engagement with children and young people.

1.4 The child and young person's views should be sought in discussion with the child, subject to their age and understanding (see section 22(4)(a) and (5)). The child's views as expressed should always be discussed, recorded and given due consideration before a placement decision is made and at every review meeting and at case conferences. The possibilities and options identified in the plan should be explained, discussed and if

necessary, reassessed in the light of the child's views. The social worker should be aware and acknowledge that there may be good reasons why the child's views are different from those of his parents or the local authority. The more mature the child, the more fully he will be able to enter into discussion about the plans and proposals and participate in the decision making process. When older children are involved, and particularly in a case of self-referral, there may well be a different perception of the child or young person's needs and interests as seen by the child or young person and his parents. With young children, the social worker should be creative and imaginative in finding ways to communicate with the child and discover his feelings. All children need to be given information and appropriate explanations so that they are in a position to develop views and make choices.

Notifications under section 85 and 86 of the Children Act 1989: draft model protocol being developed by the Welsh Assembly Government, Department for Health & Social Services in conjunction with the children's residential care sector



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Out of Area Notification Protocol

Where a child who is looked after is placed out of the local authority area the responsible authority has a statutory duty to notify the local authority and health care provider in the area in which the child is to be placed of the arrangements for placement prior to placement and no later than 10 working days thereafter.

Similarly where a child who is not looked after is placed in a health or education placement for three months or more or with the intention of the placement lasting for this time the placing authority has a duty to notify the local authority in the area in which the child is to be placed prior to placement or as soon as practicable thereafter.

These notification duties have been inconsistently performed in the past leading to concerns about the welfare of the child. The purpose of this voluntary protocol is to seek the Children's Residential Care sector's assistance in notifying the local authority in which the home is situated where a child is placed in the home from outside that local authority area and again when the placement ends. The protocol is intended to supplement rather than replace existing duties of notification which fall on the placing authority to ensure the child is safeguarded.

This notification should be sent to the Head of Children's Services in the local authority and the Local Health Board in which the home is situated. The protocol will ensure that the social services department is aware of children placed within their area and allow them to liaise with their counterparts in the placing authority to ensure that their duties in relation to the health and wellbeing of the child are met. A copy of the notification should also be forwarded to the relevant regional office of the Care and Social Services Inspectorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

Name of child:	
Date of Birth:	
Legal Status:	
Previous home (family) address:	

Current placement Address: (i.e. name and address of children's home)	
Date placed:	
Placing Authority: (Local Authority Health of Education) or LHB/PCT Name of Contact (i.e. social worker/other) address & Contact details	
Name and contact details of contact within Placing Authority (i.e. Social Worker if looked after child)	
Name and address of child's GP	
Date placement ended:	

Signed:

Name:

Position:

Date: