

## Appendix 2: Legal Framework

### Notification that a child is being placed in a host authority

It is a requirement within the **Arrangements for Placement of Children General Regulations 1991**, in **Regulations 10** and **12** that when one local authority places a child which it is looking after within the area of another local authority regardless of the type of placement, that it notifies that authority of the placement and provides certain information.

This was updated by the **Children's Homes and Looked After Children (Miscellaneous Amendments) (England) Regulations 2013** which came into effect on 27 January 2014. This requirement is in addition to the existing requirement outlined above. The change to Regulation 12B (now **Reg 7**) requires the registered person of a Children's Home also to notify the local authority when a child is admitted to or discharged from their children's home and set out the information that the notice must contain. This information is contained in the form which should be completed in Appendix 1: Appendix 1: Notification of Placement or Change of Placement of Looked After Children within the area of another Local Authority.

The requirement will continue to enable the local authority within whose area the child is placed (host local authority), to maintain a Register of all looked after children resident within its area. This register is maintained through entry onto data systems and should include:

- Those children who they are responsible for looking after (Responsible authority) and are placed within their own boundaries
- Those children who they are responsible for looking after (Responsible authority) and are placed within the boundaries of another authority (host local authority)
- Those children looked after who are placed within their boundaries by another local authority (Responsible authority), and they are the host local authority

### Amendment of the Care Planning, Placement and Case Review (England) Regulations 2010

19. In regulation 13, after paragraph (3) insert—

“(4) In the case of a placement outside the area of the responsible authority (including a placement outside England)—

(a) the responsible authority must give written notification to the area authority of the arrangements for C's placement before the placement is made or, if the placement is made in an emergency, within five working days of the start of the placement unless it is not reasonably practicable to do so, and

(b) that notification must include—

(i) details of the responsible authority's assessment of C's needs and the reasons why the placement is the most suitable for responding to these,

(ii) a copy of C's care plan (where this has not already been provided to the area authority by virtue of regulation 11(2)(d)(ii)).”

## **Request for information about a location prior to potential placement**

**The Children's Homes and Looked after Children (Miscellaneous Amendments) (England) Regulations 2013** also introduced the following changes to the Children's Homes Regulations 2001 and the Registration Regulations:

- **Regulation 31(1A) and (1B) of the Children's Homes Regulations 2001**

introduced a requirement for providers or managers to:

- Ensure that premises used for the purposes of a children's home are appropriately and suitably located so that children cared for by the home are: (a) effectively safeguarded, and (b) able to access services to meet the needs identified in their care or placement plans;
- Review the appropriateness and suitability of the location of the premises at least once in every calendar year.

For more information see Children's homes regulations amendments 2014 Advice for children's homes providers on new duties under amendments to regulations that came into effect in January and April 2014 (published July 2014 by Department for Education)

### **The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review (June 2015)**

Under the Children's Homes and Looked after Children (Miscellaneous Amendments) (England) Regulations 2013, local authorities are required to consult and share information before placing children in distant placements and the Director of Children's Services (DCS) must approve of these placements.

The general duties of local authorities towards looked-after children under Section 22 of the Children Act apply to all placements, including those that are out of authority. There are however a number of specific factors that must be taken into account when decisions are made to place the child out of the area of the responsible authority, but still within England and Wales [regulations 11 and 12].

### **The process for placing out of the authority's area**

Under the amended regulations a decision to place a child outside the area of the responsible authority must be approved by a nominated officer, or, if that placement is a distant one, by the DCS [regulation 11 (1)(a) or (b)]. The requirement to obtain the approval of the nominated officer, or DCS for distant placements, does not apply where the placement is with the parent, a connected person or a foster carer approved by the responsible authority [regulation 11(4)].

Regulation 11(2)(d)(ii)), as amended, requires the responsible authority to consult with the area authority when they are considering making a distant placement, in good time to enable a thorough assessment of appropriateness.<sup>1</sup> Annex 4 suggests information that might be discussed when a responsible authority consults the area authority about plans to place a child in a distant placement. This does not mean the area authority has a veto over the responsible authority's placement decisions.

<sup>1</sup> The Children's Homes and Looked After Children (Miscellaneous Amendments) (England) Regulations 2013 – Part 3

The child's personal Independent Reviewing Officer (IRO) must be consulted before any final decision is made about making an out of authority placement, whether distant or not, to enable the IRO to discuss the proposed arrangements with the child. The child's wishes and feelings should be taken into account, and where appropriate the child's relatives or parents should be consulted.

Where a responsible authority is considering a placement in a children's home it should take into account the information in the home's Statement of Purpose. It should ask for a copy of the home's location assessment which should include details of the home's safeguarding arrangements, including any measures taken by the home to manage safeguarding concerns arising from the neighbourhood where the home is located.<sup>2</sup>

In making a judgement about the suitability of an out of authority placement for a child, the responsible authority should assess the arrangements which it will need to put in place to enable the child to access services such as primary and secondary health care.

Where the child will require specialist health services such as CAMHS, the Clinical Commissioning Group (CCG) that commissions secondary healthcare in the area authority should be consulted, so the responsible authority can establish whether the placement is appropriate and able to meet the child's needs.<sup>3</sup> The designated nurse for looked-after children in the area authority will also be a valuable source of advice and information. Similarly, the Virtual School Head for looked-after children in the area authority, (Looked After Children Education Co-ordinators (LACE) in Wales) should be able to advise about access to school support. For children vulnerable to exploitation and abuse, children's services in the area authority will be an important source of intelligence and information about local arrangements for safeguarding children.

The responsible authority must also make sure that the appropriate persons and services in the area authority are notified [regulation 13] (see section on notifications).

### **Emergency placements out of area**

An emergency placement occurs when a placement is necessary without any forewarning. This could occur when a placement must be arranged urgently to protect a child for example from sexual exploitation or gang involvement; if a placement is made out of hours by the emergency duty team; or when a placement must be made immediately (on the same day) because of the breakdown of the child's current placement. Emergency placements may also be required at very short notice when a child becomes looked-after because they have been remanded by the youth court.<sup>4</sup>

<sup>2</sup> Children's Homes (England) Regulations 2015 – section 46

<sup>3</sup> Statutory Guidance on Promoting the Health and Well-being of Looked After Children Department of Health 2015 emphasises the need for local authorities to have agreed mechanisms with CCGs to ensure guidance on responsibility for commissioning health care is followed when making placement decisions and to resolve any funding disputes that may arise where children are placed in another local authority/CCG area. Further information about the responsibility for commissioning secondary health care for looked-after children within the NHS can be found in: Who Pays? Determining responsibility for payments to providers August 2013. The joint DH/Welsh Govt. commissioning protocol may be relevant also.

<sup>4</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss. 92&93; Children Act 1989 s.21

In such circumstances, it will not be possible to complete all the actions set out in regulation 11(2). However, as a minimum, the nominated officer or the DCS (for distant placements), must be satisfied of the following before approving a decision:

- the child's wishes and feelings must have been ascertained and given due consideration [regulation 9(1)(b)(i)]; and
- the placement is the most appropriate placement available consistent with the care plan [regulation 11(2)(b)].

The remaining requirements to notify/consult the area authority, and provide them with the child's care plan and consult the child's relatives and inform the IRO must be undertaken within five working days [regulations 9(1)(b)(ii) 11(2)(c) and (d)].

This is to avoid the child remaining in an unsuitable placement that does not meet his or her needs or to avoid difficulties in bringing the child back to a more suitable placement within or closer to the responsible authority.

The requirement to obtain approval of the nominated officer, or the DCS for distant placements, does not apply where the placement out of area is with a local authority foster carer who is either approved by the responsible authority or who is a connected person.

### **Notifications**

When the decision about the most appropriate placement has been made but before the child is placed, notification should be sent to a range of specified people and agencies. The aim of notification primarily is to ensure that those involved in the decision-making process have an opportunity to make any necessary arrangements to respond to the child's needs but will also provide an opportunity for views to be represented to the responsible authority.

### **Who should be notified**

The decision should be notified in writing to the child, the parents, the child's carers, representatives of other agencies involved with the child and the IRO about the placement [regulation 13(2) (a)(b)(e) to (i)].

The responsible authority should also consider notifying any other person with a sufficient interest in the child for example a person involved in the child's life but not specified in regulation 13. Note should be taken of the provision [regulation 13(3)] that in some circumstances the responsible authority may decide not to provide information to all or any of the persons specified in regulation 13 if, as a result of doing so the child would suffer or be likely to suffer significant harm.

Notification must also be made to any person who has an order for contact or child arrangement order whether under section 34 or section 8 [regulation 13(2)(b) and (c)]. Good practice requires that the responsible authority's social worker explains personally to the child, the child's parents and the child's carers what the placement plan entails and the reason for reaching the decisions which are reflected in the plan. This should be done in addition to any explanations given during the assessment and planning process. Where a child's or parent's first language is not English, an interpreter may be required. Sensory impaired children and adults may require the formal written notification to be in a specific format.

Other agencies involved with the child are [regulation 13(2)(f) to (h)]:

- the CCG (or local health board in the case of a child living in Wales);
- the registered medical practitioner (GP); and
- any education institution attended by the child (which will include early years provision, school, college or pupil referral unit).

Notifications to area authorities and other agencies can be problematic as it may be difficult to know who is the appropriate person to notify in the authority or other agency at any point in time. Consideration should be given to setting up generic email boxes for notifications across local authorities and CCGs which do not require a named person in the address.

### **Content of the notification**

The written notification of the arrangements for the placement should contain a summary of the proposed arrangements and the objectives, covering:

- the CCG (Clinical Commissioning Group);
- the registered medical practitioner (GP); and
- any education institution attended by the child (which will include early years provision, school, college or pupil referral unit).

In the case of an accommodated child, the notification should also set out the agreed arrangements for the ending of the placement. The explanation given by the responsible social worker to the parents and the child will supplement this. In exceptional circumstances where a child is in care or subject to an emergency protection order, the carer's name and address may be omitted from the notice. This would be in the circumstances when the responsible authority has reasonable cause to believe that informing a person would put the child at risk of significant harm. Where it is necessary to take this exceptional decision in order to safeguard a child, the circumstances and reasons should be recorded on the case record and notified to the parent in writing. The letter of notification should also refer to the representations procedure which each local authority is required to have [section 26(3)]. It will be helpful to enclose an information leaflet so that the parents, the child and others notified of the arrangements are aware of the channel open to them for making representations or complaints.

The area authority should maintain a list of all the notifications of looked after children placed in the area of the authority in order to be able to fulfil its statutory functions under the 1989 Act.

### **Termination of placements by the responsible authority**

When the responsible authority proposes to terminate a placement they must carry out a review of the child's case and ensure that the views of all the people concerned have been heard, including the child (sufficient to his/her age and understanding) as well as parents (where appropriate), the child's carer and other people who were notified when the placement was made [regulation 14]. Certain conditions apply which are explained in the following paragraphs.

Regulation 14 does not apply where the foster carer or registered manager of the children's home decide that they are no longer able to continue with the placement of a child, or where a parent of an accommodated child wishes the child to be returned to their care. If there is not time to conduct a review before the child is returned to the parent consideration should be given to conducting a child in need review after the child returns home. Unless the regulations specified in 14(5) apply, the responsible authority may only terminate the placement following a review of the child's case in accordance with the 2010 Regulations [Part 6].

The review will provide the opportunity to consider what, if any, support and services could be provided which would avoid the need to terminate the placement. If that is not possible the review will provide a forum for considering what would be the most appropriate new placement for the child, taking account of any concerns which have led to the decision to terminate the current placement.

The responsible authority is required to make other arrangements for the child's placement before terminating the current placement, in accordance with their responsibilities under section 22C [regulation 14(2)(a)].

Where the responsible authority considers that there is an immediate risk of significant harm to the child or to protect others from serious injury, the child must be removed from the placement and the requirements set out in regulation 14(2) do not need to be met. Alternative accommodation must be found as soon as possible and the IRO informed as soon as is practicable. Notifications must be made within ten working days of the termination of the placement.

## **Notification with respect to children admitted into, or discharged from, a children's home**

**The Children's Homes (England) Regulations 2015** came into force on 1 April 2015. This strengthened the provision for information to be provided by the children's home to the local authority where a child or young person was living:

41. (1) The registered person must notify, without delay, the local authority for the area in which the children's home is located of every admission of a child into the home and every discharge of a child from the home.

(2) The registered person is not required to notify the local authority in paragraph (1) if that local authority is also the placing authority for the child in question.

(3) A notification under this regulation must be in writing and must state—

(a) the child's name and date of birth;

(b) whether the child is provided with accommodation under section 20 or 21 of the Children Act 1989(a);

(c) whether the child is subject to a care or supervision order under section 31 of the Children Act 1989(b);

- (d) the contact details for—
  - (i) the child's placing authority; and
  - (ii) the independent reviewing officer appointed for the child's case; and
- (e) whether the child has an EHC plan or a statement of special educational needs and, if so, details of the local authority with responsibility for the EHC plan or for maintaining the statement of special educational needs.