

Looked after Children (Scotland) Regulations 2008: Second Consultation

This response is prepared on behalf of SCRA and the Principal Reporter. We welcome the opportunity to comment on the draft 'The Looked After Children (Scotland) Regulations 2008: Second Consultation.' Our comments are directed at those questions most relevant to the Children's Hearing System and we appreciate that a number of comments submitted by SCRA in respect of the first consultation have been addressed in the revised draft regulations. We would particularly draw attention to our comments in relation to regulation 8 and the issue of notification and non-disclosure at page 4 & 5.

Question 1

Please consider the definitions and comment as you feel appropriate.

We suggest that it might be helpful for '**looked after child**' to be defined in the interpretation section of the regulations in line with section 17(6).

We continue to have concerns about whether the definition of 'parent' as the mother or father of the child is sufficiently detailed given definitions which exist elsewhere to address the complexities which can arise. In line with our comments on the first consultation,, we would raise the possible consequences of such a definition if used throughout the Regulations, e.g. a father with no parental responsibilities or rights, with no involvement with the child, perhaps no family life with the child in terms of the European Convention on Human Rights, would be entitled to be involved in the planning for the child and to receive a copy of the care plan. While it may be appropriate to involve some such fathers, blanket provisions about their involvement and the provision of information to them could be detrimental to the interests of the child.

If this definition is to be used we suggest that safeguards are put in the Regulations to protect the interest of a child where to involve such a birth parent would be against the interests of the child. This seems to be provided for in some of the regulations (see notification section) but not in all where it would be appropriate. SCRA do not consider that a 'best interests' test is appropriate for parents with parental rights or responsibilities. Further comment on this point is made later in our response at *Additional Comments* paragraph 3.

Question 2

- a) **Do you consider that regulations 3 to 7 cover all the necessary and appropriate actions for local authorities in respect of care planning?**

We have concerns about the 'reasonably practicable' test re consultation of parents views in regulation 5(1)(b). This raises the issue of an estranged parent in respect of a child for whom they have no rights or responsibilities having access to information about the child and other people in that child's life. The subsection requires a degree of flexibility so as not to require involvement of and information sharing with individuals without parental rights or responsibilities where their involvement may be detrimental to the child's best interests. We suggest that 'practicability' may not be wide enough to encompass all these situations and that a 'best interests' test may also be appropriate.

We suggest that the situation where the child or consulted person is not in agreement with the care plan is addressed in guidance. We consider it important that the effect of non-agreement from the child or a relevant person is clearly addressed - including both the effect on the ability of agencies to implement the care plan where there is no agreement and also the situation where the child or a relevant person is not satisfied with the services proposed in the care plan.

- d) **The duty to consult with the child and the duty to produce a care plan are new requirements (previous regulations referred to making a care plan "so far as is reasonably practicable"). Are you content with these new duties?**

We suggest that care is taken in respect of the extent of medical information included in the plan for the purpose of regulation 5(2)(e). We query whether a blanket inclusion of the medical report is appropriate given the range of persons to whom the care plan will be made available. We suggest that consideration be given to including in the care plan only relevant medical information.

Question 3

Do you consider that regulations 9 and 10 cover all the necessary and appropriate actions for local authorities in respect of children cared for by their parents or those with parental rights and responsibilities? Should anything else be included here?

Regulation 9 reflects the current position and prevents a local authority from placing a child with a parent under section 25 of the Children (Scotland) Act 1995. This is so even where that parent has not been caring for the child and has no parental responsibilities or rights and therefore has no locus to influence the application of section 25. We have concerns that it is possible for the situation to arise where a child is provided with accommodation under section 25 and the local authority in assessing the child's needs can consider placing with relatives but not such a parent. We raise the question of whether the regulations should allow for the possibility of placement with a parent where the parent has no parental rights or responsibilities or is not a relevant person (in terms of section 93(2)(b) of the Children (Scotland) Act 1995).

Question 4

- a) **In relation to regulations 11 to 17, do you consider that all the necessary and appropriate actions and considerations when placing children with kinship carers are covered here?**

We welcome regulations on kinship care and agree that there is a clear need for regulations on the approval of such carers as exemplified in the current interim guidance on the assessment and approval of kinship carers. We are conscious of the needs for safeguards for children in relation to kinship placements as highlighted in the SWIA report on the Western Isles.

In this respect we consider that there should be explicit regulations for the process of approval of kinship carers. The draft regulations do not, as presently drafted, equate with the step by step process of approval contained in the interim guidance. For example, the interim guidance provides for various steps of assessment at placement, at 6 weeks and 3 months, steps silent in the draft regulations. The draft regulations indicate that kinship carer approval can be provided within 72 hours. (Regulation 38(4) requires approval within 72 hours or an emergency kinship care placement cannot continue.) We consider that this indicates that the process of approval may not be sufficiently robust. We would support the approach in the interim guidance and suggest that the regulations be amended to ensure a clear and robust approval process from initial basic approval through to final approval of the kinship carer.

We also suggest that the regulations set out requirements for local authorities to review approvals, and to terminate as appropriate.

We suggest that the regulations require a good fit between the approval process and the situations where the local authority may recommend to a Children's Hearing that the child be placed with someone who is not a relevant person.

In line with the current Fostering of Children (Scotland) Regulations 1996 (regulations 13 and 14) we would suggest that additional provision be made in regulation 12(2) for the local authority to consider the suitability of the accommodation of the kinship carer and the suitability of the placement for the child in view of any others living in the kinship carer's household.

Question 6

- a) **In relation to regulations 22 to 32, do you consider that all the necessary and appropriate actions and considerations when placing children with foster carers are covered here? Should anything else be included?**

We note the changes in regulation 28(2) compared to the previous regulation 17(3) and agree with the changes made. However, we continue to be of the view that the new carer should be subject to approval as a foster carer.

Question 9

a) We welcome your comments on regulations 36 to 39

We suggest that 36(1) should include relatives of a child in case there are relatives who do not fall into category (c).

We consider that regulation 36(3)(e) should be extended to include the terms of any decision made by a Children's Hearing and the terms of any permanence order.

ADDITIONAL COMMENTS

1. Renumbering

We suggest that there is some renumbering required in regulations 4, 5 and 38.

2. Regulation 8

We continue to have concerns about what is now regulation 8. We are unsure of the policy intention behind this regulation. If it is the policy intention to restrict the circumstances in which a local authority may recommend to a children's hearing that the child reside with someone who is not a relevant person, then the regulation does not adequately set out the restrictions. The regulation simply confirms that the local authority may make certain recommendations in certain circumstances.

We recognise that the reference to section 56(7) of the Children (Scotland) Act 1995 repeats the reference to that section in the current Fostering of Children (Scotland) Regulations 1996 regulation 15. However, that is a reference to a very specific type of report which is not relevant to many children's hearings. We suggest that if the intention is to restrict the circumstances in which a local authority can make recommendations about placements then the reference to section 56(7) should be removed or replaced.

We also note that rule 20(6) of the Children's Hearings (Scotland) Rules 1996 will require to be amended in line with the regulations and the policy intention.

The Principal Reporter would welcome the opportunity to discuss these points in more detail.

3. Notification/non- disclosure

Throughout the regulations there is reference to notification being withheld where it is 'not in the child's interests'. (e. g. regulations 14(3)(a), 29(3)(a), 34(3)(a))

We recognise that there will be some situations where qualification is needed to the notification process (see our response to question 1 and the definition of 'parent').

However , as drafted , these subsections allow a local authority to withhold notification from persons with parental rights and responsibilities who would generally be considered to be entitled to the information. We query whether this test is sufficiently robust to justify the withholding of the child's whereabouts from persons with relevant parental responsibilities and rights.

Issues may arise for the safety or privacy of others, not simply the child, where third party information is shared through the use of care plans. We consider that guidance on this area of information sharing is essential.