

2011 No. 699 (W. 106)

**CHILDREN AND YOUNG
PERSONS, WALES**

The Visits to Former Looked After
Children in Detention (Wales)
Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about visiting requirements for children and young people who were looked after by a local authority but have ceased to be so as a result of being detained in an institution, either having been remanded to prison custody or following conviction and sentencing by a court. Those who will have ceased to be looked after will be children and young people who, prior to entering custody, were either provided with accommodation under section 20 of the Children Act 1989 (“the 1989 Act”) or who had been remanded to local authority care under section 23(1) of the Children and Young Persons Act 1969 on sentencing.

These Regulations are made under section 23ZA of the 1989 Act (inserted by section 15 of the Children and Young Persons Act 2008) which confers a duty on a local authority (“the responsible local authority”) to ensure that children who have ceased to be looked after by it as a result of prescribed circumstances are visited by a representative of the responsible local authority and have access to advice, support and assistance.

The prescribed circumstances for the purposes of section 23ZA(1)(b) of the 1989 Act are that the child is detained in a young offender institution, a secure training centre or a secure children’s home (regulation 3).

Regulation 4 makes provision about the frequency of visits; the responsible local authority must arrange for its representative to visit the child within ten working days of the child first being detained and thereafter whenever reasonably requested to do so by specified

persons, for example, the child, the child's parents or in line with the recommendations made by the representative.

Regulation 5 provides that during each visit, the representative must speak to the child in private unless it is not appropriate to do so or the child refuses.

Regulation 6 places a duty on the representative to provide a report of each visit and sets out what must be included in that report. It also provides that a copy of the report must be given to the child, unless it would be inappropriate to do so, and to certain other persons.

Regulation 7 makes provision in relation to the responsible local authority's duty under section 23ZA(2)(b) of the 1989 Act to arrange for advice, support and assistance to be available to the child.

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Made 8 March 2011

Laid before the National Assembly for Wales
10 March 2011

Coming into force 1 April 2011

The Welsh Ministers, in exercise of the powers conferred by sections 23ZA(1)(b), (3) and (4), 104(4) and 104A of the Children Act 1989⁽¹⁾, make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Visits to Former Looked After Children in Detention (Wales) Regulations 2011 and they come into force on 1 April 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989;

(1) 1989 c.41; section 23ZA was inserted by section 15 of the Children and Young Persons Act 2008 (c.23) (“the 2008 Act”); section 104(4) was amended by sections 39 and 42 of the 2008 Act; section 104A was inserted by section 39 of and paragraphs 1 and 26 of Schedule 3 to, the 2008 Act. The powers are expressed to be exercisable by the “appropriate national authority”, defined in section 30A of the Children Act 1989 (“the 1989 Act”) as meaning, in relation to Wales, the Welsh Ministers. For the definition of prescribed see section 105(1) of the 1989 Act.

“A” (“A”) means a child who was looked after by a local authority but has ceased to be looked after⁽¹⁾ by it as a result of the circumstances prescribed in regulation 3;

“R” (“R”) means the representative of the responsible authority who is appointed to visit A in accordance with the arrangements made by it under section 23ZA of the 1989 Act;

“institution” (“*sefydliad*”) means a young offender institution, a secure training centre or a secure children’s home;

“relevant youth offending team case manager” (“*rheolwr achos tîm troseddau ieuencid perthnasol*”) means the person within the responsible local authority’s youth offending team⁽²⁾ who is managing A’s case;

“responsible local authority” (“*awdurdod lleol cyfrifol*”) means the local authority which looked after A immediately prior to A being detained;

“secure children’s home” (“*cartref diogel i blant*”) means a children’s home used for the purpose of restricting liberty, in respect of which a person is registered under Part II of the Care Standards Act 2000⁽³⁾; and

“working day” (“*diwrnod gwaith*”) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971⁽⁴⁾.

(2) These Regulations do not apply to a child who is a relevant child for the purposes of section 23A of the 1989 Act⁽⁵⁾.

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- (1) For the meaning of a child who is “looked after” see section 22(1) of the 1989 Act, as amended by section 107 of, and paragraph 19 of Schedule 5 to, the Local Government Act 2000 (c.22), section 2 of the Children (Leaving Care) Act 2000 (c.35) and by section 116(2) of the Adoption and Children Act 2002 (c.38). “Local authority” is defined by section 105(1) of the 1989 Act as, in relation to Wales, “the council of a county or county borough”.
- (2) Under section 39(1) of the Crime and Disorder Act 1998 (c.37) a local authority has a duty to establish one or more youth offending teams for its area.
- (3) 2000 c.14.
- (4) 1971 c.80.
- (5) Section 23A(2) provides that a “relevant child” is a child who: (a) is not being looked after by any local authority; (b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2 to the 1989 Act; and (c) is aged 16 or 17. Section 23B of the 1989 Act sets out additional functions of the responsible authority in respect of relevant children.

Circumstances prescribed for the purposes of section 23ZA of the 1989 Act

3. The circumstances prescribed for the purposes of section 23ZA(1)(b) of the 1989 Act(1) are that the child is detained pursuant to an order of a court in—

- (a) a young offender institution(2),
- (b) a secure training centre(3), or
- (c) a secure children's home.

Frequency of visits

4.—(1) The responsible local authority must ensure that its representative ("R") visits A—

- (a) within ten working days of A first being detained, in so far as is reasonably practicable; and
- (b) thereafter whenever reasonably requested to do so by—
 - (i) A,
 - (ii) a member of the staff of the institution where A is detained,
 - (iii) any parent of, or any other person with parental responsibility for, A, or
 - (iv) the relevant youth offending team case manager.

(2) The responsible local authority may arrange for R to make additional visits to A, having regard to any recommendation made by R in accordance with regulation 6(1)(b).

Conduct of visits

5. On each visit, R must speak to A in private unless—

- (a) A, being of sufficient age and understanding to do so, refuses,

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- (1) Section 23ZA(2) places a duty on the local authority to ensure that a person to whom the section applies is visited by a representative of the authority and to arrange for appropriate advice, support and assistance to be available to them if requested; section 23ZA(1)(b) provides that the section applies to a child who was looked after by a local authority but who has ceased to be looked after by it as a result of prescribed circumstances.
 - (2) A young offender institution is defined in section 43(1)(aa) of the Prison Act 1952 (c.52) as amended by the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 11, and the Criminal Justice and Public Order Act 1994 (c.33), section 18(3), and the Criminal Justice and Immigration Act 2008 (c.4), section 148(1), Schedule 26, Part 2, paragraph 3.
 - (3) A secure training centre is defined in section 43(1)(d) of the Prison Act 1952, as amended by the Criminal Justice and Public Order Act 1994, section 5(2), the Crime and Disorder Act 1998 (c.3) and the Powers of Criminal Courts (Sentencing) Act 2000 (c.6).

- (b) R considers it inappropriate to do so, having regard to A's age and understanding, or
- (c) R is unable to do so.

Reports of visits

6.—(1) R must provide a written report of each visit which must include—

- (a) R's assessment, having regard to A's wishes and feelings, as to whether A's welfare is being adequately safeguarded and promoted whilst in detention,
- (b) R's recommendations as to the timing and frequency of any further visits by R,
- (c) any other arrangements which R considers should be put in place with a view to promoting contact between A and A's family or in order to safeguard and promote A's welfare,
- (d) R's assessment as to how A's welfare should be adequately safeguarded and promoted following release from detention, in particular—
 - (i) whether A will need to be provided with accommodation on release by the responsible local authority or another local authority, and
 - (ii) whether any other services should be provided by the responsible local authority or another local authority in the exercise of their duties under the 1989 Act.

(2) R must, in making any assessment under paragraph (1), unless it is not reasonably practicable to do so or it is not consistent with A's welfare, take into account the views of—

- (a) any parent of, or any other person with parental responsibility for, A, and
- (b) the appropriate members of staff of the institution where A is detained.

(3) The responsible local authority must give a copy of the report to—

- (a) A, unless it would not be appropriate to do so,
- (b) a person falling within paragraph (2)(a), unless to do so would not be in A's best interests,
- (c) the governor, director or registered manager⁽¹⁾ of the institution where A is being detained,

(1) That is, a person registered under Part II of the Care Standards Act 2000 as a manager of secure children's home.

- (d) the relevant youth offending team case manager,
- (e) where different from the responsible local authority, the local authority in whose area A is detained, and
- (f) any other person whom the responsible local authority considers should be given a copy of the report having regard to R's assessment.

Advice, support and assistance

7. When making arrangements in accordance with section 23ZA(2)(b) of the 1989 Act for appropriate advice, support and assistance to be available to A, the responsible local authority must ensure that—

- (a) the arrangements—
 - (i) are appropriate having regard to A's age and understanding, and
 - (ii) give due consideration to A's religious persuasion, racial origin, cultural and linguistic background and to any disability A may have, and
- (b) so far as is reasonably practicable having regard to A's age and understanding, A knows how to seek appropriate advice, support and assistance from it as the responsible local authority

Gwenda Thomas

Deputy Minister for Social Services under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

8 March 2011