

2010 No. 2797

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Visits to Former Looked After Children in Detention
(England) Regulations 2010**

<i>Made</i>	- - - -	<i>19th November 2010</i>
<i>Laid before Parliament</i>		<i>25th November 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by section 23ZA(1)(b), (3) and (4), and section 104(4) of the Children Act 1989(a):

Citation, commencement and application

- 1.—(1) These Regulations may be cited as the Visits to Former Looked After Children in Detention (England) Regulations 2010 and come into force on 1st April 2011.
- (2) These Regulations apply in relation to England only.

Interpretation

- 2.—(1) In these Regulations—
- “the 1989 Act” means the Children Act 1989;
- “A” means a child who was looked after by a local authority but who has ceased to be looked after(b) by them as a result of the circumstances prescribed in regulation 3;
- “R” means the representative of the responsible authority who is appointed to visit A in accordance with arrangements made by them under section 23ZA of the 1989 Act;
- “relevant youth offending team case manager” means the person within the responsible authority’s youth offending team(c) who is managing A’s case;
- “responsible local authority” means the local authority which looked after A immediately prior to A being detained; and

(a) 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) is amended by sections 39 and 42 of 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”) (which is inserted by section 39 of the 2008 Act) as meaning, in relation to England, the Secretary of State. For the definition of “prescribed” see section 105(1) of the 1989 Act.

(b) 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 in section 105(1) of the 1989 Act as, in relation to England, “the council of a county, a metropolitan district, a London Borough or the Common Council of the City of London”. Further, by virtue of the Isles of Scilly (Children Act 1989) Order 2010 (S.I. 2010/1116) any reference to a “local authority” in the 1989 Act is to be construed, in relation to the Isles of Scilly, as a reference to the Council of the Isles of Scilly.

(c) 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 their area.

“secure children’s home” means a children’s home used for the purpose of restricting liberty and approved for that purpose by the Secretary of State, in respect of which a person is registered under Part 2 of the Care Standards Act 2000(a).

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

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

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

- (i) a young offender institution(d),
- (ii) a secure training centre(e), or
- (iii) a secure children’s home.

Frequency of visits

4.—(1) The responsible authority must ensure that their 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 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 authority may arrange for R to make such 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,
- (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—

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- (a) 2000 c.14.
 - (b) 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 and (c) is aged sixteen or seventeen. The Care Leavers (England) Regulations 2010 (S.I. 2010/2571) prescribe, for the purposes of section 23A(3), additional categories of “relevant children” and categories of children who are not relevant children despite falling within subsection (2). Section 23B of the 1989 Act sets out the additional functions of the responsible authority in respect of relevant children.
 - (c) Section 23ZA(2) places a duty on the responsible 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 them as a result of prescribed circumstances.
 - (d) A youth offender institute 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.
 - (e) 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.37), the Powers of Criminal Courts (Sentencing Act) 2000 (c.6).

- (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 recommendation 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 authority or another local authority, and
 - (ii) whether any other services should be provided by the responsible 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) appropriate members of staff of the institution where A is detained.
- (3) The responsible 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^(a) of the institution where A is being detained,
 - (d) the relevant youth offending team case manager,
 - (e) where different from the responsible authority, the local authority in whose area A is detained, and
 - (f) any other person whom the responsible authority consider 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) for appropriate advice, support and assistance to be available to A, the responsible 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 the authority.

Tim Loughton
Parliamentary Under Secretary of State
Department for Education

19th November 2010

(a) That is, a person who is registered under Part 2 of the Care Standards Act 2000 as a manager of a secure children's home.

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 authority”) to ensure that children who have ceased to be looked after by them as a result of prescribed circumstances are visited by a representative of the responsible 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 authority must arrange for their representative to visit the child within ten days of the child first being detained and thereafter whenever reasonably requested to do so by specified persons, for example, the child or the child’s parents.

Regulation 5 provides that during each visit, the representative must speak to the child in private unless this is not appropriate 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 certain other persons.

Regulation 7 makes provision in relation to the responsible 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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