
WELSH STATUTORY INSTRUMENTS

2015 No. 1823 (W. 265)

CHILDREN AND YOUNG PERSONS, WALES

The Visits to Children in Detention (Wales) Regulations 2015

<i>Made</i>	- - - -	<i>21 October 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>23 October 2015</i>
<i>Coming into force</i>	- -	<i>6 April 2016</i>

The Welsh Ministers, in exercise of the powers conferred by sections 97(1)(b) and (c), (2) and (4) and 196(2) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations⁽²⁾:

Title, commencement and application

1.—(1) The title of these Regulations is the Visits to Children in Detention (Wales) Regulations 2015 and they come into force on 6 April 2016.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989⁽³⁾;

“the 2012 Act” (“*Deddf 2012*”) means the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽⁴⁾;

“the 2014 Act” (“*Deddf 2014*”) means the Social Services and Well-being (Wales) Act 2014;

“A” (“*A*”) means a child—

(a) who was looked after by a local authority but has ceased to be looked after⁽⁵⁾ by it as a result of the circumstances prescribed in regulation 3, or

(b) subject to regulation 2(2), a child who falls within a category specified in regulation 4;

(1) 2014 anaw 4.

(2) See section 197(1) for the definitions of “specified” and “regulations”.

(3) 1989 c. 41.

(4) 2012 c. 10.

(5) For the meaning of a child who is “looked after” by a local authority see section 197(2) of the 2014 Act; “local authority” and “local authority in England” are defined in section 197(1) of the 2014 Act.

“institution” (“*sefydliad*”) means youth detention accommodation(6) or prison(7);

“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 97 of the 2014 Act;

“relevant youth offending team case manager” (“*rheolwr achos tîm troseddwyd ifanc perthnasol*”) means the person within the responsible local authority’s youth offending team(8) who is managing A’s case;

“responsible local authority” (“*awdurdod lleol cyfrifol*”) means—

- (a) where A falls within regulation 3, the local authority which looked after A immediately prior to A being detained,
- (b) where A falls within regulation 4—
 - (i) where A is ordinarily resident in Wales, the local authority for the area in which A is ordinarily resident, and
 - (ii) in any other case, the local authority for the area in which the institution in which A is detained, or the premises in which A is required to live, are situate;

“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(9);

“youth offending team” (“*tîm troseddwyd ifanc*”) has the meaning given in section 39(1) of the Crime and Disorder Act 1998.

- (2) These Regulations do not apply to a child who is—
 - (a) in the care of a local authority in Wales(10);
 - (b) in the care of a local authority in England(11);
 - (c) a category 2 young person(12);
 - (d) a relevant child for the purposes of section 23A of the 1989 Act(13); or
 - (e) a former looked after child who, having been convicted of an offence by a court, is detained in youth detention accommodation or in prison, or is residing in approved premises and, immediately before being convicted, was provided with accommodation by a local authority in England under section 20 of the 1989 Act(14).

(6) “Youth detention accommodation” is defined in section 188(1) of the 2014 Act.

(7) “Prison” is defined in section 188(1) and 197(1) of the 2014 Act.

(8) 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.

(9) 1971 c. 80.

(10) See section 197(3) of the 2014 Act which provides that “A reference in this Act to a child who is in the care of a local authority is a reference to a child who is in its care by virtue of a care order (within the meaning given by the Children Act 1989)”. Provision is made for looked after children in detention or who are required to reside in approved premises within the Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/ 1818 (W. 261)).

(11) See section 105(1) of the 1989 Act which provides that “...any reference to a child who is in the care of a local authority is a reference to a child who is in their care by virtue of a care order” and that a care order “has the meaning given by section 31(11)” of the 1989 Act. A local authority in England has duties in relation to children in their care who are in detention by virtue of the Care Planning, Placement and Case Review (England) Regulations 2010 (S.I. 2010/959).

(12) “Category 2 young person” is defined in section 104(2) of the 2014 Act. A responsible local authority has duties in relation to a category 2 young person who is detained in prison, youth detention accommodation or who is required to reside in approved premises in the Care Leavers (Wales) Regulations 2015 (S.I. 2015/ 1820 (W.262)).

(13) Section 23A(2) of the 1989 Act defines a “relevant child” and section 23B of the 1989 Act sets out additional functions of the responsible local authority in England in respect of such relevant children. A responsible local authority in England has duties towards relevant children who are in detention by virtue of the Care Leavers (England) Regulations 2010 (S.I. 2010/2571).

(14) The responsible local authority in England has duties in relation to such former looked after child under the Looked After Children in Detention (England) Regulations 2010 (S.I. 2010/ 2797).

Circumstances specified for the purposes of section 97(1)(b) of the 2014 Act

3. The circumstances prescribed for the purposes of section 97(1)(b) of the 2014 Act(15) are that a child, having been convicted of an offence by a court, is—

- (a) detained pursuant to an order of a court in youth detention accommodation(16) or in prison(17), or
- (b) is residing in approved premises(18).

Categories specified for the purposes of section 97(1)(c) of the 2014 Act

4.—(1) The following categories are specified for the purposes of section 97(1)(c) of the 2014 Act—

- (a) a child who is ordinarily resident(19) in Wales who, having been convicted of an offence by a court, is—
 - (i) detained in youth detention accommodation or in prison, or
 - (ii) residing in approved premises; and
- (b) a child who, having been convicted of an offence by a court, is—
 - (i) detained in youth detention accommodation or in prison in Wales, or
 - (ii) residing in approved premises in Wales.

(2) Paragraph (1) does not apply in relation to a child who falls within a description set out in sub-paragraphs (a) to (e) of regulation 2(2).

Local authority specified for the purposes of section 97(2) of the 2014 Act

5.—(1) Paragraph (2) specifies, in accordance with section 97(2) of the 2014 Act, the local authority which must discharge the duties imposed by section 97 of the 2014 Act or under these Regulations in relation to a child who falls within a category specified in regulation 4.

(2) Where a child falls within a category specified in—

- (a) regulation 4(1)(a), the local authority in which the child is ordinarily resident(20);

(15) Section 97(3) of the 2014 Act places a duty on a local authority to ensure that a child to whom the section applies is visited by a representative of the authority and to arrange for appropriate advice and other support to be available to a child to whom the section applies.

(16) “Youth detention accommodation” is defined in section 188(1) of the 2014 Act and means—
(a) a secure children’s home,
(b) a secure training centre,
(c) a young offender institution,
(d) accommodation provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children Act 1989 for the purpose of restricting the liberty of children,
(e) accommodation, or accommodation of a description, for the time being specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for purpose of detention and training orders).

A “secure children’s home” means a children’s home used for the purposes of restricting liberty and approved for that purpose in respect of which a person is registered under Part 2 of the Care Standards Act 2000;

“secure training centre” has the meaning given in section 43(1)(d) of the Prison Act 1952; and

“young offender institution” has the meaning given in section 43(1)(aa) of that Act.

(17) “Prison” is defined in section 188(1) and 197(1) of the 2014 Act having the same meaning as in the Prison Act 1952 (c. 52) (see section 53(1) of that Act).

(18) “Approved premises” is defined in section 188(1) of the 2014 as having the meaning given by section 13 of the Offenders Management Act 2007 (c. 21).

(19) Section 194 and section 186(2) of the 2014 Act make provision about the ordinary residence status of a child who is detained in youth detention accommodation or in prison or who is residing in approved premises.

(20) Section 194 and section 186(2) of the 2014 Act make provision about the ordinary residence status of a child who is detained in youth detention accommodation or in prison or who is residing in approved premises.

- (b) regulation 4(1)(b), the local authority in whose area the youth detention accommodation, prison, or approved premises is situate.

Frequency of visits

6.—(1) The responsible local authority must ensure that R visits A—

- (a) within 10 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 or the approved premises where A is residing,
 - (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 8(1)(b).

Conduct of visits

7. 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

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

- (a) R's assessment, having regard to A's views, wishes and feelings, as to whether A's well-being is being adequately safeguarded and promoted whilst in detention or residing in approved premises,
- (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 well-being,
- (d) R's assessment as to how A's well-being should be adequately safeguarded and promoted following release from detention, or the requirement to reside in approved premises is removed, in particular—
 - (i) whether A will need to be provided with accommodation by the responsible local authority, another local authority or a local authority in England, 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 2014 Act or the 1989 Act, or a local authority in England 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 well-being, 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, or the approved premises in which A is residing.

(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⁽²¹⁾ of the institution where A is being detained or the person responsible for the approved premises in which A is residing,
- (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 and other support

9. When making arrangements in accordance with section 97(3)(b) of the 2014 Act for appropriate advice and other support 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⁽²²⁾ 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 and other support from it as the responsible local authority

21 October 2015

Mark Drakeford
Minister for Health and Social Services, one of
the Welsh Ministers

⁽²¹⁾ That is, a person registered under Part 2 of the Care Standards Act 2000 as a manager of a secure children's home.

⁽²²⁾ "Disability" is defined in section 3(5) of the 2014 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about visiting requirements for specified children who, having been convicted of an offence by a court, are detained in youth detention accommodation or in prison, or are required to reside in approved premises.

Regulation 3 specifies, for the purposes of section 97(1)(b) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”), the circumstances that lead to a child ceasing to be looked after by a local authority (which will bring such children within the scope of the duty set out in section 97(3) of the 2014 Act and these Regulations).

Section 97(3) of the 2014 Act imposes a duty upon the responsible local authority to visit, have contact with and to provide advice and other support for such a child.

The circumstances specified by regulation 3 are that a child who was looked after by a local authority but who has ceased to be looked after because, having been convicted of an offence by a court, they are detained in youth detention accommodation or in prison, or required to reside in approved premises.

Children who, having been convicted of an offence by a court, lose their looked after status as a result of their being detained or required to reside in approved premises will fall within a description set out in paragraph (a) or (b) below—

- (a) a child, who immediately before being detained, was looked after by virtue of the local authority providing them with accommodation under section 76 of the 2014 Act; or
- (b) a child who is ordinarily resident in Wales and who was treated as looked after in accordance with section 104 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”) (by virtue of having been remanded to local authority accommodation or youth detention accommodation in accordance with section 92 of the 2012 Act).

Regulation 4 specifies, for the purposes of section 97(1)(c) of the 2014 Act, two categories of children in respect of whom a local authority (specified in accordance with section 97(2)) will have duties under section 97(3) of the 2014 Act and under these Regulations. The application of regulation 4 is subject to exceptions, which are set out in regulation 2(2).

The children who are excepted from the categories specified in regulation 4 because they fall within a description set out in sub-paragraphs (a) to (e) of regulation 2(2) will be visited and supported by the local authority (or local authority in England) responsible for meeting their needs in accordance with other statutory requirements.

Subject to the provision made by regulation 2(2), the categories of children specified in regulation 4 will fall within a description set out in paragraph (a) or (b) below—

- (a) the first category is a child who is ordinarily resident in Wales who, having been convicted of an offence by a court, is detained in youth detention accommodation or prison, or is required to reside in approved premises,
- (b) the second category is a child who, having been convicted of an offence by a court, is detained in youth accommodation or in prison or required to reside in approved premises that are situated in Wales.

Regulation 5 specifies, for the purposes of section 97(2) of the 2014 Act, which local authority must discharge the duties imposed under section 97 and under these Regulations in relation to a child who falls within a category specified in regulation 4.

Regulation 6 makes provision about the frequency of visits; the responsible local authority must arrange for its representative to visit the child within 10 working days of the child first being detained or required to reside in approved premises 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 7 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 8 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 9 makes provision in relation to the responsible local authority's duty under section 97(3)(b) of the 2014 Act to arrange for advice and support to be available to the child.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.