

2015 No. (W.)

**CHILDREN AND YOUNG
PERSONS, WALES**

**The Care Leavers (Wales)
Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) and they come into force on 1 April 2016. They revoke, and in part, replace, the Children (Leaving Care) (Wales) Regulations 2001.

The Regulations make provision about the support to be provided to certain young persons who are no longer looked after by a local authority, that is, category 2 young persons (as defined by section 104(2) of the Act and regulation 3) and to category 3 and category 4 young persons (as defined in section 104(2) of the 2014 Act).

They re-enact (with some changes) provisions in the 2001 Regulations (other than those relating to young persons who are referred to in those Regulations as “eligible” children, who are now defined as category 1 young persons in accordance with section 104(2) of the 2014 Act, which are now contained in the Care Planning, Placement and Case Review (Wales) Regulations 2015).

These Regulations make provision about the way in which the responsible local authority must carry out an assessment of the needs of category 2, category 3 and category 4 young persons (regulation 5) and about the preparation and review of pathway plans, which are plans setting out the advice and other support the responsible local authority, and where appropriate other persons, intend to provide (regulations 6, 7 and Schedules 1 and 2).

They prescribe the functions of personal advisers appointed for category 2, category 3 and category 4 young persons (regulation 8) and make provision about other support and the suitability of accommodation

(regulation 9 and Schedule 3). They provide for the establishment and keeping of records in relation to assessments and pathway plans (regulation 10).

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.

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**The Care Leavers (Wales)
Regulations 2015**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

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The Welsh Ministers, in exercise of the powers conferred by sections 104(2) and (6), 106(4), 107(7)(c) and (8), 108(6), 109(1) and (3), 116(2) and 196(2) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations⁽²⁾:

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Care Leavers (Wales) Regulations 2015 and they come into force on [xyz].

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

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

“category 2 young person” (“ ”) has the meaning given in section 104(2) of the Act and regulation 3;

“category 3 young person” (“ ”) and “category 4 young person” (“ ”) have the meanings given in section 104(2) of the Act;

“detained” (“ ”) means—

(a) in relation to a child or a category 2 young person who, having been convicted of an offence, is—

(i) detained in prison or in youth detention accommodation,

(ii) residing in approved premises, or

(1) 2014 anaw 04.

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

(iii) residing in any other premises because a requirement to do so has been imposed on the child as a condition of the grant of bail in criminal proceedings,

but does not include a remand to such accommodation or premises⁽¹⁾

(b) in relation to a category 3 or 4 young person, the young person is—

(i) detained in prison or in youth detention accommodation,

(ii) residing in approved premises, or

(iii) residing in any other premises because a requirement to do so has been imposed on the child as a condition of the grant of bail in criminal proceedings;

“former foster parent” (“ ”) has the meaning given in section 108(3) of the Act;

“personal adviser” (“ ”) means the person appointed in accordance with section 106 of the Act for a category 1, category 2, category 3, or category 4 young person;

“placement” (“ ”) has the meaning given in section 81(6) of the Act;

“post-18 living arrangement” (“ ”) has the meaning given in section 108(3) of the Act;

“prison” (“ ”), “youth detention accommodation” (“ ”), and “approved premises” (“ ”) have the meanings given in section 188(1) of the Act⁽²⁾.

(1) Section 104(1) of the Legal Aid , Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the 2012 Act”) provides that a child who is remanded to youth detention accommodation is to be treated as “looked after” by the local authority (see section 104(1) of the 2012 Act); “youth detention accommodation is defined within section 102(1) of the 2012 Act.

(2) “prison” is defined by section 188(1) of the Act by reference to the definition within section 53(1) of the Prison Act 1952 (c. 52); “youth detention accommodation” is defined within section 188(1) of the Act as meaning: (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 the purposes of detention and training orders). “hospital” is defined in section 197(1) of the Act as having the meaning given in section 206 of the National Health Service (Wales) Act 2006 (c.42). For the meaning of “young offender institution” and “secure training centre” see section 43(1)(aa) and (d) of the Prison Act 1952 (c. 52).

“responsible local authority” (“ ”) has the meaning set out in section 104(5).

Category 2 young persons

3.—(1) For the purposes of section 104(6)(a) of the Act, children falling within paragraph (2) are an additional category of category 2 young person.

(2) Subject to paragraph (3), a child falls within this paragraph if—

- (a) the child is aged 16 or 17,
- (b) the child is not subject to a care order⁽¹⁾, and
- (c) on attaining the age of 16 the child was detained, or in hospital, and immediately before being detained or admitted to hospital had been looked after by a local authority for a period or periods amounting in total to at least 13 weeks, which began after the child attained the age of 14⁽²⁾.

(3) In calculating the period of 13 weeks referred to in paragraph (2)(c), no account is to be taken of any period in which the child was looked after by a local authority or a local authority in England in the course of a pre-planned series of short-term placements, none of which individually exceeded four weeks, where at the end of the each such placement the child returned to the care of their parent or a person who is not a parent but who has parental responsibility for them.

(4) Subject to paragraph (5), a child who has lived for a continuous period of six months or more (whether that period commenced before or after they ceased to be looked after) with—

- (a) their parent,
- (b) someone who is not their parent but who has parental responsibility for them, or
- (c) where they were in care and there was a child arrangements order in force immediately before the care order was made, a person named in the child arrangements order as the person with whom they were to live,

is not to be treated as a category 2 young person despite falling within the definition set out in section 104(2) of the Act.

(5) Where living arrangements described in paragraph (4) break down and the child ceases to live

(1) For the meaning of “care order” see section 197(3) of the Act.

(2) For the meaning of “looked after” see section 74 of the Act (child or young person looked after by a local authority).

with the person concerned, the child is to be treated as a category 2 young person.

(6) For the purposes of paragraph (4), a child arrangements order is one that consists of, or includes, arrangements relating to either or both of the following—

- (a) with whom the child is to live, and
- (b) when the child is to live with any person.

(7) For the purposes of this regulation—

“child arrangements order” (“ ”) has the meaning given in section 8(1) of the Children Act 1989(1); and

“hospital” (“ ”) has the same meaning as in the Mental Health Act 1983(2)

PART 2

Assessments of need and pathway plans

Involvement of the young person

4.—(1) In carrying out an assessment of needs under regulation 5, and in preparing or reviewing a pathway plan under regulation 6 or 7, the responsible local authority must, unless it is not reasonably practicable—

- (a) seek and have regard to the views of the category 2, category 3 or category 4 young person (the relevant young person) to whom the assessment or pathway plan relates(3), and
- (b) take all reasonable steps to enable the relevant young person to attend and participate in any meeting at which their case is to be considered.

(2) The responsible authority must as soon as practicable provide the relevant young person with copies of—

- (a) the results of the assessment,
- (b) the pathway plan,
- (c) each review of the pathway plan,

and must ensure that the contents of each document are explained to the relevant young person having regard to their level of understanding, unless it is not reasonably practicable to do so.

(1) 1989 c. 42. Section 8(1) was amended by section 12 of the Children and Families Act 2014 (c. 6).

(2) 1983 c. 20.

(3) Any person exercising functions under the Act must comply with the overarching duties contained in sections 5 – 7 of the Act, in particular sections 5(a), 6(2) and (4) and 7(2).

(3) The responsible authority must ensure that a written record is kept of the view obtained under paragraph (1)(a).

Assessment of needs

5.—(1) The responsible local authority must assess the needs of each category 2 and 4 young person and each category 3 young person who does not already have a pathway plan, in accordance with this regulation.

(2) The assessment of needs must be completed—

- (a) in the case of a category 2 young person not more than 3 months after the date on which the young person became a category 2 young person,
- (b) in the case of a category 3 young person who does not already have a pathway plan, not more than 3 months after the date on which young person became a category 3 young person, and
- (c) in the case of a category 4 young person, not more than 3 months after the date on which the responsible local authority is informed that the category 4 young person is pursuing, or wishes to pursue, a programme of education or training.

(3) The responsible authority must ensure that a written record is kept of—

- (a) the identity of the persons whose views have been sought for the purpose of carrying out the assessment,
- (b) the information obtained in the course of the assessment,
- (c) the deliberations at any meeting held in connection with any aspect of the assessment and
- (d) the results of the assessment.

(4) In carrying out an assessment of the needs of a category 2 young person, or a category 3 young person, who does not already have a pathway plan, the responsible local authority must—

- (a) take into account—
 - (i) whether the young person is detained,
 - (ii) where the young person is a category 3 young person, whether he or she has a post-18 living arrangement,
 - (iii) the young person's health and development,
 - (iv) the young person's needs for education, training and employment,

- (v) the support available to the young person from members of their family and other persons,
 - (vi) the young person's financial needs,
 - (vii) the extent to which the young person possesses the practical and other skills necessary for independent living, and
 - (viii) the young person's needs for advice and other support; and
- (b) unless it is not reasonably practicable or appropriate to do so, seek and take into account the views of—
- (i) the young person's parents,
 - (ii) any person who is not the young person's parent but who has parental responsibility for the young person,
 - (iii) any person who on a day-to-day basis cares for, or provides accommodation for, the young person,
 - (iv) any school, college or institution within the further education sector attended by the young person attended by the young person,
 - (v) the local authority or local authority in England for the area in which the young person lives where that is different from the responsible local authority,
 - (vi) any person providing health care or treatment for the young person,
 - (vii) where the young person is detained, the director, governor or registered manager (as the case may be), of the prison or youth detention accommodation,
 - (viii) where the young person is a category 3 young person who has a post-18 living arrangement, the young person's former foster parent,
 - (ix) any person by whom assistance by way of representation is provided to the young person under section 178 of the Act⁽¹⁾,
 - (x) the young person's personal adviser, and
 - (xi) any other person whose views the responsible local authority, or the young person, consider may be relevant;
- (c) where the category 2 young person is—
- (i) a victim, or there is reason to believe that they may be a victim, of trafficking in human beings within the meaning of the

(1) Section 178 of the Act – assistance for persons making representations.

Council of Europe Convention on Action against Trafficking in Human Beings⁽¹⁾,

- (ii) an unaccompanied asylum seeking child within the meaning of the Immigration Rules and has applied, or has indicated to the responsible local authority an intention to apply, for asylum and has not been granted indefinite leave to remain,

take account of the young person's needs as a result of that status.

(5) In carrying out an assessment of the needs of a category 3 young person who has a post-18 living arrangement, the responsible local authority must consider whether the arrangement remains consistent with the well-being of that young person and whether the arrangement should be maintained.

(6) In carrying out an assessment of the needs of a category 4 young person, the responsible local authority must—

- (a) take into account—
 - (i) whether the category 4 young person is detained,
 - (ii) the category 4 young person's needs for education, training or employment, and
 - (iii) any other considerations the responsible local authority consider relevant, and
- (b) unless it is not reasonably practicable to do so, seek and take into account the views of—
 - (i) the personal adviser,
 - (ii) where the category 4 young person is detained, the director, governor or registered manager (as the case may be), of the prison or youth detention accommodation, and
 - (iii) any other person whose views the responsible local authority, or the category 4 young person considers may be relevant.

(7) In this regulation—

- (a) "Immigration Rules" (" ") means the rules for the time being laid down by the Secretary of State as mentioned in section 3(2) of the Immigration Act 1971⁽²⁾.
- (b) "institution within the further education sector" (" ") has the meaning given in

(1) CETS No. 197.

(2) 1971 c. 77.

section 91(3) of the Further and Higher Education Act 1992(1).

Pathway plans

6.—(1) A pathway plan prepared in accordance with section 107(3) or (4) of the Act must be prepared as soon as possible after the assessment of needs referred to in regulation 5 is completed.

(2) The pathway plan must include, in particular—

- (a) in the case of a plan prepared for a category 2 or category 3 young person, the matters referred to in Schedule 1,
- (b) in the case of a plan prepared for a category 2 or 3 young person who is detained, the matters referred to in Schedule 2,
- (c) in the case of a plan prepared for a category 4 young person, the matters referred to in paragraphs 1 – 4 of Schedule 1, and
- (d) in the case of a plan prepared for a category 4 young person who is detained, the matters referred to in paragraphs 1 – 4 of Schedule 2.

(3) The pathway plan must, in relation to each of the matters included in it by virtue of paragraph (2), set out—

- (a) the manner in which the responsible local authority or the staff of a prison or youth detention accommodation (where relevant) proposes to meet the needs of the young person to whom the plan relates, and
- (b) the date by which, and by whom, any action required to implement any aspect of the pathway plan will be carried out.

(4) The pathway plan, any review of the plan and any changes to the plan as a result of such a review must be recorded in writing.

Review of Pathway plans

7.—(1) The responsible local authority must review the pathway plan of each category 2, category 3 and category 4 young person in accordance with this regulation.

(2) The responsible local authority must arrange a review—

- (a) if requested to do so by the category 2, category 3 or category 4 young person,
- (b) if the responsible local authority, or the personal adviser, consider a review necessary,

(1) 1992 c. 22.

- (c) if the young person is detained and a review would not otherwise occur before the young person ceases to be so detained, and
- (d) in any event, at intervals of not more than 6 months.

(3) If the responsible local authority provides the category 2, category 3 or category 4 young person with accommodation in accordance with sections 109, 110 or 112 of the Act, the responsible local authority must also—

- (a) arrange a review as soon as is practicable after the end of a period of 28 days beginning on the day on which the accommodation is first provided, and
- (b) on completing a review under sub-paragraph (a), determine at what intervals (not exceeding 3 months) subsequent reviews will be carried out.

PART 3

Personal Advisers

Functions of personal advisers

8.—(1) A personal adviser has the following functions in relation to the category 2, category 3 or category 4 young person for whom they are appointed—

- (a) to provide advice (including practical advice) and support,
- (b) where applicable, to participate in the assessment and the preparation of the pathway plan,
- (c) to participate in reviews of the pathway plan,
- (d) to liaise with the responsible authority in the implementation of the pathway plan,
- (e) to co-ordinate the provision of services, and to take reasonable steps to ensure that the young person makes use of such services and that they are appropriate to the young person's needs,
- (f) to remain informed about the young person's progress and well-being, and
- (g) to keep a written record of the contacts with, and of services provided to, the young person.

(2) In addition, where accommodation is provided for a category 2, category 3 or category 4 young person by the responsible local authority under section 109, 110 or 112 of the Act, the personal adviser must visit the young person at that accommodation—

- (a) within 7 days of the accommodation first being provided,
- (b) subsequently, before the pathway plan is reviewed under regulation 7(3), and
- (c) at subsequent intervals of not more than two months.

PART 4

Miscellaneous

Support and accommodation

9.—(1) For the purposes of section 109(1)(c) of the Act, the responsible local authority must provide assistance in order to meet the category 2 young person’s needs in relation to education, training or employment as provided for in that young person’s pathway plan.

(2) For the purposes of section 109(3), “suitable accommodation” (“ ”) means accommodation —

- (a) which so far as reasonably practicable is suitable for the category 2 young person in the light of their needs, including any health needs and any needs arising from any disability⁽¹⁾,
- (b) in respect of which the responsible local authority has satisfied itself as to the character and suitability of the landlord or other provider, and
- (c) in respect of which the responsible local authority has, so far as reasonably practicable, taken into account the category 2 young person’s—
 - (i) wishes and feelings, and
 - (ii) education, training and employment needs.

(3) In determining for the purposes of paragraph (2)(a) whether accommodation is suitable for a category 2 young person, the responsible local authority must have regard to the matters set out in Schedule 3.

(4) For the purposes of section 110(8), 122(4), 114(7) and 115(8) of the Act—

“further education” (“ ”) has the same meaning as in the Education Act 1996⁽²⁾ save that for the purposes of this regulation it only includes further

(1) Section 3(5) of the Act provides that a person is “disabled” if the person has a disability for the purposes of the Equality Act 2010 (c. 15).

(2) 1996 c.56.

education which is provided on a full-time residential basis; and

“higher education” (“ ”) means education provided by means of a course of a description referred to in regulations made under section 22 of the Teaching and Higher Education Act 1998(1).

Records

10.—(1) The responsible local authority must establish and maintain a written case record for each category 2, category 3 and category 4 young person (“the case record”) (“ ”).

(2) The case record must include the written records required by virtue of regulation 4(3) and regulation 5(3), and the following records (“relevant records”) (“ ”)—

- (a) any assessment of needs,
- (b) any pathway plan,
- (c) any review of a pathway plan.

(3) Relevant records must be retained by the responsible local authority until the 75th anniversary of the date of birth of the category 2, category 3, or category 4 young person to whom they relate or, if the young person dies before attaining the age of 18, for a period of 15 years beginning with the date of death.

(4) The requirement in paragraph (1) may be complied with by retaining the original written records or copies of them, or by keeping all or part of the information contained in them in some other accessible form such as a computer record.

(5) Relevant records must be kept securely and may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under or by virtue of, a statute under which access to such records is authorised, or
- (b) any court order authorising access to such records.

Revocation of Regulations

11.The Children (Leaving Care) (Wales) Regulations 2001(2) are revoked.

Name

Title of Minister, one of the Welsh Ministers

Date

(1) 1998 c.30.

(2) S.I.2001 / 2189 (W. 151).

SCHEDULE 1 Regulation 6

Matters to be dealt with in the pathway plan and review

1.

The level and nature of contact and personal support to be provided, and by whom, to the young person.

2.

A detailed plan for the young person's education or training.

3.

How the responsible local authority will assist the young person in relation to employment or other purposeful activity or occupation.

4.

Contingency plans for action to be taken by the responsible local authority should the pathway plan for any reason cease to be effective.

5.

Details of the accommodation the young person is to occupy (including an assessment of its suitability in the light of the young person's needs, and details of the considerations taken into account in assessing that suitability).

6.

The support to be provided to enable the young person to develop and sustain appropriate family and social relationships.

7.

A programme to develop the practical and other skills necessary for the young person to live independently.

8.

The financial support to be provided to the young person, in particular where it is to be provided to meet needs for accommodation and maintenance.

9.

The health needs, including any mental health needs, of the young person and how they are to be met.

10.

Details of the arrangements made by the responsible local authority to meet the young person's needs in relation to identity with particular reference to their religious persuasion, racial origin and cultural and linguistic background.

11.

Where the young person falls within regulation 5(4)(c), whether the young person's needs as a result of that status are being met.

SCHEDULE 2 Regulation 6

Matters to be dealt with in the pathway plan and review where the young person is detained

1.

The name and address of the prison or youth detention accommodation.

2.

The level and nature of contact and personal support to be provided to the young person by the responsible local authority and by the staff of the prison or youth detention accommodation.

3.

The arrangements made by the staff of the prison or youth detention accommodation for the young person's education and training, including the name and address of any educational or training institution the young person was attending, or any other person providing the young person with education or training, immediately before their detention.

4.

The details of how the young person's needs will be met when the young person ceases to be detained, in particular—

(a) whether the young person will be provided with accommodation or other support by the responsible local authority, another local authority or a local authority in England, and

(b) how the responsible local authority will assist the young person in relation to—

(i) education or training, or

(ii) employment or other purposeful activity or occupation.

5.

Arrangements put in place by staff of the prison or youth detention accommodation to support the young person's development of the practical or other skills necessary for the young person to live independently.

6.

Details of and arrangements made by staff of the prison or youth detention accommodation to meet the young person's health needs (including any mental health needs).

7.

Arrangements made and support to be provided to enable the young person to develop and sustain appropriate family and social relationships.

8.

Details of the young person's personal history, religious persuasion, cultural and linguistic background, racial origin and the arrangements put in place by the staff of the prison or youth detention accommodation for meeting the young person's religious, cultural and linguistic needs.

SCHEDULE 3 Regulation 9

Matters to be considered in determining the suitability of accommodation

1.

In respect of the accommodation, the—

- (a) facilities and services provided,
- (b) state of repair,
- (c) safety,
- (d) location,
- (e) support,
- (f) tenancy status, and
- (g) the financial commitments involved for the category 2 young person and their affordability.

2.

In respect of the category 2 young person, their—

- (a) views of the accommodation,
- (b) understanding of their rights and responsibilities in relation to the accommodation, and
- (c) understanding of funding arrangements.