SCOTTISH STATUTORY INSTRUMENTS

2026 No. 31

CHILDREN AND YOUNG PERSONS

The Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026

Made - - - -	*21st January 2026*
Coming into force - -	*9th February 2026*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33A of the Children (Scotland) Act 1995(**a**) and sections 190 and 195(2) of the Children's Hearings (Scotland) Act 2011(**b**) and all other powers enabling them to do so.

In accordance with section 33A(3)(c) of the Children (Scotland) Act 1995 and 190(2A)(b) and 197(2) of the Children's Hearings (Scotland) Act 2011, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 and come into force on 9 February 2026.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Children's Hearings (Scotland) Act 2011,

"the 1989 Act" means the Children Act 1989(**c**),

"the 2010 Act" means the Public Services Reform (Scotland) Act 2010(**d**),

"the 2014 Act" means the Social Services and Well-being (Wales) Act 2014(**e**),

"the 1995 Order" means the Children (Northern Ireland) Order 1995(**f**),

(**a**) 1995 c. 36. Section 33A was inserted by section 30 of the Children (Care and Justice) (Scotland) Act 2024 (asp 5) ("the 2024 Act").
(**b**) 2011 asp 1. Section 190(1) was amended by section 29(2)(a) of the 2024 Act. Section 190(2) and (2A) were substituted for section 190(2) by section 29(2)(b) of the 2024 Act.
(**c**) 1989 c. 41.
(**d**) 2010 asp 8.
(**e**) 2014 anaw 4.
(**f**) S.I. 1995/755 (N.I. 2).

"the 1995 Act" means the Children (Scotland) Act 1995(**a**),

"the 2009 Regulations" means Looked After Children (Scotland) Regulations 2009(**b**),

"accommodation" means accommodation provided, or to be provided, in a residential care setting for a continuous period of more than twenty-four hours, and references to a child being "accommodated" are to be construed accordingly,

"authorising fostering provision" means, as the case may be, regulation 20(1), 24(1), or 28(1) of these Regulations in respect of giving effect to a relevant order,

"authorised foster placement" means the residence of a child with a foster carer in Scotland where the child is subject to a relevant order having effect under an authorising fostering provision,

"authorising residential provision" means, as the case may be—

(a) regulation 3(1), 9(1) or 27(1) of these Regulations in respect of giving effect to a relevant order,

(b) regulation 3(2), 9(1) or 27(1) of these Regulations in respect of giving effect to a deprivation of liberty order,

(c) regulation 4(2) of these Regulations in respect of giving effect to a voluntary arrangement,

"authorised residential placement" means the accommodation of a child in a residential care setting who is subject to a relevant order, a deprivation of liberty order or, as the case may be, a voluntary arrangement having effect under an authorising residential provision, and reference to a child being "subject to an authorised residential placement" is to be construed accordingly,

"chief constable" means the constable appointed to the office of chief constable under section 7(1)(a) of the Police and Fire Reform (Scotland) Act 2012(**c**),

"chief social work officer" means an officer appointed in accordance with section 3 of the Social Work (Scotland) Act 1968(**d**) or a deputy designated by the receiving local authority,

"care home service" has the meaning given in paragraph 2 of schedule 12 of the 2010 Act,

"child" means a person under the age of 18 years,

"cross-border foster placement" means the placement of a child who is subject to a relevant order with a foster carer in Scotland, where the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and references to a child being "subject to a cross-border foster placement" are to be construed accordingly,

"deprivation of liberty order" means an order (including an interim order) made under the inherent jurisdiction of the High Court of England and Wales or, as the case may be, made by the High Court of Justice in Northern Ireland, which authorises the deprivation of liberty of a child in a residential care setting,

"foster carer" means a person approved as a foster carer in accordance with a decision made under regulation 22(3), 23 or 26(8) of the 2009 Regulations,

"fostering service manager" means the local authority or registered fostering service which made a decision to approve the foster carer under regulation 22(3), 23 or 26(8) of the 2009 Regulations(**e**),

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(**a**) 1995 c. 36.
(**b**) S.S.I. 2009/210.
(**c**) 2012 asp 8.
(**d**) 1968 c. 49. Section 3 was substituted by section 45 of the Local Government etc. (Scotland) Act 1994 (c. 39).
(**e**) The functions of a local authority under regulations 22(3), 23 or 26(8) of the 2009 Regulations may be discharged by a registered fostering service in accordance with arrangements made under regulation 48 of those Regulations.

"Health Board" means a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(**a**),

"initial residential placement" means the placement of a child into a residential care setting in Scotland where—

(a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and

(b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—

(i) a relevant order,

(ii) a deprivation of liberty order,

(iii) section 20 of the 1989 Act(**b**),

(iv) article 21 of the 1995 Order, or

(v) section 76 of the 2014 Act(**c**),

and reference to a child being "initially placed" in a residential care setting is to be construed accordingly,

"local authority" means—

(a) in relation to England and Wales, a local authority within the meaning of section 105(1) of the 1989 Act(**d**) as it relates to England and Wales,

(b) in relation to Northern Ireland, a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(**e**) or, in the context of an education supervision order, an Education Authority established by section 1 of the Education Act (Northern Ireland) 2014(**f**),

(c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**g**),

"ongoing foster placement" means the residence of a child with a foster carer in Scotland, following a cross-border foster placement, or as the case may be, following a new placement with a foster carer in accordance with regulation 28 or 32, and references to a child being "subject to an ongoing foster placement" are to be construed accordingly,

"ongoing residential placement" means the accommodation of a child in a residential care setting following their initial residential placement, or as the case may be, following a new placement in a residential care setting in accordance with regulation 27 or 29, and references to a child being "subject to an ongoing residential placement" are to be construed accordingly,

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(**a**) 1978 c. 29. Section 2 was amended by: section 14(2) and paragraph 1 of schedule 7 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); sections 28, 66, paragraph 19(1) of schedule 9, and paragraph (1) of schedule 10 of the National Health Service and Community Care Act 1990 (c. 19); paragraph 1(2) of schedule 1 of the National Health Service Reform (Scotland) Act 2004 (asp 7); paragraph 2 of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13); and paragraph 1(2) of the schedule of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3).

(**b**) Section 20(2)(b) was amended by regulation 67(a) of the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413 (W. 131)) ("the 2016 Regulations"); section 20(2A) was inserted by regulation 67(b) of the 2016 Regulations; section 20(6) was amended by section 53(2) of the Children Act 2004 (c. 31); section 20(9)(a) was amended by paragraph 28 of schedule 2(1) of the Children and Families Act 2014 (c. 6); and section 20(9)(aa) was inserted by paragraph 59 of schedule 3 of the Adoption and Children Act 2002 (c. 38).

(**c**) Section 76(2A) was inserted by regulation 299 of the 2016 Regulations; and section 76(6)(a) was amended by section 21(2) of the Health and Social Care (Wales) Act 2025 (asc 1).

(**d**) There are amendments to section 105(1) which are not relevant to these Regulations.

(**e**) S.I. 1991/194 (N.I. 1). Article 10 was amended by article 3(8) of the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2)); paragraph 1 of schedule 2 of the Health Services (Primary Care) (Northern Ireland) Order 1997 (S.I. 1997/1177 (N.I. 7)); section 44(1), 43(1) and 43(2) of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) (N.I.); paragraphs 1(1) and 13(7) of schedule 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1) (N.I.); paragraph 141(2) and (3) of schedule 6 of the Health and Social Care Act (Northern-Ireland) 2022 (c. 3) (N.I.); and paragraph 1 of schedule 1 of the Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071).

(**f**) 2014 c. 12 (N.I.).

(**g**) 1994 c. 39. Section 2 was amended by paragraph 232(1) of schedule 22 of the Environment Act 1995 (c. 25).

"ongoing residential placement review" means a review of a child's placement in a residential care setting, which is conducted virtually, in-person or in a hybrid format, following—

(a) an initial residential placement, or

(b) a placement in accordance with regulation 27 (change of temporary placement – fostering to residential care under existing order) or regulation 29 (change of placement – fostering to residential care under new order),

"placing fostering authority" means the local authority in England, Wales or, as the case may be, Northern Ireland, which arranged for the cross-border foster placement of a child, or (as the context requires) which arranges the placement of a child with a foster carer in accordance with regulation 28 (change of temporary placement – residential care to fostering under existing order) or regulation 32 (change of temporary placement – residential care to fostering under new order),

"placing local authority" means the local authority in England, Wales or, as the case may be, Northern Ireland, which arranged the initial residential placement of a child, or (as the context requires) which arranges the placement of a child into a residential care setting in accordance with regulation 27 (change of temporary placement – fostering to residential care under existing order) or regulation 29 (change of temporary placement – fostering to residential care under new order),

"Principal Reporter" means the Principal Reporter appointed under paragraph 8 of schedule 3 of the Act or an officer of the Scottish Children's Reporter Administration to whom there is delegated under paragraph 10(1) of schedule 3 of that Act any function of the Principal Reporter,

"receiving fostering authority" means the local authority in Scotland within which the foster carer with whom a child is placed, or is to be placed, resides,

"receiving local authority" means the local authority in Scotland within which the residential care setting in which a child is placed, or is to be placed, is located,

"registered fostering service" means a person other than a local authority whose functions consist of or include the making of arrangements for or in connection with the performance of functions assigned to a local authority under the 2009 Regulations(**a**), and who is registered under Chapter 3 of Part 5 of the 2010 Act,

"registered manager" means the individual who manages the care home service provided in the residential care setting in which the child is placed, or to be placed,

"registered residential care setting" means a residential care setting within which a care home service is provided, as registered with Social Care and Social Work Improvement Scotland (otherwise known as "the Care Inspectorate") in accordance with Chapter 3 of Part 5 of the 2010 Act,

"relevant order" means—

(a) a care order made under—

  (i) section 31(1)(a) of the 1989 Act, or

  (ii) article 50(1)(a) of the 1995 Order,

(b) an interim care order made under—

  (i) section 38 of the 1989 Act(**b**), or

  (ii) article 57 of the 1995 Order,

(c) an interim supervision order made under—

  (i) section 38 of the 1989 Act, or

(**a**) Regulation 48 of the 2009 Regulations provides for local authorities to individually or jointly enter into arrangements with one or more registered fostering services for the purposes of carrying out functions under Parts VI, VII, VIII and X of those Regulations.

(**b**) Section 38 was amended by sections 13(11), 14(4) and paragraph 32(2) and (3) of schedule 2 of the Children and Families Act 2014 (c. 6).

(ii) article 57 of the 1995 Order,

(d) a supervision order made under—

(i) section 31(1)(b) of the 1989 Act(**a**), or

(ii) article 50(1)(b) of the 1995 Order,

(e) an education supervision order made under—

(i) section 36(1) of the 1989 Act(**b**), or

(ii) article 55(1) of the 1995 Order(**c**),

"residential care setting" means a residential establishment which is not secure accommodation,

"residential establishment" has the meaning given in paragraph (a) of the definition of "residential establishment" in section 93 of the 1995 Act(**d**),

"Social Care and Social Work Improvement Scotland" (otherwise known as "the Care Inspectorate") means the body established by section 44 of the 2010 Act,

"secure accommodation" has the meaning given in paragraph (a) of the definition of "secure accommodation" in section 93 of the 1995 Act(**e**),

"Police Scotland" means the Police Service of Scotland, established by section 6 of the Police and Fire Reform (Scotland) Act 2012,

"temporary placement" means the placement of a child into a residential care setting or with a foster carer, where the child is subject to a relevant order, a deprivation of liberty order or a voluntary arrangement having effect under an authorising residential provision or, as the case may be, an authorising fostering provision, and references to a child being "temporarily placed" are to be construed accordingly,

"voluntary arrangement" means the accommodation of a child in a residential care setting where a local authority would otherwise accommodate a child under the law in England and Wales or, as the case may be, Northern Ireland, by virtue of—

(a) section 20 of the 1989 Act(**f**),

(b) article 21 of the 1995 Order(**g**), or

(c) section 76 of the 2014 Act(**h**).

(2) Unless the context otherwise requires, any expression in these Regulations which is not listed in paragraph (1) and which is defined in the Act is to be construed in accordance with the Act's definition.

(3) Any reference in these Regulations to anything done in writing includes a reference to anything done in electronic form which is—

(a) sent by electronic means, and

(b) capable of being reproduced in legible form.

(**a**) Section 31(1)(b) was amended by paragraph 90 of schedule 7 and schedule 8 of the Criminal Justice and Court Services Act 2000 (c. 43).

(**b**) Section 36(1) was amended by paragraph 37(7)(a) of schedule 2 of the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158).

(**c**) Article 55(1) was amended by paragraph 14(6)(a) of schedule 3 of the Education Act (Northern Ireland) 2014 (c. 12) (N.I.).

(**d**) Paragraph (a) of the definition of "residential establishment" in section 93 of the 1995 Act was amended by paragraph 5 of schedule 1 of the Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013.

(**e**) Paragraph (a) of the definition of "secure accommodation" in section 93 of the 1995 Act was amended by paragraph 9(4)(b) of schedule 1 of the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013.

(**f**) Section 20 was amended by paragraph 59 of schedule 3 of the Adoption and Children Act 2002 (c. 38); paragraph 28 of schedule 2 of the Children and Families Act 2014 (c. 6); regulation 67(a) and (b) of the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413 (W. 131)).

(**g**) Article 21 was amended by section 120(2) of the Adoption and Children Act (Northern Ireland) 2022 (c. 18) (N.I.).

(**h**) Section 76 was amended by regulation 299 of the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413 (W. 131)) and section 21(2) of the Health and Social Care (Wales) Act 2025 (asc 1).

PART 2

TEMPORARY PLACEMENT IN RESIDENTIAL CARE SETTING - EFFECT OF ORDERS AND ARRANGEMENTS

Temporary placement in residential care setting – effect of orders

3.—(1) Where regulation 5(1) (temporary placement in residential care setting – requirements for effect of orders and arrangements) applies, a relevant order has effect as if it were a compulsory supervision order for the purposes mentioned in paragraph (3).

(2) A deprivation of liberty order has effect as if it were a compulsory supervision order for the purposes mentioned in paragraph (3) where—

(a) regulation 5(1) applies, and

(b) the requirement in regulation 6(1) (additional requirement for continuing effect of deprivation of liberty order) is satisfied.

(3) The purposes for which a relevant order, or as the case may be, a deprivation of liberty order have effect are—

(a) authorising in law, in accordance with the order—

(i) the initial residential placement of the child,

(ii) the ongoing residential placement of the child,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the ongoing residential placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order, or as the case may be, the deprivation of liberty order (in respect of which, see regulation 36).

Temporary placement in residential care setting - effect of authority to accommodate child subject to voluntary arrangement

4.—(1) Where regulation 5(1) (temporary placement in residential care setting – requirements for effect of orders and arrangements) applies, authorisation for a placing local authority to accommodate a child under the law in England and Wales or, as the case may be, Northern Ireland, by virtue of a provision mentioned in paragraph (2) has effect for the purposes mentioned in paragraph (3).

(2) The provisions are—

(a) section 20 of the 1989 Act,

(b) article 21 of the 1995 Order, and

(c) section 76 of the 2014 Act.

(3) The purposes are—

(a) authorising in law—

(i) the initial residential placement of the child,

(ii) the ongoing residential placement of the child, and

(b) providing legal authority for any person who, pursuant to the ongoing residential placement, has care and control of the child to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare.

PART 3

TEMPORARY PLACEMENTS IN RESIDENTIAL CARE SETTING - REQUIREMENTS FOR EFFECT OF ORDERS AND ARRANGEMENTS

Temporary placement in residential care setting - requirements for effect of orders and arrangements

5.—(1) This regulation applies where a child is to be temporarily placed in a residential care setting and the conditions in paragraphs (2) to (4) are complied with.

(2) The first condition is that the placing local authority has given, in writing, to each person mentioned in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting)—

(a) a notice containing the information specified in regulation 8 (content of notice in respect of temporary placement in residential care setting), and

(b) a completed undertaking in the form specified in schedule 1.

(3) The second condition is that, prior to the initial residential placement, an officer of the placing local authority—

(a) visited the residential care setting in which the child is accommodated, or where the placement required to be made in a case of urgent necessity, consulted with the registered manager,

(b) assessed that the accommodation provided by the residential care setting and the care home service provided in that setting were suitable to meet the child's needs, and

(c) recorded, in writing, the reasons for that assessment.

(4) The third condition is that the care home service being provided in the residential care setting in which the child is accommodated is registered with Social Care and Social Work Improvement Scotland in accordance with Chapter 3 of Part 5 of the 2010 Act.

Additional requirement for continuing effect of a deprivation of liberty order

6.—(1) The requirement referred to in regulation 3(2)(b) and 9(1)(b)(ii) is that a deprivation of liberty order has been reviewed and continued in effect by the court which made the order—

(a) within the period of three months beginning with the day on which the order was made, or

(b) otherwise, within the period of three months beginning with the day on which the order was reviewed and continued in effect, or last reviewed and continued in effect, by the court which made the order.

(2) In this regulation, references to a deprivation of liberty order being "continued in effect" include references to that order being extended.

Persons to receive notice and undertaking in respect of temporary placement in residential care setting

7. The persons to be given the notice and undertaking mentioned in regulation 5(2) (or, as the case may be, regulation 30(2)) are—

(a) the Health Board which provides health services in the area in which the child is to be subject to an ongoing residential placement,

(b) the registered manager,

(c) the chief social work officer of the receiving local authority,

(d) any person acting for the time being as chief education officer of the receiving local authority,

(e) the Scottish Ministers,

(f) the chief constable of Police Scotland, and

(g) Social Care and Social Work Improvement Scotland.

Content of notice in respect of temporary placement in residential care setting

8. The information specified by this regulation (as referenced in regulations 5(2)(a), 27(2)(a) and 30(2)(a)) is—

(a) the name of the child to be subject to an ongoing residential placement,

(b) where applicable, the child's preferred name,

(c) the date of birth of the child,

(d) the name of the placing local authority,

(e) in respect of the child's social worker within the placing local authority, their—

(i) name,

(ii) contact telephone number,

(iii) email address,

(iv) postal address,

(f) in respect of the residential care setting in which the child is to be subject to an ongoing residential placement—

(i) the name of the setting,

(ii) the address of the setting,

(g) in respect of the registered manager, their—

(i) name,

(ii) contact telephone number,

(iii) email address,

(h) in respect of the child's general practitioner, their—

(i) name,

(ii) postal address,

(i) the circumstances giving rise to an ongoing residential placement for the child,

(j) the proposed date of entry of the child into the residential care setting in which they are to be placed,

(k) the proposed educational arrangements for the child,

(l) the legal authorisation for placement of the child in the residential care setting under the law of England and Wales, or as the case may be, Northern Ireland, and

(m) the time that any relevant order or deprivation of liberty order—

(i) comes into effect,

(ii) is due to be reviewed, and

(iii) expires (if it is not subsequently extended).

PART 4

CHANGES TO LEGAL BASIS FOR, OR LOCATION OF, CHILD'S TEMPORARY PLACEMENT IN RESIDENTIAL CARE SETTING

Change of legal basis for child's temporary placement in residential care setting

9.—(1) Subject to paragraph (4), where an order or arrangement had effect under regulation 3(1), 3(2), 4(1) or 29(1) and a court in England and Wales or, as the case may be, Northern Ireland, makes an order changing the legal basis for the ongoing residential placement of a child in a registered residential care setting ("the new order")—

(a) the new order has effect under this regulation as if it were a compulsory supervision order for the purposes mentioned in paragraph (3) for a period of three working days, beginning with the date on which the new order is made, and

(b) for the new order to continue to have effect under this regulation as if it were a compulsory supervision order for the purposes mentioned in paragraph (3) following the period mentioned in sub-paragraph (a), the following conditions must be met—

(i) in respect of a new order which is a relevant order, regulation 11 (temporary placements in residential care setting – requirements where change to placement legal basis or location) must be complied with,

(ii) in respect of a new order which is a deprivation of liberty order, regulation 11 must be complied with and the requirement in regulation 6(1) (additional requirement for continuing effect of a deprivation of liberty order) must be satisfied.

(2) For the purposes of this regulation, the reference to a court making an order changing the legal basis for the ongoing residential placement of a child is a reference to the court—

(a) making a relevant order or deprivation of liberty order where a child was previously subject to a voluntary arrangement,

(b) revoking a deprivation of liberty order and making a relevant order,

(c) revoking a relevant order, and—

(i) making another relevant order of a different type, or

(ii) making a deprivation of liberty order.

(3) The purposes for which the new order has effect are—

(a) authorising in law, in accordance with the order, the ongoing residential placement of the child,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the ongoing residential placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order, or as the case may be, the deprivation of liberty order (in respect of which, see regulation 36).

(4) Paragraph (1) does not apply in the case where a court makes a new relevant order which immediately has effect as if it were a compulsory supervision order in accordance with Part 15 of these Regulations (permanent transfers – effect of orders).

Routine change of location of temporary placement in residential care setting

10.—(1) An officer of the placing local authority may transfer a child subject to an authorised residential placement from one registered residential care setting to another, subject to—

(a) the terms of any relevant order or deprivation of liberty order having effect under an authorising residential provision, and

(b) complying with the conditions in paragraph (2).

(2) The conditions are that an officer of the placing local authority has—

(a) visited the new, registered residential care setting to which the child is to be transferred,

(b) assessed that the accommodation provided by the registered residential care setting and the care home service provided in that setting are suitable to meet the child's needs,

(c) recorded, in writing, the reasons for that assessment, and

(d) ensured compliance with regulation 11.

Temporary placements in residential care setting - requirements where change to placement legal basis or location

11. This regulation is complied with where the placing local authority—

(a) updates the information in the notice previously given in accordance with regulation 5(2)(a), or as the case may be, regulation 30(2)(a), as appropriate,

(b) submits any information updated in accordance with sub-paragraph (a) to the persons mentioned in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting), and

(c) submits a copy of the undertaking previously given in accordance with regulation 5(2)(b) or as the case may be, regulation 30(2)(b) to any person mentioned in paragraphs (a) to (d) of regulation 7 who has changed by virtue of the new placement location.

Emergency transfer to another residential care setting

12.—(1) Paragraph (2) applies where—

(a) a child is subject to an ongoing residential placement by virtue of a relevant order or as the case may be, a deprivation of liberty order which has effect under an authorising residential provision ("the order"),

(b) the order contains a requirement that the child reside at a specified residential care setting, and

(c) it is in the interests of the child or another child in the specified residential care setting that the child be moved out of that setting as a matter of urgent necessity.

(2) The chief social work officer may transfer the child to another residential care setting, despite the terms of the order, provided that it is a registered residential care setting.

(3) Where the chief social work officer effects a transfer of the child under paragraph (2), they must inform the placing local authority as soon as reasonably practicable.

(4) Paragraph (5) applies where the child is in another residential care setting, having been transferred there under paragraph (2).

(5) Any order to which the child is subject applies in relation to that other residential care setting as it applies in relation to the residential care setting in which the child was accommodated prior to the transfer, but only until the earlier of the following occurrences—

(a) the end of the period of 14 days beginning with the day on which the child was transferred to another residential care setting under paragraph (2),

(b) where the order is a deprivation of liberty order, the end of the day on which the review of that order takes place in accordance with regulation 6 (additional requirement for continuing effect of a deprivation of liberty order), or as the case may be, regulation 31 (additional requirement for continuing effect of a new deprivation of liberty order).

PART 5

TEMPORARY PLACEMENT IN RESIDENTIAL CARE SETTING - DUTIES OF PLACING LOCAL AUTHORITY

Ongoing duties of placing local authority

13. For the duration of the authorised residential placement of a child, the placing local authority must—

(a) comply with any conditions or requirements imposed on it by a relevant order or, as the case may be, a deprivation of liberty order having effect under an authorising residential provision,

(b) ensure regular visits are made to the child in accordance with regulation 15 (requirement to visit child in residential care setting), and

(c) undertake ongoing residential placement reviews in accordance with—

(i) regulation 16 (requirement for periodic ongoing residential placement review),

(ii) regulation 18 (mandatory ongoing residential placement review in certain circumstances), and

(iii) schedule 2 (ongoing residential placement review requirements).

Residential care - compliance with requirements in order

14.—(1) The placing local authority must from time to time investigate whether any conditions or requirements imposed under a relevant order or deprivation of liberty order having effect under an authorising residential provision are being complied with.

(2) If the placing local authority considers that those conditions or requirements are not being complied with, it must take such steps as the placing local authority considers reasonable.

Requirement to visit child in residential care setting

15.—(1) An officer of the placing local authority must visit a child in a residential care setting within one week of—

(a) the date of their initial placement,

(b) the date of transfer to any other residential care setting in accordance with regulation 10 (routine change of location of temporary placement in residential care setting) or 12 (emergency transfer to another residential care setting),

(c) the date of placement in the setting following a placement made in accordance with regulation 27 (change of temporary placement – fostering to residential care under existing order) or regulation 29 (change of placement – fostering to residential care under new order).

(2) Unless paragraph (3) applies, an officer of the placing local authority must visit the child at intervals of not more than six weeks following the initial visit as mentioned in paragraph (1).

(3) Where it is not reasonably practicable for any visit as mentioned in paragraph (2) to be undertaken, an officer of the placing authority must—

(a) record, in writing, the reasons for this, and

(b) make arrangements to visit the placed child as soon as possible after the relevant six week interval has elapsed.

(4) In addition to visits in accordance with paragraphs (1) and (2), or as the case may be, paragraph (3), an officer of the placing local authority must visit the child—

(a) as soon as reasonably practicable whenever a visit is reasonably requested by—

(i) the child,

(ii) any person with parental rights or parental responsibilities in respect of the child,

(iii) the registered manager,

(b) within one week, beginning with the date of being notified by the registered manager that an improvement notice has been issued in respect of the care home service being provided in the residential care setting in which the child is accommodated.

(5) In this regulation, "improvement notice" means a notice issued by Social Care and Social Work Improvement Scotland under section 62(1) of the 2010 Act.

Requirement for periodic ongoing residential placement review

16.—(1) The placing local authority must undertake an ongoing residential placement review in accordance with—

(a) this regulation, and

(b) schedule 2 (ongoing residential placement review requirements).

(2) The first review must be carried out within the period of one month, beginning with the date—

(a) of the initial residential placement, or

(b) of the placement of the child in a residential care setting following a placement made in accordance with regulation 27 (change of temporary placement – fostering to residential care under existing order) or regulation 29 (change of placement – fostering to residential care under new order).

(3) The second review must be carried out not more than three months after the date on which the first review was carried out.

(4) The third and any subsequent reviews must be carried out at intervals of not more than six months following the previous review.

Request for ongoing residential placement review

17.—(1) Any person mentioned in paragraph (2) may request in writing that the placing local authority carry out an ongoing residential placement review.

(2) A person who may request an ongoing residential placement review is—

(a) a person specified in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting),

(b) the placed child,

(c) any person with an interest in the placed child's welfare.

(3) A placing local authority must respond to any request made under paragraph (1) within seven working days.

(4) In response to a request made under paragraph (1), the placing local authority may—

(a) agree to carry out a placement review as soon as reasonably practicable, or

(b) provide the person who made the request written reasons why it considers that a placement review before the time specified in regulation 16 (requirement for periodic ongoing residential placement review) is not justified.

(5) Where an ongoing residential placement review is carried out following agreement under sub-paragraph (4)(a), this is to be taken into consideration in determining when the next review falls due under regulation 16.

Mandatory ongoing residential placement review in certain circumstances

18.—(1) A placing local authority must, as soon as possible, conduct an ongoing residential placement review in accordance with schedule 2 (ongoing residential placement review requirements) where—

(a) as a result of a visit carried out in accordance with regulation 15, the placing local authority assesses that the welfare of a child subject to an ongoing residential placement is not adequately safeguarded and promoted by the placement,

(b) the child is, or has been, persistently absent from the residential care setting in which they have been placed,

(c) the placing local authority is notified that the registered manager or receiving local authority is concerned that the child is at risk of harm.

(2) Where an ongoing residential placement review is carried out as required under paragraph (1), this is to be taken into consideration in determining when the next review falls due under regulation 16.

PART 6

CHILDREN'S ADVOCACY SERVICES IN RESIDENTIAL CARE SETTING

Provision of children's advocacy services

19.—(1) Subject to paragraph (2), the Scottish Ministers must, as soon as reasonably practicable, inform a child of the availability of children's advocacy services where a child is—

(a) initially placed into a residential care setting,

(b) transferred to another residential care setting in accordance with regulation 10 (routine change of location of temporary placement in residential care setting) or regulation 12 (emergency transfer to another residential care setting), or

(c) placed into a residential care setting following a placement made in accordance with regulation 27 (change of temporary placement – fostering to residential care under existing order) or regulation 29 (change of placement – fostering to residential care under new order).

(2) The Scottish Ministers need not comply with the requirement in paragraph (1) if, taking account of the age and maturity of the child, the Scottish Ministers consider that it would not be appropriate to do so.

(3) The Scottish Ministers may enter into arrangements (contractual or otherwise) with any person other than a local authority, CHS or SCRA for the provision of children's advocacy services.

(4) For the purposes of this regulation, "children's advocacy services" means services of support and representation provided for the purposes of assisting a child to convey their needs and views to the registered manager.

PART 7

TEMPORARY PLACEMENT WITH FOSTER CARER – REQUIREMENTS FOR EFFECT OF ORDERS

Temporary placement with foster carer – effect of orders

20.—(1) Where a child is temporarily placed with a foster carer and regulation 21(1) (temporary placement with foster carer – requirements for effect of orders) applies, a relevant order has effect as if it were a compulsory supervision order for the purposes mentioned in paragraph (2).

(2) The purposes are—

(a) authorising in law, in accordance with the order—

(i) the cross-border foster placement of the child,

(ii) the ongoing foster placement of the child,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the ongoing foster placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order (in respect of which, see regulation 36).

Temporary placement with foster carer – requirements for effect of orders

21.—(1) This regulation applies where the conditions in paragraphs (2) to (4) are complied with.

(2) The first condition is that the placing fostering authority has given, in writing, to each person mentioned in regulation 22 (persons to receive notice in respect of temporary placement with foster carer), a notice containing the information specified in regulation 23 (content of notice for temporary placement with foster carer).

(3) The second condition is that, prior to the placement of the child with a foster carer, an officer of the placing fostering authority has—

(a) visited the address where it is proposed that the child will reside, or where the placement requires to be made in a case of urgent necessity, both consulted with the fostering service manager, and arranged for a visit to that address, to take place no later than five working days beginning with the date of the placement,

(b) assessed that the foster carer, and the accommodation to be provided at their address, are suitable to meet the child's needs, and

(c) recorded, in writing, the reasons for that assessment.

(4) The third condition is that the placing fostering authority has entered into a written agreement with the foster carer regarding—

(a) the matters and obligations in schedule 3 (matters to be covered in agreement between placing foster authority and foster carer), and

(b) any other matters or obligations as the placing fostering authority considers appropriate.

Persons to receive notice in respect of temporary placement with foster carer

22. The persons to be given the notice mentioned in regulation 21(2) are—

(a) the Health Board which provides health services in the area in which the child is to be subject to an ongoing foster placement,

(b) the chief social work officer of the receiving fostering authority,

(c) any person acting for the time being as chief education officer of the receiving fostering authority,

(d) the Scottish Ministers,

(e) the chief constable of Police Scotland, and

(f) Social Care and Social Work Improvement Scotland.

Content of notice for temporary placement with foster carer

23. The information specified by this regulation (as referenced in regulations 21(2), 28(2) and 33(a)) is—

(a) the name of the child to be subject to an ongoing foster placement,

(b) where applicable, the child's preferred name,

(c) the date of birth of the child,

(d) the name of the placing fostering authority,

(e) the name of the receiving fostering authority,

(f) the name of the fostering service manager,

(g) confirmation that an agreement has been entered into between the placing fostering authority and the foster carer,

(h) in respect of the child's social worker within the placing fostering authority, their—

(i) name,

(ii) contact telephone number,

(iii) email address,

(iv) postal address,

(i) in respect of the child's general practitioner, their—

(i) name,

(ii) postal address,

(j) the circumstances giving rise to an ongoing foster placement for the child,

(k) the proposed date on which the child will be placed with the foster carer,

(l) the proposed educational arrangements for the child,

(m) the legal authorisation for the placement under the law of England and Wales, or as the case may be, Northern Ireland, and

(n) the time that any relevant order—

(i) comes into effect,

(ii) is due to be reviewed, and

(iii) expires (if it is not subsequently extended).

PART 8

CHANGES TO LEGAL BASIS, ADDRESS OR CARER WHERE CHILD IS SUBJECT TO TEMPORARY PLACEMENT WITH FOSTER CARER

Change of legal basis for child's temporary placement with foster carer

24.—(1) Subject to paragraph (3), where a relevant order has effect under regulation 20(1), or as the case may be, regulation 28(1), and a court in England and Wales or, as the case may be, Northern Ireland, makes an order changing the legal basis for the ongoing foster placement of a child (the "new order")—

(a) the new order has effect under this regulation as if it were a compulsory supervision order for the purposes mentioned in paragraph (3) for a period of three working days, beginning with the date on which the order is made, and

(b) regulation 26(1) (temporary placement with foster carer – requirements where change to placement legal basis, address or carer) must be complied with for the new order to have effect as if it were a compulsory supervision order under this regulation after that period, for the purposes mentioned in paragraph (3).

(2) For the purposes of this regulation, the reference to a court making an order changing the legal basis for the ongoing foster placement of a child is to the court revoking a relevant order and making another relevant order, of the same or a different type.

(3) The purposes for which the new order has effect are—

(a) authorising in law, in accordance with the order, the ongoing foster placement of the child,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the ongoing foster placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order (in respect of which, see regulation 36).

(4) Paragraph (1) does not apply in the case where a court makes a new order which is a relevant order, which immediately has effect as if it were a compulsory supervision order in accordance with Part 15 of these Regulations (permanent transfers – effect of orders).

Temporary placement with foster carer – change of address or foster carer

25.—(1) Subject to the terms of any order having effect under an authorising fostering provision, a child may be moved to reside at a new address or with a new foster carer where the conditions in paragraph (2) are met.

(2) The conditions are that an officer of the placing fostering authority has—

(a) visited the new address where it is proposed that the child will reside, or where the placement requires to be made in a case of urgent necessity, both consulted with the fostering service manager and arranged for a visit to that address, to take place no later than five working days beginning with the date of the move,

(b) assessed that the accommodation to be provided at the new address and, where relevant, the new foster carer, is suitable to meet the child's needs,

(c) recorded, in writing, the reasons for that assessment,

(d) ensured compliance with regulation 26(1), and

(e) where the child is to be moved to reside with a new foster carer, ensured compliance with regulation 26(2).

Temporary placement with foster carer - requirements where change to placement legal basis, address or carer

26.—(1) This paragraph is complied with where the placing fostering authority—

(a) updates the information in the notice previously given in accordance with regulation 21(2) or as the case may be, regulation 33(a) as appropriate, and

(b) submits any information updated in accordance with sub-paragraph (a) to the persons mentioned in regulation 22 (persons to receive notice in respect of temporary cross-border placement with foster carer).

(2) This paragraph is complied with where the placing fostering authority enters into a written agreement with the foster carer regarding the matters and obligations in schedule 3 (matters to be covered in agreement between placing foster authority and foster carer) and any other matters or obligations as the placing fostering authority considers appropriate.

PART 9

CHANGE OF TEMPORARY PLACEMENT TYPE

Change of temporary placement – fostering to residential care under an existing court order

27.—(1) Where a child subject to a relevant order having effect under regulation 20(1), or as the case may be, regulation 24(1), is to be removed from a foster carer and placed in a residential care setting on a temporary basis, the conditions in paragraphs (2) to (4) must be met for the order to have effect as if it were a compulsory supervision order under this regulation, for the purposes mentioned in paragraph (5).

(2) The first condition is that the placing local authority has given, in writing, to each person mentioned in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting)—

(a) a notice containing the information specified in regulation 8 (content of notice in respect of temporary placement in residential care setting), and

(b) a completed undertaking in the form specified in schedule 1.

(3) The second condition is that, prior to the placement of the child into the residential care setting, an officer of the placing local authority—

(a) visited the setting, or where the placement required to be made in a case of urgent necessity, consulted with the registered manager,

(b) assessed that the accommodation provided by the residential care setting and the care home service provided in that setting were suitable to meet the child's needs, and

(c) recorded, in writing, the reasons for that assessment.

(4) The third condition is that the care home service being provided in the residential care setting in which the child is accommodated is registered with Social Care and Social Work Improvement Scotland in accordance with Chapter 3 of Part 5 of the 2010 Act.

(5) The purposes for which the relevant order has effect are—

(a) authorising in law, in accordance with the order—

(i) the placement of the child in a residential care setting,

(ii) the accommodation of the child in the residential care setting,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order, and

(e) legal authority for any person who, pursuant to the residential placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order (in respect of which, see regulation 36).

Change of temporary placement – residential care to fostering under an existing court order

28.—(1) Where a child subject to a relevant order having effect under regulation 3(1), or as the case may be, regulation 9(1), is to be removed from a residential care setting and placed with a foster carer on a temporary basis, the conditions in paragraphs (2) to (4) must be met for the relevant order to have effect as if it were a compulsory supervision order under this regulation, for the purposes mentioned in paragraph (5).

(2) The first condition is that the placing fostering authority gives, in writing, to each person mentioned in regulation 22 (persons to receive notice in respect of temporary placement with foster carer) a notice containing the information specified in regulation 23 (content of notice for temporary placement with foster carer).

(3) The second condition is that, before placing the child with the foster carer, an officer of the placing fostering authority—

(a) visits the address where it is proposed that the child will reside, or where the placement requires to be made in a case of urgent necessity, both consults with the fostering service manager, and arranges for a visit to that address to take place no later than five working days beginning with the date of the placement,

(b) assesses that the foster carer, and the accommodation to be provided at their address, are suitable to meet the child's needs, and

(c) records, in writing, the reasons for that assessment.

(4) The third condition is that the placing fostering authority enters into a written agreement with the foster carer regarding the matters and obligations in schedule 3 and any other matters or obligations as the placing fostering authority considers appropriate.

(5) The purposes are—

(a) authorising in law, in accordance with the order, the placement and residence of the child with the foster carer,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the foster placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order (in respect of which, see regulation 36).

Change of temporary placement – fostering to residential care under a new court order

29.—(1) Where a child subject to a relevant order having effect under regulation 20(1) or regulation 24(1) is to be removed from a foster carer and placed in a residential care setting following a court in England and Wales or, as the case may be, Northern Ireland making another relevant order, a relevant order of a different type or, as the case may be, a deprivation of liberty order ("the new order")—

(a) subject to the conditions in paragraph (2) being met, the new order has effect as if it were a compulsory supervision order under this regulation, for the purposes mentioned in paragraph (3), for a period of three working days, beginning with the day on which the new order is made,

(b) regulation 30(1) (requirements for effect of new order where placement from fostering to residential care) must be complied with and, in respect of a deprivation of liberty order, the requirement in regulation 31(1) (additional requirement for continuing effect of a new deprivation of liberty order) must be satisfied for the order to continue to have effect as if it were a compulsory supervision order under this regulation after the period mentioned in sub-paragraph (a), for the purposes mentioned in paragraph (3).

(2) The requirements are that, before placing the child into a residential care setting, an officer of the placing local authority must—

(a) visit the setting, or where the placement requires to be made in a case of urgent necessity, consult with the registered manager,

(b) assess that the accommodation provided by the residential care setting and the care home service provided in that setting are suitable to meet the child's needs,

(c) record, in writing, the reasons for that assessment, and

(d) be satisfied that the care home service being provided in the residential care setting is registered with Social Care and Social Work Improvement Scotland in accordance with Chapter 3 of Part 5 of the 2010 Act.

(3) The purposes are—

(a) authorising in law, in accordance with the order—

(i) the placement of the child into a residential care setting,

(ii) the accommodation of the child in the residential care setting,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order (in respect of which, see regulation 36.).

Requirements for effect of new order where placement from fostering to residential care

30.—(1) This regulation is complied with where the conditions in paragraphs (2) and (3) are met.

(2) The first condition is that the placing local authority has given, in writing, to each person mentioned in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting)—

(a) a notice containing the information specified in regulation 8 (content of notice in respect of temporary placement in residential care setting), and

(b) a completed undertaking in the form specified in schedule 1.

(3) The second condition is that the care home service being provided in the residential care setting in which the child is accommodated is registered with Social Care and Social Work Improvement Scotland in accordance with Chapter 3 of Part 5 of the 2010 Act.

Additional requirement for continuing effect of a new deprivation of liberty order

31.—(1) The requirement referred to in regulation 29(1)(b) is that a deprivation of liberty order has been reviewed and continued in effect by the court which made the order—

(a) within the period of three months beginning with the day on which the order was made, or

(b) otherwise, within the period of three months beginning with the day on which the order was reviewed and continued in effect, or last reviewed and continued in effect, by the court which made the order.

(2) In this regulation, references to a deprivation of liberty order being "continued in effect" include references to that order being extended.

Change of temporary placement – residential care to fostering under a new court order

32.—(1) Where a child subject to a relevant order or a deprivation of liberty order having effect under regulation 3(1), 3(2) or as the case may be, 9(1), is to be removed from a residential care setting and placed with a foster carer following a court in England and Wales or Northern Ireland making a new relevant order or a relevant order of a different type to that to which the child was previously subject ("the new order")—

(a) subject to the conditions in paragraph (2) being met, the new order has effect under this regulation as if it were a compulsory supervision order for the purposes mentioned in paragraph (3) for a period of three working days, beginning with the date on which the order is made,

(b) regulation 33 (requirements for effect of new order where placement from residential care to fostering) must be complied with for the order to have effect as if it were a compulsory supervision order under this regulation after that period, for the purposes mentioned in paragraph (3).

(2) The conditions are that, before placing the child with a foster carer, an officer of the placing fostering authority must—

(a) visit the address where it is proposed that the child will reside, or where the placement requires to be made in a case of urgent necessity, both consult with the fostering service manager and arrange for a visit to that address, to take place no later than five working days beginning with the date of the placement,

(b) assess that the foster carer, and the accommodation to be provided at their address, are suitable to meet the child's needs, and

(c) record, in writing, the reasons for that assessment.

(3) The purposes are—

(a) authorising in law, in accordance with the order—

(i) the placement of the child with the foster carer,

(ii) the ongoing residence of the child with the foster carer,

(b) providing legal authority for any person who is granted rights under the order to exercise those rights in Scotland, in accordance with the order,

(c) requiring a person to comply with any condition or requirement imposed on them by the order,

(d) providing legal authority for any person to exercise any responsibility conferred on them by the order, in accordance with the order,

(e) providing legal authority for any person who, pursuant to the new foster placement, has care and control of the child to—

(i) do what is reasonable in all the circumstances to safeguard the child's health, development and welfare,

(ii) interfere with the child's legal rights to the extent that this is—

(aa) necessary,

(bb) proportionate, and

(cc) in accordance with the order, and

(f) the application of the Act in relation to the relevant order (in respect of which, see regulation 36).

Requirements for effect of new order where placement from residential care to fostering

33. This regulation is complied with where—

(a) the placing fostering authority has given, in writing, to each person mentioned in regulation 22 (persons to receive notice in respect of temporary placement with foster carer), a notice containing the information specified in regulation 23 (content of notice for temporary placement with foster carer), and

(b) the placing fostering authority has entered into a written agreement with the foster carer regarding the matters and obligations in schedule 3 (matters to be covered in agreement between placing foster authority and foster carer) and any other matters or obligations as the placing fostering authority considers appropriate.

PART 10

TEMPORARY CROSS-BORDER FOSTER PLACEMENT – DUTIES OF PLACING FOSTERING AUTHORITY

Temporary placement with foster carer – ongoing duties of placing fostering authority

34. For the duration of the authorised foster placement of a child, the placing fostering authority must—

(a) comply with any conditions or requirements imposed on it by a relevant order having effect under an authorising fostering provision,

(b) provide or secure the provision of all services required to support the placed child,

(c) meet the costs arising from, or in consequence of, the child's ongoing foster placement,

(d) undertake visits and ongoing foster placement reviews in accordance with its written agreement with the foster carer, entered into in accordance with regulation 21(4), 28(4) or as the case may be, 33(b).

Fostering – compliance with requirements in order

35.—(1) The placing fostering authority must from time to time investigate whether any conditions or requirements imposed under a relevant order having effect under an authorising fostering provision are being complied with.

(2) If the placing fostering authority considers that those conditions or requirements are not being complied with, it must take such steps as the placing fostering authority considers reasonable.

PART 11

TEMPORARY RESIDENTIAL AND FOSTERING PLACEMENTS - APPLICATION AND MODIFICATION OF THE ACT

Application of the Act to orders having effect under authorising fostering and authorising residential provisions

36.—(1) Sections 168 to 171 of the Act apply, subject to the modifications specified in paragraphs (2) to (6) in relation to—

(a) a relevant order having effect under regulation 3(1), 9(1), 20(1), 24(1), 27(1) or 28(1),

(b) a deprivation of liberty order having effect under regulation 3(2) or 9(1).

(2) Section 168 (enforcement of orders) applies as if for subsection (3) there were substituted—

"(3) In this section, "relevant order" means an order having effect under regulation 3(1), 3(2), 9(1), 20(1), 24(1), 27(1) or 28(1) of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026.".

(3) Section 169 (child absconding from place) applies as if—

(a) in subsection (1), for paragraph (a) there were substituted—

"(a) a child requires to be kept in a particular place by virtue of an order having effect under regulation 3(1), 3(2), 9(1), 20(1), 24(1), 27(1) or 28(1) of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026, and",

(b) subsections (5) and (6) were omitted.

(4) Section 170 (child absconding from person) applies as if—

(a) in subsection (1), for paragraph (a) there were substituted—

"(a) a person has (or is authorised to have) control of a child by virtue of an order having effect under regulation 3(1), 3(2), 9(1), 20(1), 24(1), 27(1) or 28(1) of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026, and",

(b) subsections (5) and (6) were omitted.

(5) Section 171 (offences related to absconding) applies as if—

(a) in subsection (1), for paragraph (a) there were substituted—

"(a) a child requires to be accommodated in a particular place by virtue of an order having effect under regulation 3(1), 3(2), 9(1), 20(1), 24(1), 27(1) or 28(1) of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026, and",

(b) in paragraph (b) the words "or warrant" were omitted.

(6) For section 199 (meaning of "child") substitute—

"Meaning of "child"

199. In this Act, "child" means a person who is under the age of 18 years.".

PART 12

ENFORCEMENT OF PLACING LOCAL AUTHORITY AND PLACING FOSTERING AUTHORITY DUTIES

Enforcement of placing local authority and placing fostering authority duties

37.—(1) This regulation applies where it appears to the Scottish Ministers that—

(a) the placing local authority is in breach of a duty imposed on it by—

(i) regulation 13(a) (ongoing duties of the placing local authority),

(ii) regulation 13(b) (ongoing duties of the placing local authority),

(iii) regulation 14 (compliance with requirements in order),

(iv) regulation 16 (requirement for periodic ongoing residential placement review),

(v) regulation 18 (mandatory ongoing residential placement review in certain circumstances).

(b) the placing fostering authority is in breach of a duty imposed on it by—

(i) regulation 34(a) (requirement to comply with conditions or requirements in relevant order),

(ii) regulation 35 (fostering – compliance with requirements in order).

(2) The Scottish Ministers may give the placing local authority, or as the case may be, the placing fostering authority a notice in accordance with paragraph (3) of an intended application by them to enforce the authority's duty.

(3) The notice must—

(a) set out the respects in which the authority is in breach of its duty, and

(b) state that if the authority does not perform that duty before the expiry of the period of 21 days beginning with the day on which the notice is given, the Scottish Ministers may make an application to enforce the authority's duty.

(4) In determining whether it appears that the placing local authority is in breach of a duty mentioned in sub-paragraph (1)(a), the Scottish Ministers may consider—

(a) the outcome of any ongoing residential placement review,

(b) representations made by—

(i) any person mentioned in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting),

(ii) the placed child,

(iii) any other person with an interest in the child's welfare.

Application for order

38.—(1) The Scottish Ministers may apply to the relevant sheriff for an order to enforce—

(a) the duty of the placing local authority under—

(i) regulation 13(a) (ongoing duties of the placing local authority),

(ii) regulation 13(b) (ongoing duties of the placing local authority),

(iii) regulation 14 (compliance with requirements in order),

(iv) regulation 16 (requirement for periodic ongoing residential placement review),

(v) regulation 18 (mandatory ongoing residential placement review in certain circumstances),

(b) the duty of the placing fostering authority under—

(i) regulation 34(a) (requirement to comply with conditions or requirements in relevant order),

(ii) regulation 35 (fostering – compliance with requirements in order).

(2) The relevant sheriff is a sheriff of the sheriffdom in which the principal office of the receiving local authority, or as the case may be, the receiving fostering authority is situated.

(3) The Scottish Ministers may not make an application under this regulation unless—

(a) the placing local authority, or as the case may be, the placing fostering authority has been given a notice under regulation 37(2), and

(b) the authority has failed to carry out the duty within the period specified in the notice.

(4) The application is to be made by way of summary application.

Order for enforcement

39.—(1) The sheriff may, on an application by the Scottish Ministers under regulation 38, make an order requiring the placing local authority or, as the case may be, the placing fostering authority that is in breach of a duty mentioned in regulation 38(1) to carry out the duty.

(2) Such an order is final.

PART 13

REQUIREMENTS FOR PLACING LOCAL AUTHORITY AND PLACING FOSTERING AUTHORITY TO NOTIFY OF CERTAIN EVENTS

Requirement to notify of termination of placement

40.—(1) Where a child subject to an authorised residential placement or, as the case may be, an authorised fostering placement is no longer to be accommodated or to reside within Scotland, the placing local authority or, as the case may be, the placing fostering authority must notify the persons mentioned in paragraph (2) of—

(a) the intention for the child to be accommodated or to reside outwith Scotland, and

(b) the date on which the alternative accommodation or residence arrangement is proposed to take effect.

(2) The persons to be notified of the matters mentioned in paragraph (1) are—

(a) in respect of an authorised residential placement, the persons mentioned in regulation 7 (persons to receive notice and undertaking in respect of temporary placement in residential care setting),

(b) in respect of an authorised fostering placement, the persons mentioned in regulation 22 (persons to receive notice and undertaking in respect of temporary cross-border foster placement).

Requirement to notify of death of child in placement

41. Where a child subject to an authorised residential placement or an authorised fostering placement dies, the placing local authority or, as the case may be, the placing fostering authority must immediately notify—

(a) the Scottish Ministers,

(b) Social Care and Social Work Improvement Scotland, and

(c) the receiving local authority or, as the case may be, the receiving fostering authority.

PART 14

TEMPORARY PLACEMENTS – EFFECT OF CHILD BECOMING SUBJECT TO COMPULSORY SUPERVISION ORDER OR INTERIM COMPULSORY SUPERVISION ORDER

Effect of child placed in residential care setting or subject to cross-border foster placement becoming subject to compulsory supervision order or interim compulsory supervision order

42.—(1) A relevant order having effect under an authorising residential provision or an authorising fostering provision, or as the case may be, a deprivation of liberty order having effect under an authorising residential provision, ceases to have effect in accordance with the relevant authorising provision in the circumstance in paragraph (2).

(2) The circumstance is that the child who is the subject of the relevant order or, as the case may be, the deprivation of liberty order becomes subject to a compulsory supervision order or interim compulsory supervision order.

PART 15

PERMANENT TRANSFERS – EFFECT OF ORDERS

Permanent transfer – effect of care orders made in England and Wales

43.—(1) This regulation applies where—

(a) a child is subject to a care order made under section 31(1)(a) of the 1989 Act,

(b) the court has given approval under paragraph 19(1) of schedule 2 of the 1989 Act to the local authority (the "home local authority") to arrange, or assist in arranging, for the child to live in Scotland,

(c) the local authority for the area in which the child is to reside, or has moved to, in Scotland ("the host local authority") has, through the Principal Reporter, notified the court in writing that it agrees to take over the care of the child, and

(d) the home local authority has notified the court that it agrees to the host local authority taking over the care of the child.

(2) The care order has effect as if it were a compulsory supervision order (in respect of which, see regulation 47).

(3) In this regulation "court" means the court which has given the approval in terms of paragraph 19(1) of schedule 2 of the 1989 Act.

Permanent transfer – effect of supervision orders and education supervision orders made in England and Wales

44.—(1) This regulation applies where—

(a) a child is subject to a supervision order made under section 31(1)(b) of the 1989 Act, or an education supervision order made under section 36(1) of that Act,

(b) the local authority designated under section 31(1)(b) of the 1989 Act, or the local authority designated under section 36(1) of that Act, has notified the local authority for the area in which the child is to reside in Scotland ("the host local authority") of the proposed transfer of the child to Scotland, and

(c) the host local authority has consented to the proposed transfer in writing.

(2) The supervision order, or education supervision order, has effect as if it were a compulsory supervision order (in respect of which, see regulation 47).

Permanent transfer – effect of care orders made in Northern Ireland

45.—(1) This regulation applies where—

(a) a child is subject to a care order made under article 50(1)(a) of the 1995 Order,

(b) the court has given approval under article 33(1) of the 1995 Order to the local authority which is responsible for the child's care ("the home local authority") to arrange, or assist in arranging, for the child to live in Scotland,

(c) the local authority for the area in which the child is to reside, or has moved to, in Scotland ("the host local authority") has, through the Principal Reporter, notified the court in writing that it agrees to take over the care of the child, and

(d) the home local authority has notified the court that it agrees to the host local authority taking over the care of the child.

(2) The care order has effect as if it were a compulsory supervision order (in respect of which, see regulation 47).

(3) In this regulation "court" means the court which has given the approval in terms of article 33(1) of the 1995 Order.

Permanent transfer – effect of supervision orders or education supervision orders made in Northern Ireland

46.—(1) This regulation applies where—

(a) a child is subject to a supervision order made under article 50(1)(b) of the 1995 Order, or an education supervision order made under article 55(1) of that Order,

(b) the authority designated under article 50(1)(b) of the 1995 Order, or the Education Authority designated under article 55(1) of that Order, has notified local authority for the area in which the child is to reside in Scotland ("the host local authority") of the proposed transfer of the child to Scotland, and

(c) the host local authority has consented to the proposed transfer in writing.

(2) The supervision order, or education supervision order, has effect as if it were a compulsory supervision order (in respect of which, see regulation 47).

(3) In this regulation, "Education Authority" means the Education Authority established by section 1 of the Education Act (Northern Ireland) 2014(**a**).

(**a**) 2014 c. 12 (N.I.).

PART 16

PERMANENT TRANSFERS – APPLICATION AND MODIFICATION OF ACT

47.—(1) Where an order made in England and Wales or Northern Ireland has effect as if it were a compulsory supervision order by virtue of Part 15 of these Regulations, the provisions of the Act apply, subject to the modifications specified in paragraph (2), in relation to that order.

(2) The modifications are that—

(a) a reference to an implementation authority is to be read as if—

(i) where regulation 43 applies, it were a reference to the host local authority referred to in regulation 43(1)(c),

(ii) where regulation 44 applies, it were a reference to the host local authority referred to in regulation 44(1)(b),

(iii) where regulation 45 applies, it were a reference to the host local authority referred to in regulation 45(1)(c),

(iv) where regulation 46 applies, it were a reference to the host local authority referred to in regulation 46(1)(b),

(b) section 131(2) (duty of implementation authority to require review) applies as if after paragraph (e), there were inserted—

"(f) the authority becomes aware that the child is subject to a compulsory supervision order by virtue of Part 15 of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026,",

(c) section 137 (duty to arrange children's hearing) applies as if after subsection (3) there were inserted—

"(3A) If the review is initiated under section 131(2)(f) the children's hearing must be arranged to take place no later than 20 working days after notice is given to the Principal Reporter under section 131(1).",

(d) section 199 (meaning of "child") applies as if there were substituted—

"Meaning of "child"

199. In this Act, "child" means a person who is under the age of 18 years.".

PART 17

REVOCATIONS, SAVINGS AND TRANSITIONAL ARRANGEMENTS

Revocations, savings and transitional arrangements

48.—(1) Subject to paragraphs (2) and (3), the following instruments are revoked—

(a) the 2013 Regulations, and

(b) the 2022 Regulations.

(2) Any order having effect as if it were a compulsory supervision order under the 2013 Regulations prior to the day on which the 2013 Regulations are revoked continues to have such effect until that order expires or is revoked.

(3) The revocation of the 2022 Regulations has no effect in respect of—

(a) the effect given to any deprivation of liberty order under those Regulations prior to their revocation,

(b) the ability of the Scottish Ministers to take enforcement action for any potential breach of duty by the placing local authority under sections 146 and 147 of the Act (as applied and

modified by regulation 13 of the 2022 Regulations), where the potential breach arose during the period when the 2022 Regulations were in force,

(c) the ability of the sheriff to make an order for enforcement under section 148 of the Act (as applied and modified by regulation 13 of the 2022 Regulations) in respect of any breach of duty mentioned in sub-paragraph (b), where the breach of duty arose during the period when the 2022 Regulations were in force,

(d) any conviction, prosecution or criminal proceedings in respect of the offence under section 171 of the Act (as applied and modified by regulation 13 of the 2022 Regulations) where the conviction, prosecution or criminal proceedings relate to conduct during the period when the 2022 Regulations were in force.

(4) Subject to the conditions in paragraph (5), any deprivation of liberty order having effect as if it were a compulsory supervision order under the 2022 Regulations prior to their revocation shall continue to have such effect until the end of the relevant period applicable on the day before these Regulations come into force.

(5) The conditions are that—

(a) the deprivation of liberty order continues to have effect in the jurisdiction of the court which made the order, and

(b) the child subject to the deprivation of liberty order has not become subject to an interim compulsory supervision order or a compulsory supervision order (in which case, regulation 6 of the 2022 Regulations applies).

(6) Where a child is to remain accommodated in a residential care setting subject to a deprivation of liberty order after the end of the applicable relevant period mentioned in paragraph (4), these Regulations are to apply as if the child were subject to an initial residential placement.

(7) In this regulation—

(a) "the 2013 Regulations" means the Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013(**a**),

(b) "the 2022 Regulations" means the Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022(**b**),

(c) "the relevant period" means the relevant period specified in regulation 5(5) of the 2022 Regulations.

NATALIE DON-INNES
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
21st January 2026

(**a**) S.S.I. 2013/99.
(**b**) S.S.I. 2022/225, as amended by paragraph 27(2) of schedule 1 of the Children (Care and Justice) (Scotland) Act 2024 (asp 5).

SCHEDULE 1

Regulations 5(2)(b), 27(2)(b) and 30(2)(b)

FORM OF UNDERTAKING

Form of undertaking

Undertaking by placing local authority under the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026

In accordance with regulation 5(2)(b)/ 27(2)(b) / 30(2)(b) of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 ("the Regulations"),

…… [name of placing local authority] hereby gives the following undertaking:

For the duration of the authorised residential placement of …… [name of placed child, "the child"], …… [name of placing local authority] will:

(a) provide or secure the provision of all services to support the child,

(b) meet the costs arising from, or in consequence of, the child's placement, other than the costs of children's advocacy services provided to the child in accordance with regulation 19 (provision of children's advocacy services) of the Regulations,

(c) comply with the duties in the following provisions of the Regulations—

(i) regulation 13(a) (ongoing duties of the placing local authority),

(ii) regulation 13(b) (ongoing duties of the placing local authority),

(iii) regulation 14 (residential care - compliance with requirements in order), where applicable,

(iv) regulation 16 (requirement for periodic ongoing residential placement review), and

(v) regulation 18 (mandatory ongoing residential placement review in certain circumstances).

(d)

…… [name of placing local authority] recognises that any breach of its duties under the Regulations may result in enforcement action being taken by the Scottish Ministers.

Signed by: ……

on behalf of …… [placing local authority]

Date: ……

SCHEDULE 2

Regulation 13(c)(iii), 16(1)(b) and 18(1)

ONGOING RESIDENTIAL PLACEMENT REVIEW REQUIREMENTS

Duty to give notice of ongoing residential placement review

1. Before an ongoing residential placement review is undertaken, an officer of the placing local authority must—

(a) give the persons mentioned in paragraph 2(1) at least 10 working days' notice of the matters specified in paragraph 4,

(b) invite the persons mentioned in paragraph 2 to provide written representations before the date of the review if they are unable to attend,

(c) consult with the placed child about the matters to be considered at the review, unless this is inappropriate having regard to the child's age and understanding, and

(d) consult with any other person they consider appropriate, considering the matters specified in paragraph 4.

Persons to be given notice of ongoing residential placement review

2.—(1) The persons to be given notice of an ongoing residential placement review are—

(a) the Health Board which provides health services in the area in which the child is subject to an ongoing residential placement,

(b) the registered manager,

(c) the chief social work officer of the receiving local authority,

(d) any person acting for the time being as the chief education officer of the receiving local authority, and

(e) any other person the placing local authority considers appropriate, considering the matters specified in paragraph 4.

(2) The matters in relation to which a person mentioned in paragraph 1 must be given notice are—

(a) the date of the review,

(b) the time of the review, and

(c) how to attend the review.

Ongoing residential placement review process

3.—(1) An ongoing residential placement review must be undertaken and chaired by an officer of the placing local authority.

(2) The officer of the placing local authority must ensure that—

(a) the persons responsible for implementing any decision taken in consequence of the review are identified, and

(b) any failure to review the case in accordance with this schedule or to take proper steps to implement decisions taken in consequence of the review are brought to the attention of an officer at an appropriate level of seniority within the placing local authority.

Matters to be had regard to in conducting ongoing residential placement review

4. The matters to which an officer of the placing local authority must have regard in conducting an ongoing residential placement review are—

(a) the effect of any change in the child's circumstances since the last review,

(b) whether the information in the notice provided in accordance with regulation 5(2)(a), 27(2)(a) or 30(2)(a) requires to be updated and provided to the persons in regulation 7,

(c) whether decisions taken at the last review have been successfully implemented, and if not, the reasons for that,

(d) whether the placing local authority should seek any change to the legal basis for the child's ongoing residential placement,

(e) the arrangements for contact between the child, any person with parental rights or parental responsibilities in respect of them and any siblings, and whether there is any need for changes to the arrangements in order to promote such contact,

(f) whether the child's placement continues to be suitable to meet the child's needs,

(g) whether any change to the placement or any other aspects of the arrangements made to provide the child with accommodation is, or is likely to become, necessary or desirable before the next review of the child's placement,

(h) whether the child's placement safeguards and promotes the child's welfare and upholds their rights,

(i) whether any safeguarding concerns have been raised in relation to the child,

(j) the child's educational needs, progress and development and whether any change to the arrangements for the child's education or training is, or is likely to become, necessary or desirable to meet their particular needs and to promote their educational achievement before the next review of the placement,

(k) the child's leisure interests,

(l) the child's state of health and whether any change to the arrangements for the child's health care is, or is likely to become, necessary or desirable before the next review of the placement,

(m) whether the child's needs related to their identity are being met and whether any particular change is required, having regard to the child's religious persuasion, racial origin and cultural background,

(n) whether any arrangements need to be made to prepare for ending the placement,

(o) the child's wishes and feelings about any aspect of their placement.

SCHEDULE 3

Regulation 21(4)(a), 28(4) and 33(b)

MATTERS TO BE COVERED IN AGREEMENT BETWEEN PLACING FOSTERING AUTHORITY AND FOSTER CARER

1. The support and training to be given to the foster carer.

2. The procedure for the review of approval of the foster carer.

3. The procedure for handling of complaints against the foster carer.

4. The financial arrangements which are to exist between the placing fostering authority and the foster carer and the arrangements for the financial support of the child during the ongoing foster placement.

5. The placing fostering authority's arrangements for meeting any legal liabilities of the foster carer arising by reason of the ongoing foster placement.

6. The procedure available to foster carers who wish to make representations to the placing fostering authority.

7. The foster carer's obligation to give written notice to the placing fostering authority and receiving fostering authority forthwith, with full particulars, of—

(a) any intended change of address,

(b) any change in the composition of the household, any other change in personal circumstances, any other event affecting either the foster carer's capacity to care for any child placed or the suitability of the household and any criminal convictions arising between their approval as a foster and subsequent reviews under the 2009 Regulations, and

(c) any further request or application of a kind mentioned in paragraph 11 of the 2009 Regulations.

8. The foster carer's obligation—

(a) not to administer corporal punishment to the child placed with them,

(b) to ensure that any information relating to the child placed, to the child's family or to any other person, which has been given in confidence in connection with an ongoing foster placement is kept confidential and is not disclosed to any person without the consent of the placing fostering authority,

(c) to comply with the terms of the agreement entered into in accordance with this Part of this schedule, to care for the child placed with the foster carer as if the child was a member of that person's family and in a safe and appropriate manner and to promote the child's welfare having regard to the placing fostering authority's immediate and longer-term arrangements for the child,

(d) to notify the placing fostering authority and the receiving fostering authority immediately of any serious illness of the child or of any other serious occurrence affecting the child,

(e) to cooperate with arrangements made by the placing fostering authority, and

(f) where the placement is terminated, to allow the child to be removed from their home by the placing fostering authority.

9. The circumstances in which it is necessary to obtain in advance the approval of the placing fostering authority for the child to live, even temporarily, away from the foster carer's home or for someone else temporarily to take care of the child.

10. The arrangements for visits to the child, in connection with the supervision of the placement, by the placing fostering authority, and the frequency of such visits.

11. The arrangements for the review of the child's ongoing foster placement, and the frequency of such reviews.

12. The arrangements for the child to have contact with their parents, siblings and other persons.

13. The provision by the placing fostering authority to the foster carer of a statement containing all information which it considers necessary to enable the foster carer to care for the child and, in particular, information about—

(a) the objectives of the ongoing foster placement,

(b) any care plan it has prepared in relation to the child,

(c) the relevant order to which the child is subject,

(d) the child's personal history, religious persuasion, cultural and linguistic background and racial origin,

(e) the child's state of health and need for health care and surveillance, and the name of the child's general practitioner during the ongoing foster placement, and

(f) the child's educational needs,

including a requirement for the statement to be provided either prior to the child's placement with a foster carer or, where this is not possible, within three working days, beginning with the date of the placement.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for certain orders made in England and Wales or Northern Ireland to be given effect to in Scotland as if they were compulsory supervision orders ("CSOs") in certain circumstances and for certain purposes. They also provide lawful authority for a child from England, Wales or Northern Ireland to be accommodated in a residential care setting where they are subject to a voluntary arrangement (see regulation 2(1) for the definitions of "residential care setting" and "voluntary arrangement" respectively, and for the definition of other terms used in this Explanatory Note).

Part 1 of the Regulations contains citation, commencement and interpretation provisions. Regulation 2 defines terms for the purposes of the Regulations.

Part 2 of the Regulations deals with temporary placements of children from England, Wales and Northern Ireland into residential care settings in Scotland. Such placements may arise by virtue of the child being subject to a relevant order, a deprivation of liberty ("DOL") order or a voluntary arrangement.

Regulation 3 makes provision in respect of children placed into residential care on a temporary basis who are subject to a relevant order or DOL order. For either type of order to be given effect to in Scotland as if it were a CSO for the purposes specified in regulation 3(3), regulation 5(1) must apply. That regulation refers to conditions which must be met for its application – namely, that the placing local authority must give a notice and undertaking (per regulation 8 and schedule 1 respectively) to the persons mentioned in regulation 7, and that ahead of the initial placement, an officer of the placing local authority must visit the residential care setting (or consult with its registered manager where the placement requires to be made in a case of urgent necessity), and undertake and record, in writing, an assessment of the suitability of the setting and the care home service provided there to meet the child's needs. Further, the relevant care home service must be registered with Social Care and Social Work Improvement Scotland (otherwise known as "The Care Inspectorate"). In respect of a DOL order, an additional requirement (as set out in regulation 6(1)) must be satisfied for it to have effect as if it were a CSO under regulation 3(2), again for the purposes specified in regulation 3(3). That is that the court which granted the DOL order must review it at least once every three months.

Regulation 4 provides a legal basis in Scotland for the temporary placement of a child into a residential care setting where they are subject to a voluntary arrangement. As with children so placed who are subject to a relevant order, the conditions in regulation 5(1) must be met for the voluntary arrangement to have effect. The purposes for which such effect is given where those conditions are met are specified in regulation 4(3).

Part 3 of the Regulations makes provision for changes to the temporary placement of a child from England, Wales or Northern Ireland in a registered residential care setting in Scotland. Regulation 9 applies where a court in the relevant jurisdiction makes a change to the legal basis for the placement (as defined in regulation 9(2)) and gives a period of three working days during which a new relevant order or, as the case may be, a DOL order, is given effect to as if it were a CSO for the purposes mentioned in regulation 9(3). After that period, the relevant order or DOL order will only continue to have such effect if certain conditions – as specified in regulation 11(a) and (b) - are met. In respect of a DOL order, there is an additional condition for it to have continued legal effect in Scotland – namely, that the court which granted the order must review it at least once every three months.

Regulation 10 makes provision about routine moves of children by the placing local authority from one residential care setting to another.

Regulation 11 sets out requirements to be met by the placing local authority where there is a change to the legal basis for, or the location of, a child's ongoing residential placement. Regulation 12 empowers the chief social work officer of the receiving local authority to transfer a child from one registered residential care setting to another where the order contains a requirement

that the child reside at a specified residential care setting, and it is in the interests of the child or another child in the setting that the child be moved as a matter of urgent necessity.

Part 5 of the Regulations details placing local authority duties in the context of making a temporary placement of a child in a residential care setting. Regulation 13 sets out the placing local authority's overarching duties during an authorised residential placement and regulation 14 requires that it investigate, from time to time, whether conditions or requirements in any order underpinning the placement, as recognised under the Regulations, are being complied with. If the placing local authority considers that they are not, it must take such steps as it considers reasonable.

Regulation 15 and 16 respectively set out mandatory requirements for visits to a child and reviews of their ongoing residential placement.

Regulation 17 specifies that certain persons can request an ongoing residential placement review and outlines how this must be responded to by the placing local authority.

Regulation 18 specifies circumstances in which an ongoing residential placement review must be undertaken by the placing local authority as soon as possible.

Part 6 contains regulation 19, which provides that the Scottish Ministers must, as soon as reasonably practicable, inform a child of the availability of children's advocacy services in certain circumstances.

Part 7 makes provision in respect of the recognition of relevant orders where a child is temporarily placed from England, Wales or Northern Ireland with a foster carer in Scotland. Where regulation 21(1) applies, such orders are recognised as if they were CSOs for the purposes mentioned in regulation 20(2). Regulation 21(1) cross-refers to three conditions which must be met for its application. The first condition is that the placing fostering authority has given, in writing, a notice containing the information in regulation 23 to each person mentioned in regulation 22. The second condition is that, prior to the child's placement, an officer of the placing fostering authority has: visited the address where it is proposed that the child will reside (or where the placement requires to be made in a case of urgent necessity, consulted with the fostering service manager and arranged for a visit to take place within five working days of the placement); assessed that the proposed accommodation and the foster carer are suitable to meet the child's needs; and recorded the reasons for this assessment in writing. The third condition is that the placing fostering authority has entered into a written agreement with the foster carer regarding the matters and obligations in schedule 3 and any other matters or obligations it considers appropriate.

Part 8 of the Regulations makes provision about changes to the temporary placement of a child with a foster carer, where the child has been placed from England, Wales or Northern Ireland. Regulation 24 deals with scenarios where the court in the relevant jurisdiction revokes a relevant order and makes another relevant order, of the same or a different type. In such a case, the new relevant order is recognised as if it were a CSO for the purposes mentioned in regulation 24(3) for a period of three working days, beginning with the day on which that new order is made. Thereafter, regulation 26(1) must be complied with for the newly made relevant order to continue to have such effect.

Regulation 25 provides that, subject to the terms of any order having effect under an authorising fostering provision, a child temporarily placed with a foster carer may be moved to reside at a new address or with a new foster carer where certain conditions are met. Part 9 makes provision about changes to the type of placement that a child is subject to. This covers scenarios where a child is moved between a temporary placement in residential care to foster care and vice versa.

Regulation 27 makes provision for when a child subject to a relevant order having effect under regulation 20(1) or 24(1) is to be moved from a temporary placement in foster care to residential care. In other words, this regulation applies where the relevant order underpinning a child's placement is to remain the same, but the setting is to change from foster to residential care. In this instance, the relevant order has effect as if it were a CSO for the purposes specified in regulation 27(5) (relating to residential care as opposed to fostering) where the conditions in regulation 27(2)

to (4) are met. These mirror the requirements for an initial placement into a residential care setting (on which, see discussion of regulation 3 and 5(1) above), save for the fact that there is no additional requirement in respect of a DOL order. Such an order would not apply in the scenario that regulation 27 provides for.

Regulation 28 deals with cases where child is subject to a relevant order having effect under regulation 3(1), or as the case may be, regulation 9(1), and is to be moved from a temporary residential care placement to a fostering placement. As with regulation 27, this is a case of the order underpinning the child's placement remaining the same, but the setting changing. In such a scenario, the conditions in regulation 28(2) to (4) must be met for the relevant order to have effect as if it were a CSO for the purposes in paragraph (5) (relating to fostering as opposed to residential care.) These mirror the requirements for a cross-border foster placement (on which, see discussion of regulation 21(1) above).

Regulation 29 deals with moves from a temporary placement in foster care to residential care where the change to the type of placement is underpinned by a new legal order made in the child's home jurisdiction (be that a relevant order or a DOL order.) Provided that certain requirements are met before the child is placed into a residential care setting, the new legal order is recognised as if it were a CSO for the purposes in regulation 29(3) for a period of three working days, beginning with the day on which the new order is made. After the three working day period, regulation 30(1) must be complied with – and in respect of a DOL order, the requirement in regulation 31 must be satisfied - for the new legal order to continue to have effect as if it were a CSO for the purposes in regulation 29(3).

Regulation 32 makes provision for cases in which a child is to be removed from a residential care setting to be placed with a foster carer where the court in the child's home jurisdiction makes a new relevant order (be that of the same or a different type to that having effect in the residential setting.) That new order is recognised as if it were a CSO for the purposes mentioned in regulation 32(3) for a period of three working days, subject to the requirements in regulation 32(2) being met. After the three working day period, regulation 33 must be complied with for the new relevant order to continue to have effect as specified in regulation 33(b).

Part 10 of the Regulations includes regulations 34 and 35, which set out duties of the placing fostering authority during an ongoing foster placement.

Part 11 applies and modifies certain provisions of the Act in respect of relevant orders and DOL orders having effect under specified provisions of the Regulations as if they were CSOs.

Part 12 makes provision for the enforcement of certain duties of the placing local authority and the placing fostering authority under the Regulations. Regulation 37 sets out the procedure by which the Scottish Ministers can seek to enforce such a duty before escalating the matter to the relevant sheriff in accordance with regulation 38. Regulation 39 states that a sheriff may make an order to enforce the relevant duties, which order is final.

Part 13 sets out requirements for the placing local authority or placing fostering authority to make notifications about certain events in connection with an ongoing residential or fostering placement. Regulation 40 deals with notification of the proposed termination of such a placement and regulation 41 deals with notification of the death of a child subject to such a placement.

Part 14 contains regulation 42, which provides that the effect given to any relevant order or DOL order pertaining to a child under certain provisions of the Regulations is extinguished where the child becomes subject to a CSO or an interim CSO.

Part 15 deals with permanent transfer of relevant orders to CSOs. It provides for relevant orders to have effect as if they were CSOs where certain conditions are met, including that the local authority for the area in which the child is to reside has consented to the proposed transfer in writing.

Part 16 applies and modifies certain provisions of the Act where a relevant order has effect as if it were a CSO under Part 15.

Part 17 revokes the Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013. It also revokes the Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022, subject to savings and transitional provisions.

Schedule 1 sets out the form of undertaking required from the placing local authority, in accordance with regulation 5(2)(b), 27(2)(b) and 30(2)(b).

Schedule 2 outlines the requirements for ongoing residential placement reviews, as referred to in regulation 16.

Schedule 3 details the matters to be outlined in the agreement as between the placing fostering authority and a foster carer, as referred to in regulations 21(4), 28(4) and 33(1)(b).

Impact assessments have been prepared in relation to these Regulations and are published online at gov.scot.

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