

The Looked After Children (Scotland) Regulations Consultation on Draft Regulations

Introduction

Barnardo's Scotland manages over 60 services employing over 900 staff and 1000 volunteers.

Barnardo's Scotland has a wide range of services. In terms of age this includes pre-natal, early years, primary school, secondary school, and into adulthood. In terms of work focus it provides child protection services, support to children's education, support to families where there are mental health and substance misuse issues, disability services, youth offending services, leaving care and accommodation services and a growing number of services assisting young people into employment.

Almost all Barnardo's Scotland services include children who are looked after and there are specific services for children and young people looked after and accommodated in residential care and foster care.

General Comments

Barnardo's Scotland welcomes the opportunity to comment on the regulations and offers comments based on our wide ranging experience of looked after children.

Barnardo's Scotland recognises that the draft regulations build on existing regulations and believes that there is an opportunity to strengthened practice by taking a more child focussed approach to the new proposals. This is typically where the views of the child should be explicitly sought and recorded and we have indicated in the text where and how this is proposed.

Barnardo's Scotland proposes that looked after children should have a 'right' to the option of access to independent children's rights officers or advocacy services. This would place a 'duty' on the local authority to:

- Bring to the attention of a child, their entitlement to rights and advocacy services
- Where necessary provide rights and advocacy services as requested by the child
- Respond to requests for independent rights or advocacy services throughout the period of a child being looked after

This duty is consistent with the recent report on Historic Abuse in Scotland¹ which stated in its recommendations on current provision to ensure the welfare and safety of looked-after and accommodated children that:

“there is a need to develop a culture in residential child care founded on children's rights”
(Scottish Government, 2007)

Barnardo's Scotland believes that there is a need to create a culture founded on children's rights and that this should extend across all children's services and not be confined to residential services.

In one study looking at the extent to which children and young people can express their views on decisions made about them in the Children's Hearing System², suggested:

“The needs and wishes of children and young people could be met by devising a *common advocacy standard*”

Barnardo's Scotland acknowledges that this will require additional resources and believes that scoping on the costs of such a measure should accompany the consideration of the implementation of the new regulations.

Barnardo's Scotland previously proposed a limit of 3 children per household for foster placements (with exceptions for sibling groups and availability of specialist support). Barnardo's Scotland is still of the opinion that this measure should be considered when assessing placements in terms of approved limits.

PART I – GENERAL

Regulation 1- Citation and commencement
Regulation 2-Interpretation

Q1. Please consider the definitions and comment as you feel appropriate.

No comment.

PART II- PLANNING FOR LOOKED AFTER CHILDREN

Regulation 3- duty of local authority to make a care plan in respect of a child

Q2. In line with Getting it Right for Every Child, we have been asked to consider using the term 'child's plan'. Do you agree with this suggestion?

¹ Scottish Government (2007), *Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995*, Shaw, T. Scottish Government, Edinburgh

²Big Words and Big Tables: Children and young people's experiences of advocacy support and participation in the Children's Hearing System, Scottish Executive, 2005, Creegan, Henderson & King,

Barnardo's Scotland proposes for children looked after 'child's care plan' is appropriate. There is a different status for children who are under statutory measures and this should be reflected in the use of the term 'care'.

Q3. Statistics published in November by the Scottish Government indicates that 25% of looked after children do not have a current care plan. How could regulations be strengthened to ensure this important requirement is met?

This appears to be a problem of implementation at local level, rather than the wording of the regulation that requires a plan to be produced. This should be picked up through inspection frameworks and specifically reported on.

Q4. Should the regulation contain a timescale e.g. 2 weeks by which the care plan should be drafted?

Barnardo's Scotland acknowledges that in most instances, children subject to statutory measures will have been previously known to agencies. In these cases it is reasonable to propose a 2 week period for a draft plan. However, there will be instances where the child or family may not be well known (e.g. Place of Safety or Section 25) and it may require a longer period.

Barnardo's Scotland proposes a 4 week period would be more realistic, without running the risk of allowing drift in care planning.

Q5. The regulation states that the information about the child in Schedule 1 should be obtained and recorded. Should anything else be added to Schedule 1?

Barnardo's Scotland suggests that it would be helpful to have:

- A requirement to detail information on named persons with whom the child should not have any contact
- A requirement to be specific on actual medication for the child
- A requirement to have taken account of the child's views on being looked after, involvement in the planning process and demonstrate how this was achieved (or not, as the case may be)

Q6. Should adherence to the Code of Practice on records management be specifically mentioned

Yes, and it may be appropriate to amend these in light of the requirement to demonstrate how the views of the child were obtained and taken into account.

Regulation 4 -Matters to be addressed in a care plan

Q7. Is the list in Schedule 2 complete? If not what needs to be added?

It would be useful to add 'Health authority' in Part 1, 'respective responsibilities' section.

It would be useful to include a similar requirement on the child's views as suggested under Schedule 1.

Q8. Do we need to add anyone else? Should there be any caveats or exceptions e.g. for child protection purposes?

Barnardo's Scotland is aware of occasions where it is desirable to have foster carers details remain anonymous and suggests that this be included as a caveat.

Regulation 5 - considerations to which a local authority should have regard in making a care plan.

Q9. Government is keen to ensure children and young people are enabled to participate in planning and decision making around their care, for example through independent advocates. Is this an area that should be covered in these regulations?

Yes.

Barnardo's Scotland proposes that all looked after children and young people have access to independent children's rights officers or advocates and this should be incorporated. See comments under General Comments.

Regardless of the above, Barnardo's Scotland proposes that there should be explicit mention of the need to take account of the views of the child.

Regulation 6- considerations to which a local authority shall have regard in making a care plan for a child...where the local authority are considering placing the child.

Q10. Are there any further matters that need to be considered when placing children elsewhere than with their parents?

Barnardo's Scotland believes that the stability of school placements is a critical issue in the removal of a child from their home. Wherever possible, school placement should remain the same, unless there are compelling reasons why this is not desirable. Essentially, more stringent efforts should be made to limit the number of school placements for looked after children.

Regulation 7- review of children's cases

Barnardo's Scotland is aware that currently regulations³ state

³ The Scottish Office (1997), *Scotland's Children : The Children (Scotland) Act 1995 Regulations and Guidance : Volume 2 Children Looked After by Local Authority* HMSO, Edinburgh

“the obligation lies on the local authority to take into account the views of the child (paragraph 97 p21)

and ;

“In deciding recording...the emphasis shall be on a record of decisions, the facts and judgements which informed these decisions, who will carry them out and by when”.
(paragraph 112 p24)

However, there is nothing specific regarding the recording a child’s view amongst the check list that the Chairperson should cover. Some local authorities place more emphasis than others in seeking children’s views and this needs to be made a requirement.

Barnardo’s Scotland proposes that LAC reviews should specifically record the views of the child in relation to:

- The overall care plan
- Contact arrangements with significant people in their lives
- Where decisions taken are different to the child’s views or wishes the reasons for these decisions are clearly minuted

The last point proposed above is key from a children’s rights perspective and is significantly different to the current regulations as it explicitly states the need not only to ascertain views but to record why decisions that are different to the child’s view are made and the reasons why these decisions were made.

Q11. Do you agree with the 6 month timescale? If not what would you propose and why?

Barnardo’s Scotland agrees that the long term needs of a child should be addressed within 6 months of first being looked after. This will avoid drift and provide for permanency planning where this is appropriate.

Regulation 8 - Time when a case is to be reviewed

Q12. Do you agree with these timescales? If not what would you propose and why?

Barnardo’s Scotland can see no case for different reviews requirements dependent on a child being looked after at home or away from home. There should be the same expectations in terms of review requirements. There may be capacity issues to deliver, but the approach should be standard.

Q13. We believe there is scope for improvement in the process here and would be interested in your comments.

No comment

Regulation 9 - Review of a child's case: permanence order

Q14. Do you have any comments?

Barnardo's Scotland is sympathetic to the desire to minimise reviews and normalise the lives for children subject to a permanence order. We are also aware of the need to be vigilant as to the well-being of the child. Barnardo's Scotland suggests maintaining a 6 monthly review requirement which can be cancelled by the agreement of all parties, with an absolute requirement for an annual review. In addition, Barnardo's Scotland suggests that yearly visits by a children's rights officer or independent advocate would be prudent in allowing the child an opportunity to express their view – especially in relation to the safeguarding role. We have experience of the value of this model through Barnardo's Scotland Fife Children's Rights Service in partnership with Fife Council.

Regulation 10 - Recording review information

Barnardo's Scotland suggests that there should be a requirement to disseminate review minutes within 4 weeks of the review date.

Regulation 11 - Health requirements

Q15. Is this provision satisfactory for identifying needs and ensuring they are met, particularly while the child is looked after and accommodated?

Barnardo's Scotland proposes that a child's place of residence should carry a specific entitlement for their health needs to be addressed. This should fall directly on the health authority where they are placed, especially for CAMH services.

PART III- PLACEMENTS

Regulation 17- decision to place a child in a foster placement

Q17. Do these cover the requirements in full? If not, what is required?

Barnardo's Scotland suggests replacing 'ascertaining' with 'take account'.

Q18. The Scottish Government propose to accept this recommendation from APRG. Do you have any comments?

Barnardo's Scotland agrees with the Scottish Government proposal to accept the APRG recommendation.

Q19. Do these Schedules contain all the appropriate material that a carer and an agency need to have discussed before the child is placed with that carer?

Barnardo's Scotland agrees that Schedule 3 and Schedule 5 are appropriate. There is a general issue relating to placements with relative carers and this is striking a balance between appropriate standards of care and the (sometimes difficult to measure) added value of having a child remain within the wider family network. The significance of the family link will differ from case to case and discretion needs to be allowed in terms of: assessment of carers; appropriateness of placement; the views of the child; and ultimately what is in the best interests of the child.

Any assessment for placement of a child should be required to take account of the views of the child and demonstrate that this has been done.

Q20. Do you agree that, if they are willing, any adults remaining in the household should be assessed with a view to approval as foster carers for the child and that the child should be allowed to continue to live in that household during the approval process?

Yes.

Regulation 18 - Emergency placement

Q21. Do you agree? Does this provide sufficient protection for the child? The carer? The social worker?

Yes.

Q22. Do you agree? Does this process and timescale provide sufficient safeguards for the child and those responsible for his or her care?

Yes.

Regulation 19 - review following emergency placement

Q23. Do you agree? Does this process and timescale provide sufficient safeguards for the child and those responsible for his or her care?

Yes, subject to the comments made at Q4 on the appropriate time for the production of a draft care plan.

Regulation 20- recommendations by a local authority

Q24. Do you agree with these proposals?

Yes.

Regulation 21 - information to be supplied to persons in respect of each child placed in a residential establishment.

Q25. Does it cover all the requirements for children who are placed in residential establishments? If not, please specify.

Barnardo's Scotland understands the proposal to replicate Regulation 17 of the Residential Establishments Regulations, but can see no reason why there is different means to do this through a Schedule for those in foster placement and detailed in regulation for residential establishments. There is an opportunity to standardise the approach to this and the same information should be sought on a child whether entering foster care or residential care.

PART IV - PANELS

Regulation 22 - appointment and composition of fostering panels.

Q26. Do you agree with prescribing these numbers in Regulations, or should it be at an agency's discretion?

No.

Barnardo's Scotland does not agree to prescription on the number of members (the wider pool) on panels.

Query – should we say more here?

Q27. If you agree, what is a reasonable number of members for a fostering panel, to achieve the balance between each member having sufficient expertise, but not being unduly overloaded? What about for a joint fostering panel, across agencies? Should the number of members be the same?

Barnardo's Scotland suggests that the panels should ideally reflect a broad perspective of interests. It is acknowledged that this is difficult to achieve and should not be prescriptive, but it would be useful to have a children's rights perspective represented on the panels.

Barnardo's Scotland suggests that there should be prescribed training for panel members, for instance regarding children's rights.

Q28. Do you agree with these provisions? Should there be other provisions, such as the need for panel members to be Disclosure Scotland checked?

Yes.

Q29. Is it necessary to have a medical adviser or could this role be covered in some other way e.g. by written reports from the applicants' GPs?

Yes.

Barnardo's Scotland regards it as crucial for the panel to have access to a medical advisor. It is often difficult to obtain medical information required on applicants via the G.P. and it requires a medically trained person to fully assess the information when it is provided.

Q30. Should there be a duty on agencies to review the membership of the panel on a regular basis?

Yes.

Barnardo's Scotland operates a 3 year limit regarding review of length of membership.

Regulation 23 - meetings of the fostering panel and joint fostering panel

Q31. Is this a reasonable approach? What should the quorum be set at ?

Barnardo's Scotland suggests that a reasonable quorum could be set at 5 members.

Q32. Should there be any other provisions made e.g. the meeting cannot be held without the medical adviser/without sufficient secretariat support to record discussions and decisions?

Barnardo's Scotland suggests that it is necessary to have medical advice - see Q29.

Barnardo's Scotland believes that it is important to ensure that secretariat is provided and the minutes sent out within 4 weeks of the decision.

Regulation 24- functions of a fostering panel

Q33. Do you think anything else needs to be added?

Barnardo's Scotland suggests that under 1(c) 'deregistration of a foster parent' should be added.

Regulation 25 - approval of foster carers by a fostering agency

Q34. Should any change be made to this list? Should any changes be made to Schedule 4?

No.

Q35. Is it useful to have this provision? Are there any problems that might arise?

Barnardo's Scotland does not see the need for this provision and believes that it is necessary to maintain assessment of carers within each agency. Otherwise, it raises complex issues about carer accountability and agency decision making. For instance, who would make the ultimate decisions about placements and their suitability and what if there are differing viewpoints between agencies?

Regulation 26 - approval of relative carers by a fostering agency?

Q36. Do you agree with the proposals generally? Is there anything else that should be included?

Barnardo's Scotland generally agrees with the proposals, although it is too early to comment as we are aware that kinship placement will be subject to further discussion.

Q37. Are there any of the provisions set out in Schedule 4 which should not apply to relative carers?

No. See answer at Q19.

Regulation 27 - agreements with foster carers and relative carers

Q38. Do the contents of the Schedule cover all that is needed?

See answer at Q19

Q39. Using the draft Schedule 5 as a model, what should such a Schedule contain?

See answer at Q19

Regulation 28 - reviews and terminations of approval

Q40. Do you have any views on these provisions? Could they be strengthened in any way?

No comment.

Q41. Do you have any views on these provisions? Is there anything that might prevent this happening?

See answer at Q35

Q42. Do you agree with this approach?

Yes.

Regulation 30 - payment of allowances

Q43. Do you have any comments?

Barnardo's Scotland agrees with proposal for the payment of allowances and fees up to the age of 18 years and suggests that consideration should be given for this to be extended to age 21 years.

PART V - ARRANGEMENTS WITH VOLUNTARY ORGANISATIONS

Regulation 31- arrangements with voluntary organisations

Q44. Is there anything else that should be listed here? Do the matters in Schedule 6 cover all the issues to be dealt with in an SLA?

Barnardo's Scotland is aware that Schedule 6 is primarily focussed with issues relating to the placing of children and for this purpose it suggests that it would be helpful if there was mention of appropriate quality standards within any Service Level Agreements.

Barnardo's Scotland suggests that it is appropriate to consider Service Level Agreements in respect of safeguarding children's rights for those who are looked after. Barnardo's Scotland has produced a framework for this with Fife Council and this provides the basis for monitoring children's rights for those looked after by the Council.

Barnardo's Scotland suggests that under 1(b), it would be helpful to detail the services that will be provided by the local authority. These could usefully include: visits to the child; assistance with parental contact; assistance with any schooling arrangements; assistance with any specific health needs.

Regulation 32 - Circumstances necessitating visits by local authorities

Q45. Do you agree with these reasons and timescales?

No.

Barnardo's Scotland understands the reasons and timescales suggested. However, this regulation is not sufficiently robust and Barnardo's Scotland suggests that there should be a minimum visiting requirement, of say 4 to 6 weeks, by the placing authority. If this was fulfilled, it would obviate the need for some of the other suggestions in this regulation.

Barnardo's Scotland understands the reason for the passing on of responsibility from one authority to another for visiting a placement, but we do not think this is appropriate and it is not conducive to the long term care needs of the child.

Q46. We propose that the final version of the Regulations will contain similar provisions for children placed in a residential care home outwith their local authority area, except that they should be visited every 3 months. Do you agree? If not, please specify your proposed alternative.

No. Barnardo's Scotland suggests that there should be similar visiting requirements for all children looked after away from home. See Q45.

Q47. Are there any other ways we can ensure that a child's 'home' local authority continues to be involved when the child is placed outwith the area?

See Q45

PART VI – RECORDS

Regulation 33 - establishment of records for looked after child.

Q48. Is there anything else that should be recorded?

No comment.

Q49. Do you feel that adherence to the Code of Practice on records management should be required through guidance?

Yes.

Regulation 34 - establishment of case records for carers with whom a child is placed.

Q50. Is there anything else that should be recorded?

Barnardo's Scotland suggests it may be worth adding a section on 'issues arising' for carers records.

Q51. Should there be a similar record for kinship carers?

Yes, subject to comments at Q19

Q52 Do you agree that this should happen?

Yes and it should be available for Care Commission inspections.

Regulation 35 -Retention and confidentiality of records

Q53. Regulations 35(1) and (2) replicate existing provisions with regard to retention of records. We are considering whether these should be updated. In your view, what should the retention period be and why?

Barnardo's Scotland suggests a 10 year retention period for foster carer records, for child protection purposes.

Q54. Do you have any comments?

No Comment

Regulation 36 – Revocation