

THE LOOKED AFTER CHILDREN (SCOTLAND) REGULATIONS 2009
SECOND CONSULTATION
SUMMARY OF RESPONSES AND SCOTTISH GOVERNMENT RESPONSE

Introduction

‘The underpinning principle of our approach is inclusion. All of our citizens must be able to participate in this new successful Scotland, including those who have experience of the care system’¹.

The second consultation period on the Looked After Children (LAC) regulations ran between October 2008 and January 2009. This report summarises the comments received in response to the consultation and sets out the Scottish Government’s proposals, including any proposed changes to the regulations, in relation to the comments received.

Respondents were asked specific questions under 11 headings and the comments received have been grouped under these headings within this document.

A number of respondents also gave us general views and comments which are set out below.

General Comments

Respondents overwhelmingly welcomed the revised structure of the regulations, commenting that the separate sections on looked after by parents, kinship care, foster care and residential care made the regulations much clearer and easier to follow. One respondent said “the layout of the regulations has been vastly improved as they now helpfully and clearly identify the differences in regulation for looked after children at home, in foster care, in kinship care and in residential care.”

However, many respondents commented that the regulations were not detailed enough in respect of kinship care and residential care. In particular, it was suggested that the kinship care section should fully reflect the interim assessment and support guidance and the findings of the ‘Getting it right for every child in kinship and foster care’ reference and task groups. Respondents also commented that the residential regulations required some updating and amendment to bring them up-to-date. One respondent said “we do however want to take this opportunity to highlight the pressing need to review the Residential Regulations also. The key issue that needs to be addressed is the status of the regulations and the apparently unanticipated consequence of the drafting of the Regulation of Care Act 2001 and its associated statutory instrument. The key issue that needs attended to is the extent to which the residential regulations still apply to the non-local authority sector.”

Permanence orders: some respondents felt that the regulations should cover permanence orders in more detail, recognising their potential to meet the needs of a looked after child and ensure greater stability of placement. One respondent said ‘The regulations relating to permanence orders should be included as part of care planning for a looked after child, as only a local authority is able to apply for such orders’. Until the regulations relating to

¹ *These Are Our Bairns* – a guide for community and planning partnerships on being a good corporate parent.

permanence orders are drafted, it is not easy to decide where they should best sit, but care planning for a looked after child will include the legal route to securing a permanent placement – whether this is a fostering placement, residential placement or a kinship care placement.

Voluntary and independent fostering providers: a number of respondents commented on the term ‘registered fostering service’ and the implications for local authorities, voluntary and independent fostering services.

General comments were received regarding the need for consistency with the regulations supporting the Adoption and Children Act 2007. In particular, it was noted that the regulations need to be consistent in relation to carers’ right to attend panels, to see reports and papers and also in relation to the formation of the panel itself – medical and legal representation, the need for a gender balance etc.

The removal of the current restriction which prevents same-sex couples from fostering was welcomed.

One respondent noted that at several points in the regulations (placement with a kinship or foster carer or in a residential placement) there is a reference to notification being withheld where it is not in the child’s interests. They commented that as drafted this would allow a local authority to withhold notification from persons with parental rights and responsibilities who would generally be considered to be entitled to the information. They queried whether this test was sufficiently robust to justify the withholding of the child’s whereabouts from persons with relevant parental responsibilities and rights.

A number of suggestions were made throughout for points to be included and expanded on in the accompanying guidance. One respondent asked how enforceable guidance is and what the force of requirement is for processes contained in guidance, commenting “if guidance is that and not mandatory then differing standards could emerge across Scotland...” One respondent suggested flowcharts be produced as part of the guidance, which should distinguish pathways for assessment, planning, matching and review.

Respondents made a number of comments in relation to Getting it right for every child (GIRFEC), querying whether the methodology, language and terminology in the regulations were consistent with GIRFEC. It was felt that the GIRFEC principles and approach should underpin these regulations with more detailed information in guidance. One respondent noted “The regulations provide an opportunity to incorporate the principles and terminology of GIRFEC.” In revising the regulations we have sought to achieve greater consistency in language and approach, for example by referring to the ‘child’s plan’. We are conscious that we will never get it right for every child if we do not have appropriate regulations and guidance to get it right for looked after children.

The regulations consolidate our thoughts to achieve transformation in the range of quality choices and opportunities for children who need to be looked after - this is a joint vision. Hence, these regulations provide the framework within which the Scottish Government and its partner agencies work together to improve outcomes for looked after children at home and in foster, kinship and residential care which can be delivered in a cohesive and consistent way.

SCOTTISH GOVERNMENT

PART I – GENERAL

Question 1. Please consider the definitions and comment as you feel appropriate.

1.1 This section provides for definitions to be used throughout the Regulations and gives guidance on a few of the definitions, however as stated below secondary legislation should always be read with the primary legislation under which it is made.

Summary of Responses

1.2 Many respondents asked for a clear definition of 'parent'. The definition given in the regulations is "the mother or the father of the child or both". However, respondents commented that this could give rights (such as to be consulted and to receive a copy of the plan) to a parent where they may not have such rights and where it may not be appropriate. The example given was of unmarried fathers who wouldn't normally have parental rights or responsibilities.

1.3 Some respondents queried the definition of 'registered fostering service' and offered differing views on our intentions as to whether the Scottish Government was changing the current policy which means that fostering providers must operate on a 'not for profit' basis in respect of the functions in these regulations. We deal with this fully in section XI.

1.4 Some respondents asked us to provide a definition of 'child', stating that there are two definitions in the Children (Scotland) Act 1995. It was commented that Part II of the Children (Scotland) Act 1995 places duties on local authorities to promote and safeguard the welfare of children, defined as under 18, by providing services appropriate to their needs, to look after children, including provision of accommodation and to provide services for disabled children. But the Children (Scotland) Act 1995 also provides that parental rights and responsibilities for safeguarding and promoting a child's health, development and welfare, for providing direction and guidance about personal relations and acting as legal representative apply to children under 16 only.

1.5 Responses also asked if we could include definitions of: relevant person, kinship carer, relative and registered medical practitioner.

1.6 **Scottish Government Response:** *The definition of parent used in the regulations has been deliberately kept wide. Where necessary and appropriate we have included a 'best interests' test so that (for example) local authorities do not have to consult with the child's parents or give notification of placements if they consider it not to be in the child's best interests.*

1.7 *It is incorrect practice, and needlessly repetitive, to restate in secondary legislation (such as regulations) definitions which are contained in the primary legislation under which the regulations are being made. Secondary legislation should always be read with the primary legislation under which it is made. A list of definitions will be included in the accompanying guidance.*

PART II – CARE PLANNING

Question 2 (a) Do you consider that regulations 3 to 7 cover all the necessary and appropriate actions for local authorities in respect of care planning?

2.1 The consultation posed several questions on care planning, the regulations place a duty on the local authority to prepare a care plan which will describe the purpose and objective of the placement. The regulations have also been amended to use the term “child’s plan”.

Summary of Responses

Regulation 3: Information to be obtained by the local authority in respect of a child to be or being looked after by them

2.2 Many respondents commented that the three month time frame in (4) was too long. One respondent commented that “if a child has had an examination three months ago, neglectful care since then could mean a very different assessment of their health and needs.” Another commented that “it is important that each child is assessed individually and that an option is given to have a medical examination regardless of when the last one took place.” One respondent suggested “there should be some phrasing that invites deliberation and medical practitioners discretion (and potential for local authority request for further medical) given the particular child’s circumstances and needs.” Respondees did not generally suggest an alternative, except for one who suggested 28 days.

Scottish Government Response: *This provision now refers to regulation 4, the assessment duties will apply at the same point as the gathering of information at regulation 3.*

2.3 A couple of local authorities felt that the timing of the medical examination should be completely left to the discretion of the local authority.

Scottish Government Response: *Regulation 3 does not prevent a local authority from obtaining an additional medical assessment, even if one has taken place within the last three months, where they consider it necessary. Guidance will cover this in more detail.*

2.4 Some respondents disliked the term medical ‘examination’, commenting that this is not in line with current practice. It was suggested we use the assessment or health needs assessment. One respondent comments that “the use of “medical examination” is very medical focused and not in line with current practice, as “comprehensive health assessment” is used, to focus on the public health focus.”

Scottish Government Response: *The regulation has been amended to read “a written assessment of the child’s health and their needs for health care”.*

2.5 A couple of respondents asked if mental health could be specifically mentioned. One respondent said that “*the mental health needs of children and young people are not assessed at the point of becoming looked after in the majority of cases.*”

Scottish Government Response: *Mental health needs of the child are drafted under regulation 4 (l) any other matter relating to the welfare of the child either in the immediate or long term as appears to the local authority to be relevant.*

2.6 Responses were fairly evenly split in relation to who should carry out the medical examination/assessment; with mixed views on whether this should be a 'registered medical practitioner' given the increasing role of looked after children nurses. However, one respondent commented "*given the importance of full and accurate medical information in relation to looked after children, the term registered medical practitioner used in Regulation 3 should be restricted to doctors*".

2.7 Comments were made that for the avoidance of ambiguity, we should clarify the role of looked after children's nurses in guidance. It was also suggested we should include details of what the medical examination / assessment should cover. One respondent asked advice is given (in guidance) as to who carries out the examination for example a young girl may be more comfortable with a female doctor.

Scottish Government Response: *The regulation now include both terms - registered medical practitioner and registered nurse - to take into account differing practice across Scotland and allow local authorities flexibility. Guidance will cover this in more detail.*

2.8 Another respondent noted that "the consent of the child is required, where that child is deemed to have capacity, prior to any medical examination." It was further commented that "children are presumed to be of sufficient age and maturity to have such understanding to exercise their rights under the Data Protection Act from the age of 12. However, it needs to be noted that some children younger than 12 will be very able to make these decisions while some older children may not." The respondent suggested the issue of consent is fully discussed in any subsequent guidance.

Scottish Government Response: *This point will be addressed in guidance*

2.9 Another respondent commented that "the obligation to have a medical examination could be seen to be counter to children's rights and the European Convention".

Scottish Government Response: *As above, where the child has capacity to consent, this is required. We believe this meets concerns around children's rights.*

2.10 One respondent commented that the regulations did not detail "the inclusion of a young person's sexual orientation or gender identity into placing decisions." They felt that "it is our view that foster carers and prospective adopters values and attitudes towards LGBT people can play a decisive role in whether a placement is successful or not."

Scottish Government Response: *The Scottish Government believes that the general requirement to meet the child's best interests, together with existing statutory requirements on public agencies in relation to non-discrimination should ensure that sexual orientation and gender identity are taken into account where appropriate. Guidance will provide clarity.*

Regulation 4: Assessment of child's case

2.11 Many respondents suggested this was renamed 'Assessment of child' or 'Assessment of child's needs' removing the term 'case'.

Scottish Government Response: *Regulation 4 is now simply headed "assessment" to remove reference to the child's case.*

2.12 Some respondents asked if the elements could be 'ranked' or given timeframes in some way, perhaps linked to reviews, as it was felt some issues could be assessed immediately and some may take longer. One respondent said "There should be timescales for completing assessments and establishing a child's plan/care plan to ensure that the

potential for drift, especially in permanence planning, is minimised. There should also be mention of the need to progress the plan within reasonable periods of time, particularly in relation to long-term planning.” Another commented “there is no attempt to rank these either in importance or in terms of short and long terms goals. It might be helpful to do this. Also (f) should be stated more strongly to ensure that proper account is taken of the need to investigate the possibility of placement within the family of origin.

Scottish Government Response: *We do not propose to set timescales for the assessment process and consider that this matter would be more appropriately covered in guidance. The guidance could also refer to the work of the Task Group on organisational arrangements.*

2.13 A few respondents queried why the views of the child, the parents etc are not taken into account during this assessment stage.

Scottish Government Response: *Regulations under ‘assessment’ state that in making the assessment the local authority must, where appropriate seek and take account the views of the child.*

2.14 One respondent queried the placing of siblings “We are very concerned that the previous regulations concerning the placing of siblings appear to have been dropped from the regulations. We hope this is an oversight and not a deliberate policy. The regulations stated that siblings should normally be placed together, unless there were good childcare reasons for them not to be. If they weren’t placed together than the issue of placement had to be addressed as a priority at a first review meeting. The regulations always had a get-out clauses of ‘as far as is practicable’.

Scottish Government Response: *the regulations now place a duty on the local authority to take into account the need to keep children together when they are making their assessment. This means that at this early stage the authority must do all that they can to keep children together.*

Regulation 5: Care Plan

2.15 The majority of responses favoured the term ‘Child’s Plan’ instead of ‘Care Plan’. Many respondents further suggested the term should be the ‘Child’s Plan / Young Person’s Plan’. One respondent noted that “guidance should make it clear that ‘young’ people can be used in practice as appropriate even if the law retains a definition of a ‘child’ up to the age of majority.”

Scottish Government Response: *The regulations have been amended to use the term “child’s plan”.*

2.16 Respondents were also pleased with the new duty to consult with the child, but some respondents suggested this should go further, ensuring that the child’s views must also be recorded, and the “appropriate advocacy and support for the child in expressing their views should be considered.”

Scottish Government Response: *A new sub-paragraph 2 (d) has been added to include - any other person as the authority considers appropriate.*

2.17 Another respondent commented “Children are consulted but, if the new regulations are to be in the spirit of the UN Convention on the Rights of the Child, the children’s participation agenda, for example, the Children’s Charter and Getting it right for every child, putting the child at the centre means making the child visible. In my view, it is essential that the child’s views from any consultation are recorded. This will be especially important if

there are differences between parents and the professionals. Otherwise, the assessment document is biased towards the professionals views of the situation.”

Scottish Government Response: *The Scottish Government is committed to the United Nations Convention on the Rights of the Child (UNCRC) and to promoting and supporting the rights of all children in Scotland as a key strand of our activity to improve outcomes for all. We are satisfied that regulation 3 is consistent with the relevant articles of the UNCRC.*

2.18 One respondent commented that the regulation “refers to a child’s age and maturity but should also refer to ability and capacity to understand and communicate”. Another commented “it may not always be possible to obtain a clear view from a child. The previous Regulations inclusion of the phrase “so far as reasonably practicable” was helpful.”

Scottish Government Response: *the regulations include the words ‘so far as reasonably practicable’. The wording in relation to age and maturity etc. reflects that in a range of well-established statute such as the Children (Scotland) Act 1995: the Scottish Government believes that it would be undesirable to depart from this in a particular set of regulations.*

2.19 One respondent asked if we could include that the authority should also seek the views of “those who may be relevant to decision making about the plan”. Another respondent asked if the plan should “indicated what steps have been or have not been/could not be taken to consult and involve family members who could play a significant part in meeting the child’s needs/addressing risks/promoting resilience etc?”

Scottish Government Response: *It seems to the Scottish Government that there is a balance to be struck between setting down key points that local authorities and other agencies should follow, whilst also acknowledging that their staff are professionals and that it is appropriate to place some reliance upon their judgement. In particular, whilst it can be useful to set down certain specified persons or agencies who should be consulted, broad categories that would rely upon interpretation such as ‘those who may be relevant’ or ‘family members who could play a significant part’ seem better suited to guidance, where they can be set in a more discursive and nuanced context.*

2.20 Several respondents asked if we could define “ordinarily has the care and control over the child. It is important that it includes people who are employed to look after a child. The views of a residential manager or employed foster carer would be essential.”

Scottish Government Response: *The phrase concerned figures in section 5 of the Children (Scotland) Act 1995, where although there is no definition as such, there is more background, including that it does not encompass temporary charge of a child in a school setting. The Scottish Government believes that the existing wording is sufficient to encompass those persons whom some respondents thought should be included. Guidance to provide clarity.*

2.21 Several respondents commented that the medical report referred to in 3.(e) should be renamed the health assessment/health report.

Scottish Government Response: *Medical report has been changed to health assessment.*

2.22 It was also noted that “in the current regulations much of the plan would be included in the specific placement arrangement with the carer. This individual placement agreement is not included in the draft regulations and this feels a loss.”

Scottish Government Response: *regulations include specific placement arrangement information as to the child's plan prepared in accordance with regulation 5 and the objectives of the placement.*

2.23 One respondent was concerned over the use of 'so far as is reasonably practicable' in regulation 5.(2) which they felt raised the issue of an estranged parent in respect of a child for whom they have no rights or responsibilities having access to information about the child and other people in that's child's life. "The subsection requires a degree of flexibility so as not to require involvement of and information sharing with individuals without parental rights or responsibilities where their involvement may be detrimental to the child's best interests. We suggest that 'practicability' may not be wide enough to encompass all these situations and that a 'best interests' test may also be appropriate."

Scottish Government Response: *The requirement in the Children (Scotland) Act 1995 (section 17) for local authorities to safeguard and promote children's welfare and have that as their paramount concern will still apply; this is an instance of the general principle of not restating what is already in primary legislation.*

2.24 It was also suggested that "the situation where the child or consulted person is not in agreement with the care plan is addressed in guidance."

Scottish Government Response: *this matter would be more appropriately covered in guidance.*

Regulation 6: Death of a looked after child

2.25 Several respondents commented that this regulation (death of a looked after child) did not sit well within the care planning section. Many respondents suggested that more detailed information about what to do in the event of a child's death is included in the guidance. One respondent commented "Guidance could usefully outline the requirements to report a death to appropriate regulatory authorities as well as the Scottish Ministers. In the specific sections for children placed with different carers their responsibilities about notification of occurrences are outlined and it may be that this section on reporting the death of a child is better placed alongside those requirements."

Scottish Government Response: *Regulation 6 is now included in a new section, 'General matters affecting looked after children'. We agree with comments regarding the procedures for notification, when a looked after child dies and that guidance should cover this in more detail.*

Regulation 7: Assessment of needs under section 29(5) of the 1995: after care

2.26 One respondent suggested that "Regulation 7 should specifically include attention to their educational needs of the child. Advice should be sought from foster or kinship carers caring for the young person or the residential unit where the young person is living."

Scottish Government Response: *We plan to review the implementation and impact of the throughcare regulations over the coming year and will consider their inter-relationship with the LAC regulations during that process.*

2.27 Another respondent asked about "use of the Young Person's (Pathway) Plan for consistency and relevant distinction?"

Scottish Government Response: *The Scottish Government believes that we should be moving in the direction of a single plan for the child. In the meantime, the Pathways plan is*

defined in the 2004 Throughcare regulations. We plan to review the implementation and impact of those regulations over the coming year and will consider their inter-relationship with the LAC regulations during that process.

2.28 A respondent commented that “it is excellent to see this section strengthened as young people ceasing to be looked after have so often been abandoned by the state.” In relation to language, a comment was received “are we sticking to leaving care, which has the old discriminatory feel about it? Can it not be ceasing to be looked after? Or, as is suggested in Q2 f) transition to independent living?”

Scottish Government Response: *The issue of the terminology around Care Leavers and Leaving Care has been subject to recent discussion. Young people have said that “care leaver” is seen as a positive identity which they relate to. This language may evolve through time, however it is not our intention to review how it is used in legislation. We plan to review the implementation and impact of the throughcare regulations over the coming year.*

2.29 Another respondent stated that “there is a lack of guidance in relation to young people with disabilities who, on leaving children and families services, can end up living in old peoples care homes. Equally, there is little or no guidance in relation to assessment of the needs of young people before making decisions about where they should live after they have left residential care. Some young people require much more ongoing support through this transition period.”

Scottish Government Response: *Greater understanding and improvements in services have made it possible for young people with disabilities to lead active, fulfilling independent lives in local communities. All of a young person’s needs should be assessed during preparation for leaving care, including where a child has additional support needs. That is covered in the Throughcare Regulations and in the Additional Support for Learning Act. We plan to review the implementation and impact of the throughcare regulations over the coming year.*

2.30 One respondent commented “when developing guidance on the regulations, there needs to be an explicit statement about local authorities responsibilities in respect of section 29 of the 1995 Act.”

Scottish Government Response: *There is a need to get the right balance between prescription and empowering practitioners to exercise their professional judgement. We plan to review the implementation and impact of the throughcare regulations over the coming year.*

Regulation 8: Recommendations by local authority to Principal Reporter

2.31 Several respondents queried why this regulation lists only three options available to the Children’s Hearing – “it would be better if all the available options were listed e.g. including disposals to place the child in residential care or with their own family.” One respondent asked “should there be any brief indication of assessment and approval process and content in the information relayed to the Reporter?” Respondents also commented this regulation does not sit well within the care planning section.

Scottish Government Response: *This regulation (now regulation 7) has been reworded and re-located to reflect the different points above.*

2.32 One respondent also commented that the subsection “a person who is known to the child and who has a pre-existing relationship with the child and who has signed a written agreement with the local authority under regulation 36” appears to open up the placement

with someone who is neither a foster or kinship carer with no specific limit on the length of the placement. "Regulation 8 seems to re-introduce the open-ended placement of a child under a supervision requirement with a person who is not approved apart from their written agreement with the Council. Guidance or indeed regulations would need to identify what checks and assessment are needed."

Scottish Government Response: *guidance will cover this in more detail.*

2.33 A respondent also commented that "we wonder whether Regulation 8(1)(c) conflicts with Regulation 11 (b) i.e. the definition of kinship carer already includes a person who is known to the child and has a pre-existing relationship with the child, and it is not clear why they are now referred to separately from Kinship carers".

Scottish Government Response: *regulations have been amended to reflect this point*

Question 2 (b) Do you consider that either regulations, accompanying guidance, or both should be explicit that looked after children should have one child's plan which reflects their range of needs and which fulfils a range of functions?

2.34 A few respondents provided that, in line with the GIRFEC approach and principles, there should be one child's plan which reflects and addresses the child's needs however there were some concerns over how this would actually work in practice.

2.35 Respondents commented that the child's plan is likely to be made up of different plans from different agencies (care plans, personal plans in residential services, co-ordinated support plans in education, child protection plans etc) and that this could more usefully be addressed in the accompanying guidance.

Scottish Government Response: *Because the Getting it right for every child programme is being pursued through practical development, testing and implementation, rather than through legislation, it does not seem right to refer explicitly to Getting it right in the Regulations, although they should reflect its spirit. The Scottish Government agrees with respondents that there should be a single plan for the child, encompassing, where appropriate, plans drawn up for specific contexts such as child protection or additional support for learning, and that this would be most usefully addressed in the accompanying guidance.*

Question 2 (c) We welcome comments on the revised structure of the care planning section. Does this fit with good practice?

2.36 In general respondents were content with the revised structure of the care planning section. Some respondents commented on the appropriate location of regulations 6 – 8 and queried the lack of any timescales attached to the care planning process.

Scottish Government Response: *Regulations 6 – 8 have been moved into a new section "general matters affecting looked after children".*

Question 2 (d) The duty to consult with the child and the duty to produce a care plan are new requirements (previous regulations referred to making a care plan "so far as is reasonably practicable"). Are you content with these new duties?

2.37 Respondents welcomed these new requirements. In relation to consulting with the child, several respondents asked if guidance could cover how to ensure this consultation is meaningful (not just a check-box exercise) and should cover children with disabilities and / or difficulty expressing their views. As noted above, several respondents suggested the inclusion of independent advocacy for the child, suggesting guidance could usefully cover this point.

Scottish Government Response: *Consultation with the child / young person will be covered in guidance.*

Question 2(e) We welcome comments on the contents of Schedule 1 (information relating to the child) and Schedule 2 (matter to be addressed in the care plan): should anything else be included here?

2.38 Several respondents felt that Schedule 1 should include an exploration of and information about the child's network of family and friends, both for consideration regarding potential care and current involvement. It was also suggested that the schedule should include why a particular placement is being proposed and why the child can no longer live with their parents.

Scottish Government Response: *It seems to us that the references in Schedule 1 to including information on the child's family and other persons of significance to the child, together with the references to information on the child's legal status and the local authority's statutory responsibility (if any) for the child and why consideration is being given to the child being looked after is sufficient to meet these points. Guidance will help to identify good practice.*

2.39 A couple of respondents commented that the schedules should be consistent with the GIRFEC model of assessment of child's needs, containing all the key information which would allow carers to provide the best care for the child. Other suggestions included:-

- health should cover allergies, disabilities, additional support needs;
- significant others / relationships - in nursery or school either friends or staff, previous carers, family friends and neighbours, peer friendships;
- issues with pets (either allergies or issues about being in the same house as pets);
- for young children: information on normal routines and familiar persons / objects;
- emotional and psychological development to be added in to 11;
- 2. nationality, race, religion and language should include culture;
- nationality, race, religion and language should be recorded as they are defined by the child and / or their family;
- 4 (present legal status) should include a note of Child Protection status, if relevant;
- 7. should be amended to read "by any local authority";

Scottish Government Response: *The Scottish Government believes that most of these suggestions are too detailed for regulations. Guidance will provide further clarity.*

Question 2 (f) Successful transition to independent living is a key challenge for looked after young people. Could further provision be made in these regulations to support improvements for the transition process?

2.40 Respondents made a number of comments in relation to this section of the regulations. The most consistent comment was in relation to children / young people staying

in their placement beyond the age of 18. Several respondents also noted that issues relating to transition sit more appropriately within the Leaving Care Regulations.

Scottish Government Response: *It is not within the scope of these regulations to address the issue of children remaining in placement beyond the age of 18; further work will be undertaken to address this issue as part of the 'Leaving Care Regulations.'*

PART III LOOKED AFTER CHILDREN CARED FOR BY PARENTS

Question 3. Do you consider that regulations 9 and 10 cover all the necessary and appropriate actions for local authorities in respect of children cared for by their parents or those with parental rights and responsibilities? Should anything else be included here?

3.1 Part III, regulations 9 and 10, gives local authorities the power to allow looked after children to be cared for either by their own parents or persons who have parental rights and responsibilities.

Summary of responses

Regulation 9: Arrangements for child to be cared for by parents

3.2 Several respondents requested clarity over the wording (and intention) of Regulation 9 (3)(b) as they felt it may mitigate against rehabilitation. One local authority commented "It is perfectly possible for a child to be removed from any person by virtue of an authorisation or warrant, and for the circumstances for that parent to improve at a future point and the child's best interests be met by returning to that person". The current wording of this section would appear to prohibit that action. They suggested it may be helpful to replace the term "any order" with the term "that order".

Scottish Government Response: *further clarity will be provided in guidance*

3.3 One respondent stated that "regulation 9 reflects the current position and prevents a local authority from placing a child with a parent under section 25 of the Children (Scotland) Act 1995. This is so even where that parent has not been caring for the child and has no parental responsibilities or rights and therefore has no locus to influence the application of section 25. We have concerns that it is possible for the situation to arise where a child is provided with accommodation under section 25 and the local authority in assessing the child's needs can consider placing with relatives but not such a parent. We raise the question of whether the regulations should allow for the possibility of placement with a parent where the parent has no parental rights or responsibilities or is not a relevant person (in terms of section 93(2)(b) of the Children (Scotland) Act 1995)."

Scottish Government Response: *In examining the responses to the consultation on this regulation [Reg 9] and referring back to the primary legislation in the CSA where definitions of parent, family and parental responsibilities are set out, it is evident that this is an area of considerable complexity. Guidance will provide further clarification.*

3.4 One respondent suggested that "it would be positive for some of the requirements set out for foster and kinship care to be applicable for placements at home. It would be positive if parents were given a set of expectations from a Council as to what was acceptable care. If the standards fell below the agreed standards then planning for alternative care would be

grounded in more real evidence. The agreement should also detail what the family can expect from the Council in terms of support, services and guidance.”

Scottish Government Response: *We accept that more needs to be done to recognise the particular needs of children and young people who are looked after at home. We intend to return to the regulations on completion of further work to develop a coherent policy position and clarify exactly what is required.*

3.5 Another respondent advised that they would wish to see increased requirements with regard to planning and reviewing of a child’s care whilst looked after at home. Linking to this, it was suggested that an “Agreement with parent” clause similar to Regulation 13 for kinship carers & 25 for foster carers and this should include reference to the requirement to assess the needs of the family as a whole (i.e. include the needs of the parents) to enable them to look after the child. It should set out that there are mutual responsibilities on the parent(s) and the local authority to provide acceptable standards of care and support.

Scottish Government Response: *We accept that there more needs to be done to recognise the particular needs of children and young people who are looked after at home. We intend to return to the Regulations on completion of further work to develop a coherent policy position and clarify exactly what is required – guidance will address this in more detail.*

3.6 One respondent advised that it is essential that looked after children who continue to be cared for by their parents get all the help and support that they need to be safe, secure and happy, whilst remaining at home. This would also help to prevent the child having to be placed outwith their home in the future, and reflects the central preventative tenet of the upcoming Early Years framework. The respondent recommended that the draft regulations are amended to include that, whenever a looked after child is cared for by their parents, the local authority should consider the needs of the parents in caring for their child, and detail the services that will be put in place to meet these needs.

Scottish Government Response: *Because the Early Years framework is being pursued through practical development, testing and implementation, rather than through legislation, it does not seem right to refer to it explicitly in the regulations, this point would be most usefully addressed in the accompanying guidance.*

Regulation 10: Notification of occurrences involving the child

3.7 Most respondees advised that regulation 10 should apply to all who care for a child who is looked after, regardless of their care situation (i.e. looked after at home, in kinship care, foster care or in residential care). Some respondents commented that it should also refer to serious issues which occur at school; exclusions etc. Also, it was commented that in some cases, it is useful to notify the local authority if it is known that the child/young person has made any contact with parent’s outwith the contact arrangements.

Scottish Government Response: *Each section in the regulations, such as kinship care, foster care or in residential care has a part which states notification of occurrences.*

3.8 Two respondents suggested that the wording in schedule 3 (5 (d)) is changed to the same wording as regulation 10.1 (a) which covers notification.

Scottish Government Response: *Schedule 3 is now schedule 5 and sufficiently covers the provision of ‘notification of occurrences involving the child’ under obligations ‘to notify the local authority immediately of any serious illness of the child or of any other serious*

occurrence affecting the child' the same approach is taken in the foster care part of regulations.

3.9 One consultee felt that this regulation was 'heavy handed' – i.e. a mother would now have to advise the Local Authority when a child was missing, and the duty would then be placed on the Local Authority to notify an estranged father perhaps. This may or may not be helpful, and in some situations may mitigate against parents communicating directly with each other.

Scottish Government Response: *The issue of communication with estranged partners will be picked up in guidance.*

3.10 One respondent stated that the regulation 10 (b) the threshold is set at too high a level in terms of the requirement to the regulation and should be revised to read, if the child "suffers anything that is likely to be significantly detrimental to their health, safety or wellbeing".

Scottish Government Response: *The regulation has been amended so the parents must notify the local authority if the child suffers any serious illness or injury.*

PART IV - KINSHIP CARE

Question 4a) In relation to regulations 11 to 17, do you consider that all the necessary and appropriate actions and considerations when placing children with kinship carers are covered here?

4.1 These are entirely new regulations, developed from the 'Getting it right for every child in kinship and foster care' strategy. This draft set builds on and is complementary to, the interim guidance on the assessment and approval of kinship carers of looked after children . The draft set of regulations makes clear that kinship carers are distinct from foster carers and a different set of arrangements are required for them, in relation to their and the local authority's responsibility for looked after children.

Summary of responses

4.2 A number of respondees felt that the regulations did not give enough detail about the assessment process and approval of kinship carers. Respondents particularly referred to the 'Getting it right for every child in kinship and foster care' reference group, the forthcoming report and the interim guidance published in September 2008, suggesting that this work should be fully incorporated within the regulations and guidance. Several respondents suggested the regulations should cover an assessment of whether the child's needs, as identified by the child's plan, can be met by the carers, and with what support.

Scottish Government Response: *This regulation has been reworked to include a requirement that the council carry out an assessment of the kinship carer's suitability to care for the child. Guidance will provide further detail.*

4.3 Several respondents suggested the regulations should cover an assessment of whether the child's needs, as identified by the child's plans can be met by the carers, and with what support.

Scottish Government Response: *The local authority must assess the person's suitability before making the decision to approve them as a carer.*

4.4 One response suggested the regulations should “confirm that whoever is charged with the decision-making role for approving kinship carers receives full information on the kinship carer and the child and how that child’s care needs can be met by the kinship carers. All kinship care approvals will be for a specific child and in future reviews both the child’s progress and the carers’ needs should be addressed”.

Scottish Government Response: *This is agreed. Specifically, the required information, which is set out at schedule 3, together with any other relevant information must be made available to those responsible for decision to approve the carer.*

4.5 One local authority requested clarification on whether “the Scottish Government wishes children placed with kinship carers to be deemed looked after children or looked after and accommodated children. We consider this to be of critical importance and that consistency across local authorities in how these terms are applied is crucial. Whether a child is deemed looked after or looked after and accommodated determines the entitlement to aftercare support and allowances.”

Scottish Government Response: *This amended set of Looked After Children regulations make clear that the same set of statutory duties and responsibilities apply to a looked after child, regardless of their care setting. These duties and responsibilities should be applied consistently to every looked after child by every local authority and relevant agency.*

Regulation 11: Kinship carers

4.6 A comment was received asking for clarity for the definition of kinship care in regulations 11 (b) "a person who is known to the child and with whom the child has a pre-existing relationship", suggesting that this could conceivably include someone who had a professional relationship with the child, such as a teacher or social worker.

Scottish Government Response: *we recognise that this scenario is conceivable. However, the depth and quality of assessment which will be required by these regulations and the accompanying guidance should ensure that this approval process for kinship carers is followed sensibly. Those who have a professional relationship with the child can, and do, become foster carers. Social Work professionals will be responsible for working with the child and potential carers to ensure the most appropriate care setting is approved for the looked after child.*

Regulation 12: Placement of child with kinship carer

4.7 One local authority was concerned that regulations 12 and 13 do not propose any checks of kinship carers, suggesting that as a minimum these should include local authority and enhanced Disclosure Scotland checks. They also suggested that a letter from a GP should be obtained stating whether or not they have any health conditions that would preclude them caring for a child. They suggested this should also include existing checks – visiting the home and seeing where the child will sleep and there should also be a timescale within which kinship carers have to be approved.

Scottish Government Response: *Information on background checks on the kinship carer are sufficiently covered within the regulations; regulation 12 refers you to regulation 11 and schedules 4 and 5. Guidance will amplify.*

4.8 One organisation suggested that “in line with the current Fostering of Children (Scotland) Regulations 1996 (regulations 13 and 14) we would suggest that additional provision be made in regulation 12(2) for the local authority to consider the suitability of the accommodation of the kinship carer and the suitability of the placement for the child in view of any others living in the kinship carer’s household.”

Scottish Government Response: *this information is sufficiently covered in Schedule 5*

4.9 One local authority asked “In relation to regulation 12 would s72 of Children (Scotland) Act 1995 Act still be available? – we would want this.”

Scottish Government Response: *we are not regulating on supervision requirements – A local authority uses its powers to place a child with a kinship carer under regulation 11 would not be placing a child under a supervision requirement because it’s the terms of the supervision requirement that determines where the child should stay therefore, for a child who is subject to a supervision requirement and case of urgent necessity as described in section 72 of the Children Scotland Act 1995 the power of the chief social worker is a separate power. Guidance will provide further clarity.*

Regulation 13: Agreement with kinship carer

4.10 Only one respondent commented on this section advising that kinship carers should have the right to access to independent advocacy when the agreement between the kinship carers and Local Authority is being drawn up.

Scottish Government Response: *the Scottish Government fully recognises the importance of support for kinship carers. It recognises the best practice within many local authorities where kinship cares receive support from their or their child’s social worker and access to other support, for example third sector organisations which provide family support. The support which will be provided to the child and the carer is listed in schedule 3. A substantial section of the interim guidance also covers this area. Local authorities are asked to consider carefully the support which will be provided as it is clear that the success and effectiveness of the placement of the child with the kinship carer is more likely if appropriate support can be provided.*

Regulation 14: Notification of placement with kinship carer

4.11 A few respondents asked that the relevant education department should be included within notification, even if the child has not moved schools, as they felt this would give schools an early warning of a change in the child’s living situation.

Scottish Government Response: *The requirement to notify the local authority covers the relevant education department because the department is a part of the local authority. Guidance will highlight the need for good collaboration and that Local Authority is the generic term for all departments.*

Regulation 15: Short-term placements in kinship care

4.12 A number of respondents suggested this regulation required simplification and clarification.

Scottish Government Response: *we will ensure that guidance provides clarity.*

4.13 One respondent said “the need for short breaks does not lessen; in fact as a child grows the need can become greater. Therefore, what is the rationale for short term

placements within a year being treated as one? What are the implications for short term placements when children visit the same family regularly for many years?"

Scottish Government Response: *Short term placements are included within the regulations – guidance will provide further clarity on the mechanisms of the same.*

4.14 Another respondent stated that for many children, "respite care will be built in on a regular basis for the full length of their placement. It is perhaps an opportunity to simplify the position. Reviews of the arrangements should cover the issues for the child and carer more appropriately than a new admission and assessment process every twelve months as the arrangement could span many years."

Scottish Government Response: *We accept this point - guidance will provide further clarity on the mechanisms of the point above.*

4.15 A few stated concerns where a child may only have very limited stays with respite carers e.g. one or two nights each month. One local authority commented "the application of regulations to short term placements has caused considerable concern for local authorities since it was enacted." They went on to say "the regulation is felt to be cumbersome, particularly where a child may only have very limited stays with respite carers e.g. one or two nights each month. Where stays are infrequent, a requirement of even less frequent reviews would be helpful. The implication of the regulation is that a care plan is drawn up each year. It is very unlikely that this is happening and, where the child remains in the same placement, unnecessary".

Scottish Government Response: *We accept this point - guidance will provide further clarity on the mechanisms of the point above.*

Regulation 16: Establishment of case records for kinship carers

4.16 Most respondents agreed that records are essential and the information set out was comprehensive. It was also felt helpful that the regulations set out a separate case record should be established for kinship carers.

Scottish Government Response: *We welcome support for Regulation 16.*

Regulation 17: Retention and confidentiality of case records for kinship carers

4.17 Most respondents were in favour of increasing the time for maintaining records (which they considered was too short) to 25 years.

Scottish Government Response: *The time limit for retention and confidentiality of case records has been increased to 100 years in line with the Adoption Regulations.*

Question 4b) These regulations place new requirements on local authorities. Are you content with these new duties?

4.18 In general, most respondents were content with the new duties. However, a number of respondents felt there would be resource implications to meet the increased financial payments and support required when a child becomes looked after. Most respondents agreed that kinship care is growing in importance as the placement of choice for many children so the new requirements are necessary. One respondent said "it is impossible to convey in regulations that for the future the hope would be that fewer children cared for by

kinship carers will require the formal status of looked after. It is hoped that for many kinship carers support will be provided by universal services and finances with specialist help available for the carers and the child when needed.”

Scottish Government Response: *We welcome the recognition of the importance of kinship care in the approach we take in Scotland to caring for those children who cannot live with their birth parents. We agree that minimising the time spent as looked after child is desirable and developing universal services to support all families is our long-term goal and challenge. Never-the-less, while the child remains looked after. Government in Scotland must ensure that the statutory duties and responsibilities which cover every looked after child apply equally to those looked after in kinship care. We recognise that the benefit issue makes becoming ‘looked after’ attractive the Scottish Government is committed to further discussions at a UK level.*

Question 4c) We welcome your views on the contents of Schedule 3 (matters and obligations in kinship placement agreements).

4.19 One respondent suggested that “a set of obligations headed up for the Council, followed by a set of agreements from the kinship carer would give a clear message about kinship care as a valued service with high expectations on both the Council to support and the carers to care safely and to cooperate with the local authority. And Part 1 could be the obligations of the Council followed by the obligations of the kinship carers. There is an outstanding need for regulation about the information that a worker requires to collect for a kinship care placement. A schedule similar to Schedule 4 but amended for kinship carers would help to gather the appropriate information while using the proposals from the Task Group about what exactly to collect and from whom.”

Scottish Government Response: *the information at Schedules 4 and 5 set out the information required for a kinship carer placement and the respective obligations on both the local authority and the kinship carer.*

4.20 Two respondents mentioned reviews, one commenting that “there is no reference to the review of kinship carers, although there is reference to training and support to be provided, further details of which we would expect in the guidance. Integral to providing support and training is an understanding of the needs of Carers and without assessment at an earlier stage; it is difficult to see how this could be effective.”

Scottish Government Response: *Guidance will expand on the interrelationship of the review of the child’s plan and review of the kinship carer .*

4.21 In terms of schedule 3, one respondent raised the issue of corporal punishment, seeking clarity “whilst we support this obligation the fact that it remains legal to administer corporal punishment to children at all could lead to conflict and tension, if the kinship family have children of their own in the home”.

Scottish Government Response: *We recognise and have carefully considered the implications of corporal punishment within a kinship care setting where we recognise that tensions could arise. On the other hand, it is agreed that corporal punishment should not be applied to looked after children in foster and residential child care settings. We do not consider that there is a compelling case to make an exception for looked after children in kinship care settings and therefore we do not propose to remove this requirement. Guidance will expand further.*

4.22 One authority noted “Schedule 3 sets out the requirement to agree procedures for financial arrangements for Kinship Carers. We would welcome a national framework for the payment of Kinship Carers, which provides equity with Foster Carers and is consistent across agencies in Scotland.”

Scottish Government Response: *The payment of allowances was addressed in the interim guidance, currently in circulation and is referred to under section 33 of the regulations. Guidance will provide further clarity.*

4.23 Several consultees suggested that section 5(d) of Schedule 3 ‘the death of a child’ should be included as an occurrence requiring notification.

Scottish Government Response: *the regulations at paragraph 9 Notification of Occurrences involving the child includes ‘the death of a child’.*

4.24 One respondent asked that Schedule 3 should include a named contact within the Local Authority for the kinship carer “*schedule 3 states that the Kinship Placement Agreement should specifically outline kinship carers’ obligations. It would be useful for the regulations to be drafted in a way that also clearly identifies the Local Authority’s obligations towards the kinship carer as part of the agreement. These should be for example, advice, practical support, information, and training that the Local Authority will make available to the kinship carer.*”

Scottish Government Response: *this is now part of schedule 5 paragraph 3 - guidance will provide further clarity.*

4.25 One consultee asked that consideration is given to including arrangements for the kinship carer to terminate the placement if they feel they are no longer able to continue to undertake this role suggesting that they could be obliged to give written notice to the local authority of a period of at least 28 days.

Scottish Government Response: *Regulation 47 deals with the termination of placements in all types of placements mainly where the Local Authority decides the placement is not in the child’s best interest. Guidance will provide further clarity.*

PART V - FOSTER PANELS

Question 5a) We welcome your comments on regulations 18 to 21.

5.1 This part of the consultation regulates the creation and function of foster panels, posing specific questions on the appointment and composition of foster panels.

Summary of responses

5.2 Many respondents recommended that this section be renamed fostering panels.

Scottish Government Response: *this section has now been renamed.*

5.3 Many respondents suggested that ‘local authority’ in this section should read ‘registered fostering service’. One independent agency said “*with the substantial provision from the independent sector this should also be included and with reference to regulation 46 use the term ‘registered fostering service’.* This is a recurring issue in the regulations specifying the local authority rather than registered fostering service. The regulations should make explicit reference to the requirement of registration with the Care Commission for

independent providers bearing in mind in this context the work of the panel is a specific focus for inspection by the Care Commission.”

Scottish Government Response: *regulation 48 sets out the relationship between the local authority and registered fostering services. The locus of the Scottish Commission for the Regulation of Care is set out in legislation relating to that body.*

5.4 A local authority suggested that we clarify that ‘panel’ refers to the pool of members, rather than the specific panel.

Scottish Government Response: *the existing provisions for meetings of the panel to have a quorum etc seem adequately to make the distinction that not all members of the panel need to be involved in all meetings or decisions.*

5.5 Some comments were received regarding flexibility for authorities in terms of what the panel is called and what function it carries out. One local authority indicated that they have a ‘permanence panel’ to consider applications from permanent foster carers. This permanence panel also considers the matching of young children with a permanence plan with a permanent family. They recommended the regulations allow this practice to continue.

Scottish Government Response: *The Regulations as set out do not prevent local authorities adding another ‘badge’ to the fostering panel. The key is that people should be clear when they are meeting as a fostering panel and adhere to the regulations set for such meetings and decisions.*

5.6 Another local authority commented that they approve permanent foster carers at their ‘adoption and fostering panel’. They also approve all their adopters as foster carers in addition to approving them as adopters in case children have to be placed with them initially on a fostering basis. They suggested regulation 18 be amended to enable this to continue.

Scottish Government Response: *The regulations do not prevent the adoption and fostering panels from meeting at the same time or with common membership. It should just be clear which decision is being taken as a fostering panel and which as an adoption panel. Guidance could usefully cover some of these issues.*

Regulation 18: Appointment and composition of foster panels

5.7 Respondents suggested that the regulations specify what expertise, experience and qualifications should be present amongst the panel members. A range of comments and suggestions were made in relation to the composition of the panel, including:-

- the need for a gender balance;
- a mix and range of views and experiences, including foster carers;
- experience of being brought up in a foster caring household – either as the son / daughter of a carer or a former looked after child;
- should reflect the community which they serve;
- a balance in relation to ethnicity or ‘other factors’ (no examples given);
- reference to educational expertise “given the degree of educational disadvantage experienced by many looked after children”;
- a panel chair or the appointment of a professional / agency advisor;
- a suggestion that a proportion (20%) of panel members should be independent of the local authority (or registered fostering service);
- the agency should review the membership of the panel as in the National Care Standards.

5.8 Respondents noted that it may well be more appropriate to include this in guidance, not in regulations. Others suggested that “guidance should identify the need for panel members to be trained and particularly the chair so that they are kept up to date with practice, research, legal and medical issues affecting fostering.”

5.9 Another commented “Guidance should identify the qualifications, experience and training that members of a fostering panel require, and specify the panel composition be gender balanced and include a foster carer. Administrative support is essential so that an accurate record of the proceedings is made.” Several respondents supported this view regarding administrative support for the panel.

5.10 Respondents also commented that there was no mention of a legal adviser, suggesting that the panel need not have a legal adviser sitting as a formal panel member, but that the panel should have access to legal advice.

Scottish Government Response: *The Scottish Government agrees with a number of respondents noted above. The level of detail suggested by some better fits guidance and we would not wish to constrain authorities to the point where it became difficult to ‘tick all the boxes’ to actually have a fostering panel. As fostering is not inherently a process involving the courts in the way that adoption does, the Scottish Government does not intend to mandate a legal adviser for fostering panels as for adoption panels. If a particular issue were to arise where the fostering panel did require legal advice it would be reasonable to look to the relevant local authority to provide this.*

Regulation 19: Meetings of the foster panel

5.11 One local authority suggested that this regulation required further clarification as they felt the current wording would prevent the panel from carrying out other business. Another felt that this should be changed to allow for the business part of the meeting to take place without a quorum, “*in many agencies there is a separate business meeting which takes place after the main business has been conducted. Probably, if there was no quorum to start with, the business meeting won’t take place either – but the other possibility is that members who were present have had to leave.*”

Scottish Government Response: *Where the fostering panel is meeting to undertake its functions as set out in the regulations clearly it has to follow those regulations including as to quorum. If a group from the same set of individuals, smaller than a fostering panel quorum wish to discuss matters not directly covered by the regulations that is an operational matter for the local authority.*

Regulation 20: Appointment of medical advisers

5.12 One respondent asked us to clarify whether the medical adviser had to be physically present at the panel.

Scottish Government Response: *No such requirement is set by the Regulations. It is for the Fostering Panel to satisfy itself whether any written report from the medical adviser contains sufficient for use in any decision making process or whether further discussion in person is required.*

Regulation 21: Functions of the foster panel

5.13 Another respondent said “the wording of this needs to be very clear as it would be unworkable to have every looked after child who required a foster placement and every ‘match’ to come to panel. What is meant here? Is this added with permanent fostering

placements in mind? At present these go to adoption and permanence panels in local authorities who take this form of permanence to panel – or occasionally joint adoption/fostering panels in small authorities. Otherwise fostering panels normally concentrate on approval of applicants and carer reviews.”

Scottish Government Response: *a number of respondents appeared confused by this regulation, indicating that panels do not consider the case of every child, every proposed placement and the case of every foster / prospective foster carer. It seems some of the confusion can be explained by the fact some respondents may not have noted the line below “referred to it by the local authority”.*

5.14 One local authority suggested we remove (a) and (b) leaving only (c) as the function of the panel (the case of every carer / proposed carer). Another local authority suggested that this regulation be made clearer in respect of - (a) and (b) – the panel function of considering cases referred by the local authority.

Scottish Government Response: *regulation 21 has been re-worded.*

5.15 Respondents commented that foster carers should have the right to attend panel meetings and to receive a copy of the panel’s reports, in line with the adoption regulations.

Scottish Government Response: *this would be a decision for the local authority and foster panel to agree. Guidance could amplify this process.*

5.16 Two respondents expressed the view that there should be a placement limit of three children per carer.

Scottish Government Response: *Children and young people benefit from not having to compete with others for the care and attention of their carers and placement limits are a key element in improving the quality of experience for children in foster care. The Regulations do not set an upper limit on the number of children a foster carer may look after. Instead it will be left to the fostering panel to make a recommendation based on the individual case. We intend to pick it up in guidance. We also propose to return to the issue in the context of future work on recruitment and retention of foster carers.*

5.17 Before the panel makes a recommendation on whether a person is suitable to be a foster carer the panel must give that prospective foster carer the chance to meet with the panel and discuss the matter with them, this also applies to recommendations for matching and the maximum number of children to be allocated to that foster carer. This approach gives the prospective carer the right to give their views before a recommendation is made without regulating the conduct of the panel’s hearing or formalising the procedure further.

Scottish Government Response: *this would be a decision for the local authority and foster panel to agree.*

Question 5 (b) **The requirement to have 6 members on a foster panel and a quorum of 3 are new requirements. Are you content with these new requirements? Does specifying numbers in this way provide enough flexibility for agencies to conduct their business appropriately and timeously?**

5.18 A Fostering Panel must satisfy itself that the numbers, qualifications and experience of individual members of a Fostering Panel will enable it to discharge its duties.

Summary of responses

5.19 The majority of respondents were content with these new requirements. A couple of local authorities (whilst agreeing in principle) did express concern at these requirements, one commenting that this may prove problematic for small agencies and a “minimum of six may not always be achievable.”

Scottish Government Response: *The Scottish Government welcomes support by the majority for this regulation which improves the quality of decision-making.*

5.20 A number of respondents queried whether the medical adviser and legal adviser would represent part of the quorum of three.

Scottish Government Response: *No such requirement is set by the regulations it is up to the foster panel to satisfy itself that they have the advisors they need to make an informed decision. Guidance should clarify this process.*

5.21 One independent agency commented “it is interpreted that the requirement to have 6 members of the panel does not refer to each meeting of the panel but to a “pool” of panel members”.

Scottish Government Response: *Where the fostering panel is meeting to undertake its functions as set out in the regulations clearly it has to follow those regulations including as to quorum.*

PART VI – FOSTERING

Question 6 (a) In relation to regulations 22 to 32, do you consider that all the necessary and appropriate actions and considerations when placing children with foster carers are covered here? Should anything else be included?

6.1 This part of the consultation provided for the approval of foster carers, review of approval, placement of children in foster care and makes provision for establishing and maintaining case records for foster carers.

Summary of responses

6.2 Some respondents queried why this section refers only to local authorities and suggested that it should include registered fostering services. Some respondents felt that it was not clear where responsibility would lie – would local authorities have to delegate their powers, or does the registration of the registered fostering service in some way enable them to approve carers themselves?

Scottish Government Response: *A local authority may make a decision to approve a person as a suitable carer for a child who is looked after by that authority. Regulation 48 allows each local authority to individually or jointly enter into arrangements with one or more registered fostering service for the purposes of carrying out its functions. Guidance to provide further clarity .*

Regulation 23: Approval of foster carers

6.3 Respondents asked that this regulation be amended so that the decision must be made within 14 days of the date of the recommendation, not the date it was received.

Scottish Government Response: *Regulation has been updated to reflect this change.*

6.4 A couple of respondents suggested prospective carers should be entitled to attend the panel meeting to give them an opportunity to 'speak their case'. One respondent further noted that they should not be present throughout the panel, as the panel will have matters to discuss without their presence. It was also suggested that the prospective carer should be entitled to see reports prepared for the panel.

Scottish Government Response: *Regulation 20 (3) has been amended to reflect this change.*

6.5 A couple of respondents suggested this notification of the decision must include the reason for the panel's recommendations.

Scottish Government Response: *Regulation 22 (7) has been amended to reflect this change.*

6.6 A couple of respondents queried whether the regulations should cover a right of appeal / procedures where a local authority decides not to proceed with an assessment or to end an assessment prior to panel.

Scottish Government Response: *Local Authorities will have a complaints procedure.*

Regulation 24: Deemed approval of foster carers

6.7 Several respondents suggested that instead of the heading 'deemed approval' the term used should be 'derivative approval' which they felt was more widely used and understood.

Scottish Government Response: *regulations have been amended to reflect this change.*

6.8 Respondents raised concerns over this regulation: firstly, a concern that there is no requirement for the local authority to assess (re-assess) a carer who has been approved by another local authority. Some respondents were concerned this could lead to confusion in accountability. One respondent commented "with so many different agencies carrying out assessment and approval this leads to differing standards in the process and could lead to foster carers moving between agencies without a clear assessment of their suitability within the receiving agency". Furthermore, it was commented that there needs to be clarity around arrangements for link worker support, reviewing, provision of training, adherence to policy etc where there is payment from and accountability to more than one registered agency with multiple placements.

Scottish Government Response: *A Local Authority who approves the carer has lead responsibility and the receiving LA should satisfy themselves that the standards and processes are compatible. Guidance will provide further clarity.*

6.9 Some respondents were also concerned that placement of a child with a carer approved by another local authority may have an adverse effect on a child who may already be placed with that carer through the other authority or that the placements may be incompatible. One respondent commented that "*this regulation leaves agency responsibilities somewhat ambiguous if, for example, there is a difference of opinion between authorities about whether the placement of a child by a second agency might be detrimental to an existing placement. There may be a need for clearer regulation or detailed*

guidance about authority and decision making processes in these arrangements.” Another commented that “there should be explicit guidelines covering the assessment of the carer and their ability to meet the child’s needs to ensure that foster carers are not overloaded and that no child is placed inappropriately.”

Scottish Government Response: *Guidance will provide further clarity.*

6.10 It was also suggested that where a local authority approve a foster carer outwith their boundary, or where an independent agency approve a carer anywhere, there should be a responsibility to notify the local authority in which the carer resides.

Scottish Government Response: *this would be a local authority decision and will be covered in guidance - where this is a derivative approval regulation 23(3) applies.*

Regulation 25: Agreements with foster carers

6.11 Respondents commented that this appears to relate to the general agreement currently entered into with foster carers at the start of their time as carers, rather than a specific ‘placement agreement’. “Schedule 5 could be amended to make it clear which obligations fall to the local authority and which fall to the carer.”

Scottish Government Response: *this regulation has been amended to refer to a new schedule 4.*

Regulation 26: Reviews and terminations of approval

6.12 Many respondents were confused by the wording here, commenting that the timescale for review should be every 12 months, not every 2 months.

Scottish Government Response: *Now regulation 25. This regulation has been amended to refer a review at every 12 months thereafter, subsequent reviews within 3 years of the previous review.*

6.13 Some respondents also queried whether every review should go to panel, questioning whether this was necessary in every case and indicating that in some authorities this may present problems for authorities due to capacity. One authority suggested the first review should go to panel and the second and subsequent reviews could be undertaken by the authority/agency.

Scottish Government Response: *Now regulation 25 , this regulation has been amended to refer a review at every 12 months thereafter, subsequent reviews within 3 years of the previous review.*

6.14 One respondent noted the Care Commissions expectations regarding the review of foster carers and suggested “guidance to clarify the format and process of reviews would be welcomed”.

Scottish Government Response: *Guidance will provide further clarity.*

6.15 Some respondents commented that the requirement to consult with the child etc should be extended to include consultation with the birth parent(s) and any person with parental responsibility. One respondents suggested the inclusion of “any other relevant person”.

Scottish Government Response: *Schedule 3 part 2 captures the information above – it would be up to the local authority to review the information it holds.*

6.16 A number of respondents suggested that foster carers should have the right to attend the review meeting and to appeal against the decision.

Scottish Government Response: *the issue of attendance is a decision for the Local Authority and foster panel to agree. Regarding the latter Local Authorities will have a complaints procedure. Guidance may provide further clarity.*

Regulation 27: Review of approval: further provision

6.17 A number of respondents suggested that carers should have the right to attend the review of approval meeting.

Scottish Government Response: *the issue of attendance is a decision for the Local Authority and foster panel to agree.*

6.18 One respondent said “the wording of Reg 27 needs to be clearer. It appears that an approved foster carer does not have a right of appeal against the variation of approval.”

Scottish Government Response: *Regulation 27 now regulation 26 Paragraph (2) has been augmented so that the right to request a review is now open to the carer/prospective carer where their approval has been terminated or varied.*

Regulation 28: Placement of child with foster carer

6.19 Respondents suggested that (2) must specify that there has to be some kind of assessment process, unless the person concerned is already an approved foster carer and that there must be some timescales attached to this.

Scottish Government Response: *A new regulation has been inserted here. Where a child has already been placed with a foster carer but that carer dies or leaves the household, the LA can keep the child in the household as long as they are satisfied that it is in the child’s best interests and that the new carer is assessed as a kinship or foster carer. Para(3) (a) inserts a further requirement that the householder must be considered for approval. Guidance will provide further clarity.*

Regulation 29: Notification of placement with foster carer

6.20 Some respondents asked if notification could specify that the education service and / or school should be informed.

Scottish Government Response: *The requirement to notify the local authority covers the relevant education department because this department is a part of the local authority.*

Regulation 30: Short-term placements with foster carers

6.21 Some respondents commented that the intention of this regulation is unclear and asked whether it included respite placements / short breaks. It was noted that respite may well be ongoing and extend beyond a 12 month period.

Scottish Government Response: *guidance will provide clarity.*

Regulation 31: Establishment of case records for foster carers

6.22 One respondent asked if the case record should include the assessment / analysis of information undertaken in regulation 23. Another commented that the case record should include details of any allegations or complaints made against the carer.

Scottish Government Response: *the new regulations include information taken at regulation 24, previously 23. Regarding the latter schedule 6 includes the procedure for handling complaints against the foster carer.*

Regulation 32: Retention and confidentiality of case records for foster carers

6.23 Respondents requested that the timescale for retention of case records should be extended from 10 years to 25 years.

Scottish Government Response: *This has been extended to 100 years to maintain consistency with the Adoption Agencies (Scotland) Regulations 2009.*

6.24 Comments on items to be included in accompanying guidance, respondents suggested guidance should include:-

- Input from sons and daughters of foster carers into the placement process: an assessment of their views and their inclusion in training and support.
- Clarity over whether a child can go to a friend's house on a sleepover.
- The role of the agency decision maker.

Scottish Government Response: *guidance will address each of the above mentioned.*

Question 6b) We welcome your comments on the contents of schedule 4 (information as to prospective foster carer and other members of the household and family) and schedule 5 (matters and obligations in foster placement agreements).

Summary of Responses

Schedule 4

6.25 Marital status should be marital or civil partnership status.

Scottish Government Response: *the regulations have been amended in paragraph (10)(4) "related" means related to the child either by blood, marriage or civil partnership.*

6.26 The views of the foster carers child(ren) should be obtained and recorded. One respondent commented that "sons and daughters can be very influential in whether placements are successful." This was echoed in several other responses. The respondent further commented that "reports to the panel should include an assessment of their involvement, their skills and interests as well as looking at models of support and training for the sons and daughters."

Scottish Government Response: *the views of the child - this is clearly stated in the child's plan at regulation 5(2). Schedule 3 includes a provision 'interests' at para 8. There is a need to get the right balance between prescription and empowering practitioners to exercise their professional judgement. Guidance will cover including views of sons and daughters in terms of assessment.*

6.27 One respondent commented that there is no place outside a carers local authority or fostering service to record the termination of a carers approval due to poor practice. The respondent noted that this schedule relies solely on the carer to provide this information if they reapply to another authority / agency. The respondent further commented on the central registration of foster carers with a registered body, such as the SSSC.

Scottish Government Response: *The decision to record this detail would be a local decision; bearing in mind our duties and responsibilities under the data protection act. The statutory duty is with the LA to ensure they undertake the assessment of the carer – poor practice will be identified through professional judgement. Guidance will provide further clarity.*

6.28 A couple of respondents suggested third part references should include employment references, particularly if the carer previously worked with children / young people. The respondent commented that “guidance should expand on the information required from referees and the need to interview referees.”

Scottish Government Response: *the assessment at part 4 of the regulation sufficiently covers this point 'having regard to the child's educational needs, the proposals, for achieving those needs, and the proposals for achieving continuity in the child's education. On the later point Schedule 3 Para 14 include a 'reference from third parties as to the character of the prospective foster or kinship carer and their suitability'. Guidance to provide further clarity.*

Schedule 5

6.29 Some respondents commented that the foster placement schedule replaces the previous schedule in the 1996 regulations, but does not include a specific foster placement agreement.

Scottish Government Response: *the regulations have been amended to include the above.*

PART VII - FOSTERING ALLOWANCES

Question 7(a) We welcome your comments on regulation 33.

7.1 This section on fostering and kinship care allowance supports the process that there should be a minimum rate of allowance, but there must also be a clear and consistent system of assessment of the needs of the carers and the child to ensure that an adequate level of funding is provided.

Summary of responses

7.2 Respondents generally felt this section should be headed 'kinship and fostering allowances' or simply 'payment of allowances' to make it clear it covers both kinship and foster care payments.

Scottish Government Response: *the regulations have been amended as suggested.*

7.3 Several respondents noted that the regulation relates only to allowances and not to fees. They suggested further clarity was needed around fee payments.

Scottish Government Response: *It is not within the competence of these regulations to discuss fees.*

7.4 A couple of respondents were concerned that local authorities retain discretion to pay an allowance (“as they see fit”) commenting that this appears to leave open the possibility of no allowance being paid at all.

Scottish Government Response: *Regulation 33 clearly states the duty of the Local Authority based on their assessment.*

7.5 Several respondents commented that financial support for kinship carers should come through the benefits system and not from local authority support. One commented “tying kinship carers into payments from local authorities perpetuates dependence on this finance stream resulting in children remaining in the looked after system and does not promote an independent family solution.”

Scottish Government Response: *The UK Welfare Benefits system does not work as well as we would like in Scotland for kinship carers of Looked After Children and we are in discussions with UK Ministers on this matter.*

PART VIII - LOOKED AFTER CHILDREN PLACED IN RESIDENTIAL ESTABLISHMENTS

Question 8 (a) We welcome comments on regulations 34 and 35: should anything further be included in this section?

8.1 Some respondents suggested that the ‘Residential Establishments - Child Care (Scotland) Regulations’ should be moved into the LAC regulations in their entirety. However, a significant number of comments and suggestions were made which indicate that further work and additional consultation is required on the residential regulations, to bring them up-to-date with current practice.

Scottish Government Response: *we will provide further advice on whether the Residential Establishment Regulations need to be revised.*

8.2 One respondent said “*We are concerned about the current status of the Residential Regulations, which we see are not being revoked. We do however want to take this opportunity to highlight the pressing need to review the Residential Regulations also. The key issue that needs to be addressed is the status of the regulations and the apparently unanticipated consequence of the drafting of the Regulation of Care Act 2001 and its associated statutory instrument. The key issue that needs attended to is the extent to which the residential regulations still apply to the non-local authority sector.*”

Scottish Government Response: *we will provide further advice on whether the Residential Establishment Regulations need to be revised.*

Regulation 34: Child placed in a residential establishment: notification

8.3 Respondents commented that the list of those to be notified should include education, as it was vital the child's school was informed of their residential placement. It was noted that this would come under 'local authority' but respondents thought it should be clarified or included in guidance.

Scottish Government Response: *the notification requirement include "the child's education needs and whether those needs are being met". Guidance will amplify.*

Regulation 35: Child placed in residential establishment: information to be supplied

8.4 Several respondents commented that this regulation (information to be supplied) should be expanded and linked to schedules 1 and 2. It was felt that the current wording of the regulation does not cover all that should be included in a care plan and that residential establishments need to receive the full range of information about the child. One respondent commented "*it is unclear why the information detailed in reg 33 is different/less than that outlined in Schedule 1. Children in residential care have a particular vulnerability, partly because they are often placed at a distance. The full sharing of information is important to their welfare.*"

Scottish Government Response: *the regulation has been amended to allow effective information sharing.*

8.5 It was also suggested that guidance could usefully expand on what information should be provided, such as the plan(s) for the child, previous Children's Hearing reports, LAC review reports and minutes etc.

Scottish Government Response: *the regulation has been amended and now includes provision written information gathered more effectively.*

8.6 A couple of respondents commented on the use of "adequate and efficient education" (b) (iv), commenting that this sounds rather minimalist and not in the spirit of GIRFEC.

Scottish Government Response: *The wording in the draft new Regulations reflected that in the 1996 Regulations. Taking into account legislative changes since then, the Scottish Government now intends to reword this Regulation to reflect the phraseology used in section 2 of the Standards in Scotland's Schools Act 2000, to refer to 'ensuring that the child or young person receives education that is directed to development of his or her personality, talents, and mental and physical abilities to their fullest potential'. Guidance can point to best practice.*

8.7 A respondent suggested the child's health should be included here.

Scottish Government Response: *Regulations have been amended to include this point*

Question 8b) Many young people move from residential accommodation to independent living. Would any further provision in these regulations support more effective transitions for young people?

8.8 Respondents were generally supportive of further provision in this area, but noted that this area is dealt with in the Support and Assistance of Young People Leaving Care regulations and the LAC regulations should be compatible and refer to those regulations.

Several respondents commented that young people moving onto independent living from residential establishments may face additional challenges and require additional support.

Scottish Government Response: *the Scottish Government welcomes the majority support for this regulation. The Children (Scotland) Act 1995 sets out the statutory duties for LA's for young people leaving care. The duty is to carry out an assessment of the needs of all young people over school age leaving their care when requested to do so. This includes young people looked after at home, not just those provided with accommodation by the local authority.*

8.9 A few also suggested young people should be able to remain in their placement until the age of 18 if they wish, and should be supported to move on from that placement.

Scottish Government Response: *Throughcare and aftercare are key services in assisting looked after young people moving to independent living. Local authorities have a duty to provide advice and support to their young people up to age 19, and a power to do so up to age 21. They are encouraged to make sure that young people stay Looked After for as long as possible, preferably until they reach 18 if that is in the best interests of the young person. They should ensure that when young people do leave care they are equipped with the necessary life skills, and can access adequate financial and other support at what is a difficult time for all young people.*

8.10 One respondent suggested an additional regulation which would set out the actions required of a local authority in order to prepare for a young person making a transition to more independent living. The respondent commented *"the move from a 'looked after child' care plan to a care leaving 'pathway plan' could be supported by regulations, governing key aspects of preparation; for example, not moving too early, the possibility of return, and support for pathway planning."*

Scottish Government Response: *Our view is that this is something which will be covered in guidance. The time when a person ceases to be looked after is tied to the date that the relevant order (e.g. supervision requirement or permanence order) comes to an end. However, we are also considering whether we need to review the current Throughcare and Aftercare Regulations and will provide further advice on this in due course.*

8.11 A local authority commented that *"the person in charge of the residential establishment could be required to ensure that the young person receives adequate preparation prior to a move to independent living, to include a pathway assessment being completed and a pathway plan agreed and in place before the young person moves."*

Scottish Government Response: *The Children (Scotland) Act 1995 sets out the statutory duties for LA's for young people leaving care. The duty is to carry out an assessment of the needs of all young people over school age leaving their care when requested to do so.*

PART IX - EMERGENCY MEASURES AND SHORT TERM PLACEMENTS

Question 9a) We welcome your comments on regulations 36 to 39.

9.1 Sometimes it is necessary to make an emergency placement; in some instances, the placement will be successful and go on to be long term. However, this cannot be assumed,

and as part of the placement agreement, processes need to be in place for early review and monitoring.

Summary of responses

9.2 Respondents generally favoured changing 72 hours to 3 working days (both for the placement and review), indicating that this would be more workable and practical. However respondents indicated that even 3 working days is not enough time to undertake a kinship care assessment.

Scottish Government Response: *we will ensure that guidance provides clarity.*

9.3 A couple of respondents asked for more detail / clarity about what should happen when a child is placed with a carer who is then not approved. What timescales and procedures should apply? The previous regulations specified that the placement could continue for up to six weeks provided the authority was satisfied the placement was the best way of meeting the child's needs. Respondents asked for clarity on how long the child should be able to stay with the carer and what procedures would need to be undertaken.

Scottish Government Response: *the emergency placement regulations provide the level of detail requested above however, we will ensure that guidance provides clarity.*

9.4 A couple of respondents suggested that these regulations should be linked to schedules 1 and 2, as the same information would need to be collected about the child.

Scottish Government Response: *the emergency placement regulations are now linked with the appropriate schedules.*

9.5 A couple of respondents asked for clarity on the meaning of 'review', suggesting the guidance could helpfully set out what kind of review this should be and what form it should take. This should be linked in to other reviews, visits etc.

Scottish Government Response: *Guidance will provide further clarity.*

9.6 One local authority also raised the issue of a foster carer taking a placement which is outwith their approval, indicating that at the moment such a situation would be referred to the agency decision maker. The respondent suggested this could be clarified in guidance.

Scottish Government Response: *Guidance will provide further clarity.*

9.7 A couple of respondents indicated they did not like the terminology "to care for the child as if that child were a member of that person's family"

Scottish Government Response: *No change to regulations made as the carer may be a stranger to the child.*

PART X - CASE RECORDS AND REVIEW OF CHILD'S CASE

Question 10a) We welcome your comments on Regulations 40 to 45.

Question 10b) Should regulations 42-44 make clear this is a minimum requirement?

General comments

10.1 Part X covers two separate aspects, reviews and case records, and a few respondents favoured the review of the child's plan as Part X and then Case records as Part X1.

10.2 Respondents felt these should represent minimum requirements and that clearly in most cases this would not be best practice. It is important that appropriate levels of contact are specified in the child's plan. Robust efforts must be made to ensure that consulting with children about reviews takes place in a meaningful and accessible way. Guidance on this should be developed – building upon examples of good practice and research findings. Planning at reviews should again be consistent with GIRFEC and ensure that the various dimensions are addressed (safe, healthy, achieving, nurtured, active, respected, included) in every child's plan. Intended outcomes of intervention should be given priority attention in these plans.

10.3 Regarding the purpose of reviews, in the context of short breaks these must look at the relationship between the parents and carers and whether they are working well together and providing consistency for the child. For short breaks to benefit both child and family the two sets of adults must build a close working relationship.

Scottish Government Response: *We have considered the comments received and have separated this into two separately headed sections – Part XI Case Records and Part XII Review of the Child's Case. Guidance will provide further clarity.*

Regulation 40 - Establishment for records of looked after children

10.4 A few respondents asked that the content of a record should include health and education records.

Scottish Government Response: *The child's plan does include the educational and health needs of the child.*

10.5 One local authority asked why there was no requirement to keep case notes as would generally be understood by that term "there is currently no requirement to record details of meetings with a child or parent, or telephone conversations with the child or family. We would also welcome clarification regarding when a child's record should be regarded as an adoption record, given the different arrangement for access to these records."

Scottish Government Response: *Regulations relating to the keeping of adoption records will be contained within the Adoption Agencies (Scotland) Regulations. An adoption agency is required to keep a case record in respect of a child about whom an adoption panel has made a recommendation. The case record must include information obtained by the agency, reports, recommendations and decisions made by the agency and adoption panel under the adoption agencies regulations. Specific to the question of child and adoption records the guidance will provide good practice.*

Regulation 41 - Retention and confidentiality of records

10.6 Several respondents agreed with our suggestion in the consultation document that we include reference to the Code of Practice on records management in this regulation.

Scottish Government Response: *the regulations have been amended to include the above.*

10.7 A few respondents were of the opinion that there is a significant variance between the requirement to retain records for 75 years or 25 years. Although there are many reasons why historical records can be helpful, the retention of records for 75 years would seem to be an unnecessarily lengthy period.

Scottish Government Response: *an amendment was introduced into the new regulations; A case record relating to a child who is placed by a local authority must be retained by that authority until the 100th anniversary of the child's date of birth.*

Regulation 42 – review of child's case child cared for by parents with parental responsibility and parental rights

10.8 One respondent provided that it was not helpful to group together children on home supervision and children on permanence orders. In the former case, the local authority will be aiming to recommend cessation of the supervision requirement as soon as it is safe and in the child's best interests to do so.

Scottish Government Response: *Most looked after children at home will be on supervision requirements and their plan will be reviewed at least annually by a Children's Hearing.*

10.9 One local authority favoured reviews at the current frequency of after 3 months and then 6 monthly. However, stated as far as children on permanence orders are concerned, other than if their parents' circumstances change dramatically, it is likely they will be looked after for the rest of their childhood. In these circumstances, letting the child and carers get on with "normal life" is likely to be beneficial.

Scottish Government Response: *Where no agreement is reached on the frequency of reviews, these will be held every year with the first review taking place within 6 weeks. Guidance will provide clarity.*

10.10 Clarity was sought regarding section 42(5), what happens if either the child or the person caring for the child refuses to take part in reviews? They considered a minimum of one annual review should be in place.

Scottish Government Response: *section 44 (6) clearly states where no agreement is reached under paragraph (5) the local authority must under Para 6 carry out the following reviews of the child's case: a first review within 6 weeks of the placement; and thereafter subsequent reviews within 12 months of the previous review.*

10.11 One local authority queried that section 42 (b) treats a Permanence Order akin to a child placed with their parents, and regularity of reviews is to be agreed with the child and their carer, rather than specified timescales applying as in Regulation 43. The respondent asked why reviewing children subject to Permanence Orders sit within this category of children cared for by parents or persons with Parental Responsibility and Rights. While parents in such circumstances will retain some Parental Rights and Responsibilities, it is likely that substantial intervention will have taken place prior to a Permanence Order being obtained, and it seems more logical for children subject to Permanence Orders to be reviewed consistently with Regulation 43.

Scottish Government Response: *Unlike where a child is being cared for by kinship or foster carers or where they are in a residential establishment, certain parental rights and responsibilities will be vested in the persons looking after a child subject to a permanence order in much the same way as where the child is living with a person who has Parental Responsibilities under regulation 8. That arrangement requires different consideration from*

the reviews of children who are cared for by persons who do not have Parental Responsibility. The regulation is designed to allow for unintrusive reviews to take place where a permanence order is considered to be the best permanent option to provide that child with a stable, secure and safe home. Guidance to provide clarity.

10.12 With regard to regulation 42, one agency stated that looked after children subject to a home supervision requirement should have the frequency of reviews stated within the regulations and these timescales should be similar to those for children accommodated away from home. However, where a child is subject to a permanence order the frequency of reviews should have more flexibility, with a minimum requirement of once a year included in the regulations.

Scottish Government Response: *The reviews for a child placed with carers on a permanence order should be agreed with the child to ensure that they are as unintrusive as possible. However, as indicated in reg 44(6) where an agreement has not been made a review should now take place 12 months from the previous review of the placement. This addresses the issues raised. A child being cared for at Home is likely to be subject to a supervision order and will be subject to reviews for the Children's hearings system. Similar to a permanence order, reviews should be unintrusive to allow for family to continue, but are required due to the ongoing responsibility the LA has for the child.*

Regulation 43 - review of child's case: child placed with kinship carer, foster care or in a residential establishment

10.13 One recipient advised in response to regulation 43 (4)(b) applications will be preceded by an earlier review, discussion at our Permanency Panel, and referral to the Agency Decision Maker, commenting "we therefore would not consider it beneficial to conduct another Review prior to application for a P.O. being made. Similarly, 43 (4)(c) – it would be helpful if guidance could clarify the role of Planning Meetings, which are likely to precede requests for Children's Hearing Reviews."

Scottish Government Response: *This is now regulation 45. Terminology for the various meetings is seen as less important so long as the child's care reviews are working effectively to secure the child's future care.*

10.14 Most wanted to see timescales set out in this regulation, saying there are many instances where these are not adhered to.

Scottish Government Response: *The regulations para 45(2) clearly state that the Local Authority must agree the frequency of reviews - we will ensure this point is reinforced in guidance.*

Regulation 44 - local authority visits child in placement

10.15 There were a number of responses to this part of the regulation stating that consultees wished to change the frequency of visits. The need for a child to be visited in placement varies in accordance with a number of factors including the duration of the placement, the difficulties that a child may be presenting to the carers, legal processes, changes in the placement that are affecting the child etc. Few favoured a change to four/six weeks for the second visit and thereafter a minimum of three monthly intervals. Short term/emergency placements may require more frequent visits. Guidance needs to cover what should be included in a visit, with reference to Care Standards

Scottish Government Response: *Guidance will provide further clarity*

Regulation 45 – termination of placement

10.16 One agency expressed concerns about decisions to terminate placements being financially driven, rather than in the best interests of the child, stating that “a planned approach to leaving care or moving on, designed in consultation with the child and the manager of the residential establishment, should be the preferred option.”

Scottish Government Response: *We agree that decisions to terminate placements must be made in the best interests of the child.*

Question 10b) Should regulations 42-44 make clear this is a minimum requirement?

Regulation 42 – review of child’s case child cared for by parents with parental responsibility and parental rights

10.17 Most agencies agreed that guidance will be important to identify what is best practice around frequency of reviews for children subject to Permanence Orders or cared for at home. Where the child is on a supervision requirement then the reviews at the Hearings should trigger a review to prepare for that more formal review at a Hearing.

Scottish Government Response: *Most looked after children at home will be on supervision requirements and their plan will be reviewed at least annually by a Children’s Hearing. Guidance will provide further clarity.*

10.18 Where children are placed with kinship carers there may be less need for as regular formal review arrangements recognising that the child is living within their own family. The frequency should be agreed with the child, parent and kinship carers and reflect the progress of the placement and the child’s needs.

Scottish Government Response: *the regulations under assessment and child’s plan are clear that where appropriate seek and take into account the views of the child.*

Regulation 43 - review of child’s case: child placed with kinship carer, fosters care or in a residential establishment

10.19 No specific comments received.

Regulation 44 - local authority visits child in placement

10.20 While agreeing the first visit should be at 1 week, most respondents suggested that a further visit should be made no later than 6 weeks after placement and thereafter at a minimum of 3 monthly visits. This would include children placed in residential establishments in Regulation 44 (3) (b).

Scottish Government Response: *the regulations state no more than 3 months from last visit it would be up to the Local Authority to assess whether a visit was required sooner.*

PART XI - ARRANGEMENTS WITH REGISTERED FOSTERING SERVICES

Question 11a) Are you content with Regulations 46 and 47 and the content of Schedule 6?

11.1 This part of the consultation allows local authorities to enter into agreements with other fostering services (who are not local authorities and who are registered with the Scottish Commission for the Regulation of Care) for the purposes of discharging certain functions in respect of looked after children on their behalf. Now regulation 48.

Summary of responses

11.2 Responses were very mixed in this section. Some respondents welcomed the term 'registered fostering service', stating that they felt this enabled local authorities to enter into arrangements with both voluntary and independent providers.

11.3 A couple of respondents indicated that registered fostering services need to be able to carry out independent functions, such as the review and approval of foster carers, without making specific arrangements with a local authority or group of local authorities. Linking into this, another respondent noted that the key area for delegation is likely to be the assessment and approval of carers, saying *"it would be unwieldy for each local authority to approve all carers as there will be no certainty at the time of approval which authority will eventually use the carer."*

11.4 One respondent stated the need to ensure the quality of carers being assessed and approved – *"what will be the quality control of their processes and standards of approval, support and review?"*

11.5 Several respondents queried the timescales given for visit, indicating the requirement here for the local authority to visit the child within 28 days did not seem to fit with the earlier requirement to visit within a week and then every 3 months.

Scottish Government Response: *The 1996 Fostering Regulations allow local authorities to devolve some of their duties to voluntary fostering agencies. In England, Wales and Northern Ireland a number of independent fostering agencies operate on a for profit basis. In Scotland, local authorities also enter into agreements with independent fostering providers, but their operations in Scotland have to be on a not for profit basis.*

In relation to registration of fostering services, the Care Commission does not differentiate between a voluntary fostering organisation or an independent fostering organisation if the independent fostering organisation can demonstrate that it is a not for profit organisation. One of the ways in which many do evidence this is through becoming registered as a charity. The Regulations reinforce this position, by requiring the local authority to be satisfied that the registered fostering service has capacity to carry out delegated functions.

Local authorities have certain responsibilities in respect of looked after children - as the "corporate parent". They cannot abdicate responsibility when they engage with a registered fostering service. The regulations clearly state under 'visits by Local Authorities' that the local authority must arrange for one of their officers to visit the child within 28 days of the placement. Also where the registered fostering service which placed the child with the carer makes representations to the local authority that there are circumstances relating to the child which require a visit, the local authority must arrange for one of their officers to visit the child within 14 days from the day they receive those representations. Where the local authority are informed that the welfare of the child may not be or is not being safeguarded or promoted, the local authority must arrange for one of their officers to visit the child as soon as reasonably practicable but not later than 3 days from the day they are so informed.