

# EXECUTIVE COUNCIL

## PUBLIC

<b>Title:</b>	Approval of draft Regulations for Fostering and for Children Care Planning, Placement and Case Review (to be made under the Children Ordinance 2014)
<b>Paper Number:</b>	24/19
<b>Date:</b>	27 February 2019
<b>Responsible Director:</b>	Director of Health and Social Services
<b>Report Author:</b>	Crown Counsel Safeguarding
<b>Portfolio Holder:</b>	MLA Ian Hansen and MLA Stacy Bragger
<b>Reason for paper:</b>	This paper is submitted to Executive Council for approval of the attached draft Regulations relating to Fostering and to Children Care Planning, Placement and Case Review.
<b>Publication:</b>	Yes
<b>Previous papers:</b>	28/14 Children Bill 2014 Paragraph 9.3
<b>List of Documents:</b>	<b>Annex 1:</b> Draft Children (Fostering) Regulations 2018 <b>Annex 2:</b> Draft Children (Care Planning, Placement and Case Review) Regulations 2018

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### 1. Recommendations

Honourable Members are recommended to:-

- (a) approve the making and publication in the Gazette of the Children (Fostering) Regulations 2019 with effect on and from the date of publication;
- (b) approve the making and publication in the Gazette of the Children (Care Planning, Placement and Case Review) Regulations 2019 with effect on and from the date of publication;; and
- (c) authorise the Attorney General to correct typographical errors and non-substantive drafting errors found in the subsidiary legislation referred to above prior to its signature.

## **2. Additional Budgetary Implications**

- 2.1. There are no additional budgetary implications. The Social Services Department is already assessing prospective foster carers as provided for in the draft Children (Fostering) Regulations 2019, using its current resources. Similarly, the Department is already undertaking care planning for looked after children as provided for in the draft Children (Care Planning, Placement and Case Review) Regulations 2019. No additional resources are needed for these purposes.

## **3. Executive Summary**

- 3.1. The Children Ordinance 2014 sets out the legislative framework for the care of children both within families and by FIG, should this prove necessary. The Children Ordinance provides for two separate sets of regulations to be made – for the fostering of children and for their care planning and placement. The Children (Fostering) Regulations 2019 (**Fostering Regulations**) and the Children (Care Planning, Placement and Case Review) Regulations 2019 (**Care Planning Regulations**) are intended to meet this requirement.
- 3.2. The Fostering Regulations provide for the assessment and approval of foster carers. The Care Planning Regulations make provision for care plans and arrangements to be put in place for children who are in the care of the Government.
- 3.3. The Fostering Regulations and the Care Planning Regulations are attached to this paper for approval.

## **4. Background and Links to Islands Plan and Directorate Business Plan/s**

- 4.1. The Islands Plan 2018-22 contains a commitment to ‘progress safeguarding activities for vulnerable people of all ages’ A system of regulation for any activities of Government involving the care of children is necessary.
- 4.2. Foster Carers are needed in the Falkland Islands. At the present time, there are five children in the care of the Government and all are cared for in an institution rather than a family home. It has not been possible to give any children the option of living in a foster home due to the lack of carers.
- 4.3. The Fostering Regulations provide a regime under which foster carers are assessed and approved. The regime is to be overseen by a fostering panel which is to be set up under the Regulations which will regulate the panel’s membership and functions. Once approved, foster carers will be registered and subject to regular review, and specified records will be maintained in respect of them. In addition, the Fostering Regulations lay down requirements for the protection of children in foster care, the management of their behaviour, and the promotion of their education and health requirements, and their other activities. The Fostering Regulations will underpin a professional foster care service which should attract more foster carers.

- 4.4. The Care Planning Regulations make provision for children who are in the care of the state in various ways:-
- (a) A care plan for each child is to be drawn up, providing in particular for the child's health, education and family and social relationships. The plan is to be reviewed, updated and adapted as the child gets older. The plan must take into account their wishes and those of their parents and the child's likely needs.
  - (b) Under the Regulations, a child may be placed with parents, special guardians etc, with foster carers or with others as appropriate. The arrangements for each type of placement are regulated by the Regulations. Any placement of a child is to be the subject of a separate placement plan.
  - (c) Regular visits by Government representatives will be paid to a placed child. Their case will be subject to regular review.
  - (d) If the Crown should cease to look after a child, the Regulations provide for special arrangements to be made.
- 4.5. It was originally intended to implement both sets of regulations at the same time as the Children Ordinance was enacted. It is now proposed to adopt both the Fostering Regulations and the Care Planning Regulations without further delay.

## **5. Options and Reasons for Recommending Relevant Options**

- 5.1 The Fostering Regulations and the Care Planning Regulations are required to regulate the standard of care of children who do not live with their families.
- 5.2 As noted above, it was intended to adopt the Fostering Regulations and the Care Planning Regulations at the same time as the Children Ordinance was enacted.
- 5.3 It is recommended that both sets of these regulations are now adopted without further delay, as envisaged in the Children Ordinance.
- 5.4 The alternative is to continue without appropriate regulations which would mean one of the key aims of the Children Ordinance would continue not to be achieved. This is not recommended.

## **6. Resource Implications**

- 6.1. Financial Implications - None
- 6.2. Human Resource Implication - None

## **7. Legal Implications**

The legal effects and implication of adopting the Fostering Regulations and Care Planning Regulations referred to in this paper have already been discussed in sections 3 and 4.

## **8. Environmental & Sustainability Implications**

None

## **9. Significant Risks**

- 9.1 There is a need to have proper processes and procedures in place to underpin the obligations owed by the Government to safeguard children in its care. These need to be fit for purpose and comply with best practice.
- 9.2 This is so particularly in circumstances where there is a regular turnover in staff, which has been the case in the Falkland Islands.
- 9.3 The Fostering Regulations and Care Planning Regulations are intended to address these risks.

## **10. Consultation**

- 10.1. The Department for Health and Social Services has been extensively consulted in the preparation of both sets of regulations.
- 10.2. Extensive consultation took place when the Children Ordinance was planned, drafted and introduced in 2014.
- 10.3. Both sets of regulations have been prepared by AG's Chambers and the Head of Legal Services and Statutory Law Commissioner have provided input for both.

## **11. Communication**

A campaign to assist with the recruitment of foster carers will be undertaken once the Fostering Regulations are adopted. A communications plan regarding that will be needed.

**Annex 1:** Draft Children (Fostering) Regulations 2019

**Annex 2:** Draft Children (Care Planning, Placement and Case Review) Regulations 2019

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SUBSIDIARY LEGISLATION

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**Children (Fostering) Regulations 2019**

S. R. & O. No.                      of 2019

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## SUBSIDIARY LEGISLATION

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### **Children (Fostering) Regulations 2019**

S. R. & O. No.                      of 2019

*Made: ..... 2019*

*Published: ..... 2019*

*Coming into force: on publication*

IN EXERCISE of my powers under section 28(10) as read with sections 28(6), 44(1) and (2) of the Children Ordinance 2014 and paragraphs 13 to 15 of Schedule 2 to the Children Ordinance 2014 and on the advice of Executive Council I make the following regulations —

#### **PART 1** **Introductory**

##### **1. Title**

These regulations are the Children (Fostering) Regulations 2019.

##### **2. Commencement**

These regulations come into force on publication in the *Gazette*.

##### **3. Interpretation**

(1) In these regulations —

“approval” means approval as a foster carer in accordance with regulation 16 and references to a person being approved are to be construed accordingly;

“care plan” means the plan for the future care of a child prepared in accordance with Part 2 of the Children (Care Planning, Placement and Case Review) Regulations 2019;

“central list” means the list referred to in regulation 12(1);

“child protection enquiries” has the meaning given in regulation 5(4);

“Director” means the Director of Health and Social Services;

“foster care agreement” means an agreement referred to in regulation 16(4)(b);

“foster carer” —

(a) means a person (including a person ordinarily known as a foster parent) who is approved as a foster carer under these regulations; and

(b) except in regulations 14 to 18, includes a person with whom a child is placed under regulation 24 of the Children (Care Planning, Placement and Case Review) Regulations 2019 (*temporary approval of a relative, friend or other person connected with the child*);

“fostering panel” means a panel constituted in accordance with regulation 12;

“fostering service” means the fostering service provided by the Crown;

“parent”, in relation to a child, includes any person who has parental responsibility for the child;

“parent and child arrangements” means arrangements made by the Crown for a parent and their child to live with a foster carer, whether or not the parent or the child is placed with the foster carer;

“placement” means any placement of a child with foster carers made by the Crown under section 28 of the Ordinance which is not a placement for adoption;

“placement plan” means the plan for the placement of a child prepared in accordance with regulation 9 of the Children (Care Planning, Placement and Case Review) Regulations 2019;

“placing authority”, in relation to a child, means the Crown;

“social worker” means a person with a social work qualification which is recognised by the Director;

“team leader” means the Social Welfare Department Team Leader appointed under regulation 4 who is responsible for or in charge of leading the Social Welfare team; and

“the Ordinance” means the Children Ordinance 2014.

(2) In these regulations any function conferred on the Crown will be exercised by the Director or officers subordinate to the Director.

## **PART 2**

### **Conduct of fostering service**

#### **4. Fostering service – manager**

The Director must appoint a team leader for the Social Welfare Department to manage the fostering service.

#### **5. Arrangements for the protection of children**

(1) The Crown must prepare and implement a written policy which —

(a) is intended to safeguard children placed with foster carers from abuse or neglect; and

(b) sets out the procedure to be followed in the event of any allegation of abuse or neglect in respect of a child.

(2) The written policy must include a statement of measures to be taken to safeguard any child before making parent and child arrangements with any foster carer.

(3) The procedure under paragraph (b) of sub-regulation (1) must provide in particular for —

(a) liaison and co-operation with any overseas authority which is, or may be making a request that child protection enquiries be made in relation to any child placed by the Crown with that authority;

(b) the prompt referral to any overseas authority of any allegation of abuse or neglect affecting any child placed by the Crown with that authority;

(c) notification to the Director of the investigation and outcome of any child protection enquiries involving a child placed by the Crown;

(d) written records to be kept of any allegation of abuse or neglect in respect of a child, and of the action taken in response;

(e) consideration to be given to the measures which may be necessary to protect children placed with foster carers following an allegation of abuse or neglect; and

(f) arrangements to be made for foster carers and children placed by the Crown, to have the address (including email address) and telephone number of —

(i) the team leader; and

(ii) the Director,

for the purposes of referring any concern about child welfare or safety to them.

(4) In this regulation “child protection enquiries” means any enquiries carried out by the Crown in the exercise of any of its functions conferred by or under the Ordinance relating to the protection of children.

## **6. Behaviour management and children missing from foster carer’s home**

(1) The Crown must prepare and implement a written policy on acceptable measures of control, restraint and discipline of children placed with foster carers.

(2) The Crown must take all reasonable steps to ensure that —

(a) no form of corporal punishment is used on any child placed with a foster carer;

(b) no child placed with a foster carer is subject to any measure of control, restraint or discipline which is excessive or unreasonable; and

(c) restraint is used on a child only where it is necessary to prevent injury to the child or other persons, or substantial damage to property.



(3) The Crown must prepare and implement a written procedure to be followed if a child is missing from a foster carer's home.

## **7. Duty to promote contact**

The Crown must, subject to the provisions of the care plan and any court order relating to contact, promote contact between a child placed with a foster carer and the child's parents, relatives and friends unless such contact is not reasonably practicable or consistent with the child's welfare.

## **8. Health of children placed with foster carers**

(1) The Crown must promote the health and development of children placed with foster carers.

(2) In particular the Crown must ensure that each child —

- (a) is registered with a general medical practitioner;
- (b) has access to such medical, dental, nursing, psychological and psychiatric advice, treatment and other services as may be necessary for the child;
- (c) is provided with such individual support, aids and equipment which may be necessary for the child as a result of any particular health needs or disability the child may have; and
- (d) is provided with guidance, support and advice on health, personal care and health promotion issues appropriate to the child's needs and wishes.

## **9. Education, employment and leisure activities of children placed with foster carers**

(1) The Crown must promote the educational achievement of children placed with foster carers.

(2) In particular the Crown must —

- (a) implement a procedure for monitoring the educational achievement, progress and school attendance of children placed with foster carers;
- (b) promote the regular school attendance and participation in school activities of children of compulsory school age placed with foster carers; and
- (c) provide foster carers with such information and assistance, including equipment, as may be necessary to meet the educational needs of children placed with them.

(3) The Crown must ensure that any education it provides for any child placed with a foster carer who is of compulsory school age, but who is not attending school, is efficient and suitable to the child's age, ability, aptitude and any special educational needs the child may have.

(4) The Crown must ensure that foster carers promote the leisure interests of children placed with them.

(5) Where any child placed with a foster carer is above compulsory school age, the Crown must assist with the making of, and give effect to, the arrangements made for the child's education, training and employment.

#### **10. Support, training and information for foster carers**

(1) The Crown must provide foster carers with such training, advice, information and support, including support outside office hours, as is necessary in the interests of children placed with them.

(2) The Crown must take all reasonable steps to ensure that foster carers are familiar with, and act in accordance with, the policies established in accordance with regulations 5(1) and 6(1) and (3).

(3) The Crown must ensure that, in relation to any child placed or to be placed with a foster carer, the foster carer is given information, which is kept up-to-date, to enable the foster carer to provide appropriate care for the child, and in particular that each foster carer is provided with a copy of the most recent version of the child's care plan as required under regulation 6(3) of the Children (Care Planning, Placement and Case Review) Regulations 2019.

#### **11. Records with respect to fostering services**

(1) The Crown must maintain and keep up-to-date the records specified in Schedule 1.

(2) The records referred to in sub-regulation (1) must be retained for at least 15 years from the date of the last entry.

### **PART 3**

#### **Approval of foster carers**

#### **12. Constitution and membership of fostering panel**

(1) The Crown must maintain a list of persons who it considers suitable to be members of a fostering panel ("the central list").

(2) A person who is included in the central list may at any time ask to be removed from the central list by giving one month's notice in writing.

(3) Where the Crown is of the opinion that a person included in the central list is unsuitable or unable to remain on the central list, the Crown may remove that person's name from the central list and notify the person in writing.

(4) Subject to sub-regulation (5), the Crown must set up a fostering panel to perform the functions of a fostering panel under these regulations, and must appoint panel members from the central list including —

(a) a person from the central list to be the chairperson of the panel, if possible who is independent of the Crown;

(b) one or two persons from the central list who may act as chairperson if the person appointed under paragraph (a) is absent or if that office is vacant (“vice chairpersons”); and

(c) one or more social workers who have at least three years’ relevant post-qualifying experience.

(5) The Crown must ensure that the fostering panel has sufficient members, and that individual members have between them the experience and expertise necessary, to effectively discharge the functions of the fostering panel.

(6) Any fostering panel member may resign from the fostering panel at any time by giving one month’s notice in writing to the Director.

(7) Where the Director is of the opinion that any member of the fostering panel is unsuitable or unable to continue as a panel member, the Director may terminate that member’s appointment at any time by giving the member notice in writing.

(8) For the purposes of this regulation and regulation 13 a person is not independent of the Crown if —

(a) the person is currently approved by the Crown as a foster carer; or

(b) the person is employed by the Crown for the purposes of any of the Crown’s functions relating to the protection or placement of children.

(9) Any notice given to a person under sub-regulations (3) and (7) is effective from the date specified in the notice .

### **13. Meetings of fostering panel**

(1) No business may be conducted by a fostering panel unless at least the following members are present —

(a) either the person appointed as chairperson of the panel or one of the vice chairpersons;

(b) one member who is a social worker who has at least three years’ relevant post-qualifying experience; and

(c) one other member.

(2) A fostering panel must make a written record of all its proceedings and the reasons for its recommendations.

### **14. Functions of fostering panel**

(1) The functions of the fostering panel in respect of cases referred to it by the Crown are —

(a) to consider each application for approval and to recommend whether or not a person is suitable to be a foster carer;

- (b) where it recommends approval of an application, to recommend any terms on which the approval is to be given;
  - (c) to recommend whether or not a person remains suitable to be a foster carer, and whether or not the terms of the person's approval (if any) remain appropriate —
    - (i) on the first review carried out in accordance with regulation 17(2); and
    - (ii) on the occasion of any other review, if the relevant report is referred to the fostering panel by the Director in accordance with regulation 17(5); and
  - (d) to consider any case referred to it under regulation 16(7) or 17(9).
- (2) In considering what recommendation to make under sub-regulation (1), the fostering panel —
- (a) must consider and take into account all of the information passed to it in accordance with regulation 15, 16 or 17;
  - (b) may request the Crown to obtain any other relevant information or to provide such other assistance as the fostering panel considers necessary; and
  - (c) may obtain any legal, medical or other advice as it considers necessary.
- (3) The Crown must obtain such information as the fostering panel considers necessary and send that information to the fostering panel, and provide other assistance as the fostering panel may request, so far as is reasonably practicable.
- (4) The fostering panel must also —
- (a) advise, where appropriate, on the procedures under which reviews in accordance with regulation 17 are carried out by the Crown, and periodically monitor their effectiveness;
  - (b) oversee the conduct of assessments carried out by the Crown; and
  - (c) give advice, and make recommendations, on such other matters or cases as the Crown may refer to it.
- (5) In this regulation, “recommend” means recommend to the Director.

## **15. Assessment of prospective foster carers**

- (1) The Crown may carry out an assessment of any person who applies to become a foster carer and whom the Crown considers may be suitable to become a foster carer, and any such assessment must be carried out in accordance with this regulation.
- (2) The Crown —
- (a) must obtain the information specified in Schedule 2 relating to a prospective foster carer and any person living in or employed at the same household as the prospective foster

- carer (whether permanently or temporarily), including any non-resident partner of the prospective foster carer, and any other information the Crown considers relevant;
- (b) must interview at least two persons nominated by the prospective foster carer to provide personal references for the prospective foster carer, and prepare written reports of the interviews;
  - (c) must, except where the prospective foster carer lives and has only lived within the Falkland Islands, consult with, and take into account the views of, any authority in whose area the prospective foster carer has lived if the prospective foster carer has spent periods of time abroad; or
  - (d) may, where the prospective foster carer was approved as a foster carer by another fostering service provider outside the Falkland Islands and that approval has been terminated, and where the prospective foster carer consents to the inspection, request inspection of the relevant records compiled by that other fostering service provider in relation to the prospective foster carer.
- (3) Having regard to the information obtained under sub-regulation (2), the Crown must —
- (a) consider whether the prospective foster carer is suitable to be a foster carer and whether the prospective foster carer's household is suitable for any child;
  - (b) prepare a written report on the prospective foster carer which includes the matters set out in sub-regulation (4); and
  - (c) refer the report to the fostering panel and notify the prospective foster carer accordingly.
- (4) The report referred to in sub-regulation (3) must include the following matters in relation to the prospective foster carer —
- (a) the information required by Schedule 2 and any other information the Crown considers relevant;
  - (b) the Crown's assessment of the prospective foster carer's suitability to be a foster carer;
  - (c) the Crown's assessment of the suitability of the prospective foster carer's household; and
  - (d) the Crown's proposals about any terms of the approval.
- (5) Subject to sub-regulation (7), the prospective foster carer is not suitable to be a foster carer if the prospective foster carer or any member of the prospective foster carer's household aged 18 or over has been convicted of or has a citable caution in respect of an offence which the Crown considers relevant to determine the prospective foster carer's suitability as a foster carer.

(6) An offence considered relevant for purposes of sub-regulation (5) includes but is not limited to the following —

- (a) an offence against a child;
- (b) an offence in relation to importation of prohibited goods if these included indecent photographs of children under the age of 18;
- (c) any other offence involving bodily injury to a child, and

the expression “offence against a child” has the meaning given to it in Schedule 5.

(7) The Crown may regard a person who falls within sub-regulation (5) as suitable to be a foster carer in relation to a particular child (or children), if the Crown is satisfied that the welfare of that child (or those children) requires it, and either —

- (a) the person, or a member of the person’s household, is a relative of the child; or
- (b) the person is already acting as a foster carer for the child.

(8) For the purposes of these regulations, a person who is living in the prospective foster carer’s household in parent and child arrangements, is a member of the prospective foster carer’s household.

## **16. Approval of foster carers**

(1) The Director must not approve a person as a foster carer unless —

- (a) the Crown has completed its assessment of the suitability of that person and the person’s household; and
- (b) the fostering panel has considered the application.

(2) The Director must, in deciding whether to approve a person as a foster carer and as to the terms of any approval, take into account the recommendation of the fostering panel.

(3) No member of the fostering panel may take part in any decision made by the Director under sub-regulation (2).

(4) If the Director decides to approve the person as a foster carer, the Director must —

- (a) give the person notice in writing specifying any terms on which the approval is given; and
- (b) require that the person enters into a written agreement covering the matters specified in Schedule 3 (the “foster care agreement”).

(5) If the Director considers that the person is not suitable to be a foster carer, the Director must, subject to sub-regulation (6) —

- (a) give the person written notice that he or she proposes not to approve the person as suitable to be a foster carer (a “qualifying determination”), together with his or her reasons and a copy of the fostering panel’s recommendation; and
  - (b) advise the person that, within 28 days of the date of the qualifying determination, the person may submit any written representations that the person wishes to make to the Director.
- (6) If, within the period referred to in sub-regulation (5)(b), the Director does not receive any representations, the Director may proceed to make his or her decision.
- (7) If within the period referred to in sub-regulation (5)(b) the Director receives any written representations, the Director must —
- (a) refer the case, including such written representations, to the fostering panel for further consideration; and
  - (b) make a decision, taking into account any further recommendation made by the fostering panel.
- (8) As soon as practicable after making the decision referred to in sub-regulation (6) or (7), the Director must notify the person in writing and —
- (a) if the decision is to approve the person as a foster carer, comply with sub-regulation (4) in relation to that person; or
  - (b) if the decision is not to approve the person, provide written reasons for the decision.

## **17. Reviews and termination of approval**

- (1) The Director must review the approval of each foster carer in accordance with this regulation.
- (2) A review must take place not more than a year after the initial approval, and after that whenever the Director considers it necessary, but at intervals of not more than a year.
- (3) When undertaking a review, the Director must —
- (a) make enquiries and obtain information on the matters set out under Schedule 4 and such other information as he or she considers necessary in order to review whether the foster carer continues to be suitable to be a foster carer and the foster carer’s household continues to be suitable; and
  - (b) seek and take into account the views of —
    - (i) the foster carer; and
    - (ii) any child placed with the foster carer (subject to the child’s age and understanding).

(4) At the conclusion of the review, the Director must prepare a written report, setting out whether —

(a) the foster carer continues to be suitable to be a foster carer and the foster carer's household continues to be suitable; and

(b) the terms of the foster carer's approval continue to be appropriate.

(5) The Director must, on the occasion of the first review under this regulation, and may, on any subsequent review, refer the report to the fostering panel for consideration.

(6) If the Director decides, taking into account any recommendation made by the fostering panel, that the foster carer and the foster carer's household continue to be suitable and that the terms of the foster carer's approval continue to be appropriate, the Director must give written notice of his or her decision to the foster carer.

(7) If, taking into account any recommendation made by the fostering panel, the Director is no longer satisfied that the foster carer or the foster carer's household continue to be suitable, or that the terms of the approval continue to be appropriate, the Director must —

(a) give written notice to the foster carer that he or she proposes to terminate, or revise the terms of, the foster carer's approval, together with his or her reasons and a copy of any recommendation made by the fostering panel; and

(b) advise the foster carer that, within 28 days of the date of the notice referred to in subsection (7)(a), the foster carer may submit any written representations that the foster carer wishes to make to the Director.

(8) If, within the period referred to in sub-regulation (7)(b), the Director does not receive any representations, the Director may proceed to make his or her decision.

(9) If, within the period referred to in sub-regulation (7)(b), the Director receives any written representations, the Director must —

(a) refer the case, including such written representations, to the fostering panel for its consideration; and

(b) make a decision, taking into account any recommendation made by the fostering panel.

(10) As soon as practicable after making the decision referred to in sub-regulation (9)(b), the Director must give written notice to the foster carer stating —

(a) that the foster carer and the foster carer's household continue to be suitable, and that the terms of the approval continue to be appropriate;

(b) that the foster carer's approval is terminated from a specified date, and the reasons for the termination; or

(c) the revised terms of the approval and the reasons for the revision.



(11) A foster carer may give notice in writing to the team leader at any time that the foster carer no longer wishes to be a foster carer, in which case the foster carer's approval is terminated with effect from 28 days from the date on which the notice is received by the team leader.

### **18. Case records relating to foster carers and others**

(1) The Director must maintain a case record for each approved foster carer which must include copies of the documents specified in sub-regulation (2) and the information specified in sub-regulation (3).

(2) The documents referred to in sub-regulation (1) are —

- (a) the report prepared under regulation 15(3)(b) and any other reports submitted to the fostering panel;
- (b) any recommendations made by the fostering panel;
- (c) the notice of approval given under regulation 16(4)(a);
- (d) the foster care agreement;
- (e) any report of a review of approval prepared under regulation 17(4); and
- (f) any notice given under regulation 17(10).

(3) The information referred to in sub-regulation (1) must include —

- (a) a record of each placement with the foster carer, including the name, age and sex of each child placed, the dates on which each placement began and terminated, and the circumstances of the termination; or
- (b) the information obtained in relation to the assessment and approval of the foster carer, and in relation to any review or termination of the approval.

(4) The Crown must maintain a case record for each person with whom a child is placed under a temporary approval under regulation 24(1) of the Children (Care Planning, Placement and Case Review) Regulations 2019, and the record must include in relation to that person —

- (a) a record in relation to the placement, including the name, age and sex of each child placed, the date on which the placement began and, if the placement has been terminated, the date and circumstances of the termination; and
- (b) the information obtained in relation to the assessment carried out under regulation 24(2) of the Children (Care Planning, Placement and Case Review) Regulations 2019.

(5) The Director must compile a record for each person whom it does not approve as a foster carer, or who withdraws his or her application prior to approval, which must include —

- (a) the information obtained in connection with the assessment;

(b) any report submitted to the fostering panel and any recommendation made by the fostering panel; and

(c) any notification given under regulation 16.

### **19. Register of foster carers**

The Crown must maintain a register (a “register of foster carers”) and enter in it the following particulars in relation to each foster carer —

(a) name, address, date of birth and sex of each foster carer including each person with whom it has placed a child under regulation 24 of the Children (Care Planning, Placement and Case Review) Regulations 2019;

(b) the date of approval and of each review of approval; and

(c) the current terms of approval.

### **20. Retention and confidentiality of records**

(1) The case records compiled in relation to a foster carer under regulation 18(1), and any entry relating to that foster carer in the register of foster carers maintained under regulation 19, must be retained for at least 15 years from the date on which the foster carer’s approval is terminated.

(2) The records compiled by the Crown under regulation 18(4) in relation to a person with whom a child is placed under regulation 24 of the Children (Care Planning, Placement and Case Review) Regulations 2019, and any entry relating to such a person in the register of foster carers maintained under regulation 19, must be retained for at least 15 years from the date on which the placement is terminated.

(3) The records compiled under regulation 18(5) must be retained for at least 15 years from the refusal or withdrawal, as the case may be, of the application to become a foster carer.

(4) The requirements in sub-regulations (1) to (3), and in regulation 11, may be complied with by retaining the original written records or copies of the records, or by keeping all or part of the information contained in them in some other accessible form such as a computer record.

(5) Any records or register maintained in accordance with regulation 11, 18 or 19 must be kept securely and may not be disclosed to any person except in accordance with —

(a) any provision of, or made under or by virtue of, a statute;

(b) any court order authorising access to such records; or

(c) any policies relating to the safeguarding of children or adults.

## **PART 4 Miscellaneous**

## **21. Application of these regulations with modifications to short breaks**

(1) In the circumstances set out in sub-regulation (2), these regulations apply in relation to a child with the modifications set out in sub-regulation (3).

(2) The circumstances are that the child —

(a) is not in the care of the Crown; and

(b) is placed in a series of short-term placements with the same foster carer (“short breaks”), where —

(i) no single placement is intended to last for more than 17 days;

(ii) at the end of each such placement, the child returns to the care of the child’s parent or a person who is not the child’s parent but who has parental responsibility for the child; and

(iii) the short breaks do not exceed 75 days in total in any period of 12 months.

(3) The modifications are that regulations 7, 8(2)(a) and (d), and 9 do not apply in relation to the child.

**SCHEDULE 1**  
**Records to be kept by the Crown**

*(regulation 11(1))*

1. A record in the form of a register showing in respect of each child placed with foster carers —
  - (a) the date of the commencement of the placement;
  - (b) the name and address of the foster carer;
  - (c) the date on which the child ceased to be placed there;
  - (d) the child's address prior to the placement;
  - (e) the child's address on leaving the placement; and
  - (f) the statutory provision under which the child is placed with foster carers.
2. A record of all accidents occurring to children whilst placed with foster carers.

## **SCHEDULE 2**

### **Information as to prospective foster carer and members of the prospective foster carer's household and family including any person living in or employed at the same household as the prospective foster carer**

*(regulation 15(2)(a))*

1. In relation to the prospective foster carer —

- (a) full name, address and date of birth;
- (b) details of health (supported by a medical report), personality, marital status and details of current and any previous marriage, civil partnership or similar relationship;
- (c) particulars of any other adult members of the household;
- (d) particulars of the children in the family, whether or not members of the household, and any other children in the household;
- (e) particulars of the prospective foster carer's accommodation;
- (f) religious persuasion, and capacity to care for a child from any particular religious persuasion;
- (g) racial origin, cultural and linguistic background and capacity to care for a child from any particular racial origin or cultural or linguistic background;
- (h) past and present employment or occupation, standard of living and leisure activities and interests;
- (i) previous experience (if any) of caring for their own and other children;
- (j) skills and competence, and potential relevance to the prospective foster carer's capacity to care effectively for a child placed with the prospective foster carer;
- (k) the outcome of any request or application made by the prospective foster carer or any other member of the prospective foster carer's household to foster or adopt children, including particulars of any previous approval or refusal of approval relating to the prospective foster carer or to any other member of the household; and
- (l) names and addresses of two persons who will provide personal references for the prospective foster carer.

2. An enhanced criminal record and background check as provided by the Royal Falkland Islands Police or where applicable, an equivalent criminal record and background check from any overseas authority where the person has resided outside the Falkland Islands, is required in relation to —

- (a) the prospective foster carer;
- (b) a member of the prospective foster carer's household and family; and

(c) a person living in or employed at the same household (whether permanently or temporarily).

**SCHEDULE 3**  
**Matters and obligations in foster care agreements**

*(regulation 16(4)(b))*

1. Matters to be recorded:

- (a) the terms of the foster carer's approval;
- (b) the support and training to be given to the foster carer;
- (c) the procedure for the review of approval of the foster carer;
- (d) the procedure and practical arrangements in connection with the placement of children and the matters to be included in any placement plan;
- (e) the arrangements for meeting any legal liabilities of the foster carer arising by reason of a placement; and
- (f) the procedure available to foster carers for making complaints and representations.

2. Obligations on the foster carer:

- (a) to care for any child placed with the foster carer as if the child was a child of the foster carer's family and to promote that child's welfare, having regard to the long and short-term plans for the child;
- (b) to give written notice to the Director as soon as is reasonably practicable, with full particulars, of —
  - (i) any intended change of the foster carer's address;
  - (ii) any change in the composition of the foster carer's household;
  - (iii) any other change in the foster carer's personal circumstances and any other event affecting either their capacity to care for any child placed or the suitability of the household; and
  - (iv) any request or application to adopt children, or a willingness to foster with a view to possible adoption;
- (c) not to administer corporal punishment to any child placed with the foster carer;
- (d) to ensure that any information relating to a child placed with the foster carer, to the child's family or to any other person, which has been given to them in confidence in connection with a placement, is kept confidential and is not disclosed to any person without the consent of the Director;
- (e) to comply with the terms of any placement plan;

- (f) to comply with the policies and procedures of the Crown issued under regulations 5 and 6;
- (g) to allow access to the child by a social worker at the foster carer's home at any reasonable time; and
- (h) to keep the Director informed about the child's progress and to notify the Director as soon as is reasonably practicable of any significant events affecting the child.



**SCHEDULE 4**  
**Matters to be considered by the Director in reviewing foster carers**  
*(regulation 17(3)(a))*

1. In relation to each child placed with a foster carer —

- (a) compliance with the child's care plan;
- (b) all accidents, injuries and illnesses;
- (c) any complaints raised by the child and their outcomes;
- (d) any complaints, allegations or suspicions of abuse or neglect and the outcome of any investigation;
- (e) details of any child missing from a foster carer's home;
- (f) details of the use of any measures of control, restraint or discipline in respect of that child;
- (g) details of medication, medical treatment or first aid treatment administered to that child; and
- (h) where applicable, the standard of any education provided by the fostering service.

2. In relation to the foster carer —

- (a) the foster carer's recruitment records;
- (b) the foster carer's records of assessment;
- (c) records of fostering panel meetings;
- (d) records of appraisals; and
- (e) minutes of the Social Welfare Department's meetings.

**SCHEDULE 5**  
**Offences against a child**

*(regulation 15(6))*

For purposes of regulation 15(6) the offences described below are offences against a child.

1. An offence under any of the following provisions of the Crimes Ordinance 2014 —
  - (a) section 56 (Infanticide);
  - (b) section 82 (Cruelty to, or neglect of, person under 16);
  - (c) section 84 (Abduction of child by parent, etc.);
  - (d) sections 207 to 228 and 259 to 262 (Offences against children, prostitution and pornography);
  - (e) sections 203 to 206 (Rape and related offences), if the offence was committed in relation to a person under the age of 16;
  - (f) section 231 (Sexual activity with a person with a mental disorder impeding choice), if the offence was committed in relation to a person under the age of 16;
  - (g) section 232 (Causing or encouraging a person with a mental disorder to engage in sexual activity), if the offence was committed in relation to a person under the age of 16;
  - (h) section 235 (Inducement, etc. to procure sexual activity with a person with a mental disorder), if the offence was committed in relation to a person under the age of 16;
  - (i) section 236 (Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, etc.), if the offence was committed in relation to a person under the age of 16;
  - (j) section 239 (Care workers: Sexual activity with a person with a mental disorder), if the offence was committed in relation to a person under the age of 16;
  - (k) section 240 (Care workers: Causing or encouraging sexual activity), if the offence was committed in relation to a person under the age of 16;
  - (l) section 246 (Possession of indecent photograph of a youth);
  - (m) section 247 (Taking and publishing indecent photographs of youths);
  - (n) section 274 (Allowing persons under 16 to be in a brothel).
2. Similar offences committed under the Sexual Offences Ordinance 2005 or any of the Sexual Offences Acts as applied to the Falkland Islands, if the offence was committed in relation to a person under the age of 16.

3. An offence of attempting or conspiring to commit an offence specified above or encouraging, or aiding and abetting, the commission of an offence specified above.

Made

2019.

Nigel Phillips C. B. E.,  
*Governor*

EXPLANATORY NOTE  
*(This note is not part of the Regulations)*

These regulations are made under section 28(10) as read with sections 28(6), 44(1) and (2) of the Children Ordinance 2014 and paragraphs 13 to 15 of Schedule 2 to the Children Ordinance 2014.

The regulations are divided into four parts.

Part 1 has regulations 1, 2 and 3 which deal with introductory matters; title, commencement and definitions.

Part 2 deals with the fostering service and provides as follows:

Regulation 4 deals with the appointment of a Team leader of the Social Welfare Department who manages the fostering service;

Regulation 5 provides for arrangements to be put in place for the protection of children;

Regulation 6 provides for behaviour management and for children who go missing from their foster carers' homes;

Regulation 7 imposes a duty on the Crown to promote contact between a child placed with foster carers and the child's parents, friends and relatives;

Regulation 8 provides for the health requirements for children placed with foster carers;

Regulation 9 provides for the education, employment and leisure activities of children placed with foster carers;

Regulation 10 provides for the support, training and information that must be given to foster carers; and

Regulation 11 requires the Crown to keep up-to-date records, as specified in Schedule 1.

Part 3 deals with the process by which foster carers are approved and provides as follows:

Regulations 12 and 13 provide for the Crown to set up a fostering panel, its membership, qualifications for membership and meetings;

Regulation 14 sets out the fostering panel's main function, which is to consider the suitability of persons as foster carers;

Regulation 15 provides for the assessment of prospective foster carers to be carried out by the Crown;

Regulation 16 provides for the approval of foster carers. Regulation 17 provides for the Crown to review foster carers at least annually after their initial approval and allows for that approval to be terminated where it is necessary to do so;

Regulation 18 provides for the Crown to maintain case records for every approved foster carer and specifies the information to be kept in those records;

Regulation 19 provides for a register of foster carers to be kept by the Crown; and

Regulation 20 provides for the retention and confidentiality of all information relating to foster carers and the register of foster carers;

Part 4 provides for miscellaneous matters.

Regulation 21 sets out modifications to the general fostering regulation requirements applicable when placing children on a short term basis.

The regulations have 5 schedules:

Schedule 1 sets out the specific information to be included in the records required under regulation 11;

Schedule 2 sets out the information which a prospective foster carer must provide, including information in respect of members of the person's household as required under regulation 15(2)(a);

Schedule 3 specifies the information which must be included in a foster care agreement as required under regulation 16(4)(b);

Schedule 4 specifies matters which must be monitored by the Director during the period when a child is placed with a foster carer as well as information relating to the foster carer; and

Schedule 5 specifies sexual offences against a child for the purposes of regulation 15(6).

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**SUBSIDIARY LEGISLATION**

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**Children (Care Planning, Placement and Case Review) Regulations 2019**

S. R. & O. No.                      of 2019

**ARRANGEMENT OF PROVISIONS**

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2. Interpretation
3. Application

**PART 2 — Arrangements for looking after a child**

4. Care planning
5. Preparation and content of the care plan
6. Review of care plan
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## SCHEDULES

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## SUBSIDIARY LEGISLATION

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### **Children (Care Planning, Placement and Case Review) Regulations 2019**

S. R. & O. No.                      of 2019

*Made:* ..... 2019

*Published:* ..... 2019

*Coming into force: on publication*

IN EXERCISE of my powers under section 28(10) as read with sections 28(6), 32(3) and (4), 33(1)(a), 38(2), 39(1), (3) and (6), 44(1) and (2), 49(3) and 52(8) of the Children Ordinance 2014, and paragraphs 10 to 13, 14(1)(a), 15, 22(3), (7) and (8) of Schedule 2 to the Children Ordinance 2014, and on the advice of Executive Council I make the following regulations —

#### **PART 1** **Introductory**

##### **1. Title and commencement**

These regulations are the Children (Care Planning, Placement and Case Review) Regulations 2019 and come into force on publication in the *Gazette*.

##### **2. Interpretation**

(1) In these regulations —

“appropriate person” means —

- (a) a parent;
- (b) a person who is not the child’s parent but has parental responsibility for the child;
- (c) a foster carer, where the child is to be placed, or is placed with the foster carer; and
- (d) where the child is to be placed, or is placed, in accordance with other arrangements under section 28(6)(c) of the Ordinance, the person who will be responsible for the child under such arrangements;

“care plan” means the plan for the future care of the child prepared in accordance with Part 2;

“child’s case record” means a record referred to in regulation 45(1);

“child’s social worker” means the social worker allocated to a particular child’s case;

“connected person” means a relative, friend or other person connected with the child;

“Director” means the person for the time being appointed as the Director of Health and Social Services;

“eligible child” has the meaning given in paragraph 22(2) of Schedule 2 to the Ordinance;

“full assessment process” means the process set out in regulation 24(2);

“health plan” means the plan referred to in regulation 5(b)(i);

“independent visitor” means the person appointed to be the child’s visitor under section 33 of the Ordinance;

“pathway plan” has the meaning given in section 39(1) of the Ordinance;

“personal adviser” means the personal adviser arranged for the child under paragraph 23 of Schedule 2 to the Ordinance;

“personal education plan” means the plan referred to in regulation 5(b)(ii);

“placement” means —

(a) arrangements made by the Crown for the child in accordance with section 28(2) of the Ordinance, where the child is in the care of the Crown; or

(b) arrangements made by the Crown to provide for the child’s accommodation and maintenance by any of the means specified in section 28(6) of the Ordinance;

“placement plan” means the plan referred to in regulation 9(1)(a);

“representative” means the representative of the Crown who is appointed to visit the child in accordance with arrangements made under section 32(2) of the Ordinance;

“responsible person” means —

(a) the child’s parent;

(b) a person who is not the child’s parent but who has parental responsibility for the child; or

(c) where the child is in the care of the Crown and there was a residence order or special guardianship order in force with respect to the child immediately before the care order was made, a person in whose favour the residence order or special guardianship order was made;

“special educational needs” has the meaning given in section 31 of the Education Ordinance 1989 and “special educational provision” must be construed accordingly;

“team leader” means the head of the social services team appointed under regulation 4 of the Children (Fostering) Regulations 2019;



“temporary approval” means the approval given under regulation 24(1);

“the Ordinance” means the Children Ordinance 2014; and

“working day” means any day other than —

- (a) a Saturday or a Sunday; or
- (b) a public holiday.

(2) In these regulations —

- (a) any reference to a document or other record includes a document or record that is kept or provided in a readily accessible form and includes copies of original documents and electronic methods of recording information; and
- (b) any function conferred on the Crown will be exercised by the Director or officers subordinate to the Director.

### **3. Application**

These regulations do not apply in relation to any child who is looked after by the Crown and who has been freed for adoption under the Adoption Act 1976 (as it applies to the Falklands Islands) or any legislation providing for adoption.

## **PART 2**

### **Arrangements for looking after a child**

### **4. Care planning**

(1) On considering whether a child becomes looked after by the Crown, the Crown must —

- (a) assess the child’s needs for services to achieve or maintain a reasonable standard of health or development for the child; and
- (b) where a care plan for the child has not already been prepared, prepare such a plan.

(2) Except in the case of a child to whom section 49 of the Ordinance (*care orders: care plans*) applies, the care plan must be prepared before the child is first placed by the Crown or, if it is not practicable to do so, within 10 working days of the start of the first placement.

(3) When assessing the child’s needs under sub-regulation (1), the Crown must consider whether the child’s placement meets the requirements of Parts 3 and 4 of the Ordinance.

(4) Unless sub-regulation (5) applies, the care plan should, so far as is reasonably practicable, be agreed by the Crown with—

- (a) any parent of the child and any person who is not the child’s parent but who has parental responsibility for the child; or

(b) if there is no such person, the person who was caring for the child immediately before the Crown arranged a placement for the child.

(5) Where the child is aged 16 or over and the child agrees to be provided with accommodation under section 23 of the Ordinance the care plan should be agreed with the child by the Crown.

## **5. Preparation and content of the care plan**

The care plan must include a record of the following information —

(a) the long term plan for the child's upbringing;

(b) the arrangements made by the Crown to meet the child's needs in relation to —

(i) health, including the information set out in paragraph 1 of Schedule 1 ("the health plan");

(ii) education and training, including, so far as reasonably practicable, the information set out in paragraph 2 of Schedule 1 ("the personal education plan");

(iii) emotional and behavioural development;

(iv) identity, with particular regard to the child's religious persuasion, racial origin and cultural and linguistic background;

(v) family and social relationships and in particular the information set out in paragraph 3 of Schedule 1;

(vi) social presentation; and

(vii) self-care skills;

(c) except in a case where the child is in the care of the Crown but is not provided with accommodation by the Crown by any of the means specified in section 28 of the Ordinance, the placement plan; and

(d) details of the wishes and feelings of the persons listed in section 25(5) of the Ordinance about the arrangements referred to in paragraph (b) and the placement plan that have been ascertained and considered in accordance with section 25(5) and (6) of the Ordinance and the wishes and feelings of those persons in relation to any change, or proposed change, to the care plan.

## **6. Review of care plan**

(1) The Crown must keep the child's care plan under review in accordance with Part 6 and, if the Crown is of the opinion some change is required, it must revise the care plan or prepare a new care plan accordingly.

(2) Save as otherwise provided in these regulations, the Crown must not make any significant change to the care plan unless the proposed change has first been considered at a review of the child's case.

- (3) Subject to sub-regulation (4), the Crown must give a copy of the care plan —
- (a) to the child, unless it would not be appropriate to do so having regard to the child's age and understanding;
  - (b) to each responsible person;
  - (c) where the child is to be placed, or is placed, with a foster carer, to the foster carer; and
  - (d) where the child is to be placed, or is placed, in accordance with other arrangements under section 28(6)(c) of the Ordinance, to the person who will be responsible for the child under such arrangements.
- (4) The Crown may decide not to give a copy of the care plan, or a full copy of the care plan, to one or more responsible persons if to do so would not be in the child's best interests.

## **7. Health care**

(1) Before the child is first placed by the Crown or, if that is not reasonably practicable, before the first review of the child's case, the Crown must make arrangements for a registered medical practitioner to —

- (a) carry out an assessment of the child's state of health; and
- (b) provide a written report of the assessment, addressing the matters specified in paragraph 1 of Schedule 1;

as soon as reasonably practicable.

(2) Sub-regulation (1) does not apply if, within a period of three months immediately preceding the placement, an assessment of the child's state of health has been carried out and the Crown has obtained a written report that meets the requirements of that sub-regulation.

(3) The Crown must make arrangements for a registered medical practitioner or a registered nurse or registered midwife acting under the supervision of a registered medical practitioner to review the child's state of health and provide a written report of each review, addressing the matters specified in paragraph 1 of Schedule 1 —

- (a) at least once in every period of six months before the child's fifth birthday; and
- (b) at least once in every period of 12 months after the child's fifth birthday.

(4) Sub-regulations (1) and (3) do not apply if the child refuses consent to the assessment, being of sufficient age and understanding to do so.

(5) The Crown must take all reasonable steps to ensure that the child is provided with appropriate health care services, in accordance with the health plan, including—

- (a) medical and dental care and treatment; and

- (b) advice and guidance on health, personal care and health promotion issues.

## **8. Contact with a child in care**

(1) This regulation applies if the child is in the care of the Crown and the Crown has decided under section 52(6) of the Ordinance to refuse to allow contact that would otherwise be required by virtue of section 52(1) of the Ordinance or an order under section 52 of the Ordinance.

(2) The Crown must immediately give written notification to the following persons of the information specified in sub-regulation (3) (“the specified information”) —

- (a) the child, unless it is not in the child’s best interests or it would not be appropriate to do so having regard to the child’s age and understanding;
- (b) the child’s parent or a person who is not the child’s parent but who has parental responsibility for the child;
- (c) where, immediately before the care order was made, a person had care of the child by virtue of an order made in exercise of the Supreme Court’s inherent jurisdiction with respect to children, that person; and
- (d) any other person whose wishes and feelings the Crown considers to be relevant.

(3) The specified information is —

- (a) the Crown’s decision;
- (b) the date of the decision;
- (c) the reasons for the decision;
- (d) the duration of the decision (if applicable); and
- (e) remedies available in case of dissatisfaction.

(4) The Crown may depart from the terms of any order made under section 52 of the Ordinance by agreement with the person in relation to whom the order is made, provided that —

- (a) the child, being of sufficient age and understanding, also agrees; and
- (b) written notification of the specified information is given within five working days to the persons listed in sub-regulation (2).

(5) Where the Crown has decided to vary or suspend any arrangements made (otherwise than under an order under section 52 of the Ordinance) with a view to affording any person contact with the child, the Crown must immediately give written notification containing the specified information to the persons listed in sub-regulation (2).

(6) The Crown must record any decision made under this regulation in the child’s care plan.

**PART 3**  
**Placements – general provisions**

**9. Placement plan**

(1) Subject to sub-regulations (2) and (4), before making arrangements in accordance with section 28 of the Ordinance for the child's placement, the Crown must —

(a) prepare a plan for the placement ("the placement plan") which —

(i) sets out how the placement will contribute to meeting the child's needs; and

(ii) includes all the matters specified in Schedule 2 as are applicable, having regard to the type of the placement; and

(b) ensure that the child's wishes and feelings have been ascertained so far as possible and given due consideration.

(2) If it is not reasonably practicable to prepare the placement plan before making the placement, the placement plan must be prepared within five working days of the start of the placement.

(3) The placement plan must be agreed with, and signed by, the appropriate person.

**10. Avoidance of disruption in education**

(1) Subject to sub-regulations (2) and (3), if the child is currently enrolled at a school in the fourth key stage, a decision to make any change to the child's placement that would have the effect of disrupting the arrangements made for the child's education must not be put into effect unless it is in the child's best interests and it has been approved by a nominated officer.

(2) Before approving a decision under sub-regulation (1), the nominated officer must be satisfied that —

(a) the requirements of regulation 9(1)(b) have been complied with; and

(b) the educational provision made for the child at the new placement will promote the child's educational achievement and is consistent with the child's personal education plan.

(3) Sub-regulation (1) does not apply in any case where —

(a) the Crown terminates the child's placement in accordance with regulation 14(3); or

(b) it is necessary for any other reason to change the child's placement in an emergency, and in such a case the Crown must make appropriate arrangements to promote the child's educational achievement as soon as reasonably practicable.

(4) In any case (not falling within sub-regulation (1)) where the Crown proposes making any change to the child's placement that would have the effect of disrupting the arrangements made for the child's education or training, the Crown must as far as reasonably practicable

ensure that other arrangements are made for the child's education or training that meet the child's needs and are consistent with the child's personal education plan.

(5) In this regulation —

“nominated officer” means an officer nominated in writing by the Director to make approvals for purposes of this regulation; and

“school” has the meaning given in section 2 of the Education Ordinance 1989.

## **11. Placement outside the Falkland Islands – child looked after by the Crown**

(1) This regulation applies in relation to a child who is looked after by the Crown (as described in section 25 of the Ordinance).

(2) Subject to sub-regulation (3), a decision to place a child outside the Falkland Islands must not be put into effect until it has been approved by the Crown or by the court depending on whether the child is looked after by the Crown by consent or by an order of the court.

(3) Before approving a decision under sub-regulation (1), the Crown must be satisfied that —

(a) the requirements of regulation 9(1)(b) have been complied with;

(b) the placement is the most appropriate placement available for the child and consistent with the child's care plan;

(c) where the child is looked after by the Crown by consent, each responsible person has given consent;

(d) the child's relatives have been consulted, where appropriate; and

(e) where possible, the relevant authority in the receiving country or territory has been notified in order to register any existing order in respect of that child.

(4) The Crown must take steps to ensure that, so far as is reasonably practicable, requirements corresponding with the requirements which would have applied under these regulations had the child been placed in the Falkland Islands, are complied with.

## **12. Placement outside the Falkland Islands – child in Crown care**

(1) This regulation applies if —

(a) a child is in the care of the Crown; and

(b) the Crown makes arrangements to place the child outside the Falkland Islands in accordance with the provisions of section 51(7)(b) of, and paragraph 20(2) of Schedule 2 to the Ordinance.

(2) The Crown must take steps to ensure that, so far as is reasonably practicable, requirements corresponding with the requirements which would have applied under these regulations had the child been placed in the Falkland Islands, are complied with.

(3) The Crown must include in the care plan details of the arrangements it has made to supervise the child's placement.

### **13. Notification of placement**

(1) Subject to sub-regulation (3), the Crown must give written notification to the persons listed in sub-regulation (2) of the arrangements for the child's placement before the placement is made or, if the placement is made in an emergency, within five working days of the start of the placement, unless it is not reasonably practicable to do so.

(2) The persons referred to in sub-regulation (1) are —

(a) the child, unless it would not be appropriate to do so having regard to the child's age and understanding;

(b) each responsible person;

(c) if the child is in the care of the Crown, any person who is allowed contact with the child under section 52(1) of the Ordinance and any person who has contact with the child by virtue of an order under section 52 of the Ordinance;

(d) if the child is looked after but is not in the care of the Crown, any person who has contact with the child pursuant to an order made under section 12 of the Ordinance (*residence, contact and other orders with respect to children*);

(e) any person who was caring for the child immediately before the arrangements were made;

(f) the child's registered medical practitioner and, where applicable, the registered medical practitioner with whom the child is to be registered during the placement; and

(g) any educational institution attended by, or person providing education or training for, the child.

(3) The Crown may decide not to give notification to any of the persons listed in paragraphs (b) to (e) if to do so would put the child at risk of significant harm.

### **14. Termination of placement by the Crown**

(1) Subject to sub-regulations (3) and (5), the Crown may only terminate the child's placement following a review of the child's case in accordance with Part 6.

(2) Subject to sub-regulations (3) and (4), before terminating the child's placement, the Crown must —

(a) make other arrangements for the child's accommodation, in accordance with section 28 of the Ordinance;

(b) so far as is reasonably practicable, give written notification of their intention to terminate the placement to —

- (i) all the persons to whom notification of the placement was given under regulation 13;
  - (ii) the person with whom the child is placed; and
  - (iii) where the child is placed outside the Falkland Islands, the relevant authority in that place.
- (3) Where there is an immediate risk of significant harm to the child, or to protect others from serious injury, the Crown must terminate the child's placement, and in those circumstances —
- (a) sub-regulation (1) does not apply; and
  - (b) the Crown must comply with sub-regulation (2) as soon as reasonably practicable.
- (4) If it is not reasonably practicable to notify any person in accordance with sub-regulation (2)(b), then the Crown must give written notification to that person through email or any other appropriate means within ten working days of the date on which the placement is terminated, of the fact that the placement has been terminated.
- (5) This regulation does not apply where the child's placement is terminated under the following or where any of the following applies —
- (a) regulation 19(1)(c);
  - (b) regulation 23(2);
  - (c) regulation 25(6); or
  - (d) section 29 of the Ordinance (*review of child's case before making alternative arrangements for accommodation*).

## **PART 4**

### **Provision for different types of placement**

#### **CHAPTER 1**

#### **Placement of a child in care with a responsible person**

##### **15. Application**

(1) This Chapter applies if the child is in the care of the Crown and the Crown, acting in accordance with section 28(2) of the Ordinance, proposes to place the child with any responsible person.

(2) Nothing in this Chapter requires the Crown to remove the child from the care of any responsible person if the child was already living with such responsible person before a placement decision is made about the child.

##### **16. Effect of contact order**



The Crown must not place the child with any responsible person if to do so would be incompatible with any order made by the court under section 52 of the Ordinance.

#### **17. Assessment of responsible person's suitability to care for a child**

The Crown must, before deciding to place the child with any responsible person, do the following —

- (a) assess the suitability of the responsible person to care for the child, including the suitability of —
  - (i) the proposed accommodation; and
  - (ii) all other persons aged 18 and over who are members of the household in which it is proposed that the child will live;
- (b) take into account all the matters set out in Schedule 3 in making its assessment;
- (c) consider whether, in all the circumstances and taking into account the services to be provided by the Crown, the placement will safeguard and promote the child's welfare and meet the child's needs set out in the care plan; and
- (d) review the child's case in accordance with Part 6.

#### **18. Decision to place a child under this Chapter**

(1) The decision to place the child with a responsible person must not be put into effect until it has been approved by the Crown, and the child's social worker has prepared a placement plan for the child.

(2) Before approving a decision under sub-regulation (1), the Crown must be satisfied that —

- (a) the requirements of regulation 9(1)(b) have been complied with;
- (b) the requirements of regulation 17 have been complied with; and
- (c) the placement will safeguard and promote the child's welfare.

#### **19. Circumstances in which a child may be placed before assessment is completed**

(1) Sub-regulation (2) applies if the Crown does the following —

- (a) arrange an interview with any responsible person in order to obtain as much of the information specified in Schedule 3 about the responsible person and the other persons living in the responsible person's household who are aged 18 and over as can be readily ascertained at that interview;
- (b) ensure that the assessment and the review of the child's case are completed in accordance with regulation 17 within 15 working days of the child being placed with any responsible person; and

(c) ensure that a decision in accordance with regulation 18 is made and approved within 15 working days after the assessment is completed, and —

(i) if the decision is to confirm the placement, review the placement plan and, if appropriate amend it; and

(ii) if the decision is not to confirm the placement, terminate the placement.

(2) Where the Crown considers it to be necessary and consistent with the child's welfare, before the assessment under regulation 17 is completed the Crown may place the child with any responsible person.

## **20. Support for responsible person**

Where the child is placed, or is to be placed, with any responsible person, the Crown must provide such services and support to the person with whom the child is placed as appear to it to be necessary to safeguard and promote the child's welfare and must record details of those services and support in the child's care plan.

## **CHAPTER 2**

### **Placement with foster carers**

## **21. Meaning of “foster carer”**

Where the child is placed jointly with two persons each of whom is approved as a foster carer, any reference in these regulations to a foster carer is to be interpreted as referring equally to both those persons and any requirement to be satisfied by or relating to a particular foster carer must be satisfied by, or treated as relating to, both of them.

## **22. Conditions to be complied with before placing a child with a foster carer**

(1) This regulation applies where the Crown proposes to place a child with a foster carer.

(2) The Crown may only place the child with the foster carer if —

(a) the foster carer is approved by the Crown under the Children (Fostering) Regulations 2019;

(b) the terms of the foster carer's approval are consistent with the proposed placement; and

(c) the foster carer has entered into a foster care agreement with the Crown.

## **23. Emergency placement with a foster carer**

(1) Where it is necessary to place the child in an emergency, the Crown may place the child with any foster carer who has been approved in accordance with the Children (Fostering) Regulations 2019, even if the terms of that approval are not consistent with the placement, provided that the placement is for no longer than 15 working days.

(2) When the period of 15 working days referred to in sub-regulation (1) expires, the Director must terminate the placement unless the terms of that person's approval have been amended to be consistent with the placement.

## **24. Temporary approval of relative, friend or other person connected with the child**

(1) Where the Crown is satisfied that —

- (a) the most appropriate placement for the child is with a connected person, notwithstanding that the connected person is not approved as a foster carer; and
- (b) it is necessary for the child to be placed with the connected person before the connected person's suitability to be a foster carer has been assessed,

the Crown may approve that person as a foster carer for a temporary period not exceeding 16 weeks ("temporary approval") provided that the Crown first complies with the requirements of sub-regulation (2).

(2) Before making a placement under sub-regulation (1), the Crown must —

- (a) assess the suitability of the connected person to care for the child, including the suitability of —
  - (i) the proposed accommodation; and
  - (ii) all other persons aged 18 and over who are members of the household in which it is proposed that the child will live, taking into account all the matters set out in Schedule 4;
- (b) consider whether, in all the circumstances and taking into account the services to be provided by the Crown, the proposed arrangements will safeguard and promote the child's welfare and meet the child's needs as set out in the care plan; and
- (c) make immediate arrangements for the suitability of the connected person to be a foster carer to be assessed in accordance with the Children (Fostering) Regulations 2019 ("the full assessment process") before the temporary approval expires.

## **25. Expiry of temporary approval**

(1) Subject to sub-regulation (4), the Crown may extend the temporary approval of a connected person if —

- (a) it is likely to expire before the full assessment process is completed; or
- (b) the connected person, having undergone the full assessment process, is not approved and seeks a review of the decision in accordance with regulation 16(7) of the Children (Fostering) Regulations 2019.

(2) In a case falling within sub-regulation (1)(a), the Crown may extend the temporary approval once for a further period of up to eight weeks.

(3) In a case falling within sub-regulation (1)(b), the Crown may extend the temporary approval until the outcome of the review is known.

(4) Before deciding whether to extend the temporary approval in the circumstances set out in sub-regulation (1), the Crown must first—

- (a) consider whether the placement with the connected person is still the most appropriate placement available; and
  - (b) seek the views of the fostering panel constituted under regulation 12 of the Children (Fostering) Regulations 2019.
- (5) A decision to extend temporary approval must be approved by the Director.
- (6) At the end of any temporary approval or at the end of an extension to that period if the connected person has not been approved as a foster carer in accordance with the Children (Fostering) Regulations 2019, the Crown must terminate the placement after first making other arrangements for the child's accommodation.

### **CHAPTER 3**

#### **Other arrangements**

#### **26. General duties of the Crown when placing a child in other arrangements**

Before placing the child in other accommodation, the Crown must —

- (a) be satisfied that the accommodation is suitable for the child, having regard to the matters set out in Schedule 5; and
- (b) arrange for the child to visit the accommodation unless it is not reasonably practicable.

### **PART 5**

#### **Visits by the Crown's representative**

#### **27. Frequency of visits**

(1) As part of their arrangements for supervising the child's welfare, the Crown must ensure that a representative, who may also be the child's social worker, visits the child in accordance with this regulation, wherever the child is living.

(2) Subject to sub-regulations (3) to (6), the Crown must ensure that the representative visits the child —

- (a) within two weeks of the start of any placement;
- (b) at intervals of not more than eight weeks for the first year of any placement; and
- (c) after that —
  - (i) where the placement is intended to last until the child is aged 18, at intervals of not more than three months;
  - (ii) and in any other case, at intervals of not more than eight weeks.

(3) Where regulation 19 applies, the Crown must ensure that the representative visits the child —

- (a) at least once a fortnight until the first review carried out in accordance with Part 6; and
  - (b) after that at intervals of not more than eight weeks.
- (4) Where regulation 24 applies, or where an interim care order has been made in relation to the child under section 56 of the Ordinance and the child is living with a responsible person, the Crown must ensure that the representative visits the child—
- (a) at least once a fortnight until the first review carried out in accordance with Part 6; and
  - (b) after that at intervals of not more than six weeks.
- (5) Where a care order has been made in relation to the child under section 48 of the Ordinance and the child is living with a responsible person, the Crown must ensure that the representative visits the child —
- (a) within two weeks of the making of the care order; and
  - (b) after that at intervals of not more than eight weeks.
- (6) In addition to visits in accordance with sub-regulations (2) to (5), the Crown must ensure that the representative visits the child whenever reasonably requested to do so by —
- (a) the child;
  - (b) where sub-regulations (2), (3) or (4) apply, the appropriate person; or
  - (c) where sub-regulation (5) applies, the person responsible for the child's living arrangements.

## **28. Conduct of visits**

On each visit, the representative must speak to the child in private unless —

- (a) the child, being of sufficient age and understanding to do so, refuses;
- (b) the representative considers it inappropriate to do so, having regard to the child's age and understanding; or
- (c) the representative is unable to do so.

## **29. Consequences of visits**

Where, as the result of a visit carried out in accordance with this Part, the representative's assessment is that the child's welfare is not adequately safeguarded and promoted by the placement, the Crown must review the child's case in accordance with Part 6.

## **30. Advice, support and assistance for the child**

When making arrangements in accordance with section 32(2)(b) of the Ordinance for advice, support and assistance to be available to the child between the representative's visits, the Crown must ensure that —

(a) the arrangements —

(i) are appropriate having regard to the child's age and understanding; and

(ii) give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background and to any disability the child may have; and

(b) so far as is reasonably practicable having regard to the child's age and understanding, the child knows how to seek appropriate advice, support and assistance from the Crown.

## **PART 6**

### **Reviews of the child's case**

#### **31. General duty of the Crown to review the child's case**

(1) The Crown must review the child's case in accordance with this Part.

(2) The Crown must not make any significant change to the child's care plan unless the proposed change has first been considered at a review of the child's case, unless this is not reasonably practicable.

(3) Nothing in this Part prevents any review of the child's case being carried out at the same time as any other review, assessment or consideration of the child's case under any other provision.

#### **32. Timing of reviews**

(1) The Crown must first review the child's case within 25 working days of the date on which the child becomes looked after.

(2) The second review must be carried out not more than three months after the first, and subsequent reviews must be carried out at intervals of not more than six months.

(3) The Crown must carry out a review before the time specified in sub-regulation (1) or (2) if —

(a) regulation 29 applies;

(b) the Crown considers that the child is, or has been, persistently absent from a placement; or

(c) the child is looked after but is not in the care of the Crown; and —

(i) the Crown proposes to cease to provide accommodation for the child; and

(ii) accommodation will not subsequently be provided for the child by the child's parents (or one of them) or any person who is not the child's parent but who has parental responsibility for the child.

#### **33. Conduct of reviews - Crown's policy on reviews**

(1) The Crown must prepare and implement a written policy regarding the manner in which it will review cases in accordance with this Part.

(2) The Crown must provide a copy of its policy to —

- (a) the child, unless it would not be appropriate to do so having regard to the child's age and understanding;
- (b) the child's parents, or any person who is not the child's parent but who has parental responsibility for the child; and
- (c) any other person whose views the Crown consider to be relevant.

### **34. Considerations to which the Crown must have regard**

The considerations to which the Crown must have regard in reviewing each case are set out in Schedule 6.

### **35. Arrangements for implementing decisions arising out of reviews**

The child's social worker must —

- (a) make arrangements to implement decisions made in the course, or as a result, of the review, and
- (b) inform the team leader of any significant failure to make such arrangements, or any significant change of circumstances occurring after the review that affects those arrangements.

### **36. Records of reviews**

The Crown must ensure that a written record of the review is prepared, and that the information obtained in the course of the review, details of proceedings at the review meeting, and any decisions made in the course, or as a result, of the review are included in the child's case record.

## **PART 7**

### **Arrangements made by the Crown for ceasing to look after a child**

### **37. Arrangements for ceasing to look after a child who is not an eligible child**

(1) This regulation applies where the Crown considers ceasing to look after a child.

(2) Before deciding to cease to look after a child the Crown must —

- (a) carry out an assessment of the suitability of the proposed arrangements for the child's accommodation and maintenance when the child ceases to be looked after;
- (b) carry out an assessment of the services and support that the child and, where applicable a responsible person, might need when the Crown ceases to look after the child;
- (c) ensure that that the child's wishes, and feelings have been ascertained and given due consideration; and

- (d) consider whether, in all the circumstances and taking into account any services or support the Crown intends to provide, ceasing to look after the child will safeguard and promote the child's welfare.
- (3) The Crown must include in the child's care plan details of the advice, assistance and support that the Crown intends to provide for the child when the child ceases to be looked after.
- (4) Subject to sub-regulation (5), where the child has been a looked after child for at least 20 working days, any decision to cease to look after the child must not be put into effect until it has been approved by the Director.
- (5) In any case where a child is aged 16 or 17 and is not in the care of the Crown, the decision to cease to look after the child must not be put into effect until it has been approved by the Director.
- (6) Before approving a decision under sub-regulation (4) or (5), the Director must be satisfied that —
  - (a) the requirements of regulation 9(1)(b) have been complied with;
  - (b) ceasing to look after the child will safeguard and promote the child's welfare;
  - (c) the support the Crown intends to provide will safeguard and promote the child's welfare;
  - (d) the child's relatives have been consulted, where appropriate; and
  - (e) where appropriate, regulations 38 to 41 have been complied with.

### **38. Eligible child**

For the purposes of paragraph 22(3)(b) of Schedule 2 to the Ordinance, if the child is a child to whom regulation 44 applies (short breaks), the child is not an eligible child despite falling within paragraph 22(2) of that Schedule.

### **39. General duties**

If the child is an eligible child, the Crown must —

- (a) assess the child's needs in accordance with regulation 40; and
- (b) prepare the child's pathway plan in accordance with regulation 41.

### **40. Assessment of needs**

- (1) The Crown must complete the assessment of the child's needs in accordance with paragraph 22(4) of Schedule 2 to the Ordinance not more than three months after the date on which the child reaches the age of 16 or becomes an eligible child after that age.
- (2) In carrying out its assessment of the child's likely needs when the child ceases to be looked after, the Crown must take account of the following considerations —



- (a) the child's state of health (including physical, emotional and mental health) and development;
- (b) the child's continuing need for education, training or employment;
- (c) the support that will be available to the child from the child's parents and other connected persons;
- (d) the child's actual and anticipated financial resources and capacity to manage his or her personal finances independently;
- (e) the extent to which the child possesses the practical and other skills necessary for independent living;
- (f) the child's need for continuing care, support and accommodation;
- (g) the wishes and feelings of —
  - (i) the child;
  - (ii) any parent of the child or any person who is not the child's parent but who has parental responsibility for the child;
  - (iii) the appropriate person; and
- (h) the views of —
  - (i) any person or educational institution that provides the child with education or training;
  - (ii) any person providing health (whether physical, emotional or mental health) or dental care or treatment to the child;
  - (iii) the personal adviser appointed for the child; and
  - (iv) any other person whose views the Crown, or the child, consider may be relevant.

#### **41. The pathway plan**

(1) The pathway plan is the responsibility of the team leader and must be prepared as soon as possible after the assessment of the child's needs and must include, in particular —

- (a) the child's care plan; and
- (b) the information referred to in Schedule 7.

(2) The pathway plan must, in relation to each of the matters referred to in paragraphs 2 to 10 of Schedule 7, set out —

- (a) the manner in which the Crown proposes to meet the child's needs; and

(b) the date by which, and by whom, any action required to implement any aspect of the pathway plan will be carried out.

#### **42. Functions of the personal adviser**

The personal adviser's functions in relation to the child are to —

- (a) provide advice (including practical advice) and support;
- (b) participate in reviews of the child's case carried out under Part 6;
- (c) co-ordinate the provision of services and take reasonable steps to ensure the child makes use of such services;
- (d) remain informed about the child's progress and wellbeing; and
- (e) maintain a written record of their contacts with the child.

#### **43. Independent visitors**

A person appointed by the Crown as an independent visitor under section 33(1) of the Ordinance is to be regarded as independent of the Crown where the person appointed is not connected with the Crown by virtue of being —

- (a) a member of the Crown's committees or sub-committees, whether elected or co-opted;
- (b) any officer of the Crown employed in relation to the exercise of the functions referred to in section 25 of the Ordinance; or
- (c) a spouse, civil partner or other person (whether of different sex or the same sex) living in the same household as a person falling within paragraph (a) or (b) as the partner of such a person.

### **PART 8 Miscellaneous**

#### **44. Application of these regulations with modifications to short breaks**

(1) The circumstances set out in sub-regulation (2) of these regulations apply with the modifications set out in sub-regulation (3).

(2) The circumstances are that —

- (a) the child is not in the care of the Crown;
- (b) the Crown has arranged to place the child in a series of short-term placements with the same person or in the same accommodation ("short breaks"); and
- (c) the arrangement is such that —
  - (i) no single placement is intended to last for longer than 17 days;

(ii) at the end of each placement, the child returns to the care of its parent or a person who is not the child's parent but who has parental responsibility for the child; and

(iii) the short breaks do not exceed 75 days in total in any period of 12 months.

(3) The modifications are that —

(a) regulation 5 does not apply, but instead the care plan must set out the arrangements made to meet the child's needs with particular regard to —

(i) the child's health and emotional and behavioural development, in particular in relation to any disability the child may have;

(ii) promoting contact between the child and the child's parents or any other person who is not the child's parent but who has parental responsibility for the child, during any period when the child is placed;

(iii) the child's leisure interests; and

(iv) promoting the child's educational achievement;

and must include the name and address of the child's registered medical practitioner, and the information set out in paragraph 3 of Schedule 2, where appropriate;

(b) regulations 7, 9, 13 and 45(2)(b) do not apply;

(c) regulation 27(2) does not apply, but instead the Crown must ensure that a representative visits the child on days when the child is in fact placed, at regular intervals to be agreed with the team leader and the child's parents (or any person who is not the child's parent but who has parental responsibility for the child) and recorded in the care plan before the start of the first placement, and in any event —

(i) the first visit must take place within three months of the start of the first placement, or as soon as practicable after that; and

(ii) subsequent visits must take place at intervals of not more than six months, for as long as the short breaks continue;

(d) regulation 32 does not apply, but instead —

(i) the Crown must review the child's case within six months of the start of the first placement; and

(ii) the second and subsequent reviews must be carried out at intervals of not more than twelve months.

#### **45. Records - establishment of records**

(1) The Crown must establish and maintain a written case record for the child ("the child's case record"), if one is not already in existence.

(2) The child's case record must include —

- (a) the child's care plan, including any changes made to the care plan and any subsequent plans;
- (b) reports obtained under regulation 7;
- (c) any other document created or considered as part of any assessment of the child's needs, or of any review of the child's case;
- (d) any court order relating to the child; and
- (e) details of any arrangements that have been made by the Crown under which any of the Crown's functions in relation to the child are discharged by a different organisation.

#### **46. Retention and confidentiality of records**

(1) The Crown must retain the child's case record either —

- (a) until the seventy-fifth anniversary of the child's birth; or
- (b) if the child dies before attaining the age of 18, for fifteen years beginning with the date of the child's death.

(2) The Crown must secure the safe keeping of the child's case record and take any necessary steps to ensure that information contained in it is treated as confidential subject only to —

- (a) any provision of, or made under or by virtue of, a statute under which access to such a record or information may be obtained or given;
- (b) any court order under which access to such a record or information may be obtained or given; and
- (c) any policy that the Governor may make on information sharing.

## **SCHEDULE 1**

### **Care plans**

*(regulation 5)*

#### **1. Information to be included in the health plan**

- (1) The child's state of health including the child's physical, emotional and mental health.
- (2) The child's health history including, so far as practicable, the child's family's health history.
- (3) The effect of the child's health and health history on the child's development.
- (4) Existing arrangements for the child's medical and dental care including—
  - (a) routine checks of the child's general state of health, including dental health;
  - (b) treatment for, and monitoring of, identified health (including physical, emotional and mental health) or dental care needs;
  - (c) preventive measures such as vaccination and immunisation;
  - (d) screening for defects of vision or hearing; and
  - (e) advice and guidance on promoting health and effective personal care.
- (5) Any planned changes to existing medical and dental care arrangements.
- (6) The role of the appropriate person, and of any other person who cares for the child, in promoting the child's health.

#### **2. Information to be included in the personal education plan**

- (1) The child's educational and training history, including information about educational institutions attended and the child's attendance and conduct record, the child's academic and other achievements, and the child's special educational needs, if any.
- (2) Existing arrangements for the child's education and training, including details of any special educational provision and any other provision made to meet the child's particular educational or training needs, and to promote the child's educational achievement.
- (3) Any planned changes to existing arrangements for the child's education or training and, where any changes to the arrangements are necessary, provision made to minimise disruption to that education or training.
- (4) The child's leisure interests.
- (5) The role of the appropriate person, and of any other person who cares for the child, in promoting the child's educational achievements and leisure interests.

### **3. Family and social relationships**

(1) If the child has a sibling for whom the Crown or another authority is providing accommodation, and the children have not been placed together, the arrangements made to promote contact between them, so far as is consistent with each child's welfare.

(2) If the child is looked after by, but is not in the care of, the Crown, details of any order relating to the child made under section 12 of the Ordinance.

(3) If the child is in the care of the Crown, details of any order relating to the child made under section 52 of the Ordinance (*parental contact etc with children in care*).

(4) Any other arrangements made to promote and maintain contact in accordance with paragraph 16 of Schedule 2 to the Ordinance, so far as is reasonably practicable and consistent with the child's welfare, between the child and —

(a) any parent of the child or any person who is not the child's parent but who has parental responsibility for the child; and

(b) any other connected person.

(5) Where section 33(1) of the Ordinance applies, the arrangements made to appoint an independent visitor for the child or, if appropriate, the fact that section 33(6) of the Ordinance applies, that fact.

**SCHEDULE 2**  
**Matters to be dealt with in the placement plan**

*(regulation 9)*

**1. Interpretation**

In this Schedule, “parent” or “parents” includes any person who is not the child’s parent but who has parental responsibility for the child

**2. Information to be included in the child’s placement plan**

(1) How on a day to day basis, the child will be cared for and the child’s welfare will be safeguarded and promoted by the appropriate person.

(2) Any arrangements made for contact between the child and any parent, and between the child and any other connected person including, if appropriate —

(a) the reasons why contact with any such person would not be reasonably practicable or would not be consistent with the child’s welfare;

(b) if the child is not in the care of the Crown, details of any order made under section 12 of the Ordinance;

(c) if the child is in the care of the Crown, details of any order relating to the child made under section 52 of the Ordinance; and

(d) the arrangements for notifying any changes in the contact arrangements.

(3) The arrangements made for the child’s health (including physical, emotional and mental health) and dental care including —

(a) the name and address of the child’s registered medical and dental practitioners and, where applicable, any registered medical or dental practitioner with whom the child is to be registered following the placement; and

(b) any arrangements for the giving or withholding of consent to medical or dental examination or treatment for the child.

(4) The arrangements made for the child’s education and training including —

(a) the name and address of any school at which the child is a registered pupil;

(b) the name of the designated teacher at the school (if applicable); and

(c) the name and address of any other educational institution that the child attends, or of any other person who provides the child with education or training.

(5) The arrangements made for the representative to visit the child in accordance with Part 5, the frequency of visits and the arrangements made for advice, support and assistance to be available to the child between visits in accordance with regulation 27.

(6) If an independent visitor is appointed, the arrangements made for the independent visitor to visit the child.

(7) The circumstances in which the placement may be terminated and the child removed from the appropriate person's care in accordance with regulation 14.

(8) The name and contact details of —

(a) the child's independent visitor (if one is appointed);

(b) the representative; and

(c) if the child is an eligible child, the personal adviser appointed for the child.

### **3. Additional information to be included where the child is placed with a parent**

(1) Details of support and services to be provided to a parent during the placement.

(2) The obligation on a parent to notify the Crown of any relevant change in circumstances, including any intention to change address, any changes in the household in which the child lives, and of any serious incident involving the child.

(3) The obligation on the parent to ensure that any information relating to the child or the child's family or any other person given in confidence to the parent in connection with the placement is kept confidential, and that such information is not disclosed to any person without the consent of the Crown and is in accordance with any information sharing policy made by the Governor.

(4) The arrangements for requesting a change to the placement plan.

(5) The circumstances in which the placement will be terminated in accordance with regulation 19(1)(c)(ii).

### **4. Additional information to be included where the child is placed with a foster carer or in other arrangements**

(1) The type of accommodation to be provided and the address.

(2) Where —

(a) the Crown has, or is notified of, child protection concerns relating to the child; or

(b) the child has gone missing from the placement or from any previous placement,

the day to day arrangements put in place by the appropriate person to keep the child safe or to prevent the child from going missing.

(3) The child's personal history, religious persuasion, cultural and linguistic background, and racial origin.

(4) Where the child is not in the care of the Crown —



- (a) the respective responsibilities of the Crown and the child's parents;;
  - (b) any delegation of responsibility to the Crown for the child's day to day care there has been by the child's parents;
  - (c) the expected duration of the arrangements and the steps which should be taken to bring the arrangements to an end, including arrangements for the child to return to live with the child's parents; and
  - (d) where the child is aged 16 or over and agrees to being provided with accommodation under section 23 of the Ordinance, that fact.
- (5) The Crown's arrangements for the financial support of the child during the placement.
- (6) Where the child is placed with a foster carer, the obligation on the foster carer to comply with the terms of the foster care agreement made under the Children (Fostering) Regulations 2019.

**SCHEDULE 3**  
**Matters to be taken into account when assessing the suitability of a responsible person to care for the child**

*(regulation 17(b))*

1. In respect of a responsible person —

(a) the responsible person's capacity to care for children and in particular in relation to the child to —

- (i) provide for the child's physical needs and appropriate medical and dental care;
- (ii) protect the child adequately from harm or danger, including from any person who presents a risk of harm to the child;
- (iii) ensure that the home environment is safe for the child;
- (iv) ensure that the child's emotional needs are met and the child is provided with a positive sense of self, including any particular needs arising from the child's religious persuasion, racial origin and cultural and linguistic background, and any disability the child may have;
- (v) promote the child's learning and intellectual development through encouragement, cognitive stimulation and the promotion of educational success and social opportunities;
- (vi) enable the child to regulate the child's emotions and behaviour, including by modelling appropriate behaviour and interactions with others; and
- (vii) provide a stable family environment to enable the child to develop and maintain secure attachments to the responsible person and other persons who provide care for the child;

(b) the responsible person's state of health including that responsible person's physical, emotional and mental health and medical history including any current or past issues of domestic violence, substance misuse or mental health problems;

(c) the responsible person's family relationships and the composition of the responsible person's household, including particulars of —

- (i) the identity of all other members of the household, including their age and the nature of their relationship with the responsible person and with each other, including any sexual relationship;
- (ii) any relationship with any person who is a parent of the child;
- (iii) other adults not being members of the household who are likely to have regular contact with the child; and

(iv) any current or previous domestic violence between members of the household, including the responsible person;

(d) the responsible person's family history, including —

(i) particulars of the responsible person's childhood and upbringing including the strengths and difficulties of the responsible person's parents or other persons who cared for the responsible person;

(ii) the responsible person's relationships with the responsible person's parents and siblings, and their relationships with each other;

(iii) the responsible person's educational achievement and any specific learning difficulty or disability;

(iv) a chronology of significant life events; and

(v) particulars of other relatives and their relationships with the child and the responsible person;

(e) particulars of any criminal offences of which the responsible person has been convicted or in respect of which the responsible person has been cautioned;

(f) the responsible person's past and present employment and other sources of income; and

(g) the nature of the neighbourhood in which the responsible person's home is situated and the resources available in the community to support the child and the responsible person.

2. In respect of members of the responsible person's household aged 18 and over, so far as is practicable, all the particulars specified in paragraph 1 except sub-paragraphs (d), (f) and (g).

**SCHEDULE 4**  
**Matters to be taken into account when assessing the suitability of a connected person to care for the child**

*(regulation 24(2)(a))*

1. In respect of the connected person —

- (a) the nature and quality of any existing relationship with the child;
- (b) their capacity to care for children and in particular in relation to the child to —
  - (i) provide for the child's physical needs and appropriate medical and dental care;
  - (ii) protect the child adequately from harm or danger including from any person who presents a risk of harm to the child;
  - (iii) ensure that the accommodation and home environment is suitable with regard to the age and developmental stage of the child;
  - (iv) promote the child's learning and development; and
  - (v) provide a stable family environment which will promote secure attachments for the child, including promoting positive contact with the parent (or a person who is not the child's parent but has parental responsibility for the child) and other connected persons, unless to do this is not consistent with the duty to safeguard and promote the child's welfare;
- (c) their state of health including their physical, emotional and mental health and medical history and any current or past issues of domestic violence, substance misuse or mental health problems;
- (d) their family relationships and the composition of their household, including particulars of —
  - (i) the identity of all other members of the household, including their age and the nature of their relationship with the connected person and with each other, including any sexual relationship;
  - (ii) any relationship with any person who is a parent of the child;
  - (iii) any relationship between the child and other members of the household;
  - (iv) other adults not being members of the household who are likely to have regular contact with the child; and
  - (v) any current or previous domestic violence between members of the household, including the connected person;
- (e) their family history, including —

- (i) particulars of their childhood and upbringing including the strengths and difficulties of their parents or other persons who cared for them;
  - (ii) their relationships with their parents and siblings, and their relationships with each other;
  - (iii) their educational achievement and any specific learning difficulty or disability;
  - (iv) a chronology of significant life events; and
  - (v) particulars of other relatives and their relationships with the child and the connected person;
- (f) particulars of any criminal offences of which they have been convicted or in respect of which they have been cautioned;
- (g) their past and present employment and other sources of income; and
- (h) the nature of the neighbourhood in which their home is situated and resources available in the community to support the child and the connected person.

**SCHEDULE 5**  
**Other placement accommodation arrangements**

*(regulation 26(a))*

Matters to be considered before placing a child in accommodation in an unregulated setting as provided for under section 28(6) of the Ordinance:

1. In respect of the accommodation, the —
  - (a) facilities and services provided;
  - (b) state of repair;
  - (c) safety;
  - (d) suitability of staff;
  - (e) location;
  - (f) support;
  - (g) tenancy status; and
  - (h) the financial commitments involved for the child and their affordability.
2. In respect of the child, the child's —
  - (a) views about the accommodation;
  - (b) understanding of their rights and responsibilities in relation to the accommodation;  
and
  - (c) understanding of funding arrangements.

## **SCHEDULE 6**

### **Considerations to which the Crown must have regard when reviewing the child's case** *(regulation 34)*

1. The effect of any change in the child's circumstances since the last review, in particular of any change made by the Crown to the child's care plan, whether decisions taken at the last review have been successfully implemented, and if not, the reasons for that.
2. Whether the Crown should seek any change in the child's legal status.
3. Whether there is a long term plan for the child's upbringing within regulation 5(a).
4. The arrangements for contact and whether there is any need for changes to the arrangements in order to promote contact between the child and the parent or a person who is not the child's parent but has parental responsibility for the child, or between the child and other connected persons.
5. Whether the child's placement continues to be the most appropriate available, and whether any change to the placement plan or any other aspects of the arrangements made to provide the child with accommodation is, or is likely to become, necessary or desirable before the next review of the child's case.
6. The child's educational needs, progress and development and whether any change to the arrangements for the child's education or training is, or is likely to become, necessary or desirable to meet the child's particular needs and to promote the child's educational achievement before the next review of the child's case, having regard to the advice of any person who provides the child with education or training, (in particular the designated teacher of any school at which the child is a registered pupil).
7. The child's leisure interests.
8. The report of the most recent assessment of the child's state of health obtained in accordance with regulation 7 and whether any change to the arrangements for the child's health care is, or is likely to become, necessary or desirable before the next review of the child's case, having regard to the advice of any health care professional received since the date of that report, (in particular the child's registered medical practitioner).
9. Whether the child's needs related to the child's identity are being met and whether any particular change is required, having regard to the child's religious persuasion, racial origin and cultural background.
10. Whether the arrangements made in accordance with regulation 30 continue to be appropriate and understood by the child.
11. Whether any arrangements need to be made for the time when the child will no longer be looked after by the Crown.
12. The child's wishes and feelings about any aspect of the case and in particular about any changes the Crown has made since the last review or proposes to make to the child's care plan.

13. Where regulation 27(3) applies, the frequency of the representative's visits.



**SCHEDULE 7**  
**Matters to be dealt with in the pathway plan**

*(Regulation 41(2))*

1. The name of the child's personal adviser.
2. The nature and level of contact and personal support to be provided to the child, and by whom.
3. Details of the accommodation the child is to occupy when the child ceases to be looked after.
4. The plan for the child's continuing education or training when the child ceases to be looked after.
5. How the Crown will assist the child in obtaining employment or other purposeful activity or occupation.
- 6 Whether the child's placement safeguards and promotes the child's welfare, and whether any safeguarding concerns have been raised.
7. The support to be provided to enable the child to develop and sustain appropriate family and social relationships.
8. A programme to develop the practical and other skills the child needs to live independently.
9. The financial support to be provided to enable the child to meet accommodation and maintenance costs.
10. The child's health care needs, including any physical, emotional or mental health needs and how they are to be met when the child ceases to be looked after.
11. The Crown's contingency plans for action to be taken in the event that the pathway plan ceases to be effective for any reason.

Made

2019

Nigel Phillips C. B. E.,  
*Governor*

**EXPLANATORY NOTE**  
*(This note is not part of the Regulations)*

These Regulations are made under section 28(10) as read with sections 28(6), 32(3) and (4), 33(1)(a), 38(2), 39(1), (3) and (6), 44(1) and (2), 49(3) and 52(8) of the Children Ordinance 2014, and paragraphs 10 to 13, 14(1)(a), 15, 22(3), (7) and (8) of Schedule 2 to the Children Ordinance 2014.

The Regulations are divided into 8 parts.

Part 1 has regulations 1, 2 and 3 which deal with introductory matters; title, commencement and definitions as well as an application provision.

Part 2 deals with arrangements for looking after a child and provides as follows:

Regulation 4 deals with care plans;

Regulation 5 deals with the details that need to go into the care plan and these are detailed under Schedule 1;

Regulation 6 provides for the review of the care plan;

Regulation 7 provides for assessments to be made by registered medical practitioners to determine the child's state of health before placement; and

Regulation 8 provides for the process for contact with a child in care.

Part 3 provides for general provisions regarding placements:

Regulation 9 provides for the making of placement plans which must set out information detailing how the placement will meet the child's needs, as specified in Schedule 2;

Regulation 10 provides that any placement must be such that it does not disrupt a child's education;

Regulation 11 provides for placements of children outside the Falkland Islands where those children are looked after by the Crown while regulation 12 provides for the placement of children in Crown care outside the Falkland Islands;

Regulation 13 provides for notifications to be given by the Crown to different categories of people connected with the child before it can make any placement of the child; and

Regulation 14 provides for the termination of placements by the Crown.

Part 4 provides for different types of placements and has 3 Chapters:

Chapter 1 covers placements of children in care with parents, persons with parental responsibility or persons in whose favour residence orders or special guardianship orders are made.

Regulation 15 sets out the different categories of people to whom the Chapter applies;

Regulation 16 provides for the effect of contact orders made under section 52 of the Ordinance on placements;

Regulation 17 provides for assessments to be carried out to determine the suitability of any responsible person (as defined) before a child is placed with them. Schedule 3 sets out the matters to be taken into account when making the assessments;

Regulation 18 provides for all decisions to place a child with responsible persons to be approved by the Crown;

Regulation 19 specifies the different circumstances where a child may be placed before an assessment under regulation 17 is completed. One of the requirements is that the person with whom the child will be placed must be interviewed so that as much of the information set out under Schedule 3 as possible is gathered about the person (including persons living in the household with the person); and

Regulation 20 places a duty on the Crown to provide a responsible person with services and support to safeguard and promote the child's welfare and to ensure the details set out in the child's care plan are met.

Chapter 2 covers placements with foster carers

Regulation 21 defines a foster carer;

Regulation 22 lays down conditions which must be complied with before a child is placed with a foster carer;

Regulation 23 provides for emergency placements;

Regulation 24 provides for temporary approvals of persons connected with the child where that is necessary in advance of a full assessment of their suitability as a foster carer. Schedule 4 sets out matters to be taken into account when assessing the suitability of a connected person to care for the child; and

Regulation 25 provides for the expiry or extension of temporary approvals.

Chapter 3 deals with other arrangements that may be made to place children. Schedule 5 sets out matters which must be considered before placing any child in those other arrangements.

Part 5 provides for visits to be made to a placed child by a representative of the Crown.

Regulation 27 specifies the frequency of visits;

Regulation 28 provides for the conduct of visits and that the representative must speak to the child in private;

Regulation 29 provides for the Crown to carry out reviews where the representative's visit has revealed that a child's welfare is not being adequately safeguarded or promoted; and

Regulation 30 provides for the Crown to make the necessary arrangements to provide advice, support and assistance to the child in between visits by the Crown representative.

Part 6 provides for the requirements for carrying out reviews.

Regulation 31 places a general duty on the Crown to review a child's case in accordance with the requirements of Part 6;

Regulation 32 specifies timelines when reviews must be done, with the first review to be done within 25 working days from the date the child becomes looked after;

Regulation 33 provides for the Crown to set down a policy for the conduct of reviews with a requirement for the Crown to share copies of the policy with specified persons;

Regulation 34 requires the Crown to have regard to the matters set out in Schedule 6 when making assessments; and

Regulation 35 deals with arrangements which must be made to implement decisions arising from reviews, and regulation 36 requires written records of reviews to be included in a child's case records.

Part 7 provides for arrangements which must be made by the Crown when it ceases to look after a child:

Regulation 37 provides for arrangements to be made by the Crown where the child is not looked after by the Crown and is not an eligible child;

Regulation 38 provides the details required under paragraph 22(3) of Schedule 2 to the Ordinance relating to eligible children;

Regulation 39 sets out the general duties of the Crown in assessing children's needs and in the preparation of pathway plans;

Regulations 40 lays down specific considerations which the Crown must take into account when assessing the needs of a child who ceases to be looked after and becomes an eligible child;

Regulation 41 provides for the team leader to prepare a pathway plan as soon as an assessment of the child's needs under regulation 40 is completed. Schedule 7 lists the matters which must be included in the pathway plan;

Regulation 42 provides for the functions of an independent personal adviser; and

Regulation 43 provides for independent visitors.

Part 8 provides for miscellaneous matters as follows –

Regulation 44 provides for specific modifications to be made to the regulations where short term placements are made to enable short breaks of respite to carers; and

Regulation 45 sets out the information which must be included in a child's case records and regulation 46 provides for the retention and confidentiality of those records, specifying the periods for which records must be retained. It also provides for the Governor to make a policy on information sharing.