**1.** **Purpose**

To set out the legal and policy basis for provision of short break services to children with disabilities in Buckinghamshire. The document also applies to a small number of children and young people who require short breaks (within the meaning of Regulation 48 explained below) to safeguard their substantive home situation. For example children in adoptive arrangements deemed to be children in need under Section 17 of the Children Act where short break arrangements are needed to support the ongoing family situation.

**2.** **Legal Basis**

* Children Act 1989.
* Care Planning, Placement & Review Regulations and Guidance 2010.
* Short Breaks - Statutory Guidance on how to safeguard and promote the welfare of children with disabilities (and occasionally abled bodied children) using short breaks. <https://www.buckscc.gov.uk/media/4510622/short_breaks_services_statement_2018_v2.pdf>
* The Human Rights Act 1998, which sets out the fundamental rights and freedoms that everyone in the UK is entitled to

**3.** **Definitions and Principles**

Short breaks are part of a continuum of services to support children with disabilities and their families. They are intended both to enable the child to participate in fun, safe and stimulating activities and to provide a break from caring for parents/carers. They take a wide range of forms including day, evening or weekend sessions in the community, the child’s own home, the home of an approved carer or a residential setting.

The local authority should take a proportionate approach to assessment, planning and review for children needing short breaks. Many children need daytime short breaks without social care intervention. Short breaks may form part of a package of support and may include overnights.

The law provides for short breaks to be supported by social care under either section 17 or section 20 of the Children Act 1989 depending on the child’s needs and circumstances and the nature and level of short break services provided.

Vulnerable children must be safeguarded *but unnecessary intrusion into family life should be minimised* where parents are able to promote their child’s safety and well-being. Children receiving short breaks are at home most of the time and parents retain the main responsibility for their welfare. The guidance enables a proportionate degree of regulation for lower levels of overnight care.

**4.** **Legal Status**

The legal framework provides for 3 levels of legal status for children provided with short breaks through social care:

1. Section 17(6) - ‘child in need’ status;
2. Section 20(4) (reg. 48 applies) - child is ‘looked after’ while away from home, with modified planning and review requirements;
3. Section 20(4) reg. 48 does not apply - child is ‘looked after’ while away from home and full planning and review requirements apply.

**The decision of which legal status is most appropriate must be based on the social work assessment**.  This includes taking account of parenting capacity, wider family and environmental factors, the wishes and feelings of the child and his/her parents and the nature of the service to be provided.

Guidance is given in the following table on deciding whether short breaks are provided under section17 or section 20. This decision must be based on assessment using the full range of factors set out. *There are no time limits in law on section17 short breaks, so longer stays away from home may still be treated as section17 if all of the other safeguarding factors are well met*.

Key questions are:

* Which legal status would promote and safeguard the welfare of the child most effectively?
* Which legal status will lead to better outcomes for the child and family?
* Is the child in need process (section 17) for assessment, planning and review sufficient?
* Would the additional safeguards of section 20 be more appropriate?
* Has the assessment taken into account all of the criteria set out to guide decision-making?

| **Decision Making Table** | | | |
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|  | | **Children Act Section 17 (6)** | **Children Act Section 20 (4)** |
| 1. | **The vulnerabilities of the child** | The child’s condition or impairment is stable and easy to manage.  He/she can communicate his/her views and feelings and the parents have capacity to meet the child’s vulnerabilities. | Providing care for the child requires highly specialised training or equipment, i.e. communication, lifting/moving, invasive intervention, behaviour that challenges. |
| 2. | **Impact on the child** | The child spends their overnights away from home in one other setting only. | The child spends their overnights away from home in more than one other setting. |
| The child is spending infrequent and short periods away from home. | The child is spending frequent and extended periods away from home. |
| The child’s use of the placement has no impact on their place within the family or with primary attachments. | The child’s use of the placement has a potential impact on their place within the family or with primary attachments. |
| 3. | **The views of the child** | The views of the child can be observed/ gathered during or immediately following the end of the placement by a person familiar to the mood and behaviour of the child e.g. parent or school staff. | The views of the child cannot be observed/ gathered during or immediately following the end of the placement by a person/ families to the mood and behaviour of the child. |
| The child is usually happy when receiving services within the placement. | The child is unhappy when receiving services within the placement. |
| 4. | **The views of the parent** | The parents are very unhappy or resent the status of ‘child in care’ or ‘looked after children’. | The parents are reassured by the status of ‘child in care’ or ‘looked after child’. |
| 5. | **Contact with the family and carers** | The parent(s) have sufficient parenting capacity to maintain a safeguarding role for the child whilst the child is in placement. | The parent(s) do not have sufficient parenting capacity to maintain a safeguarding role for the child whilst the child is in placement. |
| The providers of the care are in regular positive contact with the family and the family have contact as appropriate with the child during the placement. | The providers of the care do not have regular and positive contact with the family and the family do not contact the child during placement. |
| 6. | **Contact with local community** | The service received by the child is local and the family have flexible opportunities to visit the child. | The service received by the child is in a place where the child is not known or where people that know the child find it difficult to visit i.e. through distance, geography or communication routes. |
| 7. | **Contact with independent person** | There is no need for an independent view of the situation. The plan has adequate monitoring and effective reviews are regularly undertaken. | Social workers consider there is a need for an Independent reviewing officer to have an independent view of the situation, monitor the implementation of the child’s plan and to chair reviews. |

**5.** **Parental Responsibility**

Providing accommodation under section 20 does not affect parental responsibility and parents maintain overall responsibility for the health, education and long term planning for their child. It is not therefore a requirement for children having a series of short breaks to have permanence plans in the way that it is for children in full time care. Parents can remove the child from placement at any time if they wish.

Children subject to section 20 should have annual health assessments and a health plan, and personal education plans. However, a proportionate approach should be adopted to applying these requirements, taking into account:

* Parental capacity to oversee their child’s health and education;
* In respect of health, the nature of any health assessments and health professional oversight already available to the child;
* In respect of education, the nature of any statement of educational needs and annual reviews of that statement.

It may be appropriate for example for annual health assessments to take the form of a desktop review by the child’s paediatrician in Child Health rather than an additional face to face assessment. A separate and/or full Personal Education Plan may or may not be necessary depending on whether the statement and statement reviews have already fully covered all of the child’s educational needs.

Changes in legal status once short breaks have been provided should be decided through the review process in consultation with child and parents.

**6.** **Section 17 Requirements**

The child is not ‘looked after’.

When a sitting service or overnight carer is arranged by the local authority to support the child in their own home this is always covered by section17 conditions.

There is no need to appoint an IRO.

A child in need plan is required covering all of the support services provided and how the child and family’s identified needs are to be met.

There should be a child in need review at least every 6 months. This review can be combined with other reviews e.g. education.

A face to face meeting is not a requirement although at least one review a year should include a meeting with the social worker and all reviews must be signed off by a manager.

**7.** **Section 20 Requirements**

The child is ‘looked after’ for the time they are away from home.

An IRO must be appointed for all children receiving short breaks under section 20.

A LAC care plan is required with all the information necessary to ensure the child’s safety and welfare in the placement.

Care Planning, Placement and Review regulations and guidance apply, although these may be modified by regulation 48 if applicable.

**8.** **Regulation 48**

Regulation 48 applies if:

* The child is accommodated for 24 hours or more;
* Breaks are pre-planned and all in the same setting;
* The child is accommodated for no more than 75 days in the year;
* Each break is less than 17 days.

Under regulation 48 [The Care Planning, Placement and Case Review England),Regulations 2010] short breaks may be treated as a single placement and the planning and review requirements are modified - short break care plan, reviewed at 3 months and then 6 monthly.

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| --- | --- |
| **Regulation 48 applies if:** | **Regulation 48 does NOT apply if:** |
| Short Breaks are:   * For more than 24 hours; * Pre-planned and in the same place; * No single short break lasts more than 17 days; * The total does not exceed 75 days in one year; * The child is looked after for the period that he or she is provided with accommodation.   The 2010 regulations apply **with modifications** in respect of planning, visiting and review arrangements.   * There must be a short break care plan with the information necessary for the providers to offer safe care; * An IRO must be appointed;   The child must be visited and reviewed regularly in placement but the timescales are modified:   * **Visiting**:  First visit within 3 months of the first placement day or as soon as practicable thereafter.  Subsequent visits at no more than six monthly intervals. * **Reviews**:  First review within 3 months of the start of the placement, and then at intervals of no more than six months. | Short Breaks are:   * For more than 24 hours; * Be with a range of providers; * Exceed timescales in column (a).   The 2010 regulations apply **without modifications** in respect of planning, visiting and review arrangements.   * There must be a care plan and placement plans for looked after children; * The child is looked after for the period that he or she is provided with accommodation; * An IRO must be appointed.   The child must be visited and reviewed regularly in placement with no modifications to the timescales for looked after children.   * **Visiting**:  First visit within one week of start of placement, then at no more than six weekly intervals in the first year and thereafter at no more than three monthly intervals is placement is intended to last until the child is 18. * **Reviews**:  First review within 20 days of start of placement, the second no more than 3 months after the first, and subsequent reviews at no more than six monthly intervals. |

**Appendix 1:** **The Legal Basis for Short Breaks**

Children may be provided with short breaks under the following legislation:

**Situation 1** - Under section 17 Children Act 1989, in which case they are not looked after children, the 2010 Regulations do not apply and there is no requirement to appoint an **Independent Reviewing Officer** (IRO).  A **Child in Need Plan** is required in accordance with the **Assessment Framework**.  Review should be carried out at least every 6 months and more often if required; or

**Situation 2** - Under section 20 Children Act 1989, with short breaks of not more than 17 days each in the same setting (where the total number of placement days does not exceed 75 in any 12-month period).  In these circumstances, the child is looked after, an IRO must be appointed, and a Short Break Care Plan drawn up.  **The 2010 Regulations are modified (regulation 48), so that Looked After Reviews and Social Work Visits are less frequent and the short breaks are treated as a single placement**; or

**Situation 3** - Under section 20 Children Act 1989, where the short breaks exceed a total of 17 days per placement/ 75 days per 12-month period and/or take place in more than one setting.  In these circumstances, the child is looked after, an IRO must be appointed and a Care Plan drawn up.  **The 2010 Regulations apply in full, including the provisions on frequency of Looked after Reviews and Social Work Visits**.

In situations 1 and 2, the requirements which usually apply to looked after children in respect of health assessments and reports, and notification of placements, do not apply.

The legal basis on which services are provided should be clear. The decision to provide a short break under section 17 or under section 20 should be informed by the assessment of the child’s needs and should take account of parenting capacity and wider family and environmental factors, the wishes and feelings of the child and his/her parents and the nature of the service to be provided.

The key question to ask in deciding whether to provide the short break provision under section 17 or section 20 is how to promote and safeguard the welfare of the child most effectively.

**End**