**West Sussex – Practice Guidance**

**Legislation for Looked After Children**

Please note that this is only an easy access guide to where a Social Worker can find the relevant legislation. It is not intended to be a comprehensive statement of the law, it simply guides you to where in the law specific provisions relating to the powers and duties of the LA can be found.

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ADMISSION TO CARE/ACCOMMODATION

Children Act 1989 [Section 20](http://www.legislation.gov.uk/ukpga/1989/41/section/20), [Section 21](http://www.legislation.gov.uk/ukpga/1989/41/section/21), [Section 31](http://www.legislation.gov.uk/ukpga/1989/41/section/31), [Section 33](http://www.legislation.gov.uk/ukpga/1989/41/section/33)

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): [Section 92](http://www.legislation.gov.uk/ukpga/2012/10/section/92), [Section](http://www.legislation.gov.uk/ukpga/2012/10/section/104) [104](http://www.legislation.gov.uk/ukpga/2012/10/section/104)

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| Accommodation under Section 20 etc. |  |
| * Duty to provide accommodation for children in need | S20(1), (3) |
| * Power to provide accommodation for a child if this would safeguard and promote the child’s welfare | S20(4), (5) |
| * Parent’s power to refuse offer of accommodation for child, or to discharge child from LA accommodation. | S20(7), (8), (9) |
| * Power of young person aged 16 – 17 to agree to accommodation against wishes of a parent | S20(11) |
| * Duty to consult the child before accommodating him/her | S20(6) |
| * Duty to accommodate children who are in police protection or are the subject of an Emergency Protection Order. | S21(1), (2) |
| * Duty to accommodate children in police detention, remanded to LA accommodation or the subject of a Youth Rehabilitation Order with a local authority residence requirement or a fostering requirement. | S21(2) |
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| Care Order |  |
| * Power to apply to Court for a Care Order or Supervision Order | S31(2), (3), (10) |
| * Duty, while a Care Order is in force, to receive the child into local authority care | S33(1) |
| * Power, while a Care Order is in force, to exercise   Parental responsibility, and to limit the exercise of parental responsibility by others who hold it. | S33(3) |
| * Limits on the exercise of parental responsibility by the local authority | S33(4), (6), (7), (8) |
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| Young Person on Remand |  |
| * Duty to accommodate a child remanded to local authority accommodation | LASPO S92(4) |
| * Power to detain a child remanded to local authority accommodation | LASPO S92(5) |

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| * Duty to treat a child remanded to youth detention accommodation as a looked after child | LASPO S104 |

POWERS AND DUTIES OF THE LOCAL AUTHORITY IN RESPECT OF LOOKED AFTER CHILDREN

Children Act 1989 [Section 22](http://www.legislation.gov.uk/ukpga/1989/41/section/22), [Section 23ZA](http://www.legislation.gov.uk/ukpga/1989/41/section/23ZA), [Section 23ZB](http://www.legislation.gov.uk/ukpga/1989/41/section/23ZB), [Section 26](http://www.legislation.gov.uk/ukpga/1989/41/section/26), [Section 34](http://www.legislation.gov.uk/ukpga/1989/41/section/34);

Children Act 1989 Schedule 2 [Para 15](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/15), [Para 16](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/16), [Para 19](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19), [Para 19A](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19A), [Para 19B](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19B), [Para 19BA](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19BA), [Para](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19C) [19C](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19C), [Para 20](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/20)

[The Care Planning, Placement and Case Review Regulations 2010](http://www.legislation.gov.uk/uksi/2010/959/contents/made)

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| * General duty to safeguard and promote the child’s welfare | S22(3) |
| * Duty to carry out an assessment of the child’s health on first admission | Reg. 7(1), (2), (4) |
| * Duty to ensure that the child is provided with appropriate health care services | Reg. 7(5) |
| * Duty to establish a procedure for dealing with complaints made by a looked after child, their parent or another person with an interest in the child’s welfare, or a foster carer. | Section 26(3), (7) |
| * Duty to ensure social work visits to the child | S23ZA(2), (5) |
| * Duty to promote contact between a looked after child and his/her parents, relatives, friends and other persons connected with him/her – unless this is not reasonably practicable or not consistent with his/her welfare | Sch 2.15(1) |
| * Duty to allow a child in care (Care Order) to have reasonable contact with parents, other persons who have parental responsibility, and persons who lost PR through the making of a Care Order. | S34(1) |
| * Duty, in considering contact arrangements between a child and a parent, relative, friend etc., to have regard to the care plan. | Reg.8ZA |
| * Duty to consult the child, parents and other relevant persons before making a decision relating to the child. | S34(4), (5) |
| * Duty to promote the child’s educational achievement | S34(3A) |
| * Duty to inform parents of where the child is accommodated | Sch2 Para 15(2) |
| * Power to make payments to enable a parent, relative or friend to visit a looked after child | Sch2 Para 16 |
| * Duty to arrange an independent visitor for a child if this would be in the child’s interests. | S23ZB(1);  Reg. 47 |
| * Power to arrange for a looked after child who is not the subject of a Care Order to live outside England and Wales (if the child is the subject of a Care Order this requires the approval of the court) | Sch2 Para 19(2) |
| * Duty, when arranging for a looked after child to live outside England and Wales, to ensure that appropriate requirements are applied, and to include details of the supervision arrangements in the care plan. | Reg. 12 |
| * Preparation for Adulthood – Eligible Children |  |
| * Duty to prepare the child for the time when s/he will no longer be looked after by the local authority | Sch2 Para 19A |
| * Duty to carry out an assessment of needs for an “eligible child” | Sch2 Para 19B(4), (5); Reg. 41;  Reg. 42 |
| * Duty to maintain a pathway plan for an “eligible child” | Sch2 Para 19B(4), (5); Reg. 41;  Reg. 43 |
| * Duty to arrange for an eligible child to have a personal adviser | Sch2 Para 19C;  Reg. 44 |
| * Duty to consider whether the LA should facilitate a “staying put” arrangement for an “eligible child”. | Sch2 Para 19BA(2), (3) |
| * Power to act in a way inconsistent with these duties where that is necessary to protect the public from serious injury | S22(6), (7), (8);  Sch2 Para 15(4) |
| * Duty, on the death of a looked after child, to notify the parents, the Secretary of State and Ofsted. Power to make payments to parents, relatives or friends to enable them to attend the funeral. | Sch2 Para 20(1) |

PLACEMENT AND TERMINATION OF PLACEMENT

Children Act 1989 [Section 22C](http://www.legislation.gov.uk/ukpga/1989/41/section/22C), [Schedule 2 Paragraph 19](http://www.legislation.gov.uk/ukpga/1989/41/schedule/2/paragraph/19)

[The Care Planning, Placement and Case Review Regulations 2010](http://www.legislation.gov.uk/uksi/2010/959/contents/made)

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| Choice of Placement and Change of Placement | |  |
| * Duty to consider whether the child’s placement meets his/her needs | | Reg.4(3) |
| * Duty to give preference to placement with parent. | | S22C(2), (3), (4) |
| * Local authority must not place child with parent if this is incompatible with a court order under s34. | | Reg. 16 |
| * Duty to assess parent’s suitability to care for child, and to review child’s case, before placing child with her/him | | Reg.17 |
| * Power to allow child to remain with parent during assessment of her/his suitability to care | | Reg. 15(2) |
| * Power to place child with parent before assessment is complete | | Reg. 19 |
| * Decision to place child with parent must be made by a nominated officer | | Reg. 18 |
| * Duty to provide services and support for placement with parents | | Reg. 20 |
| * Duty, where placement with parent would not be practicable or would be inconsistent with the child’s welfare, to give preference to placement with a connected person. | | S22C(7) |
| * Power to give temporary approval as a foster carer to a connected person while assessing their suitability to foster. | | Reg. 24 |
| * Power to extend temporary approval of a connected person as a foster carer (requires approval by a nominated officer) | | Reg. 25 |
| * Duty, when considering adoption as an option for a child, to consider fostering for adoption. | | S22C(9A), (9B) |
| * Power to give temporary approval as a foster carer to an approved prospective adopter. | | Reg. 25A |
| * Duty to ensure that any fostering for adoption placement is approved by a nominated officer. | | Reg. 22A |
| * Duty to place child near to home | | S22C(8) |
| * Duty to avoid disruption to the child’s education or training | | S22C(8) |
| * Duty to place siblings together | | S22C(8) |
| * Duty to ensure that accommodation provided for a disabled child is suitable. | | S22C(8) |
| * Duty to place within the local authority’s area | | S22C(9) |
| * Duty to ensure that any placement outside the local authority area is approved by a nominated officer. | | Reg. 11(1), (4) |
| * Duty to ensure that any placement outside the local authority area and “at a distance” is approved by the Director of Children’s Services | | Reg.11(1), (4), (5) |
| * Duty to ensure that any change of placement which would disrupt arrangements for education for a child at Key Stage 4 is approved by a nominated officer. | | Reg.10(1), (3) |
| * Duty to ensure that plans for any change of placement which would disrupt arrangements for education for a child not at Key Stage 4 include appropriate arrangements for education or training. | | Reg. 10(4) |
| * Duty to make foster placements only with carers approved by a fostering service provider. | | Reg. 22(2), (2) |
| * Power to make an emergency foster placement which is not consistent with the carer’s terms of approval. | | Reg. 23 |
| * Duty, before placing a looked after child in unregulated accommodation, to confirm that the accommodation is suitable, arrange for child to visit it, and notify the IRO. | |  |
| * Power to arrange for a looked after child who is not the subject of a Care Order to live outside England and Wales (if the child is the subject of a Care Order this requires the approval of the court) | | Sch2 Para 19(2) |
| * Duty, when arranging for a looked after child to live outside England and Wales, to ensure that appropriate requirements are applied, and to include details of the supervision arrangements in the care plan. | | Reg. 12 |
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| Notification of Placement |  |
| * Duty to notify relevant individuals and agencies of intention to place child | Reg. 13 (1), (2),  (3) |
| * Duty to notify the area authority of any out of authority placement | Reg. 13(4) |
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| Termination of Placement |  |
| * Duty to review child’s case before terminating placement | Reg. 14(1), (3), (5) |
| * Duty to make alternative arrangements for accommodation of the child before terminating placement | Reg. 14(2) |
| * Duty to notify IRO and other individuals and agencies of intention to terminate placement | Reg. 14(2), (4) |

CARE PLANNING FOR LOOKED AFTER CHILDREN

Children Act 1989 [Section 31A](http://www.legislation.gov.uk/ukpga/1989/41/section/31A)

[The Care Planning, Placement and Case Review Regulations 2010](http://www.legislation.gov.uk/uksi/2010/959/contents/made)

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| Care Plan |  |
| * Duty to assess the child’s needs for services | Reg. 4(1), (2) |
| * Duty to draw up a care plan during care proceedings, and to keep it under review | S31A(1), (2) |
| * Duty to draw up a care plan other than during care proceedings | Reg. 4(1) |
| * Duty to agree the care plan with the parents or the young person | Reg. 4(4), (5) |
| * Required content of a care plan | Reg. 5 |
| * Duty to give a copy of the care plan to the child, parents etc. | Reg. 6(3) |
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| Placement Plan |  |
| * Duty to draw up a placement plan | Reg. 9(1), (2) |
| * Duty to consult child about placement plan | Reg. 9(1) |
| * Duty to inform IRO about placement plan | Reg. 9(1) |
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| Ceasing to Look After a Child |  |
| * Duty to assess the suitability of the arrangements for accommodation and maintenance of the child after discharge | Reg. 39(2)(a) |
| * Duty to assess the child’s need for support and services after discharge, and to detail the support to be provided in the child’s care plan | Reg. 39(2)(b);  Reg. 39(3) |
| * Duty to consult the child about discharge plans | Reg. 39(2)(c) |
| * Duty to consider whether discharge will safeguard and promote the child’s welfare | Reg. 39(2)(d) |
| * Duty to ensure that a nominated officer approves any plan for discharge of a child who has been looked after for 20 working days | Reg. 39(4) |
| * Duty to ensure that a the Director of Children’s Services approves any plan for discharge of a child aged 16/17 | Reg. 39(5), (6) |
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| Records |  |
| * Duty to maintain a written case record for each looked after child | Reg. 49 |
| * Duty to retain child’s case record | Reg. 50(1) |
| * Duty to ensure the confidentiality of case records | Reg. 50(2) |

STATUTORY REVIEWS AND THE IRO

Children Act 1989 [Section 22D](http://www.legislation.gov.uk/ukpga/1989/41/section/22D), [Section 25A](http://www.legislation.gov.uk/ukpga/1989/41/section/25A), [Section 25B](http://www.legislation.gov.uk/ukpga/1989/41/section/25B)

[The Care Planning, Placement and Case Review Regulations 2010](http://www.legislation.gov.uk/uksi/2010/959/contents/made)

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| Review of Care Plans |  |
| * Duty to have a written policy on how reviews will be carried out | Reg. 34(1) |
| * Duty to review and revise the care plan from time to time. | Reg.6(1) |
| * Minimum frequency of reviews | Reg. 33(1), (2) |
| * Duty to trigger an early review | Reg. 33(3), (4) |
| * Duty to review child’s case before moving him/her from a placement with a parent or connected person, a foster home or a children’s home to a placement that is none of these. | S22D |
| * Duty to review the child’s case before making any significant change to the care plan. | Reg. 32(2) |
| * Duty to implement decisions made at reviews | Reg. 37(a) |
| * Duty to inform IRO of any significant failure to implement review decisions, or of any significant change of circumstances affecting the implementation of review decisions | Reg. 37(b) |
| * Duty to make a written record of each review | Reg. 38 |
| * Duty to carry out review of child’s health every 6 months (child under 5) or every 12 months (child aged 5 or over) | Reg. 7(3), (4) |
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| Independent Reviewing Officer |  |
| * Duty to appoint an IRO | S25A |
| * Necessary qualifications and experience of IRO | Reg. 46 |
| * Local authority duties in respect of IRO |  |
| * Duty to give the IRO a copy of the care plan | Reg. 6(3) |
| * Duty to notify the IRO of the child’s (proposed) placement | Reg. 9(1);  Reg. 13(1), (2) |
| * Duty to consult the IRO about any proposed placement decision that would disrupt the child’s education at KS4 | Reg. 10(2) |
| * Duty to consult IRO about any proposal to place the child out of area | Reg.11(2) |
| * Duty to consult IRO about proposal to place child with parents | Reg. 18 |
| * Duty to consult IRO about proposal to place child in long term foster placement | Reg. 22B |
| * Duty to notify IRO of proposal to place child in an unregulated setting | Reg. 27 |
| * Duty to notify IRO of the remand of a looked after child to Youth Detention Accommodation | Reg. 47C(2) |
| * Duty to notify IRO of proposal to terminate child’s placement | Reg. 14(1), (2) |
| * Duty to notify IRO of refusal or restriction of parental contact | Reg. 8(2) |
| * Duty to notify IRO of proposal to extend approval of connected person as foster carer | Reg. 25(4) |
| * Duty to consult IRO during assessment of needs of an eligible child | Reg. 42(2) |
| * Duty to consult IRO about any plan to cease to look after a child who has been looked after for more than 20 working days, or is aged 16 – 17 | Reg. 39(6) |
| * Duty to arrange a review at request of IRO | Reg. 33(3) |
| * Duty to notify IRO of any significant failure to implement review decisions, or of any significant change of circumstances affecting the implementation of review decisions | Reg. 37 |
| * General duties of the IRO – monitor the performance of the LA; participate in reviews; ensure that the child’s wishes are taken into consideration. | S25B(1) |
| * IRO duty to attend, and chair, all review meetings | Reg. 36(1)(a) |
| * IRO duty to ensure that reviews are carried out in accordance with the Regulations | Reg. 36(1)(d) |
| * IRO duty to consult child in private before reviews | Reg. 36(1)(b) |
| * IRO duty to ensure that reviews take into account the views of the child’s parents and carers | Reg. 36(1)(c) |
| * IRO Duty to ensure that the review identifies the persons responsible for implementing each decision | Reg. 36(1)(d) |
| * IRO duty to bring any failure to review a child’s case to the attention of an appropriate senior manager | Reg. 36(1)(d) |
| * IRO duty to bring any failure to implement review decisions to the attention of an appropriate senior manager | Reg. 36(1)(d) |
| * IRO power to adjourn a review meeting | Reg. 36(2) |
| * IRO duty, when consulted or informed about any matter by the LA, to ensure that the child has been consulted and consider whether to request a review. | Reg. 45(4) |
| * IRO duty to ensure that the child has been informed of his/her rights to apply for a Section 8 order, or to make representations and complaints. | Reg. 45(1) |
| * IRO duty to ensure that a child who wishes to take legal proceedings has access to legal advice | Reg. 45(2) |
| * IRO power to refer case to CAFCASS | S25B(3); Reg. 45(3) |

SOCIAL WORK VISITS TO A LOOKED AFTER CHILD

Children Act 1989 [Section 23ZA](http://www.legislation.gov.uk/ukpga/1989/41/section/23ZA)

Care Planning, Placement and Case Review Regulations 2010, [Regs 28 – 31](http://www.legislation.gov.uk/uksi/2010/959/part/5/made)

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| * Duty to visit a looked after child | S23ZA(1), (2) |
| * Minimum frequency of visits to a looked after child by the responsible authority’s representative. | Reg. 28 |
| * Duty to ensure that the LA representative who visits the child has the necessary skills and experience. | S23ZA(5) |
| * Duty to arrange for advice, support and assistance to be made available to the child on request. | S23ZA(2) |
| * Duty to ensure that appropriate arrangements are in place to provide the child with advice, support and assistance between social work visits. | Reg.31 |
| * Duty to ensure that the child knows how to seek appropriate advice, support and assistance. | Reg. 31 |
| * Duty to speak to the child in private | Reg. 29 |
| * Duty to review the child’s case it appears that the placement does not adequately safeguard and promote the child’s welfare. | Reg.30 |

**Reference Points;**

[The Care Planning, Placement and Case Review Regulations 2010](http://www.legislation.gov.uk/uksi/2010/959/contents/made)

[The Children Act 1989](http://www.legislation.gov.uk/ukpga/1989/41)