

Getting it right for every child

**GUIDANCE ON OVERNIGHT STAYS
FOR LOOKED AFTER AND
ACCOMMODATED CHILDREN**



**one
scotland**
SCOTTISH GOVERNMENT

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**GUIDANCE ON OVERNIGHT STAYS
FOR LOOKED AFTER AND
ACCOMMODATED CHILDREN**

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ISBN: 978-0-7559-5648-7

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by RR Donnelley B54421 01/08

Published by the Scottish Government, January, 2008

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

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INTRODUCTION

1. This guidance has been issued under section 5(1) of the Social Work (Scotland) Act 1968. Local authorities are under a statutory obligation to perform their functions under Part II of the Children (Scotland) Act 1995 under the general guidance of Scottish Ministers.
www.legislation.gov.uk/acts/acts1995/ukpga_19950036_en_3#pt2

As corporate parents, local authorities will be committed to ensuring that the children and young people they look after experience the full range of opportunities and life experiences that are open to their peers who are not looked after. Like any good parent, they will want to ensure that their children are safe, while at the same time supporting them in forming lasting friendships. The issue of overnight stays with friends has been highlighted often by young people as something which sets them apart from their peers. In this guidance, the Scottish Government is seeking to assist local authorities in minimising this sense of disadvantage while at the same time recognising the special circumstances of being in public care.

2. The legal background is set out at **Annex A**.
3. The guidance does not cover the following situations:
 - a. Contact arrangements including overnight stays with members of the child's birth family. (See *Scotland's Children: The Children (Scotland) Act 1995 Regulations and Guidance, Volume 2*).
www.scotland.gov.uk/Publications/2004/10/20067/44723
 - b. Arrangements for overnight stays when children are looked after at home and there is no condition of residence.
 - c. The checks needed when foster carers use a "sitter" to care for the child when they are out, when a foster child has an overnight stay with a foster carer's relative, or when a foster carer or their own children have friends to stay. This must form part of the guidance and information provided to the foster carers when they become approved.

4. This guidance is designed to provide a starting point for local policies and approaches to overnight stays and wider arrangements for ensuring that the child's best interests are met whilst living in care.
5. It applies to all children and young people who are looked after in foster care, kinship care or residential care under a supervision requirement.
6. In general, young people should continue to be looked after until 18, if it is in their best interests. In advance of leaving care, looked after young people will discuss with their social worker the after care services they will require on making the transition to independent living. In recognition of this *Pathways* planning and the move towards the young person taking responsibility for their own decisions and actions, looked after young people aged 16 or older should, where appropriate, be allowed to make their own decisions on overnight stays.
7. The term 'carer' used throughout the guidance is used to describe foster carers, kinship carers and residential care workers.
8. **While this guidance is intended to serve as a practical reference point for local authorities, it should not be regarded as an exhaustive or exclusive reference point. Nor does this guidance constitute legal advice. Users of this guidance should consider whether there is a need also to consult with others, including their authority's or organisations legal advisers, in relation to matters concerning overnight stays.**

SUMMARY OF KEY MESSAGES

9. This guidance recognises that relationships with friends are an essential part of a child's development by ensuring that overnight stays form a normal, safe part of a looked after child's life in care. The young person should, as far as possible, be granted the same permissions to take part in normal and acceptable age-appropriate peer activities as would normally be granted by the parents of their peers.
10. There must be a local procedure and approach to the delegation of decisions on overnight stays, backed up by appropriate training and support for carers. The presumption should be that the child's foster carer or lead residential care worker should have the authority to agree to an overnight stay. Each child in care must know who to ask when they want an overnight stay and they should receive a decision as swiftly as possible. Carers will also need to know the procedure for discussing their concerns regarding the procedures when they have concerns about making such decisions. Carers must be given the chance to discuss these concerns.
11. There is no legal requirement to undertake disclosure checks on adults in a private household where a looked after child may stay overnight. Disclosure checks should not be sought as a precondition of an overnight stay unless there is evidence to suggest that this may be necessary. If a carer has serious worries about an overnight stay invitation then it should be refused. If permission for an overnight stay has been refused, this should be based on clear, recorded reasons that are necessary to protect the child's welfare in his or her particular circumstances. The child's views should also be recorded. As far as possible the reasons should be shared with the child or young person, although care needs to be taken not to disclose confidential information about a third party.

DISCLOSURE

12. The question about whether or not Disclosure checks should be sought for the individuals in the family hosting the overnight stay should be answered after an assessment (see para 14) is carried out and that indicates that there is reasonable cause to suspect that the family the child wants to stay with presents a risk of harm or involvement in criminal activity. For example, if there have been incidences of the looked after child offending with the friend; getting into trouble at school with that friend; where local intelligence raises concerns about the poor influence the friend or family may have over the young person, etc. It should be remembered that one-off stays will not put family members in a child care position and because of that, a basic disclosure (which is instigated by the subject of the check) will be the check that is available. The basic check only reveals a limited range of convictions (that is those which are unspent) or state that there are none held. It will not show if the police hold other information about the applicant. No disclosure check will provide an assurance that the family home concerned is an acceptable place for the child or young person to stay. A clear disclosure check does not necessarily mean that someone is safe to care for a child.
If there is reasonable doubt about the suitability of the family, saying 'no' to an overnight stay may be the best and most reasonable option.

HOW DECISIONS SHOULD BE REACHED AND BY WHOM?

13. When completing the assessment, it is important to take the views of the child or young person into account when making a decision, particularly when the parents' views differ from the child's.
14. Factors to be taken into account as part of a risk assessment framework are set out in Annex D. It is recommended that this is used in the decision-making process and appropriately recorded in the child's care plan. The risk assessment should be completed within the context of the local authority's wider corporate parent duties and the overall principle that looked after children should receive the same opportunities to thrive and develop normal, nurturing friendships as any other child.
15. At a practical level, decisions on overnight stays should be delegated to carers. The social worker and the carer will agree the process for making decisions about overnight stays and will record all relevant details in the care plan. These discussions should take place at an **early stage** to avoid hurried/reactive discussions. The child must know who will make the decision.
16. The risk assessment should be conducted within a context which recognises the importance and benefits to the child of promoting friendships and social contact. More details on the importance of friendships is set out at Annex C.
17. The child's legal status may, influence the local authority's view as to who is best placed to make these decisions. If the child or young person is only likely to remain in the foster placement or unit for a very short period of time, the decision should remain with the social worker if the child isn't sufficiently well known to the carer. This must be made clear to the young person and set out in the local authority's procedure.

18. Decisions about overnight stays may be reviewed at the first and any future care review meetings and included in the care plan to make sure that the situation is still appropriate to the child's individual circumstances. Parental views can be sought regularly at the Looked After Child Review. Decisions must be taken in the best interests of the child.
19. In terms of good practice, if the child is looked after under section 17(3) of the Children (Scotland) Act 1995, before making any decision the council should so far as reasonably practicable ascertain the views of the parents.

SUPPORTING CHILDREN TO HAVE SAFE OVERNIGHT STAYS WITH FRIENDS

20. As set out at Annex D, decisions about overnight stays should be made taking into account the child, their individual care plan, the circumstances of the family they want to stay with and should be grounded in an assessment of any risk which might be involved.
21. If the family is completely unknown to the carer, for example, the children are not at the same school or the child has only formed the friendship very recently, the social worker or carer should contact the family to discuss arrangements for the stay. Foster carers and residential staff must ensure that they have contact details of the family in which the child is staying.
22. If the child has travelled independently, the carers should phone the host family to confirm that the child has arrived safely. If the child or young person is old enough to use a mobile phone responsibly, they should be given one and know how to use it and who to contact if they have any cause for concern during the overnight stay. They should also understand how to reverse the charges on a normal land-line telephone, should a mobile phone not be available. The child must also have the contact details for the foster carer or residential care home.
23. If there is a potential risk to the family from the young person, alternative arrangements should be made in the child's best interests, for example inviting the friend to stay at the foster carer's own home/residential unit or facilitating day contact further information on reciprocating overnight stays at paragraph 33.

CONTACT DETAILS

24. A child or young person should not be allowed to stay overnight unless their carers have a confirmed record of the contact name, address and phone number of the family where they will be staying. The family should also have the contact details for the child's carers and know whom to contact if there is cause for concern during an overnight stay.

CHILDREN SUBJECT TO A SUPERVISION REQUIREMENT

25. If a child is looked after under section 17 of the Children (Scotland) Act 1995 or is subject to a supervision requirement which specifies where the child is to reside, and an overnight stay is not in conflict with any other terms of the supervision requirement, the local authority may occasionally authorise an overnight stay from the place of residence specified in the supervision requirement. Decisions about overnight stays may be reviewed at the Looked After Child Review and included in the care plan to make sure that the situation is still appropriate to the child's circumstances. The care plan should confirm that parents' views on overnight stays have been taken into consideration, if this is in the best interests of the child.
26. Where a child is subject to a supervision requirement and a place of residence is specified, the local authority should authorise an overnight stay only where there are no conflicts with the supervision requirement (other than the condition of residence) or the expectations of the children's hearing, in addition to ensuring the other aspects of this guidance are robustly followed. The views of the child and the child's parents should also be taken into consideration in advance.
27. Where a child is subject to a supervision requirement that specifies where the child is to reside then, if it is proposed that an overnight stay arrangement becomes more than occasional, this must be brought by the local authority to a children's hearing for consideration and decision. (Note: the more regular arrangement will need to be reflected in the supervision requirement, which will require compliance with the Fostering of Children (Scotland) Regulations 1996.)
28. Where a sheriff or children's hearing sets specific conditions or expectations about overnight stays, these should always be met. Social workers should be involved in the decision-making process to ensure the child's interests are met.

HOW YOUNG PEOPLE CAN CHALLENGE THE REFUSAL OF AN OVERNIGHT STAY

29. Children have rights under Scots Law to have their views taken into account. Further information will be available on this and also the Children's Charter in the Young Person's version of this guidance which will be produced late in 2008. Local authorities may wish to put in place their own arrangements to enable children and young people to challenge decisions made about overnight stays.

CONFIDENTIALITY

- 30.** If any problems or concerns have arisen during the child's overnight stay, these should be discussed, recorded and acted on, if necessary. Where the overnight stay has had a positive impact, details should be recorded in the child's care plan. If any difficulties have arisen following an overnight stay, the carer should discuss these with the child's social worker in the first instance, so that any necessary action may be taken, as well as ensuring that the social worker is fully aware of the impact (positive or negative) of the stay.
- 31.** Any subsequent visits should be recorded to identify if any difficulties have arisen or to comment on the positive impact on the child of the friendship.
- 32.** Permission for a further stay should not be automatic but should not be withheld unless the previous stay had obvious negative effects.
- 33.** It may be necessary to share some safety-related health information, for example if the child has any allergies or uses inhalers. In some circumstances, such as if the child is known to have seizures, consideration should be given to training the family of the friend where the child is going to stay in recognising triggers or signs and being competent in giving emergency medication if prescribed. However, as a general rule, carers should not share confidential information about the child or young person with the family of the child or young person's friend without consent to do so.

RECIPROCATING OVERNIGHT STAYS

34. Wherever possible, the looked after and accommodated child should be able to reciprocate if they want to. If the child is in foster care, this should require no action other than ensuring that the foster carers feel comfortable with sharing sufficient information with the parent of the visiting child to ensure that they are comfortable that their child stays overnight.
35. When the child is accommodated in a residential unit, it is important that the visiting child and his/her family understand what a residential unit is, and the particular arrangements which apply within that particular unit. It is important to dispel any misconceptions and ensure that it is as “normal” an experience as possible.

LOCAL AUTHORITY ACTION

36. Early discussions with young people about policy and procedure as a matter of importance and good practice should be actively encouraged. Social services and other staff should review local policies, procedures and practices in the light of this guidance. They should make sure information about their policies and procedures is available to children and young people, parents, carers, staff, children's panel members and the local Children's Reporter. If children and young people are in placements provided by voluntary or private agencies or by different local authorities, the relevant authority should receive information about the placing authority's policies and procedures. Local authorities should include reference to overnight stays when purchasing or commissioning residential or foster care places in the voluntary or private sector.

ANNEX A

LEGAL BACKGROUND

1. The issue of looked after children having overnight stays is not mentioned in primary legislation. However local authorities' decision making on this issue should be guided by the duty placed upon them under section 17 of the Children (Scotland) Act 1995 to children looked after by them, in terms of which they are required to:
 - Safeguard and promote the child's welfare (which shall in their duty to him/her be their paramount concern).
 - Before making any decisions relating to the child, ascertain, as far as is reasonably practicable, the views of:
 - a) the child
 - b) his/her parents
 - c) any person who is not a parent but who has parental rights
 - d) any other person whose views the authority consider to be relevant.
2. Schedule 3, paragraph 4 to the Fostering of Children (Scotland) Regulations 1996 states that one of the "matters and obligations to be covered in foster placement agreements" is "The circumstances in which it is necessary to obtain in advance the approval of the local authority for the child to live, even temporarily, away from the foster carer's home or for someone else temporarily to take care of the child". Therefore local authorities are not **required** to take such decisions. It is permissible to delegate some or all of them to foster carers although the amount and type of delegation must be decided individually for each child.
3. The Residential Establishments Child Care (Scotland) Regulations 1996 require that, "Arrangements for contact and visits by relatives and friends of children resident in the establishment" (paragraph 7 of the schedule) should be included in the Statement of Functions and Objectives. These Regulations do not however state the nature of the arrangements that should be made as far as friends are concerned.
www.opsi.gov.uk/SI/si1996/Uksi_19963256_en_2.htm

4. Every child has the right to an opportunity to indicate whether he/she wishes to express views, to express those views and have them taken into account in any decision making processes affecting him or her. This does not mean that these views should prevail in the face of unsafe situations, but children do have these rights for their views to be taken into account.
5. There is no legal requirement to undertake disclosure checks on adults in a private household where a looked after child may stay overnight.
6. The Children's Hearing (Scotland) Rules 1996 and the Fostering of Children (Scotland) Regulations 1996 cover the procedure when a children's hearing requires a child to reside with someone other than a relevant person.
7. If the looked after child is staying overnight with someone who is the provider of a child minding service registered with the Care Commission then, under regulation 11 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002, that provider must not permit any person who is unfit to be in the proximity of children to live at the premises which are used for the provision of the child minding service.
8. The local authority has a duty under section 5(1) of the Children (Scotland) Act 1995 - care or control of child by person without parental responsibilities or parental rights; and also section(1) - parental responsibilities and parental rights; to give effect to a supervision requirement.
www.legislation.gov.uk/acts/acts1995/ukpga_19950036_en_1

ANNEX B

NATIONAL CARE STANDARDS – REGULATION OF CARE (SCOTLAND) ACT 2001

Services regulated by the Care Commission include care homes for children and young people fostering services. When regulating care services, the Care Commission takes the National Care Standards into account. The relevant standards are contained in the Regulation of Care (Scotland) Act 2001.

www.scotland.gov.uk/Topics/Health/care/17652

National Care Standards: foster and family placement services

Standard 2: Promoting good quality care

- 2.5:** 'You know that the agency monitors your foster carer's ability to help you to keep up family contacts and friendships as set out in your care plan, and that it respects and responds to your family's needs for information and support and supports your foster carer when necessary.'

National Care Standards: care homes for children and young people

Standard 3: Keeping in touch with people who are important to you

- 3.1:** 'You are helped to keep in contact with parents, brothers and sisters, friends or carers and other people who are important in your life.'

Standard 8: Exercising your rights

- 8.5:** 'You choose what to do in your free time within agreed limits and according to your age. This includes spending time with your friends as long as this is in your interests.'

Standard 15: Daily life

- 15.5:** 'Your friends are encouraged to visit you unless they present a risk to you or others. In some cases, visits may be supervised.'

Copies of the *National Care Standards* are available to download at www.scotland.gov.uk/topics/health/care/17652/9328

Alternatively, you can receive a free copy from:

Blackwell's Bookshop
53-62 South Bridge
Edinburgh
EH1 1YS

E-mail: business.edinburgh@blackwell.co.uk

Tel: 0131 622 8283

ANNEX C

THE IMPORTANCE AND BENEFITS OF FRIENDSHIP

1. Most children and young people like to 'sleep over' at their friends' homes from time to time. Friendships between children and young people help them to develop social and relationship skills. They can help children and young people become more resilient and to cope when faced with adversity.
2. Friendships between children and young people often bring contacts and sometimes more lasting relationships with one or more of the friend's adult relatives. These contacts and relationships can often provide benefits such as:
 - opportunities to learn about different professions, lifestyles and cultures
 - someone who could help with homework
 - encouragement in their ambitions
 - sharing in a particular hobby or interest
 - someone who will listen if the child has a problem they feel unable to share with their parents or carer.
3. However, friendships can also involve risks to children and young people. Carers who explore and discuss these risks with them can enhance children and young people's understanding of personal safety.
4. The circumstances and vulnerability of many children and young people before they became looked after may have reduced their ability to make or keep friends. Also, some children and their families may be isolated or shunned because of their particular difficulties. Children and young people who have been abused often find it hard to make or keep friends because they misinterpret neutral or friendly actions by other children as hostile.
5. Becoming looked after can often increase the barriers to friendships. Children and young people may be placed away from their home neighbourhood and may sometimes have to move school. Some move frequently from one placement to another, which often causes them to lose touch with friends. They may decide that it is not even worth trying to start new friendships. Some children and young people are bullied because they

are in care or may feel ashamed of their care status. They may find it hard to trust or share confidences with other children and young people and so become isolated. The high incidence of mental ill health among looked after children and young people may also contribute to difficulties in making and keeping friends.

6. It is essential that carers find ways of reducing barriers to friendships for children and young people in their care. Supporting children and young people to have overnight stays with friends and allowing their friends to stay overnight in their home or unit is likely to help maintain friendships. If a friend is going to stay in a foster home or unit, careful consideration needs to be given to the risk to the friend and whether this risk is manageable. Any risks should be discussed in advance of the overnight stay with the parents or carers of the friend.
7. Plans to stay with a friend should where possible be seen as an ordinary part of childhood which can enhance independence and learning about personal safety. The possibility of staying over should be discussed as part of the child or young person's individual care plan. The child or young person should be involved in these discussions, including explanations of what are the factors which are being considered in making the decision. These are likely to be two-fold, the maturity and coping capacities of the child and young person and the qualities of the family they wish to stay with.

ANNEX D

FACTORS TO BE CONSIDERED WHEN MAKING A DECISION ABOUT AN OVERNIGHT STAY

1. The following factors about the looked after child should be considered when making a decision about an overnight stay:
 - The views of the child or young person on their friend and his/her family.
 - If the child were subject to a supervision requirement specifying where the child is to reside, would an overnight stay conflict with any other terms of the supervision requirement or with the expectations of the children's hearing? If so, the overnight stay cannot take place. Was the possibility of overnight stays discussed at the most recent hearing? If not, then the issue should be raised at the next hearing.
 - The child's age and level of maturity. Is the request appropriate to their age and are overnight stays common among children of their age?
 - Has the child or young person stayed overnight with a friend before? If so how did they cope and did they enjoy the experience? Is there any evidence that they said they were staying at one friend's house but moved on to another house without letting their carer know? If they have not previously had an overnight stay, are they ready now?
 - Is the overnight stay likely to cause conflict with other aspects of the child's life for example, the need to finish a project for school or visit their family? Can ways be found to fit in both activities?
 - Is the child's legal status one where their parents' permission for an overnight stay should be taken into consideration?
 - Does the child or young person have any health problems or disabilities that may affect the overnight stay for example, wetting the bed, a need to take medication or the need for wheelchair access? The carer should discuss with the child or young person the information and advice needed to be shared with the family of the child's friend (the 'host family') beforehand to make sure that the child has a safe and comfortable stay.
 - Does the child or young person have any cultural or religious needs that may affect the overnight stay for example, a halal, kosher or vegetarian diet? The information and advice to be shared with the host family beforehand should be discussed with the child or young person, and how this will be done.

- The circumstances of the child or young person and how they react to other children and young people and adults should always form part of the risk assessment in allowing them to stay overnight in the home of a friend.
2. The following factors should be considered by the carer or relevant lead officer in the local authority as part of the risk assessment required of the child or young person the looked after child wants to stay overnight with.
 - The length and strength of the friendship. Normally the fact that a friendship is close and has lasted a considerable period will be a positive factor in the decision. However if a child or young person has moved a lot, it may have been difficult for them to maintain lengthy friendships. As a result an overnight stay might be a positive way for them to strengthen a new friendship.
 - Do the looked after child or young person's parents or current or previous carer know the friend? If not, the friend might be invited to visit the child's foster home or residential unit before the overnight stay takes place.
 - How does the looked after child or young person know the friend, are they roughly the same age and level of maturity? Is there anything that might cause concern that one child might be exploiting or abusing the other?
 3. Factors in 1 and 2 above should also be considered if a looked after child or young person wants to invite a friend to stay with them.
 4. The following factors should be considered about the family of a friend the child or young person in care wants to stay with:
 - Who will be the primary carer for the child?
 - Are the family aware of the arrangement and are they happy for the child or young person to stay? What time will the stay begin and end, are any transport arrangements necessary? Be sensitive as to what type of transport is provided.

- Do the child's parents or current or previous carer know the family? If so what is their opinion of their ability to provide a safe overnight stay?
- Do their attitudes to parenting appear to be reasonable and responsible?
- If the relationship is a boyfriend or girlfriend relationship, will the child or young person sleep in a different bedroom from their friend?
- Can the family meet any health, disability, and cultural or religious needs?
- Will anyone from outwith the family be staying in the house at the same time? If so, who are they and what is their reason for being in the house?

USEFUL WEBSITES

Parenting Across Scotland

C/O Children 1st
1 Boroughloch Square
Edinburgh
EH8 9NJ
Tel: 0808 800 2222
Web: www.parentingacrossscotland.org

Scottish Institute for Residential Care Child Care

University of Strathclyde
5th Floor
Sir Henry Wood Building
76 Southbrae Drive
Glasgow
G13 1PP
Tel: 0141 950 3683
Web: www.sircc.strath.ac.uk
E-mail: sircc@strath.ac.uk

Scotlands Commissioner for Children and Young People

85 Holyrood Road
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EH8 8AU
Tel: 0131 556 3378
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Who Cares Scotland

Oswald Chamber
5 Oswald Street
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Web: www.whocaresscotland.org
E-mail: enquiries@whocaresscotland.org

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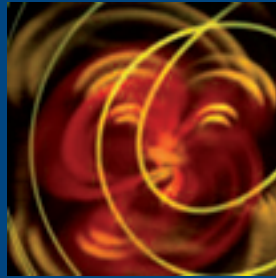
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RR Donnelley B54421 01/08

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ISBN 978-0-7559-5648-7



9 780755 956487