

LOCAL AUTHORITY CIRCULAR

LAC(2004)4

To: The Chief Executive
County Councils)
Metropolitan District Councils) England
Shire Unitary Authorities)
London Borough Councils
Common Council of the City of London
Council of the Isles of Scilly

Copy: The Director of Social Services

26 February 2004

GUIDANCE ON THE DELEGATION OF DECISIONS ON 'OVERNIGHT STAYS' FOR LOOKED AFTER CHILDREN

1. This circular is being issued under section 7 of the Local Authority Social Services Act 1970, which requires Local Authorities to act under the general guidance of the Secretary of State. The guidance in this circular is designed to:
 - Respond to concerns raised with Government and the Children's Rights Director by many looked after children that normal social visits overnight are often impeded by local requirements for Criminal Records Bureau (CRB) checks on adults in the households they may stay overnight.
 - Clarify the position in relation to the legal basis for the delegation of decisions about overnight stays for children in care, living both in residential accommodation and in foster care.
 - Set out guiding principles and good practice for making decisions about overnight stays.

Summary

2. There is no statutory duty for CRB checks to be carried out on adults in a private household where a child may stay overnight. CRB checks should not normally be sought as a precondition of an overnight stay.
3. Decisions on overnight stays should in most circumstances be delegated to foster carers and residential care staff, and arrangements for such decisions written into the Placement Plan or Foster Placement Agreement.

4. Looked After Children should as far as possible be granted the same permissions to take part in normal and acceptable age appropriate peer activities as would reasonably be granted by the parents of their peers.
5. Only where there are exceptional reasons should the permission of the responsible authority be required or restrictions placed on overnight stays.

Criminal Records Bureau (CRB) Checks

6. The Report and Recommendations by the UK Joint Working Party, reported that: "...Many authorities appear to have given both children and young people and their carers the impression that there is a statutory duty to carry out such checks. In fact, permission for overnight stays could be delegated to the carer without the need for police checks. Clearly this is an area where responsibilities for children's safety must be taken into account, but the views of the young people themselves should not be ignored."
7. There is no statutory requirement for CRB checks to be made. The cautious approach in this area taken by some local authorities is understood, given the ongoing concerns for the safety and welfare of looked after children. However, our view is that it is perfectly reasonable that responsibility is delegated to the child's foster carers or residential staff for determining the suitability of a family with whom a looked after child wants to stay overnight.
8. This guidance does not amend or relax the requirements in relation to decision making, planning, approvals and checks for any other changes in accommodation such as a temporary change of placement or relief care arrangements.

Delegation of Decisions to Foster Carers and Residential Care Workers

9. When a child is placed with a foster parent, under the Fostering Services Regulations 2002, certain responsibilities are delegated to the foster parents. Schedule 6 to the Fostering Services Regulations deals with 'Matters and Obligations in Foster Placement Agreements'. Included is, 'The circumstances in which it is necessary to obtain in advance the approval of the responsible authority for the child to take part in school trips, or to stay overnight away from the foster parent's home.'
10. When a child who has been placed by the local authority, stays away from the foster home is a matter, which should be dealt with in the foster placement agreement for each child. It is suggested that local authorities should take a lead from the UK National Standards for Foster Care (Section One, No.6.14 – supporting the child in maintaining existing peer relationships and interests). Additionally, Recommendation 27 of the UK Joint Working Party states that 'each foster placement agreement made between the authority and a carer should include, among areas of delegation, parameters within which the carer can agree

overnight stays for the child at other people's homes, dependent on the assessed needs of the child.

11. The decision whether or not a child in residential care should be allowed to stay overnight at a friend's house, should be delegated to residential staff, and this should be stated in the care or placement plan.

Guiding Principles and Good Practice

12. The guiding principle is that looked after children should as far as possible be granted the same permissions to take part in normal and acceptable age appropriate peer activities, such as staying with friends, as would reasonably be granted by the parents of their peers. Parents make judgements on whether or not there are known risks to staying in a particular household or in staying overnight in particular circumstances, and similar judgements should normally be made for children in foster or residential care by their responsible carers. Judgements should be based on a reasonable assessment of risks.
13. It should be normal practice for placing authorities to delegate day to day decision making about agreeing to a looked after child staying overnight with friends to the child's foster carer or residential staff, and to state this in the foster placement agreement or care or placement plan as applicable.
14. Where there are **exceptional reasons** to do otherwise, and either to require foster carers or residential staff to seek the permission of the placing authority or person with parental responsibility for the child, or place specific restrictions on permitting a child to stay overnight with friends, this should be based on clear and stated reasons which are necessary to safeguard and promote the child's safety or welfare in that child's particular circumstances.
15. In such cases, the restriction should be clearly stated in the child's care plan and reflected in the child's foster placement agreement or residential establishment placement plan. Wherever practicable the child should be consulted over the issue and their views and feelings taken into account in reaching the decision. The restriction and the reasons for it should be fully explained to the child concerned, unless exceptionally this would be consistent with the child's welfare. Restrictions should be reviewed regularly to ensure that they remain relevant.
16. Foster carers and residential staff considering a request from a child to stay overnight with a friend or friends should otherwise base their decision on the following factors:
 - Are there any relevant restrictions contained for exceptional reasons in the child's care plan, foster placement agreement, or residential placement plan, or any court orders, which restrict the child from making particular overnight stays?

- Are there any factors in the child's past experiences or behaviour, which would preclude overnight stays?
 - Are there any grounds for concern that the child may be at significant risk in the household concerned or from the activities proposed?
 - Is the child staying in the household with another child or children, rather than staying solely with an adult or adults?
 - The age and level of understanding of the child concerned.
 - What is known about the purpose of the overnight stay?
 - The length of the stay.
17. The child and their carers should always be told of the criteria that will be used to make decisions about overnight stays. In all cases foster carers and residential care staff should be made aware of any individuals, addresses or areas which may place a child at risk.
18. It is **strongly** recommended as good practice that foster carers and residential staff ensure that they have contact details for the household in which the child is staying. They should also make contact with the household beforehand as a parent might, to assist in assessing the request for an overnight stay and to confirm arrangements, and ensure that a child staying overnight elsewhere has their (the foster carer's or residential care home's) contact details.
19. CRB checks should not normally be sought as a precondition of a looked after child staying overnight with a friend or friends. Such checks would not be a part of the arrangements or conditions for a child living with their own parents in the community to stay overnight with friends. CRB checks should however be carried out on adults in a household where a child is to stay with an adult or adults if there is to be an arrangement for the child to stay in the household frequently or regularly, or if the child is to stay for a prolonged period.
20. In exceptional circumstances, where there is a good reason to consider a child at specific risk in staying in a particular household, the child's placing authority should be consulted and may decide that a CRB check or checks should be carried out before the child stays.

Action by Local Authorities

21. Local authorities should review local policies and practices in the light of this circular, and ensure that information about their policy is available for carers, staff, parents, and children and young people.

Enquiries

22. Initial enquiries about this circular should in the first instance be made to:

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133-155 Waterloo Road
LONDON SE1 8UG

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Further copies of this Circular may be obtained from Jim Brown at the address given above. Please quote the serial number appearing on the top right-hand corner.

Current circulars are now listed on the Department of Health website on the Internet at: www.dh.gov.uk/letters. Full text of recent circulars is also accessible at this site.

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www.children.doh.gov.uk/choiceprotects/headlines.htm

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