

The Looked After Children (Scotland) Amendment Regulations 2021

Equality Impact Assessment

February 2021



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Equality Impact Assessment - Results

Title of Policy	The Looked After Children (Scotland) Amendment Regulations 2021
Summary of Aims and Desired Outcomes of Policy	<p>The Looked After Children (Scotland) Regulations 2009 (“the 2009 Regulations”), supplemented by guidance, specify how local authorities are to care for children in public care. They make provision for the duties and functions of local authorities in respect of children who are looked after by them in terms of section 17(6) of the Children (Scotland) Act 1995. The amending Regulations cover two areas:</p> <ul style="list-style-type: none"> • The need for local authorities to have regard to the welfare of the child in relation to sibling placements and; • Extension to the exemptions to the foster care placement limit for emergency placements
Directorate: Division: Team	Children and Families Directorate Strategy, GIRFEC and the Promise Hub

Executive Summary

1. Given the provisions in section 17(6) of the Children (Scotland) Act 1995, and the Children (Scotland) Act 2020, in relation to sibling contact, there is a need to ensure that we are doing all we can to protect sibling relationships provided for in secondary legislation, especially in relation to the placement of siblings by local authorities.

2. Sibling placement is set out in the 2009 Regulations with the provision that Local Authorities must ensure that children in the same family are placed together, except where this would not be practicable or appropriate. The test here is not of welfare but if ‘practical and appropriate’, - which is a lesser test than in the UN guidelines and in practice has led to sibling separation due to a lack of resources.

3. As such we propose recognising the importance of child siblings by placing a duty on local authorities to place child siblings together, where it is in both of their interests to do so.

4. We propose that the paramount principle of the welfare of the child at the centre of decision making, remains. There may be competing interests between children and the welfare of each child will require to be considered. In some situations, the relationship between siblings may be inappropriate or harmful. Guidance will be required.

5. We are defining 'child sibling' in this context in line with the definition in the Children (Scotland) Act 2020 "... not only to siblings, but also to any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings. Two people are defined as siblings if they have at least one parent in common. This could be a biological parent or a parent by operation of adoption law or by virtue of the Human Fertilisation and Embryology Act 2008."

Background

6. There has been growing evidence on the importance of maintaining sibling relationships, to ensure that where possible children who are looked after away from home are brought up together. In most circumstances, separating siblings adds to the trauma already suffered by children.

7. Section 13 of the Children (Scotland) Act 2020 amends section 17 of the 1995 Act to provide that the local authority must take such steps to promote personal relations and direct contact between a looked after child and their siblings, as appear to the local authority to be appropriate, having regard to the local authority's duty to promote the welfare of the child.

8. This replicates the duty that local authorities have to promote personal relations and contact between a looked after child and those with parental responsibilities and rights. The duty applies not only to siblings, but also to any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings. Two people are defined as siblings if they have at least one parent in common. This could be a biological parent or a parent by operation of adoption law or by virtue of the Human Fertilisation and Embryology Act 2008.

9. Section 13 of the Children (Scotland) Act 2020 also amends section 17(3) of the 1995 Act. The effect is that, before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the views of siblings and any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings.

10. Article 12 of UNCRC requirements (respect for the views of the child): Children have the right to an opinion, and for it to be listened to and taken seriously, is also enabled here by amending the 2009 regulations.

The Scope of the EQIA

11. During the EQIA process, the potential impact on each of the protected characteristics was considered. Our assessment identified that the policy change was likely to have a direct positive impact on all children and young people with protected characteristics – age; disability; race; gender reassignment; sexual orientation; and religion or belief. Maternity and pregnancy; and marriage and civil partnership do not have a direct bearing on the proposal to amend the 2009 regulations.

12. We did not encounter evidence that children and young people in any of these groups would be disproportionately adversely affected by the desire to keep siblings together where it is safe to do so. The proposals will be welcomed by the sector, and have in fact been asked for in no uncertain terms. The acknowledged advantages to siblings remaining together on children's health and wellbeing at what is arguably the most traumatic time in their young lives, also comply with UNCRC articles and guidance. Allowing siblings to provide their views and opinions to be given ensures authorities have to pay due regard to children and young people's wishes in relation to decisions made about them.

13. This demonstrates we are conscious of the need to adhere to the equality duty of eliminating discrimination, promoting equality of opportunity and fostering good relations.

Key Findings

14. Keeping siblings together where it is safe to do so will have a positive effect on individual children and young people and families. Removing the additional trauma potentially faced children due to the separation of siblings means educational outcomes (which are poorer for children and young people who are looked after) as well as health and wellbeing indicators will not be adversely impacted. These proposals to amend the regulations will have a positive impact on all children and young people, leading to better outcomes for families and communities.

Recommendations and Conclusions

14. Following implementation regular monitoring information will be provided by partner organisations and by key sector stakeholders. An annual evaluation will take place and recommendations made to Scottish Ministers on any adjustments to this EQIA made as appropriate.



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