

**CRWIA Stage 1
Screening - key questions**

1. Name the policy, and describe its overall aims.

The Looked After Children (Scotland) Amendment Regulations 2021 aim to ensure that, given the provisions in section 17(6) of the Children (Scotland) Act 1995, and the Children (Scotland) Act 2020 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.

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 need to amend the 2009 Regulations relates to two matters:

- The need for local authorities to have regard to the welfare of each child in relation to sibling placements and;
- An exemption to the foster placement limit for emergency placements in exceptional circumstances for a specific child.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Articles of the UNCRC and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

The amendment to the 2009 Regulations will affect children and young people who are looked after up to the age of 18.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

The changes will have a direct impact on looked after children and young people as the duty is on local authorities to ensure siblings are placed together where it is safe and appropriate to do so.

4. Which groups of children and young people will be affected?

Under the UNCRC, ‘children’ can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. ‘Groups’ can also refer to children by age band or setting, or those who are eligible for special protection or assistance: e.g. preschool children, children in hospital, children in rural areas, looked after children, young people

who offend, victims of abuse or exploitation, child migrants, or children living in poverty.

The changes to the 2009 Regulations are likely to potentially affect children and young people of all ages and from all backgrounds who are looked after and accommodated by their local authority. The change will have more of an impact on children involved in court proceedings about the arrangements for their upbringing; looked after children and those involved in the Children's Hearings System.

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."

5. Will this require a CRWIA?

Yes as the amendments to the 2009 Regulations have a direct impact on children and young people.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

YES

Authorisation

Policy lead

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Strategy, GIRFEC and Promise Division

Date

10 February 2021

Deputy Director or equivalent

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Deputy Director
Strategy, GIRFEC and Promise Division

Date

11 February 2021

CRWIA Stage 2

The CRWIA – key questions

1. Which UNCRC Articles are relevant to the policy/measure?

List all relevant Articles of the UNCRC and Optional Protocols. All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life, survival and development; and the child's right to have their views given due weight.

Article 3 - Best interests of the child - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

Article 3 is key to the policy intention of the amendments to the 2009 Regulations by placing a duty on local authorities to place child siblings together, where it is in the interest of each child to do so. The amendments to the regulations will have a positive impact on this article.

The paramount principle of the welfare and best interests of each 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 can be inappropriate or harmful. The Scottish Government will produce guidance, in consultation with the sector and practitioners which explores these complexities in greater detail.

United Nations (UN) Guidelines (no 17) for the Alternative Care of Children states that siblings with existing bonds should not be separated unless there is clear risk or it is not in the child's best interests.

The Promise (conclusions of the Independent Care Review) highlights the need for a strong legal framework that acknowledges, protects and promotes sibling relationships with those in and on the edges of care. The report advocates for legal protections that must include the right to time together, meaningful participation in decision-making about their siblings and clear, simple rights to appeal.

Article 8 - Protection and preservation of identity - Governments must respect and protect every child's right to an identity.

Article 8 is relevant in relation to a child's relationship with siblings, who are considered family relations in the implementation handbook for the Convention published by UNICEF.

Article 8 is relevant in relation to the provisions in the children (Scotland) Act 2020:

- placing a duty on local authorities in relation to looked after children to promote contact with their siblings; and
- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have

on the involvement of the child's parents in bringing the child up and the child's important relationships with other people.

The amendments to the regulations will have a positive impact on this article.

Article 12 - Respect for the views of the child - Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.

Article 12 is key to the policy intention that the views of the child are considered in proceedings and decisions that affect them.

Article 12 is relevant in relation to the current duty for local authorities in the 2009 Regulations to take the views of siblings, including child siblings, when making a decision to promote personal relationships and contact between a looked after child and their siblings.

The amendment to the regulations will have a positive impact on article 12.

Article 16 Every child has the right to privacy. The law should protect the child's private, family and home life, and correspondence.

Article 16 is relevant in relation to the current duty on local authorities in relation to looked after children to promote contact with their siblings and the amendments to the 2009 Regulations that siblings should be placed together where it is safe and appropriate to do so;

The amended regulations will have a positive impact on article 16.

Article 20 If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.

Article 20 is relevant in relation to the current duty on local authorities in relation to looked after children to promote contact with their siblings and the amendments to the 2009 Regulations that siblings should be placed together where it is safe and appropriate to do so.

The amendments to the regulations will have a positive impact on article 20.

Article 25 If a child lives away from home (in care, hospital or in prison, for example), they have the right to a regular check of their treatment and the way they are cared for.

Article 25 is key to the policy intention that the welfare of each child is the paramount consideration.

The amendments to the regulations will have a positive impact on article 25.

2. What impact will the policy/measure will have on children's rights?

Positive/negative/neutral.

The amendments to the Looked After Children (Scotland) Regulations 2009 will have a positive impact on children's rights as the key policy aims are:

- ensuring that each child's best interests are at the centre of decisions made
- ensuring that the views of each child are heard; and
- further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC).

3. Will there be different impacts on different groups of children and young people?

Which groups of children will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and young people and other groups?

The changes to the 2009 Regulations are likely to potentially affect children and young people of all ages and from all backgrounds. The amendments are also likely to have more of an impact on children involved in court proceedings about the arrangements for their upbringing; looked after children and those who are involved in the Children's Hearings System.

4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

If options to modify the policy/measure are included here, include associated resource implications where relevant.

No negative impacts have been assessed for any area of rights or any group of children and young people.

5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?

Outline how the implementation of the policy/measure will support public bodies in Scotland to meet their duties to safeguard, support and promote the wellbeing of children in their area, with wellbeing defined by eight wellbeing indicators. The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included.

The following wellbeing indicators are relevant:

Safe - Protected from abuse, neglect and harm by others at home, at school and in the community.

Achieving - Being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community

Nurtured - Having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting.

Respected - Having the opportunity, along with carers, to be heard and involved in decisions which affect them

Responsible - Having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them

Included - Having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn.

Safe:

Ontological security of children and young people is realised by keeping siblings together where it is safe to do so. It will promote children's emotional wellbeing and security and support their overall development through secure attachment relationships with their siblings. In turn this will support their development of recovery from trauma as they are able to continue their shared experiences.

Achieving:

Securing safe, stable, loving and permanent homes for every looked after child at the earliest opportunity is key to children succeeding, including in education.

Nurtured:

Children and young people who are looked after away from home generally want to see and keep in touch with their brothers and sisters and ideally continue to live with them. They often want to see them more than they do. Children and young people can experience strong feelings of loss and anxiety in relation to being separated from their birth family, and this is exacerbated when separated from their siblings. When children and young people don't see their brother(s) and sister(s) they worry how they are, including being concerned for those they have never met. When looked after children and young people are separated there is a high risk that contact will be irregular, limited, or non-existent. This can be a source of additional distress for children and young people, and is an issue that also concerns professionals. A duty to keep siblings together will help children and young people feel nurtured.

Respected:

Recognition of the immense importance of life-long sibling relationships and supporting children to maintain this consistency in their lives. Preserving relationships that are important to a child is as important as building attachments with new carers and family and is key to equipping a child to grow up with the necessary skills to develop and maintain healthy adult relationships.

Responsible:

When children and young people are placed together, they create shared experiences and have opportunities to learn new skills together at home, at school and in the community. Living together enables greater opportunity to celebrate achievements together in a family setting and develop responsibility.

Included:

The Children (Scotland) Act 2020 places a duty on local authorities to promote sibling personal relations and the amendments to the 2009 Regulations further supports that duty by ensuring local authorities keep siblings together where it is in each child's best interest and is safe and appropriate to do so. Children who are looked after and accommodated away from home are more likely to experience inequality; ensuring that children live together with their sisters and brothers in these circumstances (where it is safe to do so) will help to reduce one aspect of inequality, and promote inclusion.

6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

This will inform Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

One of the key policy aims of the amendments to the Looked After Children (Scotland) 2009 Regulations is to further compliance with the UNCRC.

7. What evidence have you used to inform your assessment? What does it tell you?

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys, etc. In particular, look at what existing evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal. Identify any gaps in the evidence base, and set out how you will address these.

Data

In the 2015 cohort of the [Growing up in Scotland study](#), which was a study representative of the general population, a question was asked in relation to siblings of children who were approaching 5 years of age. The question did not differentiate between birth, half- and step-siblings. At that point around 14% of the children (aged around 5 at the time) had a brother or sister (including half- and step-brothers and sisters) who were living in another household. If we take into account the age of the siblings, around 9% of 5 year olds had a sibling aged 16 or younger living in another household. In the remaining cases we either do not know the age of the sibling or they were over 16.

Consultation with stakeholders on these amendments have confirmed the sometimes complex and challenging nature of placing siblings together. We have plans in place to work with stakeholders on supporting guidance that will help address the issues they raised.

Research

Research and literature reviews available on sibling care placements highlight recurring themes; predominantly that maintaining and developing sibling relationships and making joint placements, where appropriate, in a care setting are in the best interests of the child. It also shows that there is evidence that joint sibling placements are at least as stable as placement of single children or separate placements and that some studies show that children will do as well or better when placed with their brothers and sisters. Co-placement is also protective of placement stability.

Research and reports by groups and organisations such as [National Fostering Group](#), Scottish Children's Reporter Administration commissioned research [Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families](#), [Who Cares? Scotland](#), [Stand Up for Siblings](#) [CLAN Childlaw](#) and others offered a rich source of information which highlighted the recurring view that keeping siblings together in a care setting are in the best interests of the child.

The literature also shows that joint sibling care placements can be a protective factor for children's resilience and the stability of the placement. It also shows that 'warm' sibling relationships in particular have a positive impact on personal resilience. Sibling relationships where children are looked after away from home are also noted to have a positive impact on how trauma is internalised.

[CLAN Childlaw](#) produced a [report](#) which highlights the importance of child contact with siblings.

This extract from the report advises:

“Human Rights:

Family Life In terms of the Human Rights Act of 1998, public authorities (including local authorities, courts and children's hearings) have a duty to act compatibly with certain rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”). Those rights include the right to respect for “family life” specified in Article 8 of ECHR. The existence of “family life” depends on “the real existence in practice of close personal ties.” It has been observed that there are four key relationships which amount to family life: “First there is the relationship between husband and wife. Secondly, there is the relationship between parent and child. Thirdly, there is the relationship between siblings. And, fourthly, there are relationships within the wider family: for example, the relationships between grandparent and grandchild, between nephew and uncle and between cousins. Each of these relationships can in principle give rise to family life within the meaning of Article 8.

Any interference by a public authority in family life must be lawful and “a proportionate response to a legitimate aim.”

It follows that local authorities, courts and children's hearings need to consider whether there are close personal ties between siblings in care. If those ties are present, then "family life" between those siblings, in terms of Article 8, exists and any interference by a public authority must be lawful and proportionate. To be lawful, the interference must be conforming to or permitted by law (which could be a statute, a regulation or common law). To be proportionate: (1) the objective of the interference must be sufficiently important to justify limiting the fundamental right; (2) the interference must be rational, fair and not arbitrary; (3) the interference must be kept to a minimum, so far as is reasonably possible; and (4) the interference must involve the striking of a fair balance between the rights of the individual and the interests of society. If the interference is unlawful or disproportionate, the Article 8 rights of each sibling will be violated.

It is important to be aware also of the terms of the United Nations Convention on the Rights of the Child (UNCRC). Although the UNCRC is not incorporated directly in the United Kingdom, it is relevant in interpreting domestic legislation and ECHR.

Article 16 of the UNCRC is in the following terms:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks."

All of the duties imposed on local authorities in promoting sibling contact and keeping sibling together where safe to do so must be read in the context of the obligation on public authorities to act compatibly with the rights under ECHR, including the Article 8 right to respect for family life."

[CLAN Childlaw Promoting Sibling Contact for Looked After Children](#)

Children and Young People Survey for Children (Scotland) Act

Two versions of the Children Scotland Bill consultation document were available - a main document containing 54 questions, and a child friendly version containing 16 questions. Both documents contained a mix of closed and open questions. The young persons' survey asked respondents to identify which age category they belonged to. Nearly half (46%) were aged 16 or under. 294 children and young people responded to the survey.

[Analysis of the child friendly version](#) of the Children (Scotland) Bill consultation showed that young people were supportive of being allowed to keep in contact with their brothers and sisters, however, responses were more split between always being allowed (31%) and only when it was good for the child (44%).

One key recurring message was a need for the child's best interests, their welfare and their voice to be of paramount importance in any changes to the legislation.

8. Have you consulted with relevant stakeholders?

This would include public or targeted consultations with children and young people, their parents/carers and the children's workforce.

Broad engagement was carried out in advance of the Children (Scotland) Act being laid in Parliament with 148 responses received to the formal consultation. Barnardo's, Children 1st, Stand up for Siblings, CELCIS, and the Scottish Children's Reporter Administration amongst others all advocated the need for legislation to place additional duties on local authorities to keep siblings in care together, or maintain relations with each other if in care; a theme that was picked up in the publication of [The Promise](#), the conclusions of the Independent Care Review.

Consultation took place with children and young people during the development of the Children (Scotland) Act 2020, and during the Independent Care Review carried out from 2017 – 2020.

A targeted consultation took place with children and young people who make up the [Board of Our Hearings Our Voice \(OHOV\)](#), in relation to the amendments proposed to the 2009 Regulations. Overall the young people felt this was a very positive step and were very much in support of the proposal to keep siblings together. The young people were keen to ensure that decisions were made on an individual basis and that decisions were not made only by looking at a report.

In addition, discussion has taken place with Social Work Scotland members with regard to the duty to place siblings together and around the practicalities of the technical amendment regarding foster placement limit exceptions. There is widespread support for the principle behind the duty, though practitioners have highlighted the challenging and complex decisions that will be required to ensure the duty is upheld. Welfare of each child in the placement should remain paramount as there may be situations where it is not in the best interest of each child for siblings to remain together. Whilst the amending regulations set out the principles in relation to sibling placement, there will need to be fuller consideration of these complexities as part of the supporting guidance.

9. Have you involved children and young people in the development of the policy/measure?

Is there enough information on the views of the children and young people who will be affected by the policy/measure that enables you to make an informed assessment of impact?

The Independent Care Review gathered views of children and young people with recent direct experience of the care system in Scotland.

The Children (Scotland) Act 2020 consulted with children and young people specifically asking questions about sibling contact.

All responses were analysed and the [findings published](#).

The Promise – conclusions from the [Independent Care Review](#) – published Feb 2020.

The Care Review, took place between February 2017 and February 2020. The Care Review listened very carefully to those with experience of living and working in and around the 'care system' to properly understand what needs to change.

The Care Review heard over 5,500 experiences. Over half were children, young people and adults who had lived in care. The rest were families and the paid and unpaid workforce.

It was their stories that guided the Care Review and their experiences have shaped everything the Care Review concluded.

As well as listening carefully to what matters to children, the Care Review considered the research on the 'care system' and commissioned its own research to fill knowledge gaps. It reviewed all of the laws and rules, collected data, and made connections across the 'roots and branches' of the 'care system'.

The Promise states "Scotland already has a presumption that children will stay together with their brothers and sisters. That presumption must be fully implemented and closely monitored. Scotland must ensure:

- An expansive understanding of siblings that includes half, step and adoptive siblings and reflects children's experience of their family lives.
- Public service planning and commissioning strategies and procurement attuned to the needs of brothers and sisters to promote those relationships and prevent separation.
- The number and quality of kinship, foster carers, adopters and other carers available to meet the needs of sibling groups exceeds the needs of the children. This resource must be managed effectively.
- Robust management processes that facilitate and support good practice relating to sibling relationships and addresses any sibling estrangement.
- A social care and health workforce that is enabled to undertake high quality assessments of the relationship needs of siblings in or on the edge of care and to meet these needs.

Official recording practices that reflect the value placed on sibling relationships as a right and a source of wellbeing. Decision making in relation to any sibling separation must be accurately recorded and reviewed.

- A strong legal framework that acknowledges protects and promotes brother and sister relationships in and on the edges of care. Those legal protections must include the right to time together, meaningful participation in decision-making about their siblings and clear, simple rights to appeal.

Relationships that are important to the child - It is not only sibling relationships that are important to children but cousins, step-siblings and a range of other relationships including former carers. All children must be supported to continue relationships that are important to them, where it is safe to do so. This reflects the overall understanding that consistent, loving relationships keep children safe and that Scotland must listen to and do what children want and need.”

[The Promise, Chapter 4 Care p 61-62](#)

Children and Young People on the Board of Our Hearings Our Voice (OHOV)

The OHOV Board members were surveyed to gain their views on the proposed changes to the 2009 Regulations in respect of keeping brothers and sisters together where it is safe to do so. Overall the children and young people thought the proposals were a very positive step. They understood the limitations and the reasons why it may not be possible in every single circumstance but noted that even when siblings aren't really close, they are still siblings and have a bond that should be supported by being together.

“you have a common bond – you have gone through the same stuff so even if you can't be with your parents, you can still be with someone that knows you.”

OHOV Board Member January 2021

CRWIA – Stage 3

Publication Template

CRWIA title: The Looked After Children (Scotland) Amendment Regulations 2021 Date of publication: 24 February 2021	
Executive summary	<p>The amendments to the Looked after Children (Scotland) 2009 Regulations will have a positive impact on children and young people. This allows for compliance with UNCRC requirements: Article 3 (best interest of the child): the best interests of the child must be a top priority in all decisions and actions that affect children; United Nations (UN) Guidelines (article 17) for the Alternative Care of Children states that “siblings with existing bonds should not be separated unless there is clear risk or it is otherwise in the child’s best interests.”</p> <p>There has been growing evidence on the importance of maintaining sibling relationships, to ensure where possible that 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.</p> <p>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.</p> <p>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.</p> <p>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.</p>

	<p>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.</p>
Background	<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.</p> <p>The need to amend the 2009 Regulations relates to two matters:</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; • Exception of foster placement limits to allow extension of emergency placements.
Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base	<p>The change to 2009 Regulations is likely to potentially affect children and young people of all ages and from all backgrounds. The change will have more of an impact on children involved in court proceedings about the arrangements for their upbringing; looked after children and those involved in the Children’s Hearings System.</p> <p>A variety of sources were used to help understand the likely impact of the amendments to the 2009 Regulations. In addition to the continuing close engagement with a wide range of stakeholders, the sources of information which informed the scope of the CRWIA included:</p> <ul style="list-style-type: none"> • The conclusions from the Independent Care Review – the Care element is very clear that “Care: Where living with their family is not possible, children must stay with their brothers and sisters where safe to do so and belong to a loving home, staying there for as long as needed.” The-Promise.pdf (carereview.scot) • Key stakeholder groups such The Fostering Network, Social Work Scotland, CELCIS Improving Care Experiences group, and the Care Inspectorate all meet regularly. Outputs from these groups ensures timely delivery of a high quality service and the further improvement development work which is required, such as the work being taken forward in relation to the Review of Care Allowances • Publication of Children's Social work 2018/19 Statistics
Children and young people’s views and experiences	<p>Children and Young People Survey for Children (Scotland) Act</p> <p>Two versions of the Children Scotland Bill consultation document were available - a main document containing 54 questions, and a</p>

child friendly version containing 16 questions. Both documents contained a mix of closed and open questions. The young persons' survey asked respondents to identify which age category they belonged to. Nearly half (46%) were aged 16 or under. 294 children and young people responded to the survey.

Analysis of the child friendly version of the Children (Scotland) Bill consultation showed that young people were supportive of being allowed to keep in contact with their brothers and sisters, however, responses were more split between always being allowed (31%) and only when it was good for the child (44%).

One key recurring message was a need for the child's best interests, their welfare and their voice to be of paramount importance in any changes to the legislation.

The Promise – conclusions from the Care Review – published Feb 2020.

The Care Review, took place between February 2017 and February 2020. The Care Review listened very carefully to those with experience of living and working in and around the 'care system' to properly understand what needs to change.

The Care Review heard over 5,500 experiences. Over half were children, young people and adults who had lived in care. The rest were families and the paid and unpaid workforce.

The Promise states "Scotland already has a presumption that children will stay together with their brothers and sisters. That presumption must be fully implemented and closely monitored.

Relationships that are important to the child - It is not only sibling relationships that are important to children but cousins, step-siblings and a range of other relationships including former carers. All children must be supported to continue relationships that are important to them, where it is safe to do so. This reflects the overall understanding that consistent, loving relationships keep children safe and that Scotland must listen to and do what children want and need."

[The Promise, Chapter 4 Care p 61-62](#)

Children and Young People on the Board of Our Hearings Our Voice (OHOV)

The OHOV Board members were surveyed to gain their views on the proposed changes to the 2009 Regulations in respect of keeping brothers and sisters together where it is safe to do so.

	<p>Overall the children and young people thought the proposals were a very positive step. They understood the limitations and the reasons why it may not be possible in every single circumstance but noted that even when siblings aren't really close, they are still siblings and have a bond that should be supported by being together.</p>
<p>Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing</p>	<p>The Scottish Government has found that the proposed amendments will further comply with the Articles of the UNCRC and that these will have a positive impact on children and young people.</p> <p>Impact on Children's Rights.</p> <p>Article 3 – best interests of the child - is key to the policy intention of the amendments to the 2009 Regulations – recognising the importance of sibling relationships by placing a duty on local authorities to place child siblings together, where it is in both of their interests to do so. This is a positive impact for this article.</p> <p>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. The amending Regulations will be accompanied by practice guidance which draws out some of the complexities in more detail.</p> <p>United Nations (UN) Guidelines (no 17) for the Alternative Care of Children states that siblings with existing bonds should not be separated unless there is clear risk or it is otherwise in the child's best interests.</p> <p>The Promise (conclusions of the Independent Care Review) highlights the need for a strong legal framework that acknowledges protects and promotes sibling relationships with those in and on the edges of care. The report advocates for legal protections that must include the right to time together, meaningful participation in decision-making about their siblings and clear, simple rights to appeal.</p> <p>Article 8 – protection and preservation of identity - is relevant in relation to a child's relationship with siblings, who are considered family relations in the implementation handbook for the Convention published by UNICEF.</p> <p>Article 8 is relevant in relation to the provisions in the children (Scotland) Act 2020:</p>

- placing a duty on local authorities in relation to looked after children up to promote contact with their siblings; and
- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up and the child's important relations with other people.

The amendments to the regulations will have a positive impact on this article.

Article 12 - Respect for the views of the child - is key to the policy intention that the views of the child are considered in proceeding and decisions that affect them.

Article 12 is relevant as it introduces a duty for local authorities to take the views of siblings including child siblings when making a decision to promote personal relations and contact between a looked after child and their siblings.

The amendments to the regulations will have a positive impact on Article 12.

Article 16 - Every child has the right to privacy. The law should protect the child's private, family and home life.

Article 16 is relevant in relation to the current duty on local authorities in relation to looked after children to promote contact with their siblings and the amendments to the 2009 regulations that siblings should be placed together where it is safe to do so;

The amended regulations will have a positive impact on Article 16.

Article 20 - If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.

Article 20 is relevant in relation to the current duty on local authorities in relation to looked after children to promote contact with their siblings and the amendments to the 2009 regulations that siblings should be placed together where it is safe to do so;

The amendments to the regulations will have a positive impact on article 20.

Article 25 - If a child lives away from home (in care, hospital or in prison, for example), they have the right to a regular check of their treatment and the way they are cared for.

Article 25 is key to the policy intention that the welfare of the child is paramount in consideration.

The amendments to the regulations will have a positive impact on Article 25.

Measures contribution to children’s wellbeing.

Safe:

Ontological security of children and young people is realised by keeping siblings together where it is safe to do so.

Achieving:

Securing safe, stable, loving and permanent homes for every looked after child at the earliest opportunity is key to children succeeding, including in education.

Nurtured:

Children and young people in care generally want to see and keep in touch with their brothers and sisters and ideally continue to live with them. They often want to see them more than they do. Children and young people can experience strong feelings of loss and anxiety in relation to being separated from their siblings. When children and young people don’t see their brother(s) and sister(s) they worry how they are doing, including being concerned for those they have never met. When looked after children and young people are separated there is a high risk that contact will be irregular, limited, or non-existent. This can be a source of distress for children and young people, and is an issue that also concerns professionals. A duty to keep siblings together will help children and young people feel nurtured.

Respected:

Recognition of the immense importance of life-long sibling relationships and supporting children to maintain this consistency in their lives. Preserving relationships that are important to a child is as important as building attachments with new carers and family and is key to equipping a child to grow up with the necessary skills to develop and maintain healthy adult relationships.

Responsible:

When children and young people are placed together older siblings can take the initiative and assist their young siblings with tasks or activities. This allows the older sibling to have a sense of responsibility.

Included:

The Children (Scotland) Act places a duty on local authorities to promote sibling personal relations and the amendments to the 2009 regulations further support that duty by ensuring local

authorities keep siblings together where it is in the child's best interest to do so.

CLAN Childlaw Report – Promoting Sibling Contact for Looked After Children

Family Life In terms of the **Human Rights Act of 1998**, public authorities (including local authorities, courts and children's hearings) have a duty to act compatibly with certain rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"). Those rights include the right to respect for "family life" specified in Article 8 of ECHR. The existence of "family life" depends on "the real existence in practice of close personal ties". It has been observed that there are four key relationships which amount to family life: "First there is the relationship between husband and wife. Secondly, there is the relationship between parent and child. Thirdly, there is the relationship between siblings. And, fourthly, there are relationships within the wider family: for example, the relationships between grandparent and grandchild, between nephew and uncle and between cousins. Each of these relationships can in principle give rise to family life within the meaning of Article 8.

Any interference by a public authority in family life must be lawful and "a proportionate response to a legitimate aim."

It follows that local authorities, courts and children's hearings need to consider whether there are close personal ties between siblings in care. If those ties are present, then "family life" between those siblings, in terms of Article 8, exists and any interference by a public authority must be lawful and proportionate. To be lawful, the interference must be conforming to or permitted by law (which could be a statute, a regulation or common law). To be proportionate: (1) the objective of the interference must be sufficiently important to justify limiting the fundamental right; (2) the interference must be rational, fair and not arbitrary; (3) the interference must be kept to a minimum, so far as is reasonably possible; and (4) the interference must involve the striking of a fair balance between the rights of the individual and the interests of society. If the interference is unlawful or disproportionate, the Article 8 rights of each sibling will be violated.

It is important to be aware also of the terms of the United Nations Convention on the Rights of the Child (UNCRC). Although the UNCRC is not incorporated directly in the United Kingdom, it is relevant in interpreting domestic legislation and ECHR. Article 16 of the UNCRC is in the following terms:

	<p>1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.</p> <p>2. The child has the right to the protection of the law against such interference or attacks.”</p> <p>All of the duties imposed on local authorities in promoting sibling contact and keeping sibling together where safe to do so must be read in the context of the obligation on public authorities to act compatibly with the rights under ECHR, including the Article 8 right to respect for family life.”</p> <p>CLAN Childlaw Promoting Sibling Contact for Looked After Children</p>
Monitoring and review	<p>Ongoing monitoring and evaluation of the impact of this legislation will be carried out. Feedback from children and young people and key stakeholders in the sector will be invited to provide views and information as to how the changes are being carried out in practice. The review will be led by the Formal Care and Corporate Parenting Team in Scottish Government. The first review is planned for a full year after the regulations come into force.</p>

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
<p>The looked After Children (Scotland) Amendment Regulations 2021</p>	<p>To ensure that given the provisions in section 17(6) of the Children (Scotland) Act 1995, and the Children (Scotland) Act 2020, in relation to sibling contact, that we are doing all we can to protect sibling relationships provided for in secondary legislation, especially in</p>	<p>These changes are likely to impact on children and young people from all ages and all backgrounds who are looked after and accommodated by their local authority. The change will have more of an impact on children involved in court proceedings</p>	<p>Article 3</p> <p>Article 8</p> <p>Article 12</p> <p>Article 16</p> <p>Article 20</p> <p>Article 25</p>	<p>These amendments meet wellbeing indicators:</p> <p>Safe</p> <p>Achieving</p> <p>Nurtured</p> <p>Respected</p> <p>Responsible</p> <p>Included</p>

	relation to the placement of siblings by local authorities. The need for local authorities to have regard to the welfare of each child in relation to sibling placements, and an exemption to the foster placement limit for emergency placements in exceptional circumstances for a specific child.	about the arrangements for their upbringing; looked after children and those involved in the Children's Hearings System.		
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CRWIA Declaration	
Authorisation	
Policy lead Hannah Graham Corporate Parenting and Formal Care Team Leader Promise Policy Hub Strategy, GIRFEC and Promise Division	Date 10/02/2021
Deputy Director or equivalent William Scott-Wilson Deputy Director Strategy, GIRFEC and Promise Division	Date 11/02/2021