

POLICY NOTE

The Looked After Children (Scotland) Amendment Regulations 2021

SSI 2021/103

The above instrument was made in exercise of the powers conferred by sections 5(2), (3) and (4) of the Social Work (Scotland) Act 1968(1) and sections 17(1), and 103(2) and (3) of the Children (Scotland) Act 1995(2) and all other powers enabling them to do so. The instrument is subject to negative procedure.

The purpose of this instrument is to make amendments to the Looked After Children (Scotland) Regulations 2009 that will support the rights of looked after children to be placed together with siblings where it is appropriate and safe. The instrument includes amendments that provide an additional exemption to the foster care placement limit in exceptional circumstances when an emergency or short term foster care placement for a specific child (or children) is assessed as being a place that continues to be in the best interests of the children in placement.

Policy Objectives

To provide increased protection for the rights of looked after children to live with siblings in care placements, where appropriate, or live near together (if that would better safeguard and protect welfare than living together). In determining what is appropriate the local authority must be satisfied that the placement safeguards and promotes the welfare of the child (the paramount consideration).

To refine the foster placement limit by making an additional exemption to allow a child or children who had been placed in an emergency or short term basis to remain in their current placement. This will only apply to such a child or children in exceptional circumstances, if that safeguards and promotes the welfare of the child and other children in the placement. The instrument also clarifies the role of the fostering panel in these circumstances.

The provisions with regard to the duty on local authorities in respect of sibling placements will come into force on 26 July 2021. Foster placement limits were temporarily modified by the Coronavirus (Scotland) Act 2020. The foster placement limit refinement provisions will only take effect after those temporary modifications have expired.

Consultation

We have consulted and engaged with a broad range of stakeholders in relation to sibling relationships in advance of the Children (Scotland) Act 2020 being laid in Parliament. This included looked after children and young people, social work practitioners and voluntary

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- (1) 1968 c.49. Subsections (3) to (5) of section 5 were substituted by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(4)(d). Section 5(2) was substituted by the Children Act 1975 (c.72), Schedule 3, paragraph 49. Section 5(2)(c) was substituted by the Local Government etc. (Scotland) Act 1994 (c.39), section 180(1), Schedule 13, paragraph 76(3)(c) and is amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(4)(c), the Adoption and Children (Scotland) Act 2007 (asp 4), section 120(1), schedule 2, paragraph 2 and S.S.I. 2013/211. Section 5(2)(d) was repealed by the Children Act 1989 (c.41), section 108(7), Schedule 15. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
 - (2) 1995 c.36. Section 17 is relevantly amended by the Children (Scotland) Act 2020 (asp 16), section 13. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Section 103(2) defines "prescribed".

providers who support fostering panels. There is cross-over with policy in that Act in relation to sibling contact, which these amendments support. We also carried out additional engagement in relation to these amending regulations with social work practitioners and children and young people with experience of children's hearings whose views have been captured in the Children's Rights and Wellbeing Impact Assessment. Our engagement was able to highlight practice issues that we will address in supporting guidance, which will be developed in collaboration with the children's sector.

It is therefore a reasonable, and an efficient use of parliamentary resources, for this settled policy to be included in one instrument dealing with both aspects of the policy in relation to looked after children,. Given the importance of the changes in relation to foster placement limits, it was also considered appropriate to give advance notice of these, to provide further clarity to stakeholders in anticipation of the future expiry of the current modifications in the Coronavirus (Scotland) Act 2020, and to allow further stakeholder guidance to be prepared on that basis

Impact Assessments

We have completed and published an Equality Impact Assessment and a Children's Rights and wellbeing Impact Assessment for these amending regulations. These assessments show that the amending regulations will have a positive impact on the established relationships of looked after children, the stability of their care placements and their longer term outcomes.

We have also given consideration to a Fairer Scotland Duty Impact Assessment, a Data Protection Impact Assessment, an Islands Impact Assessment and a Strategic Environmental Impact Assessment, which were considered to be unnecessary for these amending regulations.

- A Fairer Scotland Duty Impact Assessment was considered unnecessary due to the amendments not being of a strategic nature as defined by the Fairer Scotland guidance.
- A Data Protection Impact Assessment was considered unnecessary by the Information Commissioner's Office as the data involved is already in use by local authorities.
- An Islands Impact Assessment was considered unnecessary following a screening document being completed.
- A Strategic Environmental Impact (SEA) Assessment was considered unnecessary since no "plan" as referred to in the SEA guidance needed to be considered

Financial Effects

The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

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