
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 103

**The Looked After Children (Scotland)
Amendment Regulations 2021**

Amendment of the Looked After Children (Scotland) Regulations 2009

3.—(1) The Looked After Children (Scotland) Regulations 2009⁽¹⁾ are amended as follows.

(2) In regulation 2 (interpretation) before the definition of “warrant to secure attendance” omit “and” and insert—

““sibling of the child” means—

- (a) a person who has at least one parent in common with the child, and
- (b) any other person with whom the child has lived or is living, and with whom the child has an ongoing relationship with the character of a relationship between siblings;”.

(3) In regulation 4 (assessment)—

(a) in paragraph (2)—

(i) in sub-paragraph (c), omit “and”,

(ii) after sub-paragraph (c), insert—

“(ca) any sibling of the child; and”,

(b) in paragraph (3), after “their family” insert “including any sibling of the child”, and

(c) omit paragraph (5).

(4) In regulation 5(2) (child’s plan)—

(a) in sub-paragraph (e), omit “and”,

(b) after sub-paragraph (e) insert—

“(ea) any sibling of the child; and”.

(5) After regulation 5 insert—

“Duty to place siblings together

5A.—(1) Paragraph (2) applies where—

(a) the local authority are considering placing the child—

(i) with a kinship carer in accordance with regulation 11,

(ii) with a foster carer in accordance with regulation 27,

(iii) in a residential establishment, and

(b) any sibling of the child is looked after or about to be looked after.

(2) The local authority must, where appropriate—

(1) S.S.I. 2009/210 as relevantly amended by S.S.I. 2009/290, S.S.I. 2011/211, S.S.I. 2013/14, S.S.I. 2013/147, S.S.I. 2014/112 and S.S.I. 2014/310.

- (a) place the child and the sibling of the child with the same carer or in the same residential establishment, or
 - (b) place the child and the sibling of the child in homes which are near to each other.
- (3) In determining for the purposes of paragraph (2) whether the placement is appropriate, the local authority must be satisfied that the placement safeguards and promotes the welfare of the child (which is the paramount concern).
- (4) In determining for the purposes of paragraph (2) whether a placement as referred to in sub-paragraph (b) of that paragraph is appropriate, the local authority must be satisfied that such a placement would better safeguard and promote the welfare of a child than a placement as referred to in sub-paragraph (a) of that paragraph.”.
- (6) In regulation 20 (functions of the fostering panel)(2)—
- (a) at the end of paragraph (2)(c)—
 - (i) omit “, subject to the placement limit set out in regulation 27A(3).”, and
 - (ii) insert—
 - “(d) following a referral under regulation 27B(2), whether the foster carer is a suitable carer for the child, despite this resulting in more than 3 children who are not all siblings of each other remaining in the care of that foster carer at any one time.”,
 - (b) after paragraph (4)(b) insert—
 - “(c) the presumption that no more than 3 children are to be in the care of a foster carer at any one time, unless all the children are siblings of each other.”.
- (7) In regulation 25(1)(a) (reviews and termination of approval), for “or 26(8)” substitute “, 26(8) or 27B(4)”.
- (8) In regulation 27A(2) (placement limit)—
- (a) at the end of sub-paragraph (a) omit the “or”,
 - (b) at the end of sub-paragraph (b), insert—
 - “; or
 - (c) when regulation 27B(4) applies.”.
- (9) After regulation 27A insert—

“Exceptional approval of foster carer

27B.—(1) This regulation applies where—

- (a) a child (“A”) is the subject of an emergency or short-term placement with a foster carer as mentioned in regulation 27A(2)(b), and
- (b) the local authority considers that exceptional circumstances exist so that the welfare of A and any other child placed with the foster carer (which is to be the paramount consideration) will be safeguarded and promoted by continuing the emergency or short term placement of A with the foster carer.

(2) The local authority must refer the case to the fostering panel within 4 weeks of the date on which A is placed with the foster carer or as soon as practicable thereafter.

(3) The local authority must so far as reasonably practicable provide the fostering panel with—

(2) Regulation 20 is temporarily modified by the Coronavirus (Scotland) Act 2020 (asp 7), schedule 3, paragraph 10(2).
 (3) Regulation 27A was inserted by S.S.I. 2014/310 and is temporarily modified by the Coronavirus (Scotland) Act 2020 (asp 7), schedule 3, paragraph 10(5).

- (a) the information in schedule 3, and
- (b) such other information or observations as they consider appropriate.

(4) Where a local authority receives a recommendation from the fostering panel under regulation 20(2) the authority must make a decision on whether the foster carer is suitable to be a foster carer for A within 14 days from the date the recommendation was made.

(5) Where the local authority make a decision that the foster carer is suitable to be a foster carer for A, they must be satisfied that the authority has taken into account the recommendations made by the fostering panel.

(6) Where the local authority make a decision that is contrary to the recommendation of the fostering panel the authority must record in writing the reasons for that decision.

(7) The local authority must notify the foster carer in writing of the decision made under paragraph (4) within 7 days of the date of making that decision.”.

(10) In regulation 35(b)(iii) (child placed in residential establishment: information to be supplied) after “their family” insert “including any sibling of the child”.

(11) In regulation 36(3)(e)(i) (emergency placement with carer) after “section 17(1)(c)” insert “and (d)(4)”.

(12) In schedule 1 (information relating to the child)—

- (a) in paragraph 7, for “brothers and sisters,” substitute “sibling of the child,”.
- (b) in paragraph 8, after “family” insert “including any sibling of the child”.

(13) In schedule 4 (matters and obligations to be covered in foster and kinship placement agreements), in paragraph 6, after “section 17(1)(c)” insert “or (d)”.

(4) Section 17(1)(d) of the Children (Scotland) Act 1995 (c.36) was inserted by the Children (Scotland) Act 2020 (asp 16), section 13(2)(a)(ii).