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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 103**

**CHILDREN AND YOUNG PERSONS  
SOCIAL WORK**

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

*Made - - - - 22nd February 2021*

*Laid before the Scottish*

*Parliament - - - - 24th February 2021*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 5(2), (3) and (4) of the Social Work (Scotland) Act 1968<sup>(1)</sup> and sections 17(1), and 103(2) and (3) of the Children (Scotland) Act 1995<sup>(2)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Looked After Children (Scotland) Amendment Regulations 2021.

(2) This regulation and regulation 2 come into force on 31 March 2021.

(3) Subject to paragraph (4), regulation 3 comes into force on 26 July 2021.

(4) Paragraphs (6), (7), (8) and (9) of regulation 3 come into force on the relevant day.

**Interpretation**

2. In these Regulations—

“the 2020 Act” means the Coronavirus (Scotland) Act 2020<sup>(3)</sup>,

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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 Section 5(2)(d) was repealed by the Children Act 1989 (c.41), section 108(7), schedule 15.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”.
- (3) 2020 asp 7.

“the relevant day” means the day on which sub-paragraphs (2) to (5) of paragraph 10, schedule 3 of the 2020 Act expire by virtue of—

- (a) section 12 of that Act, or
- (b) regulations made under section 13 of that Act.

### **Amendment of the Looked After Children (Scotland) Regulations 2009**

**3.**—(1) The Looked After Children (Scotland) Regulations 2009<sup>(4)</sup> 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—

- (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.

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(4) 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.

(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)(5)—

(a) at the end of paragraph (2)(c)—

(i) omit “, subject to the placement limit set out in regulation 27A(6).”, 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—

(a) the information in schedule 3, and

(b) such other information or observations as they consider appropriate.

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(5) Regulation 20 is temporarily modified by the Coronavirus (Scotland) Act 2020 (asp 7), schedule 3, paragraph 10(2).

(6) 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).

- (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)(7)”.
- (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)”.

St Andrew’s House,  
Edinburgh  
22nd February 2021

*MAREE TODD*  
Authorised to sign by the Scottish Ministers

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(7) 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).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Looked After Children (Scotland) Regulations 2009 (“the 2009 Regulations”). The 2009 Regulations 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 1995 Act”).

### **Siblings**

Regulation 3(2) inserts a new definition in regulation 2 (interpretation) of the 2009 Regulations to clarify that “sibling of the child” means a person who has at least one parent in common with the child, and 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.

Regulation 3(3) amends regulation 4 (assessment) of the 2009 Regulations so that, where appropriate, a local authority must also take into account views of any sibling of the child. Regulation 3(3)(c) omits regulation 4(5) of the 2009 Regulations in consequence of the new regulation 5A (duty to place siblings together) inserted by regulation 3(5).

Regulation 3(4) amends regulation 5 (child’s plan) of the 2009 Regulations in relation to taking account of the views of any sibling before preparing the child’s plan.

Regulation 3(5) inserts a new regulation 5A (duty to place siblings together) in the 2009 Regulations. This provides that the local authority must, where appropriate, place the child and any sibling of the child who is also looked after with the same carer or in the same residential establishment, or in homes which are near to each other. 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). A local authority may only place a child in homes that are near together rather than in the same placement if that better safeguards and promotes the welfare of the child.

Regulation 3(10) amends regulation 35(b)(iii) (child placed in residential establishment: information to be supplied) of the 2009 Regulations to clarify that arrangements for contact with the child’s family includes contact with their siblings.

Regulation 3(11) amends regulation 36(3)(e)(i) (emergency placement with carer) of the 2009 Regulations to include reference to the duty to promote contact with siblings in section 17(1)(d) of the Children (Scotland) Act 1995 (section 17(1)(d) is inserted by section 13 of the Children (Scotland) Act 2020).

Regulation 3(12) makes amendments to schedule 1 (information relating to the child) in relation to siblings.

Regulation 3(13) makes amendments to schedule 4 (matters and obligations to be covered in foster and kinship placement agreements) with regard to contact with siblings.

### **Placement limit**

Regulation 3(8) inserts a new 27A(2)(c) in the 2009 Regulations to provide that there is a further exception to the placement limit referred to in regulation 27A(1) where regulation 27B(4) applies.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 3(9) inserts a new regulation 27B into the 2009 Regulations to provide a procedure for the local authority to follow if it considers that it is in the best interests of a child to continue the current short term or emergency placement of a child, despite the placement limit.

Regulation 3(6) amends regulation 20 (functions of the fostering panel) of the 2009 Regulations in consequence of regulations 27A(2)(c) and 27B.

Regulation 3(7) amends regulation 25(1)(a) (reviews and termination of approval) of the 2009 Regulations in consequence of regulation 27B(4).