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## Stage 3 Briefing: Children and Young People (Scotland) Bill

### Sibling Contact for Looked After Children Amendment 177

*“Both in the early stages of placement, when holding on to familiar contacts is reassuring, and for children who spend prolonged periods looked after away from home by a local authority, contact with siblings living elsewhere... needs similar attention as contact with parents.”*

Guidance on Looked after Children (Scotland) Regulations 2009 and  
the Adoption and Children (Scotland) Act 2007, p42

#### **Background**

Looked after children are often separated from their siblings due to being placed away from each other either in foster placements, residential units or by one sibling being accommodated and the other remaining with parents at home.

From our work with vulnerable children and young people we know that siblings are frequently prevented from seeing each other, either through a lack of action from the local authority involved, or simply due to sibling contact not being given the same priority as parental contact. This can have a devastating effect on looked after children who stand to lose a link with siblings with whom they previously shared a close bond. Local authorities often fail to consider the impact of sibling separation on children and young people, or promote the sibling relationship at all. The relationships between looked after children and their siblings become all the more important to them when they are removed from their core family unit, and contact with siblings can be a reassuring link to the family home, which may come without the pressures that parental contact can often bring, such as supervision and assessment.<sup>i</sup> At present, there is no recourse available to looked after children if a local authority do not prioritise sibling contact. This can make it impossible for looked after children to address the issue of sibling separation.

Currently, there is a duty on the local authority under section 17 of the Children (Scotland) Act 1995 to promote personal relations and direct contact on a regular basis between a child who is looked after by them and any person with parental responsibilities, subject to the contact being conducive to the child’s welfare and the contact being practicable and appropriate. The duty however does not extend to personal relations and contact

with siblings of the child. The Looked After Children (Scotland) Regulations 2009 impose a duty on a local authority to assess the child's need for contact with family members where the local authority is considering placing a child away from the birth parents, with kinship carers, foster carers or in a residential unit. This is a duty to assess, not to promote contact. Attention to sibling contact, in accordance with the Guidance referred to above is, in our experience and that of our clients, not always given.

### **Purpose & Effect of Amendment 177**

Support of **Amendment 177** lodged by Jayne Baxter MSP would extend the current duty of the local authority under section 17 of the Children (Scotland) Act 1995<sup>ii</sup> (to promote contact and personal relations between looked after children and those with parental responsibilities), to **place a duty on local authorities to promote and facilitate contact between looked after children and their separated siblings, where it is practicable and appropriate in the circumstances of each individual case.**

The existing safeguards in section 17 will ensure that contact would only be promoted between looked after children and siblings where it is suitable and in the child's best interests. Local authorities will at least have to make an assessment as to the suitability of sibling contact. A duty on local authorities to promote and facilitate contact between separated siblings would lead to more positive outcomes for looked after children.

**For sibling relationships to be prioritised and promoted consistently by local authorities, it is essential that section 17 be extended as proposed.** By introducing a relatively small change to the current law through the Children and Young People (Scotland) Bill, a significant number of looked after children could benefit from a statutory requirement for local authorities to promote and facilitate sibling contact, leading to more positive outcomes for them.

*Clan childlaw offers a unique legal advocacy service to children and young people within Edinburgh and the Lothians and Glasgow. We aim to make the law more accessible to children and young people, including the most vulnerable in our society, by providing free, specialist legal advice and representation at a place suitable to them at the time that they need it. Children's rights are central to our work.*

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### **Endnotes**

<sup>i</sup> For further discussion of the issues faced by our clients in relation to sibling contact, see "Barriers to Sibling Contact", Straiton, V., 2012 <http://www.journalonline.co.uk/Preview/1011960.aspx#.UsqLEeLeLoZ>

<sup>ii</sup> **17.— Duty of local authority to child looked after by them.**

(1) Where a child is looked after by a local authority they shall, in such manner as the Secretary of State may prescribe—

(a) safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern);

(b) make such use of services available for children cared for by their own parents as appear to the authority reasonable in his case; and

(c) take such steps to **(i)** promote, on a regular basis, personal relations and direct contact between the child and any person with parental responsibilities in relation to him **(ii) promote and facilitate, on a regular basis, personal relations and direct**

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*contact between the child and any siblings of the child*, as appear to them to be, having regard to their duty to him under paragraph (a) above, both practicable and appropriate.

(2) The duty under paragraph (a) of subsection (1) above includes, without prejudice to that paragraph's generality, the duty of providing advice and assistance with a view to preparing the child for when he is no longer looked after by a local authority.

(3) 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—

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental rights in relation to him; and
- (d) any other person whose views the authority consider to be relevant,

regarding the matter to be decided.

(4) In making any such decision a local authority shall have regard so far as practicable—

- (a) to the views (if he wishes to express them) of the child concerned, taking account of his age and maturity;
- (b) to such views of any person mentioned in subsection (3)(b) to (d) above as they have been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

(5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm) a local authority consider it necessary to exercise, in a manner which (but for this paragraph) would not be consistent with their duties under this section, their powers with respect to a child whom they are looking after, they may do so.

(6) Any reference in this Chapter of this Part to a child who is "looked after" by a local authority, is to a child—

- (a) for whom they are providing accommodation under section 25 of this Act;
- (b) who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the Children's Hearings (Scotland) Act 2011);
- (c) ...
- (d) who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of this Act or section 190 of the Children's Hearings (Scotland) Act 2011 (asp 1) (effect of Orders made outwith Scotland), they have responsibilities as respects the child; or
- (e) in respect of whom a permanence order has, on an application by them under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4), been made and has not ceased to have effect.

(7) Regulations made by the Secretary of State under subsection (1) above may, without prejudice to the generality of that subsection, include—

- (a) provision as to the circumstances in which the child may be cared for by the child's own parents; and
- (b) procedures which shall be followed in the event of the child's death.

*(8) Any reference in this section to a sibling includes a sibling by virtue of adoption, marriage, or civil partnership, a sibling of the half blood and any other person the child regards as their sibling and with whom they have an established family life.*