

LEGAL RESPONSIBILITIES TO CHILDREN IN CARE

When looking after a child the local authority is required to;

1. Safeguard and promote his or her welfare and to make use of such services as would be available for children were they cared for by their parents.
2. The local authority must also take steps to promote appropriate personal relations and direct contact between the child and any person with parental responsibilities.
3. In discharging its responsibilities the local authority must consult with, and have regard to the views of the child, his or her parents, any person with parental rights and any other person whose views may be relevant when making decisions and it must take account of the child's religious persuasion, racial origin and cultural and linguistic background.
4. The local authority may terminate the placement where for any reason it appears to the local authority that it is no longer in a child's best interests to remain in a placement and shall make arrangements to terminate the placement as soon as is practicable.
5. Irrespective of the basis on which the child is looked after, every child has the right to an opportunity to indicate whether he or she wishes to express views, to express those views and to have them taken into account in any decision-making processes affecting him or her. Statements for meetings. Professionals should listen to and take account of their views. There should be clear and accessible means for children and parents to challenge decisions with which they disagree and to make a complaint, with access to independent advocacy. Administrative arrangements, for example the location and timing of meetings, should take account of both parents' and children's needs.
6. The law requires local authorities to make appropriate arrangements to meet the child's educational needs and to ensure continuity of education.
7. When placed away from home the child has the right to be brought up in accordance with his or her religious persuasion.
8. The local authority must ensure medical assessment of the child's health status and need, and ensure that arrangements are in place for the provision of health care, including medical and dental care and treatment.

9. When a child is looked after away from home he or she is entitled to contact with any family member who has parental responsibility for him or her. There is no statutory duty upon the local authority to promote direct contact with people who do not have parental responsibility for the child. In practice local authorities should help the child sustain any significant relationships with relatives and friends that are likely to promote his welfare or facilitate the upbringing of the child by his family. The local authority may provide traveling, subsistence and other expenses to any parent, relative or other person connected with a looked after child to enable contact if the person would not be able to visit the child without undue hardship.
10. Sibling relationships are important in sustaining children's personal identity and supporting stability in placements. Failure to protect sibling relationships for looked after children may breach ECHR rights to respect for their family life. Local authorities must place siblings together wherever possible. The legal requirement to place siblings together is qualified by the need to ensure that this is consistent with coexisting duties to safeguard and promote the child's welfare and to ascertain the child's views.

All these duties apply whether the child is looked after at home, in residential or foster care or in a residential school. For example the local authority may facilitate contact with an absent parent for a looked after child living at home under local authority supervision.

References

- 1 C(S)A 1995, s17(1)(a)
- 2 C(S)A 1995, s17(1)(b)
- 3 C(S)A 1995, s17(1)(c)
- 4 C(S)A 1995, s17(3) and (4)(a) and (b)
- 5 C(S)A 1995, s17(4)(c)
- 6 C(S)A 1995, s17(5)
- 7 The Arrangements to Look After Children (Scotland) Regulations 1996; The Fostering of Children (Scotland) Regulations 1996
- 8 Children (Scotland) Act 1995 Regulations and Guidance Volume 2: Children Looked After by Local Authorities
- 9 The Arrangements to Look After Children (Scotland) Regulations, regulation 19
- 10 Children (Scotland) Act 1995 Regulations and Guidance Volume 1: *Support and Protection for Children and their Families* Chapter 2 Annex A (p 15)
- 11 C(S)A 1995, s17(6)
- 12 For overview of the statutory requirements to consult with children in legal and administrative proceedings see Marshall, K, Tisdall, E. Kay M., Cleland, A with Plumtree, A (2002) ' *Voice of the Child*'; *Under the Children (Scotland) Act 1995: Giving due regard to children's views in all matters that affect them* Volume 1, Mapping Paper (The Scottish Executive CRU, Edinburgh)
- 13 C(S)A 1995, ss16 and 17(3) and (4) [s16 - duty upon courts and children's hearings; ss17 (3) and (4)]

- 14 Children (Scotland) Act 1995 Regulations and Guidance Support and Protection for Children and their Families Chapter 1 pp 5-6; Chapter 6 p 34
- 15 The Arrangements to Look After Children (Scotland) Regulations 1996, Regulation 5(2)(c)
- 16 *ibid*, regulation 5(3)
- 17 *ibid*, regulation 13
- 18 *ibid*, regulation 5(2)(d)
- 19 C(S)A 1995, s17(1)(c)
- 20 C(S)A 1995, s22(1)(b)
- 21 Social Work (Scotland) Act 1968, s29
- 22 June Thoburn (2002) Quality Protects Research Briefing No 5 *Adoption and Permanence for Children who Cannot Live Safely with Birth Parents or Relatives*, DOH
- 23 Beckett S and Hershman D (2001) 'The Human Rights Implications for Looked After Siblings' April [2001] Family Law
- 24 The Arrangements to Look After Children (Scotland) Regulations 1996, regulation 5(4)
- 25 *Re S (Contact: Application by Sibling)* [1998] 2 FLR 897 established that the welfare of the child with whom a brother or sister sought contact would be the paramount consideration of the court.
- 26 Children (Scotland) Act 1995 Regulations and Guidance Volume 2 *Children Looked After by Local Authorities*, paragraphs 19-20, p 5
- 27 Sheriff Brian Kearney, personal communication