

## Enquire briefing

# Extra support at school: The rights of looked after children

The law says that all looked after children should have the extra support they need to get the most out of their education and achieve their full potential. This law is the **Education (Additional Support for Learning) (Scotland) Act 2004, as amended**, – the ASL Act. The Act presumes that all looked after children have additional support needs, until they are assessed as not having them.

### Who should read this?

Residential child-care staff, social workers, advocacy workers with a responsibility for looked after children, parents, foster carers, kinship carers, children’s panel members, teachers, school staff, looked after children’s nurses, educational psychologists and education liaison and welfare officers.

### What ‘looked after’ means

The term ‘looked after’ used in the ASL Act is based on the meaning in the **Children (Scotland) Act 1995**. It covers children looked after at home and children looked after away from home. Those looked after away from home may be cared for:

- by relatives, kinship carers or foster carers
- in a children’s residential unit
- in a residential school or secure unit

Not all children cared for by kinship carers are considered as ‘looked after’. There are two types of kinship care. One is a formal care arrangement and the legal status of the child is looked after by the local authority. The other is an informal care arrangement where the child does not have looked after status. However, the ASL Act applies to all children who need extra support with their learning.

Local authorities and their schools have a responsibility to *all* looked after children, whether they live at home or live elsewhere.

## Why looked after children may need learning support

There are many reasons why looked after children might need extra help to get the most from their learning. These include:

- dealing with a parent's substance abuse
- chaotic home circumstances
- problems associated with trauma or abuse experienced in the early years
- moving home a lot and having to change schools
- being bullied or stigmatised
- finding it hard to control behaviour
- having a low attendance rate at school
- feeling depressed or anxious
- having difficulty finding a quiet place to do homework and accessing the internet.

## What support is available?

Support should be tailored to meet a child's individual needs and may include:

- time with learning support staff
- assistance from a counsellor or therapist
- nurture group support
- equipment, such as a laptop
- strategies, such as time out
- more time to complete school work and exams
- 'buddy' support from an older pupil
- meetings to discuss learning plans and transition between schools
- support to access further education or vocational training.

For more information, see **Enquire Factsheet 7: Who provides extra support for children's learning?** and **Enquire young people's guide: Extra help at school when you are looked after**

## Who is responsible for a looked after child's education?

All local authorities should have detailed policies on the education of looked after children and arrangements for liaising with the child and their parents or carers and with any other professionals involved. Chapters 3 and 4 of the **Supporting children's learning code of practice** provide guidance on how the law might work in certain situations.

If a child is looked after, their home authority has responsibility for their education. The home local authority is still responsible for:

- a looked after child placed in accommodation in another local authority and attending a school in that authority
- a looked after child placed in a school in another local authority, for example, because school provision that meets their needs is available there.

**The Looked After Children (Scotland) Regulations 2009** state that the local authority must review the circumstances of looked after children and young people within 6 weeks of them gaining looked after status or being placed in their area. Regular reviews of the child's progress should then take place.

## Planning support for looked after children

Staff from education, social work and other agencies should work closely together to assess and plan the support a looked after child needs to achieve their fullest potential in all areas. The child or young person should be involved in this planning, having a say in decisions about what they will learn at school and the support they will need.

The Scottish Government's **Getting it right for every child** approach aims to integrate and co-ordinate plans developed for children by different agencies. When a child or young person needs more detailed planning for learning than is covered in a personal learning plan, they may have a single agency plan that will include an individualised educational programme (IEP) or similar local plan.

The local authority must consider whether a looked after child needs a co-ordinated support plan (CSP). A CSP is a plan for some children who need significant additional support from more than one agency to benefit from their education. It includes information on what the child's learning support needs are, which agency will provide this support and who will ensure that it is co-ordinated.

When a looked after child has been placed in accommodation in another local authority or is attending a school in another local authority the home local authority is still responsible for considering if they need a co-ordinated support plan and if one is put in place implementing and reviewing the plan.

When two or more agencies are involved there will be a multi-agency care plan. If the child or young person has a CSP it will form part of this plan but must also be a stand-alone document. At least once a year, the school and other agencies should meet with the child or young person and parent or carer to review the CSP.

The care plan, as defined by the **Children (Scotland) Act 1995**, must set out the local authority's immediate and longer term plans for the child; details of the services required to meet the care, health and education needs of the child; and the respective responsibilities of the local authority; the child; any person with parental responsibility; any foster carer or kinship carer for the child; and, where the child is placed in a residential establishment, the designated manager of that establishment.

Child's Plans are a statutory requirement from Autumn 2016 as part 5 of the Children and Young People (Scotland) Act 2014. Child's Plans will be created if a child or young person requires some extra support to meet their wellbeing needs such as access to mental health services, respite care, or help from a range of different agencies.

The Child's Plan will pull together all other plans e.g. health and education plans to create one single plan. If a child has a co-ordinated support plan this will be included in a Child's Plan but also need to be treated as a stand-alone document if there is disputes about additional support for learning. The care plan and the CSP will form part of this plan but the CSP must also be a stand-alone document.

For more information, see **Enquire Factsheet 1: Planning children's and young people's learning**, **Factsheet 13: Co-ordinated support plans**, and **Enquire young people's guide: Extra help at school when you are looked after**.

## Planning for leaving school

It is important that all looked after young people get the help they need to:

- decide what to do when they leave school
- move from school to other opportunities.

Children can request to take a supporter or advocate to meetings to help them put their views across or to speak on their behalf. Young people (16-18 years) have the right to have a supporter or advocate with them at discussions or meetings where decisions are made that affect their lives. For advocacy services in your area, contact Enquire or the Scottish Independent Advocacy Alliance: [www.siaa.org.uk](http://www.siaa.org.uk) 0131 55 66 443. You could also contact Who Cares? Scotland, who run independent advocacy services for looked after children in some areas.

Every local authority will have a Children's Rights Officer who can help in many ways. They can give advice and information to the child or young person and make sure they are always treated fairly. For more information on children's participation at meetings, see **Enquire young people's guide: Going to meetings**.

Planning should start at least 12 months before the child or young person is due to leave school. The school should gather information from agencies that may be involved in supporting the young person after they leave, for example, Skills Development Scotland, social workers and further education colleges. If the young person agrees, the school should tell these agencies about their support needs. It is vital that the young person is involved in all stages of this planning.

For more information, see **Enquire Factsheet 14: Progressing beyond school after 16** and **Enquire young people's guide: Getting ready to leave school**.

## What if things are not working?

The Act provides processes for resolving disagreements about additional support for learning. It is important that throughout all these processes the views of children and young people are taken into account.

If parents or carers have any concerns about a looked after child's support their first step should be to talk to the school (or to the local authority link worker if the child is not in school). If they still feel concerned after speaking to the school, the next step is to contact the local authority. Details of local authority ASL officers are available on the Enquire website, see [www.enquire.org.uk/local-authorities](http://www.enquire.org.uk/local-authorities)

If matters are still not resolved, other options may be available to try to resolve the disagreement, such as making a formal complaint to the school or local authority, requesting Independent Adjudication and making a reference to the Additional Support Needs Tribunals for Scotland (ASNTS). If there are grounds, disagreements relating to transition arrangements and CSPs can be referred to the ASNTS. Let's Talk ASN is the national advocacy service for appeals to the Additional Support Needs Tribunal about additional support for learning: email [letstalkasn@edlaw.org.uk](mailto:letstalkasn@edlaw.org.uk) or call **0141 445 1955**.

For more information, see **Enquire Factsheet 4: Resolving disagreements and Steps to avoid and resolve disagreements about additional support for learning**.

There is also the option for parties to access independent mediation at any stage. See **Enquire Factsheet 8: Mediation**.

## School attendance

There can be many reasons for a child not attending school. The child may be having problems at school such as bullying, or may be absent from school due to ill-health, family problems or exclusion. If a looked after child is having problems that are affecting his or her willingness or ability to go to school, it is important that the school knows about these problems. The home-school link worker plays an important role in encouraging the child to attend regularly. For more information see **Enquire factsheet 9: School attendance**, **Enquire factsheet 17: When a child can't go to school** and guide for young people **What happens when you can't go to school?**

## School exclusion

Guidance suggests that assessment and planning for looked after children and young people could include an assessment of the risk of behaviour likely to lead to a possible exclusion and the support and provision needed to prevent this happening.

If a looked after child is excluded, the school should follow certain procedures. These include:

- checking there are proper arrangements for the child's care before they are sent home
- arranging an alternative education while they are off school
- explaining any conditions that must be met before the child can return to school
- arranging a meeting to discuss the exclusion.

If parents or carers do not agree with the exclusion, they have the right to appeal it. A child over the age of 12 also has the right of appeal. If a child is excluded several times, this may suggest a need to review and make changes to their educational provision. For more information see **Enquire Factsheet 11: Exclusion from school**.

## How Enquire can help

Enquire is the Scottish advice service for additional support for learning. Enquire provides independent advice and information through a helpline, website and guides. The service can explain the law and how it relates to the issues facing a looked after child, and advise on possible ways forward. As well as resources for practitioners, parents and carers, there is a dedicated website and range of guides for children and young people.

## Where to find out more

### Organisations

Who Cares? Scotland exists to support all children and young people in care:

[www.whocaresScotland.org/](http://www.whocaresScotland.org/)

Pupil Inclusion Network Scotland: [www.pinscotland.org](http://www.pinscotland.org)

Education Scotland:

[www.educationscotland.org.uk/inclusionandequalities/additionalsupportforlearning/lookedafter/index.asp](http://www.educationscotland.org.uk/inclusionandequalities/additionalsupportforlearning/lookedafter/index.asp)

The Centre for Excellence for Looked After Children in Scotland: [www.celcis.org/](http://www.celcis.org/)

Let's Talk ASN is the national additional support needs advocacy service:

Email: [letstalkasn@edlaw.org.uk](mailto:letstalkasn@edlaw.org.uk) Telephone: **0141 445 1955**

### Publications

Improving the Education of Looked After Children, A Guide for Local Authorities and Service Providers (Scottish Government, 2009)

[www.gov.scot/Publications/2009/03/25142835/0](http://www.gov.scot/Publications/2009/03/25142835/0)

Core tasks for Designated Managers in educational and residential establishments in Scotland (Scottish Government, 2008) [www.gov.scot/Publications/2008/09/09143710/0](http://www.gov.scot/Publications/2008/09/09143710/0)

Count Us In: Improving the Education of our Looked After Children (HMIE 2008)

[www.educationscotland.gov.uk/publications/c/publication\\_tcm4618881.asp](http://www.educationscotland.gov.uk/publications/c/publication_tcm4618881.asp)

These Are Our Bairns: A guide for community planning partnerships on being a good corporate parent (Scottish Government, 2008)

[www.gov.scot/Publications/2008/08/29115839/0](http://www.gov.scot/Publications/2008/08/29115839/0)

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

[www.legislation.gov.uk/asp/2004/4/contents](http://www.legislation.gov.uk/asp/2004/4/contents)

Supporting children's learning code of practice (Scottish Government, 2010)

[www.gov.scot/Publications/2011/04/04090720/0](http://www.gov.scot/Publications/2011/04/04090720/0)

Education outcomes for Scotland's looked after children, 2011/12

[www.gov.scot/publications/2013/06/9231](http://www.gov.scot/publications/2013/06/9231)

How much is education included in the plans of children on Supervision Requirement [www.scra.gov.uk/publications/research.cfm](http://www.scra.gov.uk/publications/research.cfm)

Peer mentoring opportunities for looked after children and care leavers

[www.gov.scot/publications/2012/06/1483/0](http://www.gov.scot/publications/2012/06/1483/0)

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## Extra support at school: The rights of looked after children

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