

Date: 31st May 2022

Education, Children and Young People Committee

Dear Convener,

The Cross Border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022

I am writing on behalf of Clan Childlaw about the Cross Border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 ('the Regulations') which the Scottish Government laid before Parliament on 26th April 2022.

As Scotland's law centre for children and young people, Clan Childlaw exists to protect and strengthen children's rights and improve their lives. We have been following the progress of, and debate surrounding, these Regulations with interest. Specifically we have taken the opportunity to listen to the oral evidence given by the Children and Young People's Commissioner Scotland Office (CYPCS) and the Minister for Children and Young People (the Minister). We have also read the documents accompanying their evidence, including the Minister's letter to Committee dated May 2022, provided to the Convener in advance of her evidence.

It is clear from the evidence provided, and the questions posed by the Committee, that concern about the provision of advocacy and the absence of a right to legal representation has become a central part of the debate. As lawyers for children and young people, we believe strongly in the right to, and benefit of, legal representation for all children to enable them to effectively access justice. While we do not intend to add anything further to the substance of that debate, having considered the evidence provided to the Committee – specifically our role in supporting advocacy workers - we thought that it would be helpful for us to provide some clarification.

Firstly, we are delighted to note the esteem in which we are clearly held by the Minister and her colleagues whom we have had the pleasure of working with for a number of years. Currently this work entails the operation of a training and legal support service for independent children's advocacy workers in the children's hearing system. The legal support service consists of a telephone enquiry line, in which we aim to support these advocacy workers to increase their knowledge of how to use children's rights to advocate for and support children and young people at children's hearings.

The training provides advocacy workers with a baseline of knowledge of the law and rights as they relate to children's hearings which helps enable them to support children and young people. Through both the training and the enquiry line we provide second tier advice to the advocate who uses that information to support the child through the children's hearing system. Where a rights breach is identified through the legal support service the child needs a lawyer. In those cases the legal support

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service enables the advocate to discuss the availability of legal advice and assistance for the child to help them access justice.

We have agreed with the Scottish Government that we will provide assistance in line with the existing scheme to those advocacy workers working with cross-border children who choose to call our enquiry line. This provision of support is reliant on the advocacy workers knowing about and identifying rights breaches within the context of complex DOL orders and then reaching out to us on behalf of the child. The service will enable those advocates who contact us to help the children they support through raising awareness of rights but does not offer legal advice or representation to that child. Nor is it the equivalent of legal advice or assistance for all children who may need it.

I appreciate that this may be something that was clear from the Minister's statements, but we thought it might be helpful to give further background and detail to support your final consideration of the Regulations. Should you wish any further information in relation to this, please do not hesitate to contact us.

Katy Nisbet

Legal and Policy Manager

For and on behalf of Clan Childlaw Ltd

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