

Children and Young People's Commissioner Scotland

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

Revised Appendix: Suggested Amendments to Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022

We have revised our list of suggested amendments to incorporate reference to the Care Inspectorate's "Report on Distance Placements" published on 18th May 2022. This is to help illustrate the issues we have raised and which the current proposed Regulations do not cover.

Point of Process	Relevant provision of the Regulations	Suggested amendment from CYPCS to ensure adequate legal safeguards	Report and recommendations of Care Inspectorate
Application to High Court by Local Authority	<p>Reg 7. Notice and undertaking required for deprivation of liberty order to have effect as if compulsory supervision order</p> <p>Content of notice</p>	<p>Within 24 hours, notification of an application to the High Court should be made by the Local Authority to the receiving Scottish local authority, Health Board, the residential care home for children and young people, the child and anyone with parental rights and responsibilities for the child.</p> <p>This notification should include a copy of the application itself and the supporting social work welfare needs assessment and planning reports.</p> <p>Place additional restrictions on which care homes for children and young people are able to accept cross-border deprivation of liberty order placements.</p>	<p>"A theme emerged from survey respondents that issues arise in the independent sector where the need to fill placements has taken priority over suitability. The Children's Commissioner for England has produced several informative papers highlighting the reality for children whose care is often reliant on private providers operating in cheaper regions and who do not prioritise local children. They describe a system where children are placed away from home not because it is best for them, but because there is nowhere else for them to go." (p8)</p> <p>"A theme that emerged from respondents was a concern about staff skills to deliver therapeutic care. Respondents indicated that care services were sometimes not able</p>

	<p>Reg 3. Deprivation of liberty order to <i>have effect</i> as if compulsory supervision order</p>	<p>For example, a care home for children and young people may only accept a placement of a child subject to a Deprivation of Liberty order if:</p> <ol style="list-style-type: none"> 1. It is registered, regulated and inspected by the Care Inspectorate as a care home for children and young people and has a recent “adequate” inspection report. 2. It provides written confirmation to the placing local authority and the Care Inspectorate that it complies with the requirements of the UNCRC in upholding children’s human rights and adheres to the Secure Care Standards and Pathway, 2020, the Health and Social Care Standards; and all national guidance, policy and training requirements governing the provision of Secure Accommodation providers in Scotland (for example, National Child protection Guidance and requirements to have staff registered with the Scottish Social Services Council and other professional regulatory bodies). 3. The Head of the care home has assessed and is satisfied that staff training and experience is sufficient to deliver the child’s care plan, and to meet the individual child’s needs. 	<p>to deliver the required support due to high staff turnover and a lack of knowledge in areas such as trauma. Some respondents said placing social workers often lacked knowledge about the care service as separate placement teams had sourced placements for children. We heard some placements were secured based on availability or an urgent need to find somewhere at short notice, which had led to inappropriate provision. Examples were provided by inspectors in which placing social workers were unaware of a service’s regulatory history, staff skills, placement setting or distance from home community. We know that even when placing authorities were aware of weak grades or high-risk evaluations, placements over significant distances and legal jurisdictions still went ahead. Respondents highlighted that regulated care providers’ aims and objectives at times lacked sufficient detail on staff skills, qualifications and experience, as well as house location.” (p9)</p> <p>“Where it is necessary to place a child cross border, it should be undertaken on a planned basis only. England’s placement regulations state that out of authority placements to Scotland require effective planning, engagement and information sharing with the services likely to be</p>
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Transfer of Legal Order	3. Deprivation of liberty order to have effect as if compulsory supervision order	<p>The initial order should be limited to 22 days to reflect the emergency and temporary nature of the placement.</p> <p>Restricting the order to having the same effect as an <i>interim</i> compulsory supervision order (an ICSO) provides strict time-limited safeguards for the protection of the child's rights and parity of treatment for non-Scottish children being deprived of their liberty under Scots law.</p>	<p>"When placing within England and Wales, regulations for emergency out-of-area placements set requirements around care planning and consulting with the area local authority. These must be completed within five days of the placement being made." (p13)</p>
Decision of High Court and Notification		<p>If the High Court grants a Deprivation of Liberty order, the placing local authority must immediately, but no later than within 24 hours:</p> <ol style="list-style-type: none"> 1. Provide basic notification of the following information: the child's age, initials or case reference, the name of the placing local authority, the legal representative or Guardian's name, the location of the care home and the duration of the High Court order to the Scottish Government, Children and Young People's Commissioner Scotland, the Care Inspectorate, the Mental Welfare Commission and the Principal Reporter. 2. Provide enhanced notification (in addition to basic notification, a copy of the High Court Deprivation of Liberty Order, care and education Plans, the 	<p>"We know that host authorities in Scotland are sometimes unaware that young people have been placed cross-border in their area; only finding out when serious issues have arisen, and they have been asked to step in. Similarly, without prior consultation, child and adolescent mental health services (CAMHS) have been asked to do the same." (p6)</p>

		<p>child's Welfare Needs Assessment, Social work report, and the supporting application to High Court) to the Head of the care home, the Chief Social Work Officer, Health Board and Director of Educational Services for the receiving area.</p>	
Duration of placement		<p>Initial placements under these Regulations should only be made for a maximum of 22 days (as per an ICSO).</p> <p>Subsequent placement may be made for 3 months via an application for review of the placement to the High Court to determine whether the placement continues to be necessary and proportionate to meet the child's needs for care and protection, supported by a longer-term assessment and plan to be submitted to the High Court.</p> <p>No child can be lawfully deprived of their liberty in Scotland under these Regulations for a period in excess of 6 months from the first date of their placement under the High Court Order.</p> <p>There should be a duty on the placing local authority to provide a detailed assessment and plan in conjunction with the public authorities in Scotland, the care home and the</p>	<p>"The inspectors we surveyed reported limited evidence of adequate planning and consideration of needs, linked to the impact of distance, prior to a move. We heard accounts of children moving significant distances with no admissions or matching assessment in place. Furthermore, a lack of assessment, information sharing and planning between responsible (placing) authorities and host authorities was highlighted in some extremely poor outcomes for children placed cross-border." (p6)</p> <p>"A theme emerged that many distance placements appeared to be made on an emergency basis with survey respondents suggesting these had often led to inappropriate provision. Some respondents considered these could have a negative impact on children with limited evidence of planning or consideration whether</p>

		child and family identifying how it proposes to fulfil its human rights duties to the child.	<p>placements should be short or long-term.” (p8)</p> <p>“According to our survey, some vulnerable children are living for lengthy periods (up to four years and more) with their legal orders and care plans managed by local authorities in different legal and policy jurisdictions, often with little or no knowledge of the Scottish care system, local service provision or the communities in which children are placed.” (p11)</p>
Transport	7. Notice and undertaking	The placing local authority must provide an undertaking that the transportation of children to and from care placements is child-centred, trauma sensitive, and in accordance with the child’s human rights.	<p>“In our survey, we heard that children were sometimes unaware they were moving to Scotland until they had arrived at the placement.” (p5)</p> <p>“Further alarming cases were highlighted in which children were transferred in secure transport at night with security personnel and no one familiar to them. We know from our regulatory work that this experience can retraumatise children and we are very concerned about this practice.” (p9)</p> <p>“Before accepting placements, providers must satisfy themselves that the transportation of children to and from care placements is child-centred, trauma sensitive and adheres to human rights and UNCRC legislation.” (p16)</p>

Child's rights and needs	10. Content of undertaking	<p>The placing local authority must provide an undertaking that</p> <ul style="list-style-type: none"> • it will, in the performance of its statutory functions in relation to the child, ensure that it and the care home and any 3rd party provider of services acting on its behalf, complies in full with the requirements of the UNCRC. • it will, support and pay for regular visits and contact between the child and their family throughout the duration of the placement. 	<p>"We found inspectors were concerned about continuity of relationships. A lack of direct contact with families, brothers and sisters and friends, following moves to distance placements, left children without a sense of belonging and feeling disconnected from home communities... In our survey, most respondents evaluated plans for family contact as 'limited' or 'not good enough'" (p7)</p> <p>"Providers should only accept children into placements where the United Nations Convention on the Rights of the Child (UNCRC) guidelines on direct contact with parents, carers, brothers, sisters, and friends can be adhered to. This should be central to upholding children's rights, good placement planning and adhered to throughout a child's placement." (p15)</p>
Child's rights and needs	Receiving Local Authority and Health Board duties	<p>Within 72 hours of the child being placed in the Scottish care home, the receiving local authority Social Worker and Mental Health professionals must make contact with and visit the child and if necessary, conduct assessments of needs under sections 22 and 23 of the Children (Scotland) Act 1995 and under relevant mental health legislation.</p>	<p>"Scottish public services and corporate parents are often unaware of placements until points of crises when services have stepped in to provide support and keep children safe." (p11)</p>

		<p>Within the 22-day period of the initial order, the placing and the receiving local authorities must convene a multi-agency, Team Around the Child meeting (under the Getting It Right for Every Child) (GIRFEC) policy framework for assessment and planning in children's services) with the child and family and provide a recommendation and report to the High Court about the suitability of the placement for the child and the plan for the continuing care and protection of the child.</p>	
Scrutiny / Inspection	11. Provision of advocacy services	<p>The Scottish Government must provide access to state funded legal advice and representation in relation to the child's legal and human rights, the relevant Scottish public authorities' statutory duties and the child's rights to access to justice and effective remedies under Scots law.</p> <p>The child will ordinarily be receiving advocacy services as part of the statutory duties of the placing local authorities. It is essential that the Regulations provide clear rights of the child to access free legal advice and assistance from a suitably qualified and experienced Scots lawyer.</p>	
Review and challenge		<p>We suggest that the Scottish Government consider a provision similar to that in section 7 of the UNCRC (Incorporation) (Scotland) Bill.</p>	

		We consider that this will ensure that children and young people have an effective remedy to challenge any rights violations.	
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