

# Report on distance placements



# Distance placements: exploration of practice, outcomes, and children’s rights

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## Cross-border and distance placements: exploration of practice, outcomes, and children's rights

### Summary

In August 2020, we set up a short-life working group to explore and report on cross-border and distance placements including those from within Scotland or elsewhere in the UK or Republic of Ireland (hereafter referred to as distance placements). We took the decision to carry out this work following concerns we identified during the course of our inspections and discussions with stakeholders about negative experience and impact on children and young people in cross border and distance placements.

Our working group liaised with stakeholders such as the Scottish Children's Reporters' Administration (SCRA), the office of The Children and Young People's Commissioner Scotland (CYPCS) and other UK regulators. The group also surveyed the professional views and experiences of inspectors involved in the regulation of residential children's services across Scotland and examined a range of relevant research and reporting from other national organisations.

Our findings highlight that many children do not have their rights protected due to inadequate planning, poor practice and a lack of resources in their home communities. Concerns centre around family contact, advocacy, understanding of rights, transport methods, transitions and a lack of planning for placement moves. We found a lack of information sharing from responsible authorities and instances where care providers accept placements without the specialist skills to provide the required level of care. The indefinite placement of children from outside Scotland on legislation from different legal jurisdictions - essentially placing children outside the Scottish care system and its protections - was also an issue. Furthermore, consideration of the wider research highlights that the placement of vulnerable children in distance placements increases the likelihood of poorer outcomes in relation to some key outcome measures. Our report concludes with recommendations.

## Introduction

The Care Inspectorate established a working group to consider practice, outcomes and rights issues for children accommodated in distance placements. The term ‘distance placement’ describes any placement of a child outside their home community. Distance placements will therefore include children placed from within Scotland, and children placed from elsewhere in the UK, often referred to as ‘cross-border’ placements. However, reflecting the balance of issues we found in practice, the findings and recommendations in this report relate predominantly, but not exclusively, to placements from outside Scotland. Rights-based organisations in Scotland have raised concerns about cross-border placements, questioning whether children placed from different legal jurisdictions have the same protections and rights as children placed under Scottish legislation ([Independent Care Review report The Promise](#); [the Children and Young People’s Centre for Justice report on children in conflict with the law](#); and [the Children and Young People’s Commissioner for Scotland’s work on strategic litigation](#)). In line with a sharp increase in the number of children placed in Scotland’s secure care centres from outside Scotland as noted in [Information sheet 76 by the Children and Young People’s Centre for Justice](#), our inspectors have reported an increase in the number of children placed on a cross-border basis in regulated care homes.

Our working group’s objective was to consider practice from a children’s rights perspective through these four key stages.

- Scope the prevalence and impact of long-distance placements.
- Produce a paper summarising inspectors’ experience from regulatory practice, with a discussion on expectations for practice, outcomes and children’s rights when accommodated far from their home and community.
- Liaise with other regulators across the UK to share and discuss findings.
- Promote the rights of children in the context of long-distance placements.

Throughout this report, ‘children’ describes children and young people up to age 18. Membership of our working group comprised inspectors from the children and young people’s team, the children and young people’s strategic team, and the complaints team. The scope of the working group was to consider placements in regulated care homes and specialist residential schools. The group met seven times from August 2020 through to March 2021. There was limited literature to draw upon from within Scotland, however, our report refers to recent studies in England (following a widely reported resource crisis) which discuss children’s rights issues in distance placements.

We conducted group discussions, a survey of inspectors, external engagement and we referred to literature. We contacted the Scottish Children’s Reporters’ Administration (SCRA), the Centre for Excellence for Children’s Care and Protection (CELCIS), Who Cares? Scotland, UK regulatory bodies responsible for social care and the Children and Young People’s Commissioner Scotland (CYPCS). As well as providing information, these external partners expressed interest in receiving our findings. Although inspectors provided examples involving children, our working group did not directly consult children, however we have agreed that we will

undertake a consultation study with children experiencing distance placements in Scotland. This forms one of the key recommendations from our findings.

## Inspector survey

Inspectors completed a survey on children's rights in distance placements. Respondents were inspectors in our children and young people's team, which regulates a range of children's services including all children's care homes, secure accommodation, and specialist residential schools in Scotland. The questionnaire used closed scaling questions with prompts for practice examples. We designed the survey with feedback from Care Inspectorate colleagues outside the working group and external professionals specialising in children's rights. The Care Inspectorate's policy team provided full analysis of the results and highlighted the key messages. The survey was completed in January 2021.

## Findings

This section explores themes raised in the survey. It also draws upon the wider work of the working group and includes references to literature.

### Advocacy and understanding of rights

A theme of the survey feedback was that many young people placed cross-border had arrived in Scotland with little understanding or knowledge of their rights, as well as a lack of independent advocacy support. Comparing the different systems, in England it is the responsibility of the independent reviewing officer (IRO) to oversee children's care plans and act on their behalf when challenging the local authority. However, in their report [Pass the parcel: Children posted around the care system](#), the Children's Commissioner for England recommends that IROs increase contact with children in distance placements. This report cites research published by Ofsted highlighting that IROs rarely saw children between reviews or acted to challenge drift or delay. In another study looking specifically at out-of-area placements in England, they found children had limited input in some key decisions about their care. Recognising the gaps and the increased vulnerability of children in distance placements, the Children's Commissioner for England in their report [The children who no-one knows what to do with](#) recommended an advocate is named at the beginning of each placement. In our survey, we heard that children were sometimes unaware they were moving to Scotland until they had arrived at the placement. We also heard that some children on voluntary arrangements from England (unregulated by court) had had their phone removed and did not think they were allowed to leave services on their own. In Scotland, the aspiration is that all children in alternative care settings have access to independent advocacy before, during and after their care experience. The Independent Care Review findings, outlined in [The Promise](#), called for greater consistency in applying these standards across Scotland. Who Cares? Scotland advised that they have on occasion provided advocacy to children placed from outside Scotland.

In 2019, the [Children and Young People's Commissioner Scotland](#) raised concerns following accounts of young people placed on deprivation of liberty (DoL) orders from England without adequate information on their rights or legal advice before and during placements. More recently, [a Care Inspectorate review looking at a small number of DoL cases](#) highlighted some positive examples of practice in this area. While this may provide some initial indications of improved quality of service (where

a DoL order is in place) our review notes several areas for improvement and the findings cannot be generalised to all children placed in Scotland from other parts of the UK. Exactly how many children are placed cross-border into care homes is unclear, but the significant majority are thought to be subject to statutory care orders or similar (not DoL orders). We have introduced a notification that requires providers to notify us when a young person, placed from different legal jurisdiction within the UK, moves in and out of placement. The aim of the notification is to give us assurance in relation to care planning and information for data analysis.

## Planning and matching

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. We note that following concerns about information sharing, the Welsh Government developed protocols to improve communication when young people were placed out of area from English authorities ([Department for Education, 2015](#)). We understand that the Scottish Government is considering whether similar protocols would be helpful here, given that a number of organisations have raised the issue of planning care across large distances and the challenge of navigating different legal and policy systems. (This issue is raised by: the Independent Care Review in [The Promise](#); the Children and Young People's Centre for Justice in [Rights Respecting? Scotland's approach to children in conflict with the law](#); and The Children and Young People's Commissioner for Scotland's work on [strategic litigation](#). The Children's Commissioner for England's report [Pass the parcel](#) found that distance presented problems when coordinating professional networks across different local authority areas in England.

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. While good placement practice suggests that consultation with host authorities around capacity to meet need should be a prerequisite, this is not happening consistently in cross-border placements, despite a legal duty to do so. The statutory duties for English placing authorities are set out in The Children Act 1989 guidance and regulations. Volume 2: Care Planning, Placement and Case Review and were amended in July 2021. When placing children in Scotland, the English placing authorities must still comply with the regulations and statutory guidance. They are legally bound to take all the steps they would take if the child were being accommodated out-of-area in England or Wales. This means that when placing a child in Scotland, English local authorities have a legal duty to plan for the placement effectively, engage with the receiving authority and share information with the services that will likely be responsible for meeting the child's needs ([Children Act 1989 guidance and regulations Volume 2](#)). However, despite finding a range of issues relating to information sharing, the Care Inspectorate has no power to enforce these regulations. We consider this a key issue that requires attention to support the rights of the children involved. We are currently considering options to strengthen preplacement communication by requiring providers to demonstrate that placing English authorities have met their legal obligations in relation to planning and

consulting prior to placement. We are also considering options to ensure timely communication with our scrutiny partners in the UK where we find practice that does not comply with statutory duties.

Survey respondents raised the issue of viability of care providers relying on out-of-authority placements from in and out of Scotland. One responded that a care provider had 90% of placements from local authorities in England and we heard another Scottish provider was “marketing hard” south of the border. Positive examples were also provided, where young people had been consulted about their views and information sharing was completed prior to placements being agreed. In addition, respondents were aware of placing authorities that clearly considered the aims and objectives of services to assist decision making. One respondent indicated that for residential special schools, planning and visiting for young people and families was very good, with moves not taking place without considerable assessment and familiarisation.

### **Family contact**

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. The following each highlight concerns with this issue.

- [The Promise](#), Scottish Government, 2020.
- [The children who no-one knows what to do with](#), the Children’s Commissioner for England, 2020.
- [Rights Respecting? Scotland’s approach to children in conflict with the law](#), Children’s and Young People’s Centre for Justice (CYCJ) 2020.
- [Strategic litigation](#), Children and Young People’s Commissioner Scotland (CYPCCS), 2019.

The report [Rights Respecting? Scotland Approach to Children in conflict with the law](#) described the impact of distance placements on family connection and belonging as “deeply concerning” and “extremely worrying”. The report highlights an 89% yearly increase of placements to Scotland’s secure centres from outside Scotland (representing almost 50% of all places). Issues relating to connection with friends, culture, school system are also discussed.

In our survey, most respondents evaluated plans for family contact as ‘limited’ or ‘not good enough’. The challenges to meet the United Nations Convention on the Rights of the Child (UNCRC) guidelines are clear. Article 9 requires states to “respect the rights of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents regularly, except if it is contrary to the child’s best interests”. Some respondents noted there was not enough focus on contact with brothers, sisters, and friends. In this respect, the UNCRC guidelines stipulate that regular contact with the family “as well as with other persons close to him or her, such as friends, neighbours and previous carers” should be encouraged and facilitated. It is difficult to understand how these rights can be protected in the context of many distance placements. As our survey results highlighted, many children have been placed significant distances from home into rural placements

throughout the pandemic. Inspectors commented on the additional barriers in these circumstances to direct family contact, which include a reluctance or inability of families and support staff to travel.

### Emergency placements

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 placements should be short or long-term. A lack of resources was often cited as the reason for a child being placed in a care home on an emergency basis a distance from home. One respondent liked that a provider offered 90-day placements, which was viewed as a stopgap to allow for assessment of longer-term options. However, 90 days is not insignificant should there be a breach of the child's rights, and the impact of multiple placements must also be considered. The 2019 report *Pass the parcel*, by the Children's Commissioner for England reveals that children placed outside their home area are already at increased risk of multiple placements.

### Resource implications

The Independent Care Review's 2020 report [The Promise](#) was unequivocal in its view that "Scotland should stop selling care placements to local authorities outside Scotland" and questioned the ethics of transporting children to an "unknown place with no connections or relationships". The Independent Care Review's subsequent publication [The Plan 21-24](#) further asserts that this should be achieved by 2024. It is worth considering the widely reported resource crisis in England to understand the increase in cross-border placements. In the 2020 briefing paper [The children who no-one knows what to do with](#), The Children's Commissioner for England highlights the challenges faced by the courts in England. Citing a series of high court judgments where no suitable care home place could be found "anywhere in England", the UK government was criticised for a failure to plan for vulnerable children. The briefing highlights "highly unusual... sustained criticism" from a wide range of regulators, ombudsmen and parliamentary committees about the state of residential care in England. In August 2020, the BBC reported that the number of children in care in England and Wales with restrictions placed on their freedom had tripled in the previous two years with deprivation of liberty orders increasingly used to detain children in homes when suitable accommodation could not be found. One court judgement described the restrictions as "draconian" stating however that 30 applications for a place in a secure unit or alternative settings had been declined.

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. [Rights Respecting? Scotland's approach to children in conflict with the law](#), published by Children's and Young People's Centre for Justice (CYCJ) in 2020 discusses secure care in Scotland, raises the question of whether the current system encourages children to be placed in certain settings and contends that cost rather than the best interests of the child is driving decision-making. Respondents to our survey suggested that remote

placements can be viewed as a model of care and used to manage risks. They raised concerns about isolation, access to resources and a lack of integration in communities.

### **Specialist care**

Often, the rationale allowing for a longer-distance move is the need for specialist therapeutic input. In accordance with placement regulations, if a placement is for educational or therapeutic purposes, the placing authority must be satisfied that the people employed can provide these services. However, 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 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.

Some positive examples were provided where placing authorities had taken an interest in staff skills, the care service, its methods of intervention and opportunities for focused work. One respondent stated they were satisfied a placing authority in Northern Ireland had chosen a care home service in Scotland due to their knowledge of it and their view that a suitable resource could not be found in the child's home area.

### **Preplacement visits and travel**

Our survey results indicated children had seldom visited services before moves to distant placements. Reasons for this included distance, time pressures and situations requiring placements to be made on an emergency basis. Some examples included the use of secure transport for children travelling cross-border subject to care or voluntary orders (both non-secure orders). More detail about this is provided on page 12. 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. We learned of other examples where it was reported children already in placement had no knowledge of a child moving into the service. Several respondents highlighted cases where children were collected and transported by care workers they did not know. Another stated they often heard that children were not adequately informed or prepared for the journey length, with many not having left their immediate communities before.

It was noted preplacement visits were more likely to happen for out-of-authority placements made within Scotland. Survey results highlighted examples where moves had been well thought out in terms of travel with pre-admission visits or virtual visits completed, as well as planning meetings before a decision was made

about the placement. We heard some care home services were offering an introductory video session, a video meeting and a welcome book created by children. One respondent said travel arrangements were mostly suitable for those placed following a transition plan, where social workers or family had helped develop the plan.

## Transitions

Survey respondents felt that transitions out of placement were poorer than transitions into a placement and this was due to resource issues, young people's age or placement breakdown. This was raised in CYCJ's report on [Scotland's approach to children in conflict with the law](#), which voiced concerns about the impact of distance and legal jurisdiction on positive transitions out of secure care. Some respondents thought practitioners lacked the time for adequate planning for long-distance transitions. A theme from respondents was that children placed cross-border were rarely given a choice in terms of which service they move on to, sometimes due to their circumstances or the limited options available. One respondent was aware of a child moving back to a homeless hostel in England, hundreds of miles away with no preplacement visit after a lengthy placement in Scotland. One respondent highlighted some good practice where a local authority commissioner had been tasked with identifying the initial placement and a future placement at time of referral.

## Continuing care

There was concern about a lack of clarity regarding continuing-care rights across legal jurisdictions. Consistent with [recent findings by the Children's Commissioner for England](#), there was a view that almost all children returned to their home communities following a distance placement. One respondent in our survey gave an example about continuing care where a young person from England approaching 18 wished to stay in their placement. We understand that following an initial period of uncertainty and independent legal advice, they were able to remain in their placement. Scotland rightly does not discriminate against children in terms of their rights. Therefore, it is important that all children and young people placed in Scotland from different legal jurisdictions have clarity and security in relation to continuing care rights.

## Cross-border placements and the legal context

Our findings have highlighted a view that providers in Scotland are often confused about legal orders and the English legal system (although some inspectors felt this had improved since the Care Inspectorate started raising awareness). We heard many examples where children had moved cross-border into care homes before placing authorities had provided evidence of legal status to providers. We learned that subsequent requests (by providers for legal orders) went unanswered, therefore a child's legal status was unknown, and it was unclear if placements were lawful. For care professionals, the absence of a coherent statutory framework working across UK jurisdictions adds to the complexity of cross-border placements. In October 2020, Mr Justice Cobb, said the issue of identifying the legal framework under which a placement of an English child in a Scottish residential care home could be achieved or authorised and recognised had been around for some time. Legal challenges have arisen and continue to arise, with cases drawing interest from children's rights groups and care professionals.

[The Children Act 1989 guidance and regulations, Volume 2, 2021](#) suggests that placement practice has shifted significantly. The following examples, taken from the guidance, are circumstances where the question of a care placement outside England and Wales may occur.

“It would be in the interests of a child to be placed with a relative or other person elsewhere in the British Islands: Scotland, Northern Ireland, the Isle of Man, or the Channel Islands.

“A foster carer moves to a new address elsewhere in the British Islands and there are reasons in favour of continuing the placement; or

“A foster carer is required to go overseas for a tour of duty or service posting and there are reasons in favour of continuing the placement.”

While a legal pathway for placements to care homes from England, Wales and Northern Ireland exists, questions persist particularly around orders made under section 20 of the Children Act 1989, Interim Care Orders, and the legal effect of deprivation of liberty (DoL) orders in Scotland. Although in a recent DoL case on 15 March 2021, the court of session found the interim order should be recognised and enforceable and the child detained in Scotland under the terms of the order made in England. The Children and Young People’s Commissioner Scotland argues that without the necessary Scots law safeguards, DoL placements in Scotland are incompatible with the requirements of international human rights law, policy and standards. Cases have been challenged where it has been argued children have been deprived of their liberty unlawfully in care home establishments that are not authorised under Scottish legislation to do this.

From a rights perspective, our concern is that, in contrast to children placed from within Scotland, children in cross-border placements have no right to a GIRFEC assessment, co-ordinated support plan or review of care through the Scottish Children’s Reporter’s Administration (SCRA). 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. Moreover, 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. We are aware that the Scottish Government is currently considering whether amendments to existing legislation are required to ensure the rights of all children placed in Scotland are protected and if so, what these amendments should be and how they should be implemented.

## Human rights

Issues of human rights have been raised in the context of distance placements. In its report on [Scotland’s approach to children in conflict with the law](#), the Children and Young People’s Centre for Justice raised issues of compliance with Article 37 for children from England and Wales detained of their liberty and placed in Scottish secure settings. The report states barriers to maintaining contact with family and friends as well as being placed in another legal jurisdiction create significant

difficulties in supporting effective transitions. The same challenges will apply to vulnerable children in care homes.

The Care Inspectorate has engaged with the office of the Children and Young People's Commissioner Scotland when we have been concerned about individual children. Some of the themes raised as concerns are highlighted below.

- Concern about liberty or treatment to the extent that it contravenes the young person's UNCRC (Articles 16, 37 and 40) rights or their rights under Articles 5, 6 and 8, European Convention on Human Rights (ECHR) rights to privacy, dignity, liberty, and family life, and query about which safeguards had been put in place.
- The potential discriminatory impact on children being placed in Scotland and not included in the Scottish care system. This is particularly relevant in terms of accountability under the Children and Young People (Scotland) Act 2014, the children's hearings system, the national assessment and planning framework Getting it Right for Every Child (GIRFEC), and community planning partnerships' approaches, including the whole-systems approach.
- Concerns that the young person was placed in alternative care without adherence to the UNCRC guidelines. Specifically, those that ensure that the child is fully involved in the process, given legal advice and advocacy support, and able to object and appeal all decisions.
- The potential that placements are not lawful in Scots law, therefore the human rights requirement of 'in accordance with the law' was not met. In relation to placements unregulated by court orders (such as voluntary arrangements), The Children's Commissioner for England's office has called for much more scrutiny and accountability.

In relation to human rights, Scotland's Independent Care Review was clear in its report [The Promise](#) that placing children from outside Scotland was often a fundamental breach, denying them access to family support networks and services. The Care Inspectorate recognises our unique position and responsibilities to advocate for children's rights where we see these are not protected. This includes raising awareness and passing on information to scrutiny partners in the UK where practice falls outside our remit.

In [The children who no-one knows what to do with](#), the Children's Commissioner for England suggested children's basic rights may be compromised when attempting to secure short-term safety in out-of-area placements. Moreover, they questioned the use of distance placements as a safeguarding strategy in England, highlighting statistics that show more children in distance placements go missing and when they do, they are at risk of criminal and sexual exploitation, with most planning to return home as soon as possible. The study found that the experience of being placed far from home was often traumatic for children who are often not consulted about moves and left feeling isolated and missing family.

Following concerns raised by our inspectors, we explored the secure transportation of children to Scotland when placed on voluntary and care orders under English legislation. Although we have no remit over the methods English local authorities use to transport children to Scotland, we recognised the potential breaches of human rights law. As our survey highlights, concerns exist about children's welfare

and potential traumatising practice in relation to how children are transported to their placement. Our legal advice recommended that where inspectors have concerns, these are raised with placing local authorities or Scottish Government where appropriate. The Care Inspectorate now has an information sharing protocol with Ofsted that we have used to highlight concerns about practice and children's rights. In relation to some of the transport methods reportedly being used, the following rights of children are engaged and potentially being breached (although this will depend on the individual facts and circumstances in each case).

- Article 5 of the ECHR, which states "Everyone has the right to liberty and security of person". There are exceptions to this, as most human rights are not absolute. For example, the right to liberty can lawfully be breached if a person has been convicted by a competent court and sent to prison or if it is necessary to prevent the spreading of infectious diseases, or to protect people who are mentally ill.
- Paragraph 1 of Article 3 of the UNCRC, which states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".
- Paragraph 1 of Article 9 of the UNCRC, which states "State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child".
- Paragraph 1 of Article 20 of the UNCRC, which states "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State".

## Emergency placements

In relation to cross-border placements, no statutory guidance exists in the [Children Act 1989](#) on the process or circumstances where emergency placements can be made outside England and Wales. 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. The amended guidance and regulations for the [Children Act 1989](#) states that "Out of authority placements in Scotland require effective planning, engagement and information sharing with the services likely to be responsible for meeting the child's needs".

## Regulating cross-border placements

The following summarises our current understanding and expectations for providers relating to the lawfulness of cross-border placements.

- A young person subject to a care order from England or Wales may only be placed in residential accommodation outside England or Wales following a judgement that authorises this placement into a Scottish care service.

- Where required by law, the young person must also consent for this to happen, but the court can dispense with consent in certain circumstances, such as where the child cannot consent, or they withhold consent unreasonably.
- Alternatively, where the law provides that some other person, such as a person with parental rights, must consent to the placement, this must also have been provided.
- Previously, the Care Inspectorate has asked that, when placements are made from England and Wales, providers have written evidence of both:
  - the court judgment that authorises a placement outside England or Wales
  - the young person's consent, any other relevant consent, or a court judgement dispensing with the need for this consent, or evidence of another legal basis on which the young person is placed.

Where young people are moved to a care home from outside Scotland on deprivation of liberty orders, and to ensure young people's liberty is not being restricted unlawfully, we ask that services:

- have a copy of the English court order that sets out the specific restrictions on liberty the court has approved
- have evidence, prior to admission, that within six weeks of commencement of the placement, the placing local authority has agreed to make an application to the Court of Session in Scotland under the [Nobile Officium](#) for ratification of the English court order
- have confirmation that an application has been made to the Court of Session by the placing local authority under the Nobile Officium for ratification of the English court order within six weeks of the placement commencing or have evidence that they are pro-actively liaising with the placing local authority for this to be progressed within an agreed timeframe following admission.

Over the past year, we have focused on strengthening our communication with providers on these matters to ensure our expectations are clear and understood. There is some evidence that providers are now clearer about what is required and are complying with expectations. Monitoring compliance across all services that may accept a distance placement is challenging, however we will continue to use our authority to ensure that expectations are met.

## **Conclusion and recommendations**

When moving to alternative care placements, a child's right to stay in, or as close as possible, to their home communities next to family and friends is fundamental. In recent years, local authorities in Scotland have worked hard to keep young people in their home communities. We know from our own inspection evidence the positive benefits this has brought when it has been done in a planned, child-centred way. The benefits are not just for family relationships but also for potential positive relationships with key care staff continuing across placements. In summary, we know that upholding these rights leads to better outcomes for young people.

The rights of children placed at a distance from home, particularly those placed cross-border, are often not protected. There are some contributory factors such as inadequate placement planning, a lack of resources in home communities and issues in the current policy and legislative framework when moves do take place.

We acknowledge a lack of placements means difficult and pragmatic decisions must be taken. However, decisions should be made with awareness that placing vulnerable children at long distances from home may not only have a negative impact on outcomes but may also constitute a breach of duties under both statutory regulations and children's rights under UNCRC.

From the findings highlighted in our survey and in our research, we propose the following actions must be taken to ensure children's rights are protected. Many of these are applicable to the placement of any child moving to alternative care. For more information see our guidance [Matching Looked After Children and Young People: Admissions Guidance for Residential Services](#).

### Care providers

- Before accepting a distance or cross-border placement, providers should ensure children have a named independent advocate. A consistent advocate should be regularly available to children throughout their care experience (before, during and after).
- Providers should satisfy themselves that placing authorities have consulted host authorities **prior to placement** to assess capacity, need and appropriateness of placement. **This is a legal requirement for placing authorities.** A record of this assessment should be submitted to regulated care homes as part of the referral and matching information.
- Where a child requires specialist health services such as CAMHS, the health service in the area authority should be consulted **prior to placement. This is also a legal requirement under England's placement regulations.** This will enable the responsible authority to establish appropriateness of placement and ability to meet the child's needs. Providers should only accept the placement if evidence of this consultation is provided at matching and referral stage.
- Where a referral is made for a child at risk of organised criminal activity such as county lines or child sexual exploitation, host authorities (through initial consultation and assessment) should provide information regarding local risk and police intelligence. Providers should only accept referrals where evidence of this consultation is provided, and all relevant information shared. **Sharing information with services who may be responsible for meeting the child's needs is a legal requirement for placing authorities.**
- 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.
- 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 responsible for meeting the child's needs. Cross border emergency placements have led to some very poor outcomes and do not allow for the effective planning across different policy, practice, and legal jurisdictions.

- 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.

Providers must ensure their service profile accurately describes the location of care settings, and the skills, knowledge, and experience of the staff team. Services must be suitably equipped to meet the needs of the children for whom they agree to provide placements.

### **Actions for the Care Inspectorate**

Our working group recommended the following actions for the Care Inspectorate. As detailed below, some of these have been progressed since the group first presented its findings in March 2021.

- We have introduced a notification that requires providers to notify us when a young person, placed from different legal jurisdiction within the UK, moves in and out of placement. The notification aims to provide assurance in relation to care planning and information for data analysis.
- We have established links with both Ofsted and the Competition and Markets Authority to discuss cross-border placements. Future discussions should be held with other bodies regulating services for children in the UK or advocating on behalf of children in such placements, and include the findings from the working group, highlighting:
  - the issues around the transportation of young people to care homes in Scotland
  - a theme that young people are arriving in Scotland with limited understanding of their rights
  - our findings in relation to independent advocacy support for children placed cross-border
  - legal requirements around planning, consulting, and sharing information, including consultation with police and health services where appropriate, are not being routinely applied in cross-border placements
  - discussion on continuing care rights for young people wishing to remain in placement beyond 18 years.
- To improve the practice of placing authorities from outside Scotland, we should discuss with Scottish Government development of a protocol for inspectors to share relevant information with scrutiny partners across the UK and with the Republic of Ireland. We have already set in place a protocol with Ofsted where we have concerns about the actions or inactions of an English local authority that has placed a child in Scotland. In adopting a children's rights approach, the Care Inspectorate's scope and remit should not impact adversely on information-sharing to improve children's outcomes.
- We should strengthen our admissions guidance and support Scottish local authorities and regulated care providers to understand the statutory duties placed upon English placing authorities when placing a child cross-border.
- The Care Inspectorate should continue to hold providers accountable for ensuring that they are suitably equipped to meet the needs of the children for

whom they agree to provide placements and take appropriate action when required.

- We should consider how inspectors can strengthen support for children's rights where they are placed at distance. Fundamental rights to family, friends and other freedoms must be a key priority when assessing outcomes during inspections. This is the message from the Independent Care Review (2020) and the future direction of practice as aligned to the recent commitment to incorporate the UNCRC into Scottish legislation.
- The findings in this report should support the Care Inspectorate's Promise workstreams, ensuring the issues raised inform our reviews of practice, methodology and quality frameworks.

### **Consulting children**

- We have agreed to undertake a consultation study with children experiencing distance placements in Scotland.

### **Legislation – recommendations for the Scottish Government**

- The Care Inspectorate will continue to support the Scottish Government to address the following areas.
  - The indefinite placement of children in Scotland under legislation from different legal jurisdictions. In these circumstances, children are denied the same rights, standards and protections as children placed from within Scotland.
  - The secure transportation of children to Scotland when placed on voluntary and care orders under English legislation.
  - Adherence to placement regulations for children placed cross-border in terms of planning and consultation with host authorities (including NHS and Police Scotland).
  - Continuing care rights for children placed from different legal jurisdictions.

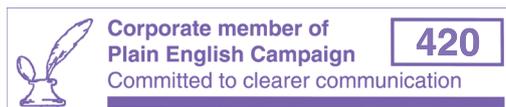
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