

## **CYCJ's response to the Scottish Government's policy position paper: Cross-border placements of children and young people into residential care in Scotland**

CYCJ would like to thank you for the opportunity to feed back on the proposals for cross border placements. We have attempted to provide feedback to the five questions suggested although due to the complexity of the issue, we believe there are several questions that the document raises on how duties are fulfilled and how children's care and protection will be monitored assessed and plans implemented, which it would be good to seek clarity on. These questions are incorporated throughout this consultation.

Firstly, we are unsure from the proposal how the number of cross-border placements will be reduced by what is being proposed? Is there a risk that they could in fact increase and be exacerbated by this policy? Who will ensure this does not happen? What are short-term timescales and what is proposed in the longer term?

One argument for this policy appears to result from the lack of provision in England and Wales. Has the UK Supreme Court set a timeframe to address this lack of provision? What is the evidence that there is a lack of provision in other parts of the UK? What research has been done on the number of placements required, current provision across the UK, the experiences and impact on children of placing them in another country away from their families and communities, and the needs of the children being placed? Is there an ongoing consultation in relation to this? We welcome the statement that this needs to be addressed, but we are unclear how will this be done, by whom and how it will ensure the reduction in cross-border placements? What is the evidence that these children would be left at risk if they were not placed in Scotland as stated in the paper?

From the policy paper, it is unclear in what circumstances it will be in a child's best interests to be placed in Scotland. Who will make this assessment, on what criteria and how will this be scrutinised and monitored to ensure it remains in the child's best interests? If children are placed in Scotland due to their risk as stated, would it not be in all their best interests for this risk to be addressed/reduced through a placement in Scotland? We believe there is a risk that it may increase the number of children in cross-border placements through this argument alone.

### **Do you support the proposals outlined above? If yes, why?**

CYCJ does not feel in a position to support the above proposal as it stands, due to the number of questions the proposal raises. We are not sure that the proposal meets UNCRC requirements or how it will achieve its aim of meeting *The Promise* and stopping cross-border placements. As depriving a child of their liberty should always be a last resort and for the shortest time possible in keeping with the ethos of minimum intervention, we would welcome more discussion on how this will be the priority, and what measures this policy will put in place to ensure that any decision is in the best interests of the child. The proposed timeframe of reviewing every three months does not fit with the shortest time possible and we would ask why this is the timeframe that has been proposed. It seems inconsistent for children to spend extremely short periods of time within the secure centres, whilst those who have their liberty restricted

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

by Deprivation of Liberty Safeguards orders placed within residential settings must wait three months for a review.

The proposal, as set out, appears to be driven by the need to remove a burden that currently exists within the court system. It does not take into consideration the transference of this burden to the Children's Hearing System and local authorities which will lead to resource implications and an impact on the children who are currently supported within this mechanism. How will this be addressed? Questions also arise from the dual legal implications of this with children being the subject of both Scottish and English/Welsh legislation. This is not in keeping with the minimum intervention principle and leaves questions around what should happen if the non-Scottish order is removed, and the placing authority withdraws from the child's care. Is it likely that there will be a reduction in DoLS orders in favour of Care Orders, which still has resource implications for Scotland? What will be put in place to ensure that the placing authority upholds its duty, roles, and responsibilities? Does the Scottish Government have the authority to hold these organisations and the High Court to account? Will the High Court take cognisance of the views of a children's hearing? What will be the process if the children's hearing does not believe the child meets secure care criteria/their liberty should not be deprived? Is the three months review period enforceable?

#### **If no, what would you wish to see changed and why?**

We believe that to support such a proposal there would need to be more scrutiny in relation to the questions outlined in this consultation. Additional concerns relate to what the position would be when competing orders are in place. One example would be if the child commits an offence while placed in Scotland and this is dealt with through the Scottish court system and an order is received. Which order would take priority, and who would oversee this order? What would happen if the Chief Social Work Officer did not agree to the placement, would this result in additional burdens being placed on other local authority areas who were more amenable to supporting the proposal? What would happen if the CSWO did not believe the child met secure care criteria, would the child be returned home? What if the child wishes to stay in Scotland; who is responsible for that child? Clarity is also required over what may occur should the receiving local authority or residential provider form a view that the legal criteria for a DoLS order is not met.

When taking the child's best interests into consideration, it is stated that any child residing in Scotland should be entitled to the same rights regardless of whether they are usually resident here or not. Children under the care of local authorities outwith Scotland must not be afforded less rights than their Scottish counterparts by virtue of their local authority of origin. To ensure this is achieved additional resources will be necessary as this requires input from social work, health, education, SCRA, CHS, Police Scotland and the third sector. There is no indication of how this will be funded - will money be redirected from placing authorities or the UK government? Is the burden of this being placed on the Scottish Government and Scottish services?

We believe that the additional responsibility on the CHS proposed would also need to take into account potential training needs, who is responsible for sharing and providing updates to the court, who compiles the report, will there be an expectation of input at High Court hearings? There is mention of increased use of safeguarders and advocacy services. Would this be in addition to what children may

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

already have in place within their support network and do we have the capacity to meet this need? Will an assessment further delay matters and require additional hearings? What is the power of the CHS in these situations?

We would appreciate some clarity on some of the statements in the proposal, for instance, 'short term,' 'exceptional circumstances,' 'certain purposes'. In 'an emergency situation' we agree that the placing authority needs to retain full responsibility for their child and meeting their needs. Involving a Scottish local authority and any additional services that may be needed, we believe, removes the responsibility that currently lies with the placing authority and would place additional pressures on Scottish local authorities, their resources, and services. If a DoLS is treated like a CSO does that mean by default, Scottish local authorities are involved in the overseeing of the order?

We are not clear from this proposal what the outcome would be if there was a conflict of interests, or unintended consequences that may be detrimental to the child and their rights. What is the appeal or complaints process if the child disagrees? Who hears such cases? As deprivation of a child's liberty is one of the most punitive orders that can be made, who is ensuring that the child's rights are upheld? What protection for these children will be in place? Has a CRIA assessment been undertaken or planned to be undertaken on these proposals? Is taking children to a children's hearing an additional layer that these children need to go through?

We would welcome some additional information on the impact of this proposal on particular local authority areas. The prevalence of DoLS orders appear to be linked to rural private providers and localities where secure centres are situated as children transition from secure accommodation to residential establishments. We believe clear data on need regarding the targeting of resources is required.

**Do you think the proposals omit key issues that should be addressed through the proposed regulations? If yes, what are these gaps?**

We welcome the acknowledgement that the child's best interests need to be the priority. What we are less clear about is which receiving authority is being referenced - is this the authority where the independent secure centre is based? What is the role and expectation of the host authority? How can they best meet the child's needs when they do not know the child, their background, their history etc? What if, as stated above, the Chief Social Work Officer does not agree that the child meets secure criteria or that their liberty should be deprived within a residential setting? What is the impact on other services like health, education, Police Scotland, Children's Hearing System, third sector providers etc? Who pays for these additional resources if used for a child from outwith the local authority area? Who is responsible for the child if the non-Scottish Order is terminated but they remain in Scotland? Who is responsible for attending the children's hearing - is that their placing authority social worker or one from Scotland? Who is responsible for writing the social work report? Who is resourcing any additional services that the children's hearing feel are appropriate to meet the child's needs?

What is the evidence to support three months being the ideal length of the order? Is this the shortest time possible as stated in the UNCRC? Could this period be extended? If so, on what grounds? What is the child's right to appeal? Three months is a very long time for a child to be removed from their home and deprived of their liberty.

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

We are unclear of the review process within the proposal provided. Will data be collected to ascertain the effectiveness of any new process? Is improved regulation assumed due to the involvement of the CHS and local authority? Could this not be more appropriately managed by holding cross-border authorities and the courts more accountable when they source Scottish provision? There is mention of the recognition of a DoLS order being conditional on actions and principles: what are these?

The promise clearly sets out the planning process relating to cross border placements. How will these proposals ensure consistent standards of care, end the selling of care placement and the phasing out of acute and crisis services?

**In your view, what should the scope and key features of the proposed non-statutory administrative agreements be?**

We would welcome an information sharing process prior to any child being placed in Scotland, outlining their needs with a robust plan and assessment of how best to meet these needs. A measure that ensures that the CSWO is consulted before the placement is agreed and welcomed. There should however also be a role for other partners in health, the police, education, and the children's reporter as this has implications for the planning of services. Processes should also be in place during and after DoLS. There are currently significant gaps in knowledge and understanding pre-placement that are impacting on already tightly resourced services being stretched, for instance CAMHS.

**In your view, is there anything additional (such as guidance on particular issues) that would further support the achievement of the policy? If so, what would they be and why/how do you think they would help?**

We would like to highlight some evidence that could be considered before any policy is introduced. Lightowler's Rights Respecting (2020) report illustrates that in research in Northern Ireland by Haydon, basic civil rights are frequently violated in secure care, for instance, 'freedom of association was undermined in a building where doors to every room were locked on entry and exit, despite rooms being off a locked corridor within a secure building' (Haydon, 2018, p.40). Interestingly, it is argued that measures intended to 'protect' children regularly lead to breaches of their rights 'not only through deprivation of liberty but also within interactions and interventions which did not prioritise their participation or best interests' (Haydon, 2018, p.41).

Children deprived of their liberty have the right to maintain contact with their family, which should be respected regardless of the form the deprivation of liberty takes. However, children frequently report difficulties maintaining relationships with family and friends especially when far away from home and highlight how practices discourage contact in various ways. For instance, in relation to secure care in Scotland children and young people have highlighted issues around a lack of access to landlines to make phone calls, and difficulty using these due to staff rotas and call rationing (Gough, 2017, p.26).

There are additional issues with ensuring compliance with Article 37 (c) for children from England and Wales who are restricted of their liberty and placed in Scottish secure care. For children so far away from family and friends, maintaining contact, as well as being placed in another legal jurisdiction, creates

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

significant difficulties particularly in supporting the transition as they return to their communities such a distance away.

In 2014 the average number of children in secure care over the year was 74, with the average number of children from outside Scotland seven. By 2018 the average number of children in secure care was 81, with 36 of these children from outside Scotland (Scottish Government, 2019a, p.25). This means that in 2018 44% of children in secure care in Scotland were from outside Scotland, most from England. Gibson (2020, 2021) found that over one third of children within the secure arena had been placed there by local authorities outwith Scotland, whilst the number of children in secure care in Scotland from outside Scotland increased by 89% from 2017 to 2018 (Scottish Government, 2019a, p.25).