

Children and Families Directorate

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Cross-border placements of children and young people into residential care in Scotland – NYAS (National Youth Advocacy Service) response

Dear Children and Families Directorate,

To inform the Children and Families Directorate's scrutiny of the policy relating to placing children and young people into Scottish residential care when a High Court in England or Wales has granted a Deprivation of Liberty Safeguards (DOLS) order, please see below NYAS' views on the matters listed in your communication requesting organisational responses.

Who we are: NYAS (National Youth Advocacy Service) provide residential visiting advocacy or advocacy support during review panels in a number of secure children's homes for welfare in England and Wales.

Do you support the proposals outlined above? If yes, why? If no, what would you wish to see changed and why?

NYAS partly support the proposal for DOLS to have effect as CSOs in line with the best interests of the child or young person. This has been called for by judges in the High Court of England and Wales and would facilitate a more stable transfer for young people in cross-border placements. However, if a lower standard of law is to be accepted by Scottish Government to allow DOLS to have effect as CSOs, a higher standard of advocacy must be provided to these young people by the UK Government.

We welcome confirmation from Scottish Government that the UK Government is being urged to find a solution to capacity issues, and that the most appropriate permanent solution is to address this lack of provision.

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

NYAS believe Scottish Government have a number of issues to consider before full implementation of this policy proposal.

1. Offering advocacy provision to children and young people in cross-border placements must be compulsory

Article 12 of the UNCRC, the right of the child to express his or her views in all matters affecting him or her and to have those views taken into account, must guide all decision making in actions concerning cross-border placements.

Scottish Government have proposed for it to be 'open' to the children's hearing to ensure advocacy provision has been offered to the child or young person. This non-statutory commitment is not strong enough for children and young people who are being sent hundreds of miles away from their homes to be deprived of their liberty. NYAS suggest making it compulsory for English and Welsh local authorities to offer independent advocacy provision to the child or young person as a condition of their use of accommodation in Scotland.

2. The highest standard of independent advocacy should be available to children and young people in cross-border placements

In England, all local authorities with social service responsibilities should ensure that independent advocacy services are provided for children and young people making or intending to make a complaint under section 24D or section 26 of the Children Act 1989.

This offer is weaker than Scotland's section 122 of the Children's Hearings (Scotland) Act, which sets out a requirement for the chairing member of a children's hearing to inform the child or young person of the availability of advocacy.

For young people in Wales, the 'active offer' of advocacy automatically connects young people with an independent advocate who explains advocacy and offers their services.

If DOLS orders are permitted to have effect in Scotland as if they were CSOs, NYAS say that children and young people must be offered the strongest advocacy offer available to them, whether this is from their home country or from Scotland. It is not fair to strip advocacy rights from children and young people who are moving country due to a lack of accommodation provision.

This would require specialised training for all advocates offering the highest standard of independent advocacy to children and young people in cross-border placements.

3. The responsibility of providing independent advocacy should remain with non-Scottish placing authorities

As well as overall responsibility for the placement, all independent advocacy provision should be commissioned and monitored by the corporate parent local authority in England or Wales. This would guarantee continuity of the advocacy relationship for the child or young person if and when they return to England or Wales, as well as mitigate further pressure on advocacy capacity in Scotland.

4. Scottish Government should consider how they shall support children and young people in cross-border placements who choose to stay in Scotland

NYAS share the concerns of Who Cares? Scotland that it is unclear from the policy proposal how the Scottish Government intend to support children and young people who experience cross-border placements and then choose to stay where they were placed following the end of the relevant legal order.

Access to entitlements and provision for care-experienced children and young people must be considered in advance of any policy implementation.

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?

Child-friendly guidance should be produced for children and young people from England and Wales on their advocacy rights when in their Scottish cross-border placement. Such guidance should explain what advocacy is and let them know how it can be accessed.

Scottish Government should look towards how they will monitor this temporary policy change. This should include the publishing of accurate data and publishing a plan for transitioning away from cross-border placements.