

CELCIS's response to the Education, Children and Young People Committee's call for views on the Children (Care and Justice) (Scotland) Bill, Sections 24 and 25.

CELCIS, the Centre for Excellence for Children's Care and Protection, based at the University of Strathclyde, is a leading improvement and innovation centre. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care. We welcome the opportunity to respond to the Scottish Parliament's Education, Children and Young People Committee's call for views on the Children (Care and Justice) (Scotland) Bill (the Bill).

This short response focuses on Sections 24 and 25 of Part 3 of the Bill, relating to the regulation of care services that provide residential accommodation to children, as well as to cross border placements and the effects of orders made outwith Scotland. We have focused our response on four high level considerations within these Sections, of which CELCIS has particular expertise. This response should not be taken as endorsement of aspects of the Bill not raised in this response.

This response to the Committee draws on the evidence and expertise developed for our comprehensive [response](#) to the Scottish Government's consultation on a Children's Care & Justice Bill in 2022 as well as for our [policy position paper](#) on 'cross-border placements' of children into residential care in Scotland. Our response then, and this response, draws from engagement with care experienced people, research evidence, as well as practice experience and policy expertise offered through our long-standing, cross-organisational networks of people across the children's and social care workforce.

1. All children and young people in Scotland must be loved and cared for, and their rights upheld.

All children and young people living in Scotland must receive the high-quality support that is right for them, including children living in Scotland on 'cross-border placements' from other parts of the UK. That all children and young people should be cared for so that they grow up safe, loved, and respected is a central tenet of The Promise of the Independent Care Review which endorses the Scottish Government's National Performance Framework's National Outcome.¹

Evidence shows that there are a range of reasons why children from England and Wales placed across borders may not experience the same access to their rights and protections as children already living in Scotland. These include:

- The different legal landscapes between Scotland and England and Wales, include different entitlements to support depending on the legal basis of

¹ The Independent Care Review (2020) The Promise. Independent Care Review (page 1)

their cross-border placement, for example, aftercare or independent advocacy.²

- Being far away from important and trusted supportive relationships. This can be traumatic for children and those they trust and present risks to these relationships over the long term, weakening connections and does not uphold children's rights.³
- There can be limited support for children to understand their rights, limited opportunities to have a say in decisions about their care, and limited access to advocacy.⁴
- The isolation of rural care settings can affect access to services, and a lack of continuity in specialist services, such as mental health care or counselling, can have a profound impact on wellbeing.

Decisions taken to care for a child or young person under cross-border arrangements should be based on a thorough, early, assessment of the child's needs, including their views, and subsequent planning to meet these needs, including matching with a more appropriate place to stay and be cared for. We are aware of concerns about limited assessment, information sharing and matching before children and young people are moved across the border. Additionally, where this does take place, multi-agency planning for such transitions is complicated by distance and different legal and policy landscapes.⁵ Even where assessment and multi-agency planning is more robust, this can be further complicated by distance and different legal and policy landscapes.⁶

The consequences of 'cross-border placements' can be significant throughout the rest of a child's life, and the impact on a child's life should never be underestimated. The Promise makes clear and strong calls for an "end to the selling of care placements to Local Authorities outside Scotland".⁷ In addition to the substantial impact on the rights, family support networks, and community of the children and young people concerned, The Promise highlights the impact of such practice, and of commissioning and systems-driven decisions, on: strategic planning for the care needs of children and young people already living in Scotland; the need to instead base decisions on the needs of children and young people; and the ethical issues associated with the monetisation and marketisation of care.⁸

We welcome the explicit statement in the Policy Memorandum of the Scottish Government's position that cross-border placements should only occur in exceptional circumstances where the place to stay and be cared for is in the best

² Children's Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children's Commissioner; The Children's Commissioner for England. (2020). [The Children that no one knows what to do with](#). London: Children's Commissioner for England

³ For example, Article 9 of the United Nations Convention on the Rights of the Child (UNCRC) requires States Parties to respect children's rights to maintain 'direct contact and personal relations' with their parents on a regular basis when they are separated from them. UNCRC (1989) [Convention on the Rights of the Child](#), Article 9(3). London: UNICEF UK

⁴ Children's Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children's Commissioner; The Children's Commissioner for England. (2020). [The Children that no one knows what to do with](#). London: Children's Commissioner for England

⁵ Lightowler, C. (2020) [Rights Respecting? Scotland's approach to children in conflict with the law](#). Glasgow: CYCJ; Children's Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children's Commissioner

⁶ Lightowler, C. (2020) [Rights Respecting? Scotland's approach to children in conflict with the law](#). Glasgow: CYCJ; Children's Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children's Commissioner

⁷ The Promise Scotland (2021) <https://thepromise.scot/planning>

⁸ The Independent Care Review (2020) [The Promise](#). Independent Care Review

interests of an individual child. We also recognise the limited powers of Scottish Ministers in the decision-making processes of courts in other jurisdictions of the UK, including where these courts determine that the best option for a child is to be cared for in a Scottish setting solely because of a lack of suitable provision elsewhere.⁹ The complexity of the landscape surrounding 'cross-border placements' underscores the importance of legislation, guidance and practice that can overcome this complexity, ensuring that children on 'cross-border placements' experience the same love, care, and respect that all children need. We do not feel that there is sufficient detail in the provisions of the Bill to address the complexities of this landscape, and uphold the rights of these children.

2. On the implementation of existing standards for care services providing residential accommodation to children who are subject to a cross-border placement.

We note that the Bill includes a provision that Scottish Ministers can prepare and publish standards and outcomes for specific types of care service which provide residential accommodation to children who are subject to a 'cross-border placement'. We are concerned that the Bill includes a generic, 'framework'¹⁰ provision for Scottish Ministers to prepare and publish such standards and outcomes, as it is particularly important to include specific direction around the care that must be in place to support children.

The publication of any standards and outcomes specific to care services that provide residential accommodation to children who are subject to a 'cross-border placement' is not an appropriate or adequate solution to ensuring the need of children are met. The rationale for introducing any new standards and outcomes was not highlighted as an area of need by the Independent Care Review, nor since by The Promise Scotland in their plans or Change Programme. Nor would that address the concerns highlighted by the Children and Young People's Commissioner Scotland, that current practice of 'cross-border placements' creates a "second class" of children in care in Scotland, who are not subject to the full oversight, support, and human rights protections of the Scottish statutory systems.¹¹

The current landscape of policy, guidance and standards which regulate residential care are already designed to facilitate the provision of high-quality care for children, including the incorporation of the UNCRC to further uphold children's rights; implementation of the GIRFEC approach to safeguard children's holistic wellbeing; and the application of rights-based Health and Social Care Standards.^{12 13} Developing new standards and outcomes risks being an

⁹ Children (Care and Justice) (Scotland) Bill, Policy Memorandum (Paragraphs 248 and 252)

¹⁰ See comments on 'Framework Bills' by Social Work Scotland. Social Work Scotland (2022) [National Care Service \(Scotland\) Bill Submission to Scottish Parliament Committees \(Stage 1 Bill Scrutiny\)](#)

¹¹ CYPCS (2022) The Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 Briefing for Education, Children and Young People Committee (ECYP/S6/22/14/3, Annexe C), (page 19)

¹² Care Inspectorate & Healthcare Improvement Scotland (2017) Health and Social Care Standards: My support, my life. Edinburgh: Scottish Government

¹³ Care Inspectorate (2019) A quality framework for care homes for children and young people and school care accommodation (special residential schools). Dundee: Care Inspectorate

unnecessary distraction from focussing on sustained implementation of current standards and guidelines to ensure all children and young people in residential care receive high quality care attuned to their needs.

Evidence shows that effective, therapeutic residential care can be ensured by trained staff using evidence-informed models of care. The knowledge, values, and principles which underpin each residential service's model of care must be explicit and consistently understood for practice to be high quality, uphold children's rights, and meet their needs. This should be in place in every residential care service.¹⁴ The Promise is clear that the focus for change in residential care should be on enabling children's important relationships to flourish; and ensuring all residential care services are underpinned by values and approaches that uphold the rights of children and provide therapeutic and attuned care.¹⁵

We unequivocally support the introduction of Secure Care Pathways and Standards as the need for such standards in relation to secure care. This is well evidenced and a key recommendation of the Secure Care National Project.¹⁶ The Secure Care Pathways and Standards clearly set out what all children in "*or on the edges*" of secure care should expect, and what their rights are, across the continuum of intensive supports and services¹⁷. We would strongly advocate that this Bill stipulates that any care settings in which children are deprived of their liberty must abide by the Secure Care Pathways and Standards.

3. On the recognition in Scots law of different types of court orders from other UK jurisdictions, and the support available to children.

We welcome provision in the Bill to recognise orders in other UK jurisdictions as Compulsory Supervision Orders (CSO), as this would mean that children from England and Wales being cared for in Scotland would be brought into Scotland's Children's Hearing System, in addition to being part of existing and ongoing proceedings through the High Court in England or Wales.

Involvement in the Children's Hearing System may help ensure advocacy has been offered to the child, and the appointment of a safeguarder could be made. Advocacy provision for children is vital and should be in place from the earliest possible stage (i.e., before moving across the border), but this is not always the case.¹⁸ Therefore, the provision of advocacy services under the Children's Hearing advocacy scheme would be a welcome safeguard where existing advocacy is insufficient or not in place.

To properly uphold the rights of children from England or Wales who are cared for in Scotland across the border, there is a need for concerted planning to ensure enough practitioners are available in Scotland with the additional legal knowledge about the law in England and Wales, as well as the expertise to

¹⁴ Porter, R.B., Mitchell, F., & Giraldi, M. (2020) Function, quality and outcomes of residential care: Rapid Evidence Review. CELCIS, Glasgow

¹⁵ The Independent Care Review (2020) The Promise. Independent Care Review

¹⁶ Gough, A. (2016) Secure Care in Scotland: Looking Ahead Key messages and call for action, Glasgow; CYCJ

¹⁷ Nolan, D. (2020) Info Sheet: Secure Care Pathway and Standards Scotland. Glasgow: CYCJ

¹⁸ Children's Commissioner for England (2019) Pass the parcel: Children posted around the care system. London: Children's Commissioner

support children in this position. It will also require further clarity on the role and remit of a safeguarder for children in this situation, given the responsibility for the implementation, oversight, and review of their care placement will remain with the local authority in England or Wales and therefore outwith the Children's Hearing System. It must be recognised that this will require children to attend additional formal meetings and become subject to the scrutiny of a second legal and bureaucratic system at a particularly turbulent and potentially traumatic time in their life. Again, the impact of this must not be underestimated nor overlooked.

We note the intention for local authorities in England and Wales to retain responsibility for the implementation, overview, review, and financial cost of the provision of care as the "implementation authority" for an order, as well as the proposal for Scottish Ministers to have the power to apply to the sheriff court for an enforcement order if a placing authority does not comply with its obligations. However, it is not clear whether a child subject to an order recognised as a CSO would be eligible to the rights and entitlements of other children subject to a CSO in Scotland, such as support to see and spend time with any brothers and sisters who they do not live with; to access Corporate Parenting, Continuing Care, and Aftercare provisions under Parts 9, 10 and 11 respectively of the 2014 Act; or to specific financial entitlements such as the Care Experienced Student Bursary and the forthcoming Care Experienced Grant. If not, this would have significant implications in terms of discrimination: it would create a two-tier system for children who are part of the care system in Scotland, but whose circumstances differ from other children in the same system, based solely on how they came to be cared for in Scotland. If the intention is for children on orders recognised as CSOs to have the same rights and entitlements as all children subject to CSOs in Scotland this will have resource and planning implications, which need to be fully scoped and accounted for.

4. The importance of suitable care provision in England and Wales.

The final report of England's Independent Review of Children's Social Care published in May 2022 recognises the need for change to address the challenge of the shortage of homes and availability of care for children when and where they need it.¹⁹ There are circumstances in which it is in the best interests of a child to move across borders, for example, a where a kinship or foster family relocates to a different part of the UK. However, care planning decisions determining that children should be cared for in cross-border arrangements made solely on the basis of a lack of resources closer to their home and family connections, are far from acceptable. Such decisions should be based on a thorough, early, assessment of the child's views and needs, and subsequent planning to meet these needs, including matching with the best place for care and support. Recent findings from the Care Inspectorate's exploration of cross-border and distance placements highlight failures in upholding children's rights through inadequate planning, poor practice, and a lack of information sharing between local authorities.²⁰

¹⁹ MacAlister, J. (2022) The independent review of children's social care: Final report (page 123)

²⁰ Care Inspectorate (2022) Report on Distance Placements. Dundee: Care Inspectorate

Full support of the needs of children who require or may require a 'cross-border placement' in the future, is not possible without addressing the shortage of appropriate residential provision in England and Wales. Whilst we recognise that the powers of Scottish Parliament do not extend to these matters, this is critical to meeting the needs and rights of children who need care and protection.

CELCIS Contact

Kate Mackinnon

Policy Associate

Kate.mackinnon@strath.ac.uk