POLICY NOTE

THE CROSS-BORDER PLACEMENT OF CHILDREN (REQUIREMENTS, EFFECT AND ENFORCEMENT) (SCOTLAND) REGULATIONS 2026

SSI 2026/31

The above instrument is to be made in exercise of the powers conferred by section 33A of the Children (Scotland) Act 1995 and sections 190 and 195(2) of the Children's Hearings (Scotland) Act 2011. The instrument is subject to affirmative procedure.

Summary Box

The overarching aim of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 ("the Regulations") is to provide a robust legal framework in respect of cross-border placements made into residential and foster care in Scotland, thereby ensuring that the welfare of placed children is safeguarded and promoted, and that their rights are upheld.

Policy Objectives

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

The 2022 Regulations were brought forward in response to increasing numbers of petitions to the *nobile officium* jurisdiction of the Court of Session to recognise Deprivation of Liberty (DoL) orders made elsewhere in the UK. The 2022 Regulations provide legal recognition in Scots law for DoL orders granted by a High Court in England and Wales or, Northern Ireland – setting out that they have effect in Scotland as if they were a Compulsory Supervision Order (CSO), in certain circumstances and for certain purposes.

When the 2022 Regulations were reviewed by Parliament, stakeholders expressed concerns that they did not sufficiently address issues related to cross-border placements. Although Parliament approved the Regulations in draft, this approval was contingent upon the expectation that additional legislative measures would be introduced to address these concerns.

The 2022 Regulations will be revoked and replaced by the Regulations to ensure a more comprehensive regulatory framework for cross-border placements into residential and foster care in Scotland. The 2022 Regulations will remain in place up until the day before the new Regulations come into force and are subject to specified savings and transitional arrangements.

In particular, the Scottish Ministers will retain the right to take enforcement action under the 2022 Regulations in respect of breaches of duty by the placing local authority arising when they were in force, and a sheriff will be able to make an associated enforcement order. Further, any conviction, prosecution or criminal proceedings in respect of the offence under section 171 of the Act (as applied and modified by regulation 13 of the 2022 Regulations) will not be affected by the revocation of the 2022 Regulations where the conviction,

prosecution or criminal proceedings relate to conduct during the period when they were in force. In terms of transitional arrangements, DoL orders recognised under the 2022 Regulations will continue to be so recognised until the end of the relevant period specified in regulation 5(5) of those Regulations (i.e. the end of the relevant three-month review window). Local authorities will need to meet the requirements of the new Regulations before the end of this period for the DoL order to continue to have effect under them thereafter. Given the small number of current DoL placements (as at 31 October there were four DoL placements in Scotland), officials will ensure each placing authority is contacted in advance about the changes and new requirements.

Legal recognition of placements

The Scottish Ministers are clear that cross-border placements into Scotland should only occur in exceptional circumstances where the placement is in the best interests of the individual child. Their intention through the Regulations is to ensure that cross-border placements into residential and foster care in Scotland are appropriately considered and assessed, and that a clear regulatory framework applies to these placements. This, in turn, will ensure that the rights and wellbeing of children who come to Scotland through cross-border placements are safeguarded and promoted.

Evidence gathering has highlighted that for most of the temporary cross-border placements coming to Scotland, the key risks are in relation to Scottish parties knowing very little about placed children or their circumstances (and so they may be unable to ensure necessary support can be provided where needed). In many cases, Scottish parties do not know that children have been placed and often find out through crisis interventions. Young people expressed concern that they were sometimes unable to access health services, particularly mental health services, when placed in Scotland. The Scottish Government also understands that children are sometimes placed without education provision having been agreed, leading to children being without education for prolonged periods.

Therefore the Regulations set out new requirements, both in terms of the legal recognition of orders and arrangements where children are placed cross-border into residential or foster care in Scotland on a temporary basis, and more broadly. For example, they make clear that specified Scottish parties must be notified of placements; that the placing local authority, or as the case may be, the placing fostering authority, is responsible for providing or securing all services required to support the placed child and for meeting costs associated with the placement; and that regular visits to the child and placement reviews are required throughout the placement.

As was the case under the 2022 Regulations, the Regulations allow for recognition of DoL orders in Scots law for periods of up to three months. Where a DoL order is continued beyond that period, the order can continue to be treated as if it were a CSO for renewable periods of up to three months, provided it has been reviewed or continued in effect by the court which made it. This ensures that the High Court in England, Wales or Northern Ireland must regularly review the DoL order underpinning the child's placement, to ensure it continues to be necessary and proportionate in the context of a placement meeting their best interests.

The Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 ("the 2013 Regulations") currently provide for conversion of certain orders made elsewhere in the UK into CSOs where a child is placed in Scotland on a permanent basis. The Regulations revoke the 2013 Regulations and broadly restate them, thereby ensuring that children can be brought into the Scottish children's hearings system and become the responsibility of a Scottish local authority in appropriate cases.

Assessment of suitability

The Scottish Government is clear that authorities in England, Wales and Northern Ireland should seek a residential or foster placement, in the first instance, in the child's country of residence. However, where it is in the child's best interest to be placed in Scotland, consultation should take place with the relevant Scottish local authority and service providers to assess whether the proposed placement in Scotland can meet the child's needs. Where a temporary placement is to be made, to ensure effect is given to its legal underpinning, the placing local authority or fostering authority must assess in advance of the placement that the proposed setting and care home service/foster carer(s) are suitable to meet the child's needs and record the reasons for the assessment. The assessment includes a visit to the proposed residential care home or the address of proposed foster carer(s), although - given some placements are emergency in nature - it is recognised that a visit in advance of the placement may not always be possible. To ensure that the placing local or fostering authority has still considered the suitability of the placement in such cases, an assessment of suitability must be undertaken in consultation with the relevant care home or fostering service manager and recorded in writing.

Notice of placement

The Regulations require placing local and fostering authorities to submit a notice in advance of making temporary placements into Scotland to ensure their legal underpinning is recognised. This will help to ensure that Scottish parties are informed of the intention to place a child in a particular area. Ensuring that all relevant Scottish parties are informed of a child's placement at the outset will also help to safeguard the child's interests and avoid scenarios in which Scottish authorities first become aware of a cross-border placement at a point of crisis. It is also intended to inform discussion with relevant parties in Scotland in relation to ensuring the child can receive appropriate support and care.

Should material changes be made to the placement (for example, if the order a child is subject to changes, or they are moved from fostering to residential care) the Regulations require placing authorities to update and resubmit the notice so that notified parties have up-to-date information and can retain oversight. The Regulations also require that the placing authority provides notification to the list of notified parties when the placement is due to come to an end, or the young person turns 18, whichever comes first.

The Regulations set out the people who must receive the required notice and the information which is to be contained within it. This includes key health, education, and residential or fostering contacts; the Chief Social Work Officer; Police Scotland; the Care Inspectorate; and Scottish Ministers.

Careful consideration has been given to the those that require to be notified and the level of information required for parties to have appropriate oversight and fulfil their statutory duties if required. A Data Protection Impact Assessment has been undertaken to consider the specific responsibilities of each notified party and to ensure that the notification includes only the information they required. This assessment includes further detail in relation to why each of these parties should receive the level of information specified within the Regulations.

Undertaking for residential placements

For temporary residential placements, the Regulations require that the placing local authority signs an undertaking that specifies that for the duration of the placement, it will:

- Provide or secure the provision of all services required to support the child
- Meet all the costs arising from, or in consequence of, the child's placement (other than the costs of an offer of Scottish advocacy), and
- Adhere to duties in the Regulations for the duration of the placement.

It is intended that this will ensure there is greater clarity in relation to the responsibilities of the placing authority. It will be for Scottish authorities and Scottish Health Boards to determine what services to recharge for.

Fostering agreement

For fostering placements, the Regulations require an agreement to be made between the placing fostering authority and the foster carer as a prerequisite for the recognition of the order underpinning the placement. This agreement requires the placing fostering authority to provide information about the matters such as the child's care, planning and wellbeing including specifying review periods and arrangements for visits in line with the child's home jurisdiction.

In relation to costs, the Regulations specify for the duration of the authorised foster placement of a child, the placing fostering authority must meet the costs arising from, or in consequence of, the child's ongoing foster placement, as agreed with the receiving fostering authority. It will be for Scottish authorities and Scottish Health Boards to determine what services to recharge for.

Review periods

For temporary residential placements, the Regulations require regular reviews to take place. Such review periods are in line with the current review periods within the child's home jurisdiction which will mitigate placing additional burden on placing authorities. Although these reviews may already be taking place, policy engagement has shown that Scottish parties involved in the child's care are often not included in these reviews and the requirements in schedule 2 of the Regulations aim to rectify this.

For all temporary residential care placements, any party which received the notice discussed above, the placed child, or any party with an interest in the placed child's welfare can request a review at any point in writing. It will be for the placing authority to determine how to respond to such a request. However, regulation 18 requires that a review be carried out as soon as possible in certain circumstances (e.g. where the child is, or has been, persistently

absent from the residential care setting in which they have been placed, or concerns have been raised that the child is at risk of harm). This will help to ensure that any serious issues or concerns are addressed by the placing authority. The Regulations also require a review of a temporary residential placement if, following a visit, the placing local authority assesses that the welfare of a child is not adequately safeguarded and promoted by the placement.

For fostering placements, arrangements for reviews of a placement should be agreed in the fostering agreement between the placing authority and the foster carer(s) and take place in line with the requirements in the child's home jurisdiction.

Visits

The Regulations require that a pre-placement visit to the residential care setting/foster carer's address takes place prior to placement as part of an assessment of the suitability of the relevant setting and care service/foster carer(s) (unless in an emergency). Pre placement visits are important given the distance of these placements from the child's home. Stakeholders have noted in particular that residential care placements are often made into remote parts of Scotland where the placing authority may not be familiar with Scotland's geography and availability/accessibility of local services.

For temporary residential placements, regulation 15 requires a visit to the child within one week of the start date of a new placement in Scotland and any placement move within Scotland to ensure they have settled in the new home and that the placement is appropriate for that child. Visits will then be required at least once every six weeks insofar as reasonably practicable to ensure the placement continues to meet the child's needs. This mirrors existing requirements in the other nations to mitigate any additional burden on placing authorities. Where a six weekly visit is not possible, one must be arranged as soon as possible – this aims to ensure that visits are not missed altogether. A mandatory visit where the Care Inspectorate has issued an improvement notice in respect of the care home service provided in the setting where a child is accommodated will ensure that the placing local authority checks on the child's welfare and can re-assess the suitability of the placement, as appropriate.

A visit can be requested by the child, anyone with parental rights and responsibilities in respect of them, or the registered manager of the residential care home service. This request must be considered by the placing authority. This helps ensure the voices of children and those who care for them are given due consideration throughout the duration of their placement.

For fostering placements, arrangements for visits should be agreed in the fostering agreement between the placing authority and the foster carers and visits should take place in line with the requirements in the child's home jurisdiction.

Advocacy

Regulation 19 provides that where a child is temporarily placed cross-border into residential care, the Scottish Ministers must inform the child of the availability of children's advocacy services.

This offer of independent advocacy is intended to supplement the support that the child receives through relevant systems elsewhere in the UK. It is intended to support children to provide their views to the registered manager of the residential care home service which is hosting them, as to how their placement experience in Scotland aligns with their child's plan and how their welfare is being protected.

If the child agrees to the offer, any advocacy worker appointed to them will listen to – and advocate for – the child's views, with the aim of ensuring that the child's rights are upheld whilst living in Scotland. If the child refuses the intial offer they can take up the offer at any point in the future.

For fostering cross-border placements, the provision of advocacy will be considered as part of the lifelong advocacy provisions within The Children (Care, Care Experience and Services Planning) (Scotland) Bill. Fostering placements have not been included in the commitment for independent advocacy support as set out for residential placements because these placements are deemed lower-risk placements. The placing authority can set out independent advocacy arrangements in the fostering agreement if they wish to do so.

Review following transfers in cases of urgent necessity

Where a child is placed into a residential care setting in Scotland, it may become urgently necessary to transfer them out of that setting to protect their, or another child's, interests. If the child is subject to an order which specifies where they are to be accommodated, the effect of the Regulations is that the Chief Social Work Officer of the local authority in which the child is placed can transfer the child to another place despite the terms of the order, but it must inform the placing authority as soon as reasonably practicable when this has been done. The Regulations provide authorisation to keep the child in the new setting for a period of up to 14 days, or a shorter period where the child is subject to a DoL order which is due to be reviewed within that period. Should the placing authority wish to keep the child in the new setting beyond this point, the intention is that the placing authority will revert to the court which granted the order the child is subject to, to obtain a review and variation of the order.

Change in placement location

The Regulations require certain conditions to be met when a placement location changes within Scotland. A placing authority may move a child within Scotland including:

- from a residential placement to a fostering placement
- from a fostering placement to a residential placement
- from an existing residential placement to another residential service in Scotland
- from an existing fostering placement to another fostering placement within Scotland

Excepting urgent necessity cases as described above, in each of these scenarios, as with new placements into Scotland, the Regulations require an assessment of the suitability of the proposed setting and service/foster carer to be carried out in advance of the move. This aims to help to ensure that children are not moved within Scotland without consideration placement suitability. The Regulations also require an updated notice to be submitted in advance to ensure relevant Scottish parties are aware of the move so that appropriate support can be provided.

For temporary residential placements, a visit to the child must take place within one week of a move to a new residential care setting. Where the child moves from one residential care setting to another, the placing local authority must update and re-circulate its previous notice and submit a copy of the undertaking it has previously given to any person mentioned in paragraphs (a) to (d) of regulation 7 who has changed by virtue of the new placement location. For example, where a child is moved from a residential care setting in Glasgow to a setting in Paisley, the placing authority must submit a copy of the undertaking to the registered manager of the new setting, and the chief social work officer and chief education officer of Renfrewshire Council.

For temporary fostering placements, any proposed change of the foster carer's address must be notified to the placing fostering authority and receiving fostering authority under the terms of the fostering agreement entered in accordance with schedule 3 of the Regulations. The placing fostering authority must assess the suitability of the proposed new placement location in advance of any move, update information in the notice it has previously given as appropriate and re-circulate this to ensure that relevant Scottish parties are aware.

In cases where a child is to be placed with a new foster carer, a new agreement is required between them and the placing authority to ensure clarity around the new arrangements and that the new carer has all the information they need to care for the child.

Change to order underpinning placement

It is possible that the order or arrangement underpinning a child's temporary placement into Scotland may change during the placement. Accordingly, the Regulations provide for the recognition of a new relevant order or deprivation of liberty order in this context for a period of three working days after the order is made. Within this time, the placing authority must take the necessary steps to ensure the order's continued recognition under the relevant provision of the Regulations.

Enforcement

The 2022 Regulations provide Scottish Ministers with the power to apply to a sheriff for an enforcement order if a placing authority does not comply with certain duties. Ministers retain enforcement powers under the Regulations. For example, they can seek a judicial remedy where a placing local authority or placing fostering authority does not comply with any conditions or requirements imposed on it by a non-Scottish order which has effect as if it were a CSO and enforce requirements for visits and reviews in the residential context. However, recognising the time required to see through this formal enforcement process (noting some issues require immediate attention), in consultation with Chief Social Work Officers, the Scottish Government has developed an escalation process that aims to resolve concerns between parties on an informal basis, where possible. This has already been introduced for DoL order placements under the 2022 Regulations and, if the Regulations are passed by Parliament, this will be replicated for all temporary cross-border placements into residential care. An escalation process for cross-border fostering placements will be developed and will aim to resolve concerns on an informal basis, this will be developed with stakeholders and included in guidance.

Sections 168 to 171 of the Children's Hearings (Scotland) Act 2011 are applied with modifications to relevant orders and DoL orders having effect under the provisions of the Regulations mentioned in regulation 36(1). This ensures that appropriate action can be taken where a child who is subject to a relevant order or DoL order absconds from a place or a person. These provisions ensure that the child can be returned to the relevant place or person if they abscond and that anyone who knowingly assists or induces the child to abscond; harbours or conceals them; or prevents them from returning to the relevant place or person commits an offence.

Permanent transfers

The 2013 Regulations provide for the permanent conversion of care orders, supervision orders or education supervision orders from England, Wales, and Northern Ireland, in certain circumstances, into a Scottish CSO. Although we are only aware of 8 cases entailing such conversion since the 2013 Regulations came into force, it is important for such a route to exist and to have a clear procedure in place to ensure a smooth transition for a child when a permanent transfer is necessary. Instances where a permanent transfer might be appropriate for example would be if a child's family has moved to Scotland. This will be determined on a case by case basis, but it is not the intention that all placements should become permanent. It will ultimately be for the Scottish local authority to agree to such a transfer if it is proposed by the placing authority.

The 2013 Regulations will be revoked and broadly restated by the Regulations to ensure a comprehensive regulatory framework for cross-border placements into Scotland can be found in one place.

Notification of child deaths

The Regulations contain a requirement for placing local and fostering authorities to notify the Care Inspectorate and Scottish Ministers when a child temporarily placed cross-border from another part of the UK into residential or foster care dies in Scotland. There is currently no requirement to provide notification of such deaths, so this provision will ensure that these deaths are notified to Ministers and the Care Inspectorate, in the same way as deaths of Scottish looked after children who die in Scotland.

Effect of child becoming subject to CSO

Part 14 of the Regulations includes provision for children placed in a residential care setting or subject to cross-border foster placement becoming subject to CSO or interim CSO. Should this occur, the non-Scottish order or arrangement underpinning the original placement will cease to have effect. This will ensure that if a child is placed on a CSO or interim CSO while in Scotland on a cross-border placement, that child will only be subject to one order (the CSO or interim CSO) and will become the responsibility of the relevant Scottish authoity, with oversight from the children's hearings system.

Review following implementation

A review of the implementation of the Regulations will be undertaken after one year, if the Regulations are approved by Parliament.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the Act"), the Scottish Ministers certify that, in their view, the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government has undertaken significant engagement with key partners on the development of the Regulations. This included bilateral engagements as well as wider stakeholder events.

The Scottish Government hosted open engagement sessions on 27 August and 4 September 2024 which comprised large numbers of stakeholders who have experience of dealing with cross-border placements into residential care. These engagement sessions offered an opportunity to discuss the key challenges and gaps with the 2022 Regulations and how those Regulations could be improved to address these challenges/gaps.

Following this engagement, the Scottish Government considered all feedback received to inform the development of the policy to underpin the future Regulations and then hosted further engagement sessions in March 2025 to test and further refine this policy where necessary.

Although the engagement noted above was specially in relation to residential care, many of the same issues exist for cross-border fostering placements. This evidence was therefore able to inform the development of the provisions in relation to cross-border fostering placements – for example, ensuring Scottish parties require to be notified of temporary cross-border fostering placements.

Given the limited data and evidence regarding cross-border foster care placements, the approach taken in these Regulations will improve the data and information in relation to cross-border fostering. This will be considered as part of a review of the implementation of the Regulations, to ascertain whether future regulatory measures may be required.

Impact Assessments

The following impact assessments has been completed on the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026. These are attached.

- Business and Regulatory Impact Assessment
- Equalities Impact Assessment
- Data Protection Impact Assessment
- Island Communities Impact Assessment

A Children's Rights and Wellbeing Impact Assessment was also completed, and is published on the Scottish Parliament website.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is limited and no quantifiable financial effects have been identified.

Scottish Government
Children and Families Directorate
November 2025