POLICY NOTE

THE REGULATION OF CARE (CHILD CONTACT SERVICES) (EQUALITY) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

1. The above instrument was made in exercise of the powers conferred by sections 78(1) and 104(1) of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). The instrument is subject to affirmative procedure.

2. In accordance with section 49 of the 2010 Act they have consulted with such persons (or groups of persons) as they consider appropriate.

Summary Box

This instrument will confer an additional function on the Care Inspectorate in relation to the regulation of child contact services, requiring the Care Inspectorate to notify the Equalities and Human Rights Commission of any failure, or possible failure, by a child contact service provider to comply with its duties under the Equality Act 2010, in particular the duty to make reasonable adjustments for disabled people.

This instrument is linked to the Regulation of Care (Child Contact Services) (Scotland) Order 2025, which will add child contact services to the list of care services that the Care Inspectorate regulates under the Public Services Reform (Scotland) Act 2010.

The purpose of the instrument is to help ensure child contact services are meeting their duties under the Equality Act 2010 in relation to service users without placing any additional duties upon the providers of those services.

Policy Objectives

3. Child contact services are generally used in private family law cases where separated parents are in dispute or can't reach agreement around contact arrangements for their child. Referrals to child contact services are made by the courts or solicitors in contact and residence cases, by separated parents themselves and (to a lesser extent) from other agencies, such as social work and GPs.

4. Child contact services have an important role in helping children maintain relationships with a parent (or other adult) they don't live with by providing supervision or support in a child-friendly environment. These services may be the only way a child can safely have contact with one of their parents.

5. Concerns had been raised at the lack of external regulation of these services, noting the need to ensure the rights, safety and welfare of children is paramount in relation to contact arrangements, including for disabled children who need to access these services. and that a consistent quality of service is provided across the sector.

6. The key policy objective for regulating child contact services is to have an independent body in place to ensure services are provided to a consistently high standard, and in the best interests of all children.

7. The policy objective relating to the additional function of notifying the Equalities and Human Rights Commission of any failure by a child contact service provider to comply with its duties under the Equality Act 2010 is to help ensure that all children, including disabled children, can access to child contact services and that contact is facilitated appropriately.

8. The intention is to encourage observance of the duties set out in the Equality Act 2010 and for this notification function to complement the existing enforcement mechanisms available through the Equalities and Human Rights Commission, as the appropriate enforcement body.

9. This recognises that child contact services are already under a duty to make reasonable adjustments for disabled people to access their facilities under the public sector equality duty in the Equality Act 2010. It is also noted, that under the existing duty, an organisation is not required to do more than it is reasonable for it to do, and this will depend on, among other things, its size and nature, and the nature of the facilities or services it provides, or the public functions it carries out.

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

10. The Scottish Ministers have made the following statement regarding children's rights.

11. 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 Regulation of Care (Child Contact Services) (Equality) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

13. Provisions relating to the regulation of child contact services were included the Children (Scotland) Bill (now section 10 of the Children (Scotland) Act 2020), including the power to appoint an independent body to oversee regulation.

14. During the passage of the Bill representations were made around the need to ensure child contact services are accessible for disabled children, and that contact is facilitated safely and appropriately. Provision was included in the Bill to confer a function on the body appointed to oversee regulation in relation to reasonable adjustments under the Equality Act 2010.

15. In 2021, there was a further Scottish Government consultation on implementation of child contact services regulation. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website[1].

16. The consultation asked for views on whether the proposed provision in relation to ensuring observance with the Equality Act 2010 duties was adequate. 27% of respondents answered yes, 12% answered no, and 20% did not respond. The analysis of the consultation responses was also published[2]. A general theme from the analysis is that disabled people have the right to be treated in the same way as non-disabled people, and that ensuring disabled children have access to these services is essential.

17. Although it was not confirmed at that time that the Care Inspectorate would take on the role of independent regulator, or that the function relating to observance with the Equality Act duties would involve a notification to the Equalities and Human Rights Commission, the consultation did set out that the Care Inspectorate were our preferred option and it made reference to the feasibility report.

18. In addition to seeking views on the proposals for regulation at that time, the consultation also sought views on a suite of draft impact assessments, including a draft Equality Impact Assessment (EQIA). Paragraphs 169 and 171 of the consultation analysis summarise responses on the EQIA. There were no specific comments in relation to the proposed function in relation to making reasonable adjustments under the Equality Act 2010.

19. In 2022 the Scottish Government reached agreement with the Care Inspectorate that they would take on the role of independent regulator of child contact services. The Care Inspectorate already regulate a range of care services, including services related to children and young people.

20. In agreement with the Care Inspectorate, the Scottish Government decided to use the powers in the Public Services Reform (Scotland) Act 2010 to apply the existing regulatory regime to child contact services, rather than prescribe a separate set of minimum standards under the Children (Scotland) Act 2020, as had been envisaged when we consulted in 2021.

21. However, we are in the Regulations conferring the additional function on the Care Inspectorate of notifying the Equalities and Human Rights Commission of any failure by a child contact provider to comply with their duties under the Equality Act 2010, in particular the duty to make reasonable adjustments for disabled people. This is based on the provision in section 10 of the Children (Scotland) Act 2020 with the addition of the provision to notify the EHRC. This change was made in discussion with the Care Inspectorate around the appropriate enforcement responsibilities of their respective organisations.

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[1] https://consult.gov.scot/justice/regulation-of-child-contact-centre-services/

[2] https://www.gov.scot/publications/regulation-child-contact-centre-services-consultation-analysis/pages/2/

22. To comply with the requirements of section 49 of the Public Services Reform (Scotland) Act 2010 the following bodies have been consulted:

- Abused Men in Scotland
- Children and Young People's Commissioner Scotland
- Children First
- CLAN Childlaw
- Equalities and Human Rights Commission
- Faculty of Advocates
- Family Law Association
- Grandparents Apart UK
- Inverclyde Family Contact Centre
- Law Society of Scotland
- Oshay's Child Contact Centre
- Promoting Positive Contact
- Relationships Scotland
- Scottish Child Law Centre
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Scottish Public Services Ombudsman
- Scottish Social Services Council
- Scottish Women's Aid
- Scottish Women's Rights Centre
- Shared Parenting Scotland
- Social Work Scotland

Impact Assessments

23. A suite of Impact Assessments was completed on the draft SSI and are attached:
    - The Child's Rights and Wellbeing Impact (CRWIA) assessment identified that there is a positive impact in relation to children's rights.
    - The Equality Impact Assessment (EQIA) identified positive or no impacts on each of the protected characteristics.
    - The Data Protection Impact Assessment (DPIA) assessed compliance with the requirements of the UK GDPR and Data Protection Act 2018.
    - The Island Communities Impact Assessment (ICIA) identified that there was no significantly different impact on island communities as compared with other communities in relation to this Order.
    - The Fair Scotland Duty Assessment identified that families who experience inequalities of outcome caused by socio-economic disadvantage may be impacted by the wider regulation of child contact services.

Financial Effects

24. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The main impacts of regulation generally will be on child contact services. Regulation is intended to be proportionate and we have made provision for an 18 month lead-in period to give the sector time to prepare and plan. We will consider what support child contact providers may require in the lead up to the regulation coming into force on 1 April 2027.

25. In terms of the additional function being conferred on the Care Inspectorate in relation to Equality Act duties, we consider any additional costs for the Care Inspectorate will be minimal.

26. There could be additional costs to the Equalities and Human Rights Commission if enforcement action is necessary following a notification from the Care Inspectorate that a child contact service may have failed to comply with their Equality Act duties. However, we expect this to be minimal given the size of the sector and such matters may come to the EHRC's attention through another route in any event.

27. The published BRIA can be found on the Scottish Government website.

Scottish Government
Justice Directorate

23 September 2025