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Dear James + Margaret

SECURE CARE – CROSS-BORDER PLACEMENTS

Following an English High Court judgment in September in relation to the placing of children in Scottish secure units under an order made by an English court, discussions have been taking place with the UK Government and with secure care providers about its implications..

For reference, I attach a hyperlink to that judgment:
https://www.judiciary.gov.uk/wp-content/uploads/2016/09/pfd-x-and-y-20160912.pdf

In that judgment, Sir James Munby said that -

(1) a judge in England *cannot* make a secure accommodation order where the child is to be placed in Scotland;
(2) the 'inherent jurisdiction' of the High Court can be used to place English children in secure accommodation in Scotland ,and
(3) if an order placing a child in secure accommodation in Scotland is made by an English judge, this order cannot be recognised and enforced in Scotland.

While this was essentially a matter for the local authorities in England and the secure units, there are wider implications including the potential for unplanned closures of Scottish secure units if children from England were to be removed from those units and no longer placed there.

The phenomenon of England to Scotland referrals has become more pronounced recently, as lower demand from Scottish authorities has obliged the four independent providers here to accept young people from England in order to remain viable. I asked officials to support the application for the interim extension in the interests of the young people affected and in the interests of the charitable providers here in Scotland.

Official consideration has also been given to the need for legislative reform to ensure cross-border placements can take place should the prevailing circumstances make it necessary or desirable.

On 19 October, a Court of Session hearing relating to the cross-border placements in secure care in Scotland granted interim orders, in exercise of the *nobile officium*, in relation to the 3 instant applications made by English local authorities. There is now a sound basis in law to continue to accomodate the relevant children, at least in the interim.

However, the cases will call again on 1 February 2017 for the Court of Session to review matters, and the decision only applies to the cases presented. It does however provide a mechanism for other petitions in respect of individual young people to be dealt with in a similar way on an interim basis until an appropriate legislative solution is implemented.

The UK Government made clear that it intends to legislate to deal with the matter conclusively in the coming months, and the Scottish Government will support this. It is expected that amendment will be made to the current Children and Social Work Bill which will be shortly reaching the House of Commons following scrutiny in the House of Lords. This would achieve the necessary changes to the Children Act 1989. The consent of the Scottish Parliament will also be required and arrangements are being made for a draft Legislative Consent Motion.

I have written to Edward Timpson MP, Minister for Vulnerable Children and Families to set out our agreement in principle to this plan, contingent on the right safeguards being in place for Scottish young people and Scottish providers.

I will keep Committee members informed of progress on this.

Yours Aye

MM

MARK MCDONALD