

Cross-border placement of a child including foster family - Scotland

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1 Is there an obligation under your national law for prior consultation and the obtaining of consent before the cross-border placement of a child? Please mention possible exceptions.

National law for child being cared for a Relative (kinship care)

There are several legal ways a Scottish child can be cared for by relatives. These are by

a. An informal arrangement.

A child can be cared for by a relative or friend (kinship carer) by agreement between the parent and the kinship carer without the consent or knowledge of the Member State. The relative could be in Scotland or elsewhere.

b. By placement by the local authority responsible for the child (under section 25 [Children \(Scotland\) Act 1995](#)).

Where there is no one able to look after a child or the parent consents to the child being cared for by the Member State, the local authority in charge of the child’s welfare is required to assess the needs of the child and take into account the views of those involved, including the relative, or friend (kinship carer) and the child, before making plans about the child and a written agreement would be required between the carer and the local authority. At a minimum police checks and health checks are done.

c. By an order by a children’s hearing. ([Children’s Hearings \(Scotland\) Act 2011](#)).

The children’s hearing will name which local authority is responsible for the child. This is usually the local authority where the child lives. Parents and others with parental responsibilities have a right to attend a hearing. Other close relatives may attend.

A child may be referred to a children’s hearing who will make a decision of where a child is to stay. There is a right of appeal to the sheriff court. If the decision is to place a child with a relative the carer and their property has to be considered suitable, and they must consent to looking after the child.

2 If prior consultation and consent are required, which authority is to be consulted and to give the consent?

The local authority in charge of the child is responsible for providing an assessment of the relative carer. If the relative lives in a different local authority then this assessment could be completed in liaison with the local authority where the carer lives if the local authorities agree.

The local authority responsible for the child will check and retain responsibility for ensuring the suitability of the relative. This may require that the local authority for the child will visit the relative more than once and/or may rely on the local authority where the relative stays for information. It is essential that both local authorities communicate closely to make sure that the assessment is as robust as it should be.

There is a risk that if an assessment is abbreviated that the placement will break down and not meet the needs of the child. A comprehensive assessment is also required to ensure that the child and relative have the correct supports once they move to live with the relative. This would also be the case if the decision was for a child to be moved to another country.

3 Please describe shortly the procedure for consultation and the obtaining of consent (including required documents, deadlines, modalities of the procedure, and other relevant details).

☑ Looked after Children Regulations (Scotland) 2009, regulation 11 sets out the general principles to be followed by local authorities.

A local authority must not place a child with a kinship carer unless they are satisfied that–

- (a) placement is in the best interests of the child;
- (b) placement of the child with that kinship carer is in the best interests of the child;
- (c) following the assessment referred to in regulation 10(3), that kinship carer is a suitable person to care for the child;
- (d) they have taken into account all information available to them relevant to the performance of their duties under section 17(1) to (5) of the 1995 Act;
- (e) the kinship carer has entered into a written agreement with the local authority under regulation 12; and
- (f) the kinship carer has entered into a written agreement with the local authority as to the matters specified in Schedule 4.

For the assessment procedure, at a minimum police checks and health checks are carried out for short term decisions and a full assessment is carried out by the local authority responsible for the child for longer term decisions of up to one year. The assessment includes an assessment of the carer's suitability to look after the child- that they themselves are suitable and also that their accommodation is also suitable for them to care for the child.

The model of assessment in kinship care should clearly consider the child's needs alongside the capacity of the kinship carer to meet them. As such, it should be linked with the review of the initial arrangements according the following timescales:

- At three days;
- Six weeks;
- Completion of the kinship assessment in time for the child's review at 4.5 months

4 What is a “foster family” according to the national law of your Member State?

A foster family in Scotland is one that includes at least one adult who has been recruited, approved and registered as a suitable carer for a looked after child with a local authority, private or voluntary fostering agency, who themselves are registered with the Care Inspectorate and inspected annually against national standards of care.

5 Does the notion of “foster family” encompasses relatives or not? If yes, which ones?

No. In Scotland this would be defined as a ‘Kinship Care’ arrangement. A Kinship Carer in Scotland is:

- i) a person related to the child by blood, marriage or civil partnership- with no restrictions on closeness of that related status;
- ii) a person known to the child and with whom the child has a pre-existing relationship. This could include close friends or people who know the child well through regular contact and can be seen as part of the child's network.

Relative is not restricted to any group or category.

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