



Guidance for providers of care homes for children and young people on the emergency relaxation of conditions of numbers

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Under the [Children \(Scotland\) Act 1995](#), local authorities have a duty of care towards all children in need in their area and must therefore provide a place for any child or young person who needs to be looked after. [The Age of Criminal Responsibility \(Scotland\) Act 2019](#) also prescribes duties to provide places of safety to children in certain circumstances. There are other examples of services having more children stay over than they are registered for, which are covered at the end of this guidance document.

Individual local authority and independent care homes for children and young people may need, on rare occasions, to accommodate a child or young person in an emergency and go above the numbers of children which they are registered to care for. This conflicts with the condition imposed on the registration, which provides for the maximum number of young people a care home service can care for at any given time. Such conditions are imposed on the registration of a service in terms of [section 60\(2\) of the Public Services Reform \(Scotland\) Act 2010 \("the Act"\)](#) and [paragraph 7\(f\) of The Social Care and Social Work Improvement Scotland \(Registration\) Regulations 2011 \(SSI 2011/28\)](#).

The Care Inspectorate may, however, set aside the enforcement action that might be considered should conditions of registration be breached, so that the immediate needs of children and young people are met.

Before a provider agrees to accept a young person which is, or is likely to, mean that the maximum number of children allowed at the establishment is exceeded, the provider must ensure the following provisions are met. That:

- The assessed needs of the young person require such action by the local authority and to not accommodate the child in the unit, despite exceeding numbers, would create higher risk.
- The Care Inspectorate has not previously deemed the accommodation unsuitable for use, even in an emergency.
- The condition on numbers is exceeded only to accommodate a single young person on a single occasion and the accommodation is safe and fit for this purpose. It cannot be used to accommodate nonrelated children on the same occasion as an emergency. It is noted that that the aim of keeping sibling groups together will require a holistic and creative assessment of their short-term safety and wellbeing, where the suitability of the accommodation is one aspect of this judgement.
- A detailed record is kept by the provider of all occasions when registered numbers are exceeded.

Prior to accepting the emergency admission of a young person, which would result in exceeding the maximum registered numbers of the service, the care home provider must be assured of, and keep evidence, that:

- There is confirmation from the placing local authority, in their written request for an emergency admission, that the child remaining in their current residency is not in the young person's best interests and there is evidence that the chosen proposed alternative provision is.

- The service has sufficient admission information on the child's physical, emotional and health needs to provide safe care and support.
- An assessment of the impact on the other resident young people, and the stability of the receiving care home, has been undertaken. This must evidence that the emergency admission will not impinge on the rights and care of those young people.
- Risk and staffing needs assessments for the receiving service have been completed - based on continuing to safely meet the needs of all young people, the additional young person, and the revised group dynamic.
- The placing authority is aware that the service, by taking the young person, is operating outwith its conditions of registration and there is no guarantee that any consequent variation to conditions application will be approved.

The notification detailing that both the above conditions and assurances have been met, prior to the young person being admitted to the service, should be submitted via an incident notification in the [eForms system](#) within 24 hours of the admission taking place. The notification must also confirm that a formal review for the young person is planned, its date, and that outcomes of this plan will be notified to the Care Inspectorate when it has taken place. ([Regulation 37\(1\) of The Looked After Children \(Scotland\) Regulations 2009 \(SSI 2009/210\)](#), allows for emergency placements in a residential establishment for a period not exceeding three working days during which time the young person's case must be formally reviewed by the placing local authority.) Should the placement continue beyond three working days a request to vary conditions of numbers must be submitted through our [digital portal](#) within 48 hours of learning this.

The notification to the Care Inspectorate should not be interpreted, or communicated as, the Care Inspectorate approving that a specific young person be placed in a service, or that we have assessed this to be appropriate. This is the provider's responsibility. It is also recommended that providers seek their own legal advice on the implications of such admissions decisions.

The case holding inspector for the service will monitor all instances of such notifications. If the service regularly goes over the numbers of young people it is registered to care for, the Care Inspectorate will consider additional scrutiny interventions. This would also be raised with the placing authority. In addition to this guidance providers should also refer to the following in making their assessment:

- [Matching Looked After Children and Young People: Admissions Guidance for Residential Services](#)
- [Guidance for providers on the assessment of staffing levels](#)

Other examples of services having more children stay over than they are registered for

- In support of [Part 11 of the Children and Young People \(Scotland\) Act 2014](#) we are aware that more services are ensuring young people experience longstanding, nurturing relationships by being able to return from university or another location to stay over in a service they previously lived in. In these circumstances the same procedure as above should be followed, by services submitting an initial notification, and then following up with a variation after three working days if required. We aim to be as flexible as possible with services that support young people to benefit from the security of stable living arrangements and meaningful relationships, and you can read more about this in [Guidance for services on the provision of continuing care, throughcare, and aftercare](#).
- [The Promise](#) is clear that young people should have access to regular positive childhood experiences, one of which is having friends stay over for sleepovers. We are firmly committed to helping services to keep [The Promise](#). In these circumstances we do not require a notification or variation application to be submitted, as the child who is staying over will not be living in the service. However we would expect that the service:
 - ensures any associated risks have been robustly assessed;
 - has sought information about the additional child's individual needs (e.g. dietary requirements, medication, and emergency contact details);
 - is able to appropriately meet the needs of the child who is staying over;
 - has carried out a staffing needs assessment which has taken these factors into account.
- [Staying together and connected: getting it right for sisters and brothers: national practice guidance](#) highlights the importance of children and young people being able to sustain strong and positive relationships with their brothers and sisters, which may include them staying for sleepovers. We have long been a proud member of the [Stand Up For Siblings](#) partnership, a Scotland wide initiative to improve and change legislation, policy and practice. In these circumstances we do not require a notification or variation to be submitted, as the child who is staying over will not be living in the service. However we would expect that the service:
 - ensures any associated risks have been robustly assessed;
 - has sought information about the additional child's individual needs (e.g. dietary requirements, medication, and emergency contact details);
 - is able to appropriately meet the needs of the child who is staying over;
 - has carried out a staffing needs assessment which has taken these factors into account.

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