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## Short Article

# Non-compulsory care for children and young people: Learning from research on Section 25 arrangements. What is next for Scotland?

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## Abstract:

This paper presents the key issues arising for social work practice from a 30-month mixed-methods study on how Section 25 of the Children (Scotland) Act 1995 was used, understood and experienced. The research was based on analysis of data collected in focus groups and interviews with 101 people with lived and professional experience of Section 25 arrangements, and a 12-year longitudinal data set. Through exploration of themes including high levels and variation in use of Section 25 arrangements, consent, understanding, and the concept of 'voluntary', this paper proposes next steps for improving policy, practice, and experiences of Section 25 arrangements in Scotland.

## Introduction

Section 25 of the Children (Scotland) Act 1995 places a duty on local authorities to provide care and support to children and young people away from the parental home where it is necessary for their care and protection. As with all children cared for away from the parental home, children experiencing Section 25 arrangements may live with family or close family friends, foster carers, or in other settings such as children's homes, and are subject to regular social work review meetings. What sets Section 25 arrangements apart from compulsory measures is that they are entered into and monitored without social work departments engaging families in courts or court-like processes (such as Children's Hearings), they require that the parent is absent or does not object to



the arrangement, and they contain a provision for parents to object to the arrangement, and request their child is returned to their care.

Between 2012-2022, the overall number of children in Scotland receiving the care and protection of their local authority decreased, but the proportion cared for under Section 25 arrangements nearly doubled (Scottish Government, 2023). A small-scale study in 2020 by the authors highlighted variation in use between three different local authorities, demonstrating differences in the numbers of Section 25 arrangements used and the length of time that they lasted (Anderson et al., 2020).

This paper draws from a 30-month research project funded by the Nuffield Foundation on the use, understanding, and experiences of Section 25 (Porter et al., 2024) and explores the findings most relevant to social work practice. Given the scale of use, national variation in practice, the extent to which Section 25 arrangements are interventions into private family life, and commitment to Keeping the Promise<sup>1</sup> for Scotland's children and young people, we highlight the importance of reaching agreement on a new shared vision for Section 25 use in Scotland. This article is a short summary of the research and findings, a full report and other outputs can be found on the CELCIS website ([www.celcis.org/Section 25](http://www.celcis.org/Section%2025)).

## Background

Social work practice in Scotland is guided by a range of legislation and national policies which place children and young people's wellbeing at their core, notably the National Practice Model, The Promise, the Children and Young People (Scotland) Act 2014, and most recently, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

Additionally, important concepts within the Children (Scotland) Act 1995 aimed at courts and Children's Hearings influence social work practice around Section 25. The Act requires courts and Children's Hearings to protect and promote a child's welfare when considering limitations to a parent's Parental Responsibilities and Rights. The 'no order principle' prohibits compulsory measures being put in place unless making an order is considered better for the child than not making an order. The concept of minimum intervention is also applied to ensure that any order does not go beyond what is necessary to promote and protect the child's welfare.

Other jurisdictions within the UK and across Europe (e.g. Ireland, Finland) have provisions for non-compulsory care (Section 20 of the Children Act 1989 in

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<sup>1</sup> In 2020 the final report of the Independent Care Review in Scotland (titled 'The Promise') was published. This led to the creation of The Promise Scotland, a non-governmental agency that supports people and organisations as they act to 'Keep the Promise' by implementing the recommendations of the Independent Care Review.



England, and Section 76 of the Social Services and Well-Being (Wales) Act 2014). What unites these measures is that they are based on a parent's consent or 'non-objection'; children are cared for away from the parental home; parents or guardians retain parental responsibilities and rights; and the arrangements avoid courts or court-like processes (Brennan et al., 2021, p. 2).

Previous research has highlighted advantages and drawbacks to non-compulsory measures, including the potential to be less adversarial than compulsory measures, and benefits when parents and social workers have positive working relationships (Burns et al., 2016, p. 225; O'Mahony, 2020, p. 63 & p. 373). Other studies have questioned the accuracy of the term 'voluntary' for parents who are expected to make decisions: knowing that the alternative is involuntary removal of their children; when capacity to decide has been affected through trauma or stress; in the face of a power imbalance; or when they have insufficient information on the consequences of the decision (Burns et al., 2016, p. 226; Lynch, 2017; Pösö et al., 2018; O'Mahony et al., 2020, p. 380-381; Simpson, 2022).

## Methods & limitations

We conducted quantitative analysis of the Looked After Children Scottish Longitudinal Dataset, which contains longitudinal records of the care experiences of all children and young people in Scotland between 2008 and 2022. To conduct a cohort analysis, we grouped the children and young people in our data into three cohorts: those who had only experienced a Section 25 arrangement; those who had never experienced a Section 25 arrangement but had experienced compulsory measures; and those who had experienced a Section 25 arrangement and other legal reasons. We then conducted descriptive analysis across the whole population.

We used qualitative methods to explore the complex factors which contribute to decisions about and experiences of Section 25 arrangements. We undertook 35 online and in-person interviews and focus groups with 101 people using semi-structured, open-ended questions which enabled us to prompt reflection and discussion on specific topics while providing participants with the ability to follow their line of thought. One hundred and one people with personal or professional experience of Section 25 arrangements took part, including: parents, a young adult who had been cared for under a Section 25 arrangement, and children and families social workers and social work managers, solicitors, independent reviewing officers, children's reporters (whose role is to receive referrals to the Children's Hearings System and to assess whether compulsory intervention through the Children's Hearings is likely to be required), and independent advocates.

We reached out to young people through organisational and personal networks and received support from Scotland's Chief Social Work Officers to share



information about the study with eligible children and young people. Despite these efforts, we only spoke with one young person. We believe that recruitment was also influenced by the substantial volume of engagement requests made in recent years to children and young people with experience of local authority care and protection.

## **Key Learning: Quantitative Findings**

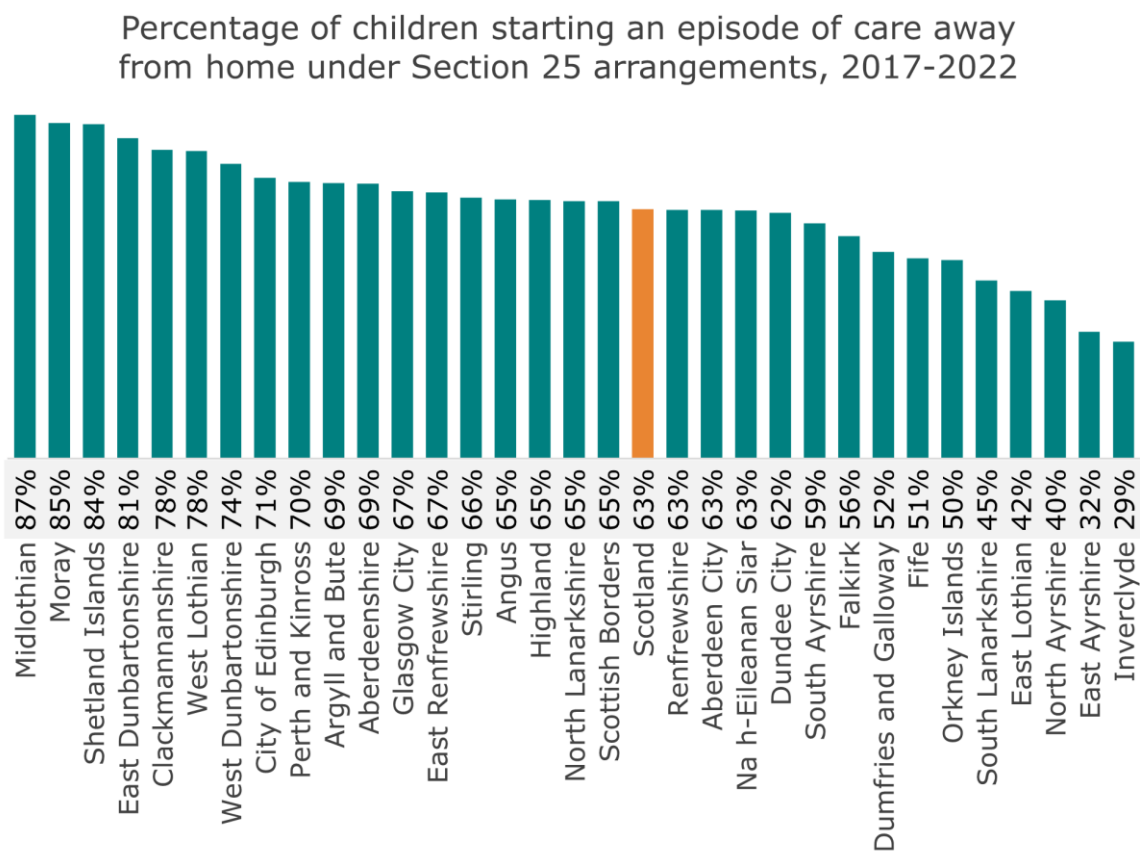
We found that the use of Section 25 arrangements was even higher than previously understood. Previous data which was published by the Scottish Government only looked at 'snapshot' data from 31 July each year, but using the 12-year longitudinal dataset allowed us to create a more accurate and complete picture of how Section 25 has been used in relation to compulsory measures. Through analysis of all 'legal reasons' recorded in 2021-2022, we found that Section 25 arrangements were used as the first legal reason for 71% of children and young people who were cared for away from the parental home at the start of an episode of care.

Analysing the most recent five years of data (2017-2022), as a means of focusing on recent practice, we found an even larger majority (93%) of Section 25 arrangements were used as the first legal reason for a child or young person to become cared for away from the parental home. Most (67%) children and young people who experienced a Section 25 arrangement did not experience any other legal reasons. Half (50%) of Section 25 arrangements lasted under six months, while the average duration of a Section 25 arrangement was one year and three months. Twelve percent of Section 25 arrangements lasted more than three years. Section 25 arrangements were used for all ages of children and young people, and in all care settings away from the parental home.

The most recent five years of data highlighted significant variation in Section 25 arrangements between local authorities, with the proportion of children and young people who become cared for away from the parental being cared for under a Section 25 arrangement ranging from just 29% to 87%, with a national average of 63%.



**Figure 1: Percentage of children starting an episode of care under Section 25 arrangements.**



To understand whether the type of legal measure affected children and young people’s experiences, we conducted a cohort analysis by grouping the children and young people in our data into three cohorts: those who had only experienced a Section 25 arrangement; those who had never experienced a Section 25 arrangement but had experienced compulsory measures; and those who had experienced a Section 25 arrangement and other legal reasons. This cohort analysis showed that those who experienced both Section 25 arrangements and other legal reasons spent longer in care, with more periods of time (‘episodes’) in care, and more changes in where they live (‘placements’), than those who only experienced a Section 25 arrangement, or who never experienced Section 25 arrangements. The group who only experienced Section 25 arrangements were more likely to return home to their parents than children in the other two cohorts.

### Key Learning: Qualitative findings

The major themes raised by social workers throughout focus group and interview discussions included: variation in how Section 25 arrangements are used between local authority social work departments; varying levels of



understanding by parents; approaches to gaining consent to the arrangement; ethical considerations; and, the appropriateness of the term 'voluntary'.

## **How Section 25 arrangements are understood and used**

We heard from social workers that Section 25 arrangements were often the first option considered, with many believing that they provided better partnership working between parents and social workers and the opportunity to build a shared understanding with parents around social work concerns. Many noted that using Section 25 arrangements aligned with the concept of minimum intervention or the no order principle. Others told us that sheriffs (Scottish judges) expect 'voluntary' approaches to be exhausted prior to seeking compulsory measures.

When we asked social workers in focus groups about their views on appropriate and inappropriate uses, the topic prompted lively discussion. There seemed to be universal agreement that Section 25 arrangements were appropriate in cases that did not feature concerns around a child's care in the parental home, such as meeting the needs of separated children or for children requiring specialist physical or educational support.

There were a range of responses regarding the use of Section 25 arrangements in situations involving child protection concerns. Opinions differed over whether Section 25 arrangements should be used primarily for pre-planned or emergency accommodation, for younger or older children, and around the timing of referrals. Those who favoured immediate or early referral to the Children's Reporter<sup>2</sup> emphasised the potential instability of Section 25 arrangements due to the risk of a parent requesting the return of their children home to their care, and the value of independent oversight within the Children's Hearings System. Others emphasised a desire to protect children and parents from the additional processes of Children's hearings, citing difficult experiences that children, young people, and families have reported (see Independent Care Review, 2020; The Promise Scotland, 2023). Those who felt this way believed referrals were only appropriate once a parent had expressed their intention to object to the Section 25 arrangement, requested their child's return to the parental home, or when the potential for a child returning home had been ruled out.

## **Consent**

When discussing Section 25 arrangements, solicitors and some social workers emphasised the duty placed on the local authority or referenced the requirement for non-objection. These interpretations align with a UK Supreme Court ruling in

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<sup>2</sup> Children's Reporters receive referrals to the Children's Hearings System – the care and justice system for children and young people in Scotland. The Reporter conducts an investigation to determine if they consider compulsory measures are likely to be needed, and if so, convene a Children's Hearing.





relation to Section 20 Children Act 1989 arrangements in England by Lady Hale that noted that children's care could be delegated to a local authority without a parent fully understanding the legislation (Williams and another v London Borough of Hackney [2018] UKSC 37).

Many other social workers, however, stressed the importance of informed consent, which echoes language in guidance documents produced for England and Wales (Webb et al., 2016; Public Law Working Group, 2021), and earlier legal decisions from English courts (Masson, 2018).

Many social workers articulated how working in partnership with parents was the ideal situation, and this may have influenced their desire to seek and record parental consent, as well as the great care they took to explain to parents what Section 25 arrangements were, including the fact that social workers would seek compulsory measures if parents did not agree.

The social workers we spoke to highlighted the ethical tensions between providing parents with detailed information in order to make informed decisions and knowing that the information provided could cause parents to feel that they had no choice but to agree to a Section 25 arrangement. Some also raised concerns that parents were not always informed that there may be uncertainty around whether compulsory measures would be *obtained* (See O'Mahony et al., 2020, p. 386-387).

## Parental understanding

Despite the reported attention given to informing parents, social workers, solicitors, IROs, and independent advocates all mentioned examples of parents who did not understand the implications of Section 25 arrangements that they were reported to have agreed to.

Parents who took part in the study had varying levels of understanding of the arrangements. Some did not understand at the time what legal provision had been used at all, some did not understand what Section 25 meant in practice - including the retention of the parental responsibilities and rights, or the right to request their child's return home - and others thought they understood yet displayed misunderstanding of important elements. Other research on non-compulsory measures also found that parents did not fully understand the arrangements to which they had agreed, or not objected, to (O'Mahony et al., 2020; Masson, 2008).

Social workers and parents raised the following factors as affecting one's ability to understand or retain information:

- The time available to discuss the detail, particularly in emergency situations
- The impact of emotions on processing information



- The volume of paperwork and conversations taking place
- The significance of the circumstances facing parents
- The lack of information on Section 25 arrangements for parents to review at a later stage

Informed decision-making and the realisation of rights requires understanding Section 25 arrangements and their implications. As we heard from parents, incomplete understanding can affect how a parent maintains connections with their child, as well as potentially acting to nullify their right to object to the arrangement or having their child returned to their care if they wish. Many social workers shared that this dynamic raised ethical concerns for them.

### **Use of the term 'voluntary'**

Although Section 25 arrangements are not referred to as voluntary in the 1995 Act, the accompanying guidance uses the phrase 'voluntarily' (Scottish Office, 1997, p. 23) and a Scottish Government website detailing legislation relevant to children receiving the care and protection of the local authority uses the phrase 'voluntary agreement' (Scottish Government, 2024a). Legally, this use of voluntary is inaccurate; Section 25 arrangements constitute local authority duty based on *non-objection* rather than active agreement.

Since Section 25 arrangements are primarily sought by social work departments, the term 'voluntary' also fails to reflect most lived experiences. Parents and social workers were aware that when the alternative to a Section 25 arrangement is positioned as a compulsory measure, it did not feel like a 'choice'.

Use of the term 'voluntary' may also potentially reinforce public perceptions that Section 25 arrangements require the active consent of parents. Some social workers shared experiences of supporting young people who had found it difficult to learn about their parents' role in the decision for them to become cared for away from the parental home, especially when framed as 'voluntary' or being told that a parent had 'agreed'.

### **Suggested Next Steps**

Looking across these findings, there are some clear next steps that need to be taken to improve the use and experience of Section 25 arrangements for all children, young people, and families.

### **Section 25 practice**

There needs to be a new shared vision of the role and purpose of Section 25 arrangements. This programme of work should involve all relevant voices and seek the views and experiences of practitioners and professions involved - legal,





social work, caring, advocacy – and the Scottish Government. This work must also prioritise voices that can be marginalised in professional practice discussions: those of children, young people, and families. The published evidence on Section 25 and similar international arrangements must inform the themes considered.

In particular, given the reflections from all respondent groups about the use of the term 'voluntary', we suggest that the term should be avoided in all discussions and literature relating to Section 25 arrangements.

### **Written guidance and supports for social workers**

The level of social worker awareness and reference to case law and guidance published for England and Wales indicate that similar national guidance for Scotland would be both feasible and useful.

### **Continuing Professional Development opportunities for social workers**

Social workers reflected that they desired more training and development opportunities to better consider Section 25 arrangements. The scale of use of Section 25 arrangements highlights the importance of ensuring that social workers are appropriately equipped and supported. Further supporting practitioners to critically reflect on their practice is a vital part of providing the best possible support to children and families.

### **Information for parents**

Parents would benefit from a standard information document which explains Section 25 arrangements in plain terms. This document should: be made available at first mention of a Section 25 arrangement; include information on parental rights during the arrangement, particularly around family time and the right to request a child's return home; and avoid use of the term 'voluntary'.

### **Information for children**

Children and young people would benefit from clear, age-appropriate information on Section 25 arrangements. Child-friendly resources should clearly detail their rights and the rights of their parents under Section 25 arrangements, contain information on processes and how they can participate or have their voice heard, and outline what the long-term options might include.

Such information will support children and young people to understand their own experiences of their care pathways more accurately, provide a level of knowledge that will enable them to identify issues or information they do not understand, and support them to appropriately participate in decision-making about their care and protection.



## Ongoing research

Further work to explore the contexts and causes of differences in experiences between cohorts of children and young people will further aid understanding of Section 25 arrangements. Additional qualitative work can help us to understand what factors or processes contribute to the different experiences and outcomes identified, and how decision-making processes can be supported to ensure the best outcomes for children and young people and their families in Scotland.

## Wider Implications

The findings from this research have wide relevance beyond Scotland, reflecting other research into non-compulsory care arrangements elsewhere (Brennan et al., 2021; O'Mahony et al., 2020; Pösö et al., 2018; Skivenes, 2021), and highlighting issues that require attention wherever such arrangements are used. In particular it highlights the challenges inherent to conceptions of 'voluntariness' within child protection (Pösö et al., 2018), and the extent to which such arrangements are appropriate within child protection settings (Skivenes, 2021), both of which require significant attention within Scotland, the UK, and elsewhere.

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