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Who Cares? Scotland is Scotland's only national independent membership organisation for Care Experienced people.¹ Our mission is to secure a lifetime of equality, respect, and love for Care Experienced people in Scotland. This response has been shaped by our advocacy evidence, Action on Advocacy and Lifelong Rights campaigns.² We look forward to engaging more closely with the Committee, our members and others to make the Bill as strong and as effective as possible in order to keep the Promise to Care Experienced people.

Who Cares? Scotland urges MSPs to:

- Support the general principles of the Bill in order to help keep the Promise and uphold Care Experienced people's rights.
- Ensure the strongest definition of lifelong independent advocacy and opt-out advocacy in the Children's Hearings System.
- Ensure the financial memorandum sufficiently reflects the investment required for the legislation to be timely implemented in order to keep The Promise.
- While ensuring appropriate scrutiny, encourage the swift passage of the Bill before the pre-election period in March 2026.

¹ For more information about Who Cares? Scotland, please see www.whocaresscotland.org.

² For more information about our campaigns, please follow the link in the footnote above.

Part 1 Chapter 1

1. What are your views on the aftercare provisions set out in the Bill?

Eligibility for Aftercare:

When we ensure everyone in our community has access to the support they need, when they need it, everyone benefits.

We supported our Care Experienced member Jasmin Kasaya-Pilling to [petition the Scottish Parliament on this issue](#) from August 2022 to September 2024, receiving 533 signatures. We are therefore pleased to see measures in the Bill which address some of Jasmin's calls.

Jasmin called on the Scottish Parliament to urge the Scottish Government to:

- Extend aftercare provision in Scotland to “previously looked after” young people who left care before their 16th birthday, on the basis of individual need;
- Extend continuing care throughout Care Experienced people's lives, on the basis of individual need; and
- Ensure Care Experienced people are able to enjoy lifelong rights and achieve equality with non-Care Experienced people. This includes ensuring that UNCRC and the findings of the Promise are fully implemented in Scotland.

We welcome that the Bill commits action on the first call in Jasmin's petition above, as this will help to keep [The Promise](#) (p118): “present definitions that operate do not ensure that those who leave care prior to their sixteenth birthday are able to access legal entitlements, even though they have been removed from their families by a decision of the State.” It should bring about equal opportunities to access human rights in terms of housing, education, employment and financial support. On eligibility for all Care Experienced people, please note our answer to question 4.

UNCRC compatibility

However, we are concerned that children will not be able to access justice if these provisions are breached, as they are currently drafted to amend the Children (Scotland) Act 1995. **This places these rights beyond the scope of the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act) under Section 6(2), as the UNCRC Act only applies to provisions in post-1999 legislation.**³

To bring these provisions within scope of the UNCRC (Incorporation) (Scotland) Act 2024, the Bill should include new freestanding rights or duties within its own text, rather than amending pre-1999 legislation. **This would ensure that the duties are subject to the UNCRC Act, meaning children and young people could challenge any breaches where necessary.** This would be in line with the commitment from Scottish Government to take a maximalist approach to UNCRC incorporation.

Sufficient investment:

The [financial memorandum](#) notes that “all costs are steady-state - i.e. do not include any recruitment, training or other costs which might be required to expand capacity to provide aftercare.” We regularly advocate for Care Experienced children and young people who are being denied their rights under existing legislation. The reason often given for these breaches is that local authorities are facing significant resourcing issues.⁴ We encourage decision-makers to ensure local authorities are fully supported to implement these changes so that the Promise is kept on an individual level for every Care Experienced person seeking support.

³ For more information please see the Scottish Alliance for Children’s Rights (Together)’s [new ‘Promise Bill and UNCRC scope concerns’ briefing](#).

⁴ See Who Cares? Scotland, [‘2024 Advocacy Data and Impact’](#), Scottish Government, [Staying Together And Connected: National Implementation Group final report](#), 2023 and [CELCIS, Continuing Care: An exploration of implementation, 2022](#)

It is well known that Scotland is currently experiencing a social work workforce crisis, and social workers are currently often only able to deal with the most pressing of their caseloads.

- Social Work Scotland’s most recent [Social Worker Vacancy Report, December 2024](#), highlighted that the total Whole Time Equivalent (WTE) of all social workers has fallen since June 2024, and over a half of the loss of senior WTE staff (55%) was in children’s teams.
- Many respondents to Social Work Scotland’s “[Setting the Bar](#)” briefing calling for a maximum caseload for social workers highlighted the tensions between what they were being asked to do, and the resources they were being given to do it with. As a result, many highlighted the “moral distress” caused by rising caseloads pushing them to operate in ways inconsistent with their professional values and judgement, and often they were only able to prevent further deterioration of someone’s situation, but did not have the capacity to empower and enable people.
- [Research by CELCIS](#) in 2022 exploring the implementation of continuing care highlighted that resources and capacity of the workforce were among the biggest barriers to consistent implementation of this policy, with the majority agreeing that there were insufficient resources, and around half of respondents feeling that there was insufficient capacity and infrastructure.

Whilst we welcome the expansion of aftercare, we are concerned that the financial memorandum does not include provisions to increase an already stretched workforce to meet these duties. **Investment is required in order to make these rights realisable.**

The [Financial Memorandum](#) (p.8) also notes that eligibility for these provisions **would be sequenced, based on a “gradual eligibility” model.** Clear communication of this phased approach will be vital so that children, young people, their carers and practitioners that support them are aware of their entitlements, as well as who is not eligible for support. The Who Cares? Scotland National Advocacy Helpline commonly receives calls from carers and professionals, including social workers, who feel they have

exhausted all of their options to help a young person but are still concerned about their situation and unsure what else to do. We also receive calls from carers and professionals who aren't sure of what people are entitled to and how to access it.

Adding an increased complexity of eligibility must be very clearly highlighted and communicated to all who work with Care Experienced people and Care Experienced young people themselves. It is critical for accountability to set expectations that will be met, as well as to ensure that other support can be arranged for children and young people who need it but will not be eligible.

Area for Improvement:

- **All provisions within the Bill must be brought into the scope of the UNCRC Act 2024. For example, the rights in Sections 1 and 10 amending sections of the Children (Scotland) Act 1995 must be restated as freestanding rights.**
- **Ensure the financial memorandum sufficiently reflects the investment required.**

2. What are your views on the corporate parenting provisions set out in the Bill?

We welcome these provisions as they address the issues raised by Jasmin in her petition referred to above.

Life after care can be vastly different for each Care Experienced person. The data and research available highlight the stark inequalities this group faces compared to their non-Care Experienced peers. In 2020, The [Independent Care Review](#) (p.10) published that Care Experienced people in Scotland are:

- Almost twice as likely to have poor health,
- More than twice as likely to have experienced homelessness,
- Over twice as likely to have no educational qualifications and less than half the chance of having a degree,
- Over one and a half times more likely to have financial difficulties,
- Over one and a half times more likely to experience severe multiple disadvantage (homelessness, substance use, mental health, offending, domestic abuse).

Five years on from the publication of these figures, we continue to hear from Care Experienced people that they are experiencing the impact of being in care long after they have left the “system”.

- June 2023, [Ipsos and the Trussell Trust published research](#) revealing that one in five people referred to Trussell Trust foodbanks in Scotland were reported to have care experience.
- The 2024 [Scottish Prison Service’s Prison Survey](#) showed that 42% of prisoners self-reported that a social worker had been involved in their lives as a child and 30% had been involved in children’s hearings. The actual figure may be higher as 3% did not answer.
- The Scottish Child Abuse Inquiry, which has [cost £98.7 million as of 30 June 2025](#), was set up to run from 2014-2018. It has been unable to wind down due to the

number of survivors coming forward and evidencing the impact abuse in care happening as recently as December 2014 has had across their lives.

[Who Cares? Scotland research](#) found that 2 out of 3 Care Experienced adults who participated in our Summer of Participation, 2023 had a negative experience when leaving care, and over 80% of Care Experienced adult participants want extra protection for their rights in law.

It is undeniable that [there is a clear and pervasive inequality for Care Experienced people](#) that reaches beyond the statutory aftercare support currently provided to them. Arbitrary definitions and financial pressures result in cliff edges of support for those previously looked after by the state. In line with our [Lifelong Rights campaign](#), **we support a more ambitious approach which extends Corporate Parenting duties to cover Care Experienced people of all ages.**

This would recognise that, as noted in The Promise, “Scotland’s parenting responsibilities are lifelong and holistic for the young people that Scotland has cared for” and “Older Care Experienced people must have a right to access supportive, caring services for as long as they require them.”

Without legislation, some Corporate Parents already go further and extend their support and policies to Care Experienced adults above the age of 26, which we have celebrated and consider best practice. This has been particularly evident across the higher education sector where access to degree level study for Care Experienced people has been further widened with the introduction of minimum entry requirements, the [Guaranteed Offer](#) and the [Care Experienced Student Bursary](#) – all of which allow for equality of opportunity with no upper age limit being applied.

However, this practice is not consistent across all Corporate Parents, often due to the combination of a lack of legal imperative to support those over the age of 26, resources issues within local authorities and a lack of understanding of Corporate Parenting and the issues faced by Care Experienced people from leadership.

In our experience, the Corporate Parents who engage with our team often and fully take up our offer of support are the ones who are most likely to have removed upper age limits and also widen their support to those with experience of all types of care. We see a direct link between our support and them deciding to go above and beyond what is in the legislation, because we tell them it's the right thing to do, and our training motivates them to want to do all that they can.⁵

Regular training updates for senior leadership and clearer guidance is essential to ensure senior leaders fully understand why supporting Care Experienced people lifelong is so important and how this fits with their existing Corporate Parenting duties. Please see our position in response to Question 10 around building in more streamlined monitoring and accountability duties into Corporate Parenting.

Area for Improvement:

- **In order to realistically keep the Promise by 2030 we call for a duty for Scottish Ministers to produce guidance that ensures regular renewal of Corporate Parenting training for senior leadership which highlights the ability of Corporate Parents to extend their support beyond the age of 26 where possible. The guidance should also emphasise the ability of the local authority to use discretion and provide aftercare beyond 26 on a case-by-case basis.**

⁵ See the first Corporate Parenting Awards in August 2024 where award categories included a Lifelong Rights Award, which was awarded to the Student Awards Agency Scotland: <https://www.whocaresscotland.org/blog/corporate-parenting-awards-2024/>. We also coordinate the Collaborative Corporate Parenting Network which provides a space for Corporate Parents to come together to share ideas their organisation is implementing and give feedback and support to other organisations to fulfil and surpass their duties to the Care Experienced community.

3. What are your views on the advocacy proposals set out in the Bill?

We welcome the inclusion of a right to independent care experience advocacy services in the Bill, answering the calls from our [Action on Advocacy campaign](#).⁶ Independent advocacy ensures that Care Experienced people are informed of their rights, options and have their voices heard in decisions affecting their lives. At Who Cares? Scotland, our professional independent advocacy workers work one-on-one with Care Experienced people to have their voices heard in decisions affecting them.

As [this infographic](#) (see appendix) shows, for over 50 years, Care Experienced people, inquiries and reports have called for the right to independent advocacy. **The creation of a duty for Scottish Ministers to create the rights of access to “care experience advocacy services” through regulations is a significant step forward in making this call a reality.** We set out in more detail below how to future-proof the Bill to ensure that advocacy is truly independent, lifelong, relationship-based and accessible to all Care Experienced people who need it.

Ensure the independence of advocacy:

The Bill currently refers to “Care experience advocacy services” as being “independent services of support and representation”. **While we appreciate the reference to independence, this lacks any further definition on the face of the Bill that would provide greater legal clarity and safeguards.**

An independent advocacy worker works only for the person they are supporting and is entirely centred on the voice, rights and wishes of the individual. [The Scottish Independent Advocacy Alliance \(SIAA\)](#) states that **independent advocacy must be**

⁶ Our [Action on Advocacy Campaign](#)⁶ has been publicly supported by the Scottish Coalition of Care Providers, Health and Social Care Alliance, MCR Pathways, LGBTI Scotland and the Equality Network. Our Campaign Partners Group also includes Scottish Youth Parliament, Together (Scottish Alliance for Children’s Rights), Scottish Through Care and Aftercare Forum, Barnardo’s, the Poverty Alliance and the Fostering Network.

"structurally, financially, and psychologically separate from services." [The Promise](#) (p115) reiterated this definition in 2020.

"I know my advocate is there for me not SW [social work] or school etc. And my advocate says what I want her to say." - Care Experienced person, 2023.

However, a growing number of local authorities in Scotland are no longer providing independent advocacy services. This means that employees of a local authority, which also provides residential childcare placements, or employees of a foster care agency, could be providing advocacy. Our members have told us that they struggle to trust non-independent advocacy services, and that it can be hard to raise rights issues where ultimately one person or a team with a potential conflict of interest will be responsible for both investigating the issue and delivering the service under scrutiny. **We believe that it isn't true advocacy if it isn't independent.**

A useful definition already exists in the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Section 259](#). Greater legal clarity on the face of the Bill regarding the meaning of "independent" should aid consistent implementation in line with this principle across Scotland.

Area for Improvement:

- **Amend Section 4 of the Bill to define independence as being separate to, for example, Lead Children's Services Planning Bodies and any care provision contracted by them within the local authority area in which a Care Experienced person resides, or "is placed" within a residential or secure setting.**

Ensure advocacy is as accessible and relationships-based as possible:

The policy intention is to introduce a right to advocacy for children, young people and adults with care experience, and regulations may provide further specification. This is significant as [Care Experienced people have told us](#) that whilst they may leave care, the

effects of care never leave them. **This is a historic commitment which recognises the lifelong impact that care can have.** We also welcome the duty on Scottish Ministers to ensure that the right to independent advocacy is available to the extent necessary for Care Experienced people to exercise it.

“Thanks so much for this. It is really nice to hear his views and he has given us a really clear steer for what he wants for his time with his family, and for himself.” - Advocacy feedback from a Social Worker, 2024.

Nevertheless, **further safeguards are necessary to ensure that no Care Experienced person is left without advocacy, regardless of their care type, length of time in care or communication needs.** The Bill must reflect the [broad and inclusive universal definition](#) set out in the Promise. This includes informal kinship care, adoptees, those who have experienced adoption disruption and unaccompanied asylum-seeking children.

“Personally, independent advocacy has made a big difference to me, it feels like it’s helped me a lot to express my feelings and get my point across about things I probably would never have opened up about. I think you should be able to have an advocate at any age as you can still struggle to express yourself when you are older, and you still need to have that person who can help you to tell people how you feel.” – Care Experienced person, 2023.

The “Guidance in relation to care experience” is not intended to replace existing statutory definitions which apply to those who are Care Experienced or affect their existing legal entitlements.⁷ The policy intention is to “ensure that advocacy support is available at the right stage of a person’s care journey rather than focused exclusively on age”.⁸ We call for reassurances at Stage 1 that **leaving the specification of eligibility to future regulations will not limit the right to advocacy to particular care processes or length**

⁷ See the [Bill's policy memorandum 2025](#), paragraph 78.

⁸ This reflects the changes made in Section 1 of the Bill.

of time in care. As otherwise, advocacy might not be relationship-based or accessible to all.

We similarly seek reassurances that Section 4(a) of the Bill will not be interpreted to limit the right if other advocacy services are available or depending on how long you've been in care for.⁹ **Such an interpretation would exacerbate the existing “cliff-edge” Care Experienced people can face in terms of advocacy provision, where in many areas across Scotland services are already capped by age or care type.** The local authority assesses unmet need, and there is no publicly available data or reporting on how decisions about provision are made. For example, in some areas you are no longer eligible for advocacy when you turn 16, in others, unless you are currently going through a Children's Hearing, you cannot access advocacy.

These “cliff-edges”, often driven by cuts, damage relationships. We know that when Care Experienced people can rely on a consistent and trusted advocacy worker who understands their unique circumstances, they can build a strong, ongoing connection that enables better advocacy over time.¹⁰ Funding must also allow for relationship-based practice, and not impose barriers on young people who already have an advocacy worker from continuing to work with them. This is a current issue we see created by the different funding for core advocacy funded by local authorities, and CHS advocacy funded by Scottish Government. We also know that the need for advocacy isn't necessarily related to time spent in care, rather, the unique circumstances of that time, however long, spent in care.

Such an interpretation could negatively impact the quality of advocacy provided. For example, there could be no choice of provider¹¹, advocacy services under the Social Security (Scotland) Act 2018 are not independent from local authorities; many other types of advocacy may have waiting lists or apply prioritisation criteria which doesn't include care experience; many providers do not operate a relationships-based service;

⁹ See paragraph 21 of the [Bill's explanatory notes, 2025](#).

¹⁰ This relationships-based principle must be contained within the regulations.

¹¹ As is the basis of the Children's Hearings Advocacy model, and best practice.

and **the advocacy worker may not have a specialism in Care Experience which is an essential part of the relationships-based practice**, especially at crisis points such as those relating to mental health.

Choice of provider is also particularly important for people with intersectional identities who may wish to choose a particular advocacy service, such as mental health advocacy, care experience advocacy, or social security advocacy for the specialist knowledge that service holds. **Being eligible for one type of advocacy cannot remove eligibility for another service.** People's lives are complex and their issues are often intertwined.

Younger children or young people with complex communication or additional support needs are often unable to access advocacy because the commissioner has directed the provider to prioritise children in other processes, such as child protection. This is a clear example of unmet need and demand outweighing supply. Supported decision-making in the form of **non-instructed independent advocacy would ensure specialist support so that these rights are also upheld and views respected.**¹²

The Care Inspectorate's [Joint Inspections of services for children and young people in need of care and protection 2018-2020](#) reported that from reviewing case records, independent advocacy had only been offered to young people in care in just over a quarter of cases. For young people whose names were on the child protection register, independent advocacy was only offered to them in a few cases and to their parents or carers in just under one fifth of cases. The Care Inspectorate found regularly that, **as well as being in short supply, the criteria for accessing independent advocacy was often unclear, both to children and young people and frontline staff.**

¹² This is a well-established approach that ensures the person is treated as an individual with inherent worth and rights, not excluded due to perceived incapacity. For more information, please see <https://www.siaa.org.uk/information-hub/non-instructed-advocacy-guidelines/>

Area for Improvement:

- **Seek assurances that the regulations will ensure eligibility for truly relationships-based, independent advocacy for all Care Experienced people regardless of their care type, length of time in care or communication needs. They must promote choice and be inclusive of supported decision-making (non-instructed advocacy).**

Independent advocacy as a form of early intervention:

[The Promise](#) found that “**Care Experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond**”. Yet five years since the Promise was published, our evidence tells us that Care Experienced people are not receiving adequate access to independent advocacy, and there are inconsistencies in provision across Scotland leading to a postcode lottery.

Independent advocacy is a valuable early intervention tool. Gathering a child’s views about what is wrong, what they need and advocating for them to receive this support before an issue escalates can reduce the levels of trauma incurred and state intervention needed.

However, due to funding, some local authorities currently do not fund independent advocacy for children and young people on the edges of care. For example, those who are looked after at home, in informal kinship care or in child protection processes.

Adequate funding for independent advocacy ensures that all children and young people involved in formal care processes are able to benefit from this support at an early stage. Currently, our teams across numerous local authorities have to operate waiting lists and respond to the most immediate hearings and crises.

Despite the commitment to independent advocacy in the Promise, we have generally seen cuts rather than investment in services since 2020. We believe that no matter where you live or are/were cared for in Scotland, independent advocacy should

be available at every stage of life, regardless of age, which care processes you've been through or how long you've spent in care. Having a statutory right to advocacy isn't about having another right, it's about ensuring that Care Experienced people are able to enjoy and access all of their rights on an equitable basis to non-Care Experienced people, no matter where they live.¹³

“It is important to have that person in the middle that is only for you to make you feel comfortable throughout the process and explain things in terms that you understand.” – Care Experienced person, 2023.

Ensure adequate investment:

We are concerned that paragraph 13 of the Bill's financial memorandum states that the dataset used to estimate the Care Experienced population and subsequently to cost these provisions “does not include individuals experiencing informal kinship or other care arrangements.” Around 18% of children and young people who requested advocacy support from Who Cares? Scotland during the period of 1st April 2023 to 31st March 2025 were in kinship care (including formal kinship care, Section 25 placements and informal kinship care). **Not using the universal definition of Care Experience (which will be key in informing eligibility for this section when developing the regulations) when projecting the costings risks underestimating the investment required in order to keep the Promise.**¹⁴

Paragraph 45 explains that the costs for lifelong advocacy have been based on the take up rate of existing advocacy services, and provision for 5% and 10% of the population is provided. **However, the Care Experienced population is underestimated and the current take up rate would increase with proper advertising and awareness which paragraph 46 commits to do.**

¹³ Check-out our campaign pro list and policy memorandum [here](#) for more information.

¹⁴ For more info see [our response to the Scottish Government's consultation on 'Developing a universal definition of "Care Experience"', 2025](#) and our ['Who would be eligible' campaign resource, 2025](#).

Paragraph 47 also highlights that “costs identified are based on **the assumption of one case of advocacy per person** who comes forward for advocacy services in a year.” Our data shows that 01/04/2023 to 31/03/2025, **Care Experienced people requesting independent advocacy from Who Cares? Scotland had an average of 4.7 issues they were seeking support with.**

Paragraph 48 also explains that the demand for advocacy will likely decrease as people get older and are able to access universal support and other specialist services such as mental health advocacy. However, **access to other services is not guaranteed, specialised in terms of care experience or easy to access.**

Paragraph 52 states that there are no confirmed costs of the duty on Scottish Ministers to make arrangements by regulations for the provision of independent advocacy support on local authorities. However, **across many local authorities we already need to operate waiting lists to manage demand**, and those waiting lists can be capped and will not include demand from those Care Experienced people who are not eligible for the service.

For this Bill to deliver truly transformational change, **it must provide the right investment to make all the outlined changes possible** without reallocating vital funds from other key services and provisions. Independent advocacy is an essential form of rights protection and must not come at the cost of access to services which support specific children’s rights, such as the right to health, to leisure and play, to education, or to be supported to stay with their family. Rights are indivisible, and UNCRC Article 4 requires governments to legislate and invest in services in a way that ensures all are upheld.

Area for Improvement:

- **Seek clarity from the Minister for Children, Young People and Keeping the Promise that new provisions in the Bill will receive investment at the appropriate level.**

Collective advocacy:

We also recognise the value of independent collective advocacy in enabling access to rights to be pursued by a group of individuals for systemic change, as highlighted by the Scottish Independent Advocacy Alliance (SIAA). This removes the burden from one person pursuing an issue and can have a further-reaching impact than individual advocacy.

Champions boards are a good example of collective advocacy which currently exist for Care Experienced people. The boards are groups of Care Experienced young people across different local authorities which provide a space for young people to meet with local Corporate Parents and influence change they wish to see in their area. We believe that there are currently 24 local authorities with Champions Boards which operate with varying degrees of independence, and 25% of councils do not have a Board at all. These are most effective when run independently of the organisations they seek to influence and hold accountable.

The Scottish Mental Health Law Review (SMHLR) emphasised the importance of access to both individual and collective advocacy, recognising that systemic issues affecting groups of children require a collective voice to influence policy and practice effectively. However, SIAA highlight that collective mental health advocacy has recently been defunded by one IJB, arguing that statutory obligations are met through individual advocacy alone.

Clear statutory language is essential to prevent narrow interpretations and ensure that both local and national government are held accountable for adequately resourcing independent advocacy. The SMHLR recommends placing duties on Scottish Ministers to support collective advocacy for children and young people, ensuring that their voices are heard not only in individual matters but also in shaping the services and systems that

affect them. The Bill presents a timely and powerful opportunity to embed these recommendations into law for Care Experienced people.

Area for Improvement:

- **Amend Section 4 (2) to reflect the right to independent collective advocacy for Care Experienced people.**

What are your views on the proposals for guidance in relation to care experience?

A definition of Care Experience must be in regulations:

The introduction of a duty on Scottish Ministers to publish guidance in relation to “care experience” is intended to reduce stigma. We welcome this as almost 50% of Care Experienced adults reported during our [Lifelong Rights campaign](#) that they feel stigmatised when receiving support.

Section 5 does not define Care Experience in statute so as not to exclude groups of people, despite the government’s consultation having resulted in [support for a definition which is broad and inclusive](#). We noted above that the guidance will not alter eligibility requirements to aftercare, replace statutory definitions which apply to those who are Care Experienced or affect their existing legal entitlements.¹⁵

We are concerned that without a clear definition in regulations, eligibility requirements for aftercare, advocacy and other support will continue to be guiding not binding, and exclusive e.g. to people with experience of informal kinship care, adoptees, those who have experienced adoption disruption and unaccompanied asylum-seeking children.

A benefit to defining Care Experience by regulation is that it can be updated more easily. Language and the groups we have recognised as Care Experienced has also evolved over time. The Care Experienced community is a relatively young identity movement, and the way it talks about itself is rapidly evolving, as is the social policy surrounding it.¹⁶

¹⁵ See the [Bill's policy memorandum 2025](#) paragraphs 28, 30, 78 and 79.

¹⁶ For example, new ideas for flex-secure and models of foster carers moving into a family’s home are being proposed, widening the types of care that will exist in future. An increased focus on early intervention and keeping families together may see more children in need of enhanced support and protection remaining at home with supervision or entering informal kinship care without coming into contact with the Hearings System and becoming formally looked after. National Care Leavers Week has evolved in the last few years to National Care Experience Week as the idea of care experience as a lifelong identity with a lifelong impact has been developed amongst the community. Over the past century, terms like orphanages, house parents and orphans gradually become outdated, as has other language associated with the “care system”. Language in legislation can quickly become outdated and feel stigmatising.

The Promise states that “a universal and inclusive definition of care experience which encapsulates everyone with even the smallest experience of care will help to normalise care as more people can understand and relate to it.... Scotland must ensure that current definitions that act as the access point for rights and entitlements are inclusive enough to benefit all young people for whom Scotland has had parenting responsibility.” (p118)

Who Cares? Scotland uses a broad and inclusive definition of Care Experience which includes foster care, secure care, formal and informal kinship care, adoption and adoption breakdown, unaccompanied asylum seeking young people, young people looked after at home, and residential care. This could also include someone who spent time in supported accommodation or a residential special school as a child or young person if there was social work involvement in placing them there, however, not everyone living in these settings will be Care Experienced.

Local authorities must continue support for as long as required, on an individual basis over the age of 26. The Independent Care Review’s [Follow the Money report](#) made a strong case for investing upstream to get it right for every Care Experienced child and adult, at the economic benefit to other services.

We encourage Corporate Parents to also adopt this definition through our Corporate Parenting training, and look forward to shaping the regulations in this regard. To be clear, we are not proposing altering the definition of “looked after” children, rather, to ensure that the broad definition of Care Experience (which includes “looked after” children) can shape existing and future eligibility for rights and support.

This section requires public authorities to have regard to future guidance when exercising their functions in relation to Care Experienced people. **This would be stronger if it was a “due regard” duty, so public authorities could be subject to judicial review.** [Our learning from our education and engagement work with Corporate Parents](#) tells us that we have come across challenges in ensuring all Corporate Parents act on their duties.¹⁷ As part of this challenge, we have found that there is a lack of consequence when duties

¹⁷ Under Part 9 of the Children and Young People Scotland Act 2014.

are not being met, and therefore, it is difficult to create the changes needed to ensure Corporate Parenting and The Promise are fully implemented. A proactive procedural duty of due regard should take this into account.

The guidance should also promote rights-based practice (in addition to ‘experiences and needs’ as set out in the Bill) in relation to Care Experienced people and the planning and provision of public services.

We are concerned that Section 5 Subsection 5 could be interpreted as a limit on the responsibilities of local authorities to any Care Experienced person living in their area, as opposed to those who were ‘looked after’ by the local authority while a child. **We believe that Care Experienced people should be able to choose to live, work or study in the area that is best for them, without compromising their rights to practical and emotional aftercare support from the team local to them,** as recommended in our [Housing Issue Paper, 2024](#). This must be clarified in the Bill to ensure consistency of application across local authorities.

Area for Improvement:

- **Create a broad and inclusive definition of Care Experience in regulations which places a due regard duty on public bodies, can be consistently applied across local authorities and promotes rights-based practice. This definition must include informal kinship care and all other groups of Care Experience set out above.**

Identification of Care Experience:

We support the position of the Children and Young People’s Commissioner Scotland (CYPCS) that the word “identify” must be removed from Section 5A(2), due to the risk of violating a person’s Article 8 right to respect for their private and family life.

If Care Experienced people are required to provide proof of status in order to access support, they may have to submit a Subject Access Request in order to gain this. In practice, this can mean that a Care Experienced person receives their full care records

before they wanted to or without appropriate advocacy, resulting in a Care Experienced people engaging in a potentially traumatic situation.

It is essential that any proof required adopts the same process used successfully by the Care Experienced Student Bursary. The Bursary provides a list of professionals who can provide a letter certifying that the applicant is Care Experienced, providing a range of options for the applicant to pursue. Alternatively, guidance should require local authorities to create a process for Care Experienced people to be able to apply for a “letter of proof” that can be provided without the applicant having to receive detailed and traumatic information about their life that they were not seeking.

Area for Improvement:

- **Ensure guidance upholds Care Experienced people’s rights to privacy and operates in a trauma-informed way.**

Chapter 2

5. What are your views on proposals designed to limit profits for children’s residential care services?

We welcome the intention of this provision, but it could go further.

Who Cares? Scotland firmly supports the statement in [The Promise](#) (p.111) that “Scotland must avoid the monetisation of the care of children and prevent the marketisation of care... and make sure that its most vulnerable children are not profited from... There is no place for profiting in how Scotland cares for its children.”

The Welsh Government has gone further in its [Health and Social Care \(Wales\) Bill](#) by legislating to remove profit completely from residential care services, where care will only be provided by the public sector, charitable or non-for-profit organisations in the future, and the money saved from shareholders’ profit will be reinvested into children’s welfare.

We believe it is more in keeping with the Promise to legislate to avoid excess profit-making entirely. However, it is vital that planning for this considers the implications for current provision, and how that might be supported to create a sense of security for Care Experienced people currently in “placements” with for-profit institutions.

The Promise (p.110) was also clear that “Regulatory bodies must scrutinise any presence of profit to ensure that funds are properly directed to the care and support of children”.

We encourage the Scottish Government to consider the Welsh example (requiring all children’s residential care services to be registered as “not for profit” entities) in its [upcoming consultation](#).

We appreciate the government’s intention to ensure the stability of placements for children and young people currently in Scottish residential care, as well as ensuring sustainable provision of future placements.¹⁸

The government should continue to apply the key principles of stability and sustainability by developing a clear roadmap to ensure there is due consideration and collaboration with Care Experienced children and young people currently experiencing profit-led “placements”, and the sector, in order to ultimately fully keep the Promise in this area.

A roadmap must include consideration of the following:

- A stronger definition of profit-making in the regulations.
- Measures to permit only registered “not for profit” entities to receive funding to deliver care.
- Clarifying by regulation that any surpluses must be reinvested back into care services.

¹⁸ Please see paragraph 106 of the Bill’s [policy memorandum](#).

Area for Improvement:

- **Ensure a clear roadmap is developed to ensure there is due consideration and collaboration with Care Experienced children and young people currently experiencing profit-led “placements”, and the sector, in order to ultimately fully keep the Promise in this area.**

6. What are your views on proposals to require fostering services to be charities?

We welcome the measures around creating transparency around profit from residential care and not-for-profit principles of Independent Fostering Agencies. [The Promise](#) (p.111) was clear that “Scotland must make sure that its most vulnerable children are not profited from.”

We echo The Fostering Network’s Calls that the transition must be planned in a way that avoids any disruption to children’s lives or to the retention of foster carers. We also agree with their position to future-proof the Bill by extending the requirement for charitable status to adoption services:

“Although all independent adoption services currently operating in Scotland are registered charities, this change would prevent agencies without charitable status from providing adoption services in the future, and solidify Scotland’s commitment to the principle that there is no place for profit in children’s social care.”

Area for Improvement:

- **Extend the requirement for charitable status to adoption services.**

7. What are your views on proposals to maintain a register of foster carers?

We [welcome](#) giving Scottish Ministers the power to create a register of foster carers due to the increased safeguarding and public protection measures it would bring.

The [Scottish Child Abuse Inquiry](#) has an extensive record online which evidences that children have been continuing to experience abuse in foster care as recently as December 2014, the upper limit of their scope into historic abuse. More robust measures to identify concerns with potential foster carers are required.

This section of the Bill amends the Children (Scotland) Act 1995. All provisions must be brought into the scope of the UNCRC Act 2024.

We are also supportive of the register for the potential to make better matches between children and foster carers, providing that in line with The Promise, children do not become matched too far away from where they currently go to school and have established social networks and relationships with family members. Some children may want to live in a different area for many reasons, however we currently advocate for many children who do not want to move to the area being proposed. Guidelines must be developed to ensure this works in the child's best interests and has the child's views at the centre of this decision.

As stated in our response to question 1, guidance is also required to ensure that young people who are placed with carers outside of their home local authority are able to access aftercare in that area if that is where they have built their life and choose to remain after leaving care.

Area for Improvement:

- **We recommend that the register also record complaints and concerns made about a foster carer by a child, young person or other relevant person to help identify concerning patterns in behaviour.**
- **All provisions within the Bill must be brought into the scope of the UNCRC Act 2024. For example, the rights in Sections 1 and 10 amending sections of the Children (Scotland) Act 1995 must be restated as freestanding rights.**

Chapter 3

8. What are your views on the proposed changes to the Children's Hearings system?

We welcome the following changes in this Chapter which reflect our calls in our [Children's Hearings System Redesign consultation response \(2024\)](#):

- Powers to exclude relevant persons and remove relevant person status (Section 15 and 16).
- The changes regarding extended duration on interim Compulsory Supervision Orders (ICSOs) (Section 19).
- Post-referral discussion option with the Reporter (Section 21).

Below we provide comments on the following sections:

Single panel member decisions (Section 11):

We support single panel members being able to take procedural decisions to improve the efficiency of the Children's Hearings System (CHS). However, **we oppose a single panel member taking any substantive decisions in a young person's life.**

An interim Compulsory Supervision Order (ICSO) is a flexible order panels can use if it is necessary as a **matter of urgency** for the protection, guidance, treatment or control of a child or young person. The child or young person can be removed from their home or remain there on an ICSO, or be required to reside in a named place or in a place of safety. An ICSO currently lasts for 22 days but provisions in the Bill extend this to 44 days, and they can also be renewed lasting up to a total of 66 days before the Section 67 ground is established in court. If grounds are accepted or established, there are no limits to the ICSOs which may be set in place by the children's hearing.

We are concerned that the provision in Section 11 subsection 13 for single panel members to be able to make or extend an ICSO may affect a child's right to a fair trial under Article 6 ECHR and Article 40 UNCRC.¹⁹ ICSOs can have serious consequences on a young person's life. Whilst they may only last for a set period of days, an ICSO can make provisions that may require a child to move to a new home, be unable to speak to their parent or attend school and see their friends, or cause other significant disruption to a child's life. The level of shock and trauma this can create for a child is not necessarily lessened by the fact that the change may only last for a set number of days, particularly as they are often extended or converted into a longer-term CSO. The decision to create an ICSO for a child is a substantive decision that should not be made by one single panel member.

An opt-out right to independent legal advice and advocacy must be available to ensure additional safeguards that support the child or young person's views to be heard if an ICSO is to be made or extended.

Area for Improvement:

- **Section 11(13) is removed or amended so the making or extending of an ICSO is always subject to a hearing of three members of the Children's Panel.**
- **An opt-out system of referral for independent legal advice and advocacy.**

Child's attendance at children's hearings and hearings before sheriff (Section 13):

We welcome to removal of the existing obligation on a child to attend their hearing and the enhanced offers referenced to ensure that the child's voice is not lost from the process.

¹⁹ See paragraphs 58-60 of the [Bill's explanatory notes, 2025](#) and also the Children and Young People Commissioner Scotland's response to this question.

However, as recommended in the [Hearings for Children report 2023](#), **we still believe that there should be an offer made to a child to attend or participate via alternative methods at every hearing.** We disagree that this “would replicate the current approach of an obligation which can be disregarded in some circumstances”,²⁰ as a [proactive offer makes it clearer to the child, parents and carers](#) that there are options in the process to ensure the child’s views are always checked and respected. Removing the obligation to attend without making this offer could have the unintended consequence of the child not accessing their right to attend such hearings and proceedings.²¹

However, we do not propose that such an offer is made to all babies and very young children in line with their evolving capacities, due to the evidence highlighted by NSPCC’s response and previous 2023 research on [Keeping the Promise to Infants, 0-3 Year Olds](#). Attending a hearing can cause great distress and there is a risk of panel members and professionals drawing assumptions about the meaning of an infant’s behaviour without the requisite training (as the behaviour of a very young child who has experienced trauma can often be counter-intuitive to interpret).

Supported decision-making (in the form of non-instructed independent advocacy) would ensure that in situations where the child has complex communication or additional support needs, or is younger, they would have specialist support to ensure that their rights are upheld and any communicated views are respected.²²

Forcing a child to attend

We are very concerned by Section 13 subsections (2) and (10) that “there will be some situations where the child must attend, regardless of their preferences.”²³ As independent advocacy workers, we would strongly encourage a young person at risk of

²⁰ See paragraph 176 of the [Bill’s policy memorandum, 2025](#)

²¹ See Part 10 of the Children’s Hearings (Scotland) Act 2011, Sections 78(1)(a) and 103(4)).

²² For more information, please see the [SIAA Non-Instructed Advocacy Guidance](#).

²³ See paragraph 172 of the [Bill’s policy memorandum, 2025](#): These situations are ‘where the grounds of referral relate to the child’s conduct which has brought them into conflict with the law, and the consequences for the child may include long-term disclosure of criminal offences, or restriction or deprivation of liberty, the hearing may well consider that the child’s attendance is essential to uphold their right to a fair hearing or to assist the hearing in making its decision.’

deprivation of liberty to attend their hearing to instruct their lawyer and share their views. We would explain to them the potentially huge consequences of not attending.

Nevertheless, young people who do not want to attend their hearing are generally making this choice due to the level of emotional distress and trauma they feel it would cause, and their Article 12 UNCRC right to respect for views must be balanced with their Article 40 right to a fair trial. **This Bill has the potential to deliver transformational change in requiring panel members to be trained that they must not treat the child less favourably if they choose not to appear before the panel.**

Just as adults are able to exercise the choice not to attend their sentencing, children must be given this option and be able to rely on a lawyer to ensure their rights are upheld and their case is not treated in an unfair manner. For a young person who is very clear that they do not want to attend, the only way we can envisage this exception being enforceable is to compel them by involving the police to forcibly remove them from their home. While we appreciate the need to balance rights in this context, this would be at complete odds with the spirit of the redesigned CHS to be child-friendly and trauma-informed. This would significantly hinder them from being able to engage in the process and damage their trust in the system and professionals around them.

For children called on serious offence grounds or subject to a secure care “placement”, whether or not they wish to attend their hearing, they must have opt-out independent legal representation in order to uphold their right to a fair trial (UNCRC Article 40, ECHR, Article 6). There should also be opt-out independent advocacy to help convey the views of the child to the lawyer and ensure the child understands the process, potentially lifelong consequences and serious interference with their rights. **Where a child chooses not to attend their hearing, their lawyer should be permitted to attend in their place, at no prejudice to their case.**

Area for Improvement:

- **The obligation to attend a hearing should be removed for all children and young people. They should receive an offer to attend or participate via alternative measures for every Hearing. There should be an opt-out system of referral for independent legal advice and advocacy for all children on offence grounds and subject to a secure care “placement”.**

Role of Principal Reporter and grounds hearing (Section 14):

In Section 14, subsection 5, where the Principal Reporter prepares a statement of grounds for a child, **there should be an opt-out system of referral for independent legal advice and advocacy at that stage.** The Reporter should be looking for the most appropriate way for a child to communicate their views and independent advocacy can support the child before they have to make complex legal decisions about the grounds.

Here, as above, this should include supported decision-making in the form of non-instructed advocacy, especially given the revision where the Principal Reporter doesn't have to engage with the child and family on the grounds and whether they agree with them and the supporting facts, and the child's participation in the hearing.²⁴

We are also concerned that in cases where there is no clear agreement of the grounds, in particular offence grounds, a hearing with a single chairing member can resolve any disputed elements of the grounds. Section 89C subsections 3 and 4 allow the grounds hearing to be satisfied if the child does not accept all of the supporting facts in relation to a ground but “the child accepts sufficient of the supporting facts to support the conclusion that the ground applies”. **This reiterates the importance of opt-out independent advocacy as an additional safeguard to support the child to have their**

²⁴ To the Children's Hearings (Scotland) Act 2011 Section 69A (8). This is where it would be 'inappropriate or ineffectual to do so (taking account, for example, of the child's age and maturity)', or 'if the Principal Reporter already has sufficient information, based on previous engagement (or attempts to engage) with the child'.

views heard in this complex legal process with a potential criminal record and lifelong impact.

Area for Improvement:

- **Section 14 must include an opt-out system of referral for independent legal advice and advocacy, including non-instructed advocacy.**

Tests for referral to Principal Reporter and making of compulsory supervision order or interim compulsory supervision order (Section 17):

We welcome the addition of “support” to modernise the language of the statutory referral criteria regarding “protection, guidance, treatment or control”. However, we are disappointed not to see the removal of “treatment” and “control”, as recommended in the [Hearings for Children report 2023](#).

The criteria must be wholly reframed to avoid young people feeling as though something scary will be done to them, and instead prioritise their nurture, protection and support. The language being aimed at legal professionals is not a reason to keep it, rather, a reason to change it as language influences culture which impacts practice and decision-making.

We agree that “skilful explanation, interpretation and confirmation of children’s understanding will always be required” when communicating legal and complex processes to children.²⁵ However, this does not happen often enough in practice and should not only be the case for children who have the support of an advocacy worker – it should be the job of all professionals in the process to communicate in this way.

Child-friendly language and developmentally appropriate two-way communication should confirm understanding, where the child can explain their understanding in

²⁵ See paragraphs 214 and 215 of the [Bill’s policy memorandum, 2025](#).

their own words or through other creative means. At this conversation, the role of advocacy can also be explained and offered to a child to support with the child's understanding and agency. This is particularly important for children who are subject to offence grounds or a secure care "placement".

Area for Improvement:

- The statutory referral criteria must be wholly reframed to remove the words "treatment and control" and replace them with "nurture and support." At the point of referral, the role of independent advocacy must be explained and offered to the child.

Information about referral, availability of children's advocacy services etc. (Section 18):

Having [previously called](#) for the right to independent advocacy at the earliest possible opportunity to be written into legislation; **we celebrate the new duties to provide a child with information about the referral and children's hearings process, as well as the availability of children's advocacy services and the new requirement to share information with an advocacy worker regarding when and where a child's hearing is to take place.**²⁶

However, the Bill doesn't include an opt-out system of referral for advocacy like the English model because of "the extent of existing presenting demand for children's advocacy at around 20% of hearings in the year to November 2024".²⁷ As CHS advocacy is currently only funded by Scottish Government for 10% of hearings, we believe this is an incorrect assumption that there is no surplus demand. As the Bill introduces new duties on professionals to explain and offer independent advocacy to children, the

²⁶ See paragraph 227 of the [Bill's policy memorandum, 2025](#).

²⁷ See paragraph 223 of the [Bill's policy memorandum, 2025](#).

demand on current provision is likely to increase yet the financial memorandum makes no indication that this service will be uplifted to meet increased demand.

In 2024, our advocacy workers raised over 5,660 issues for over 1,500 Care Experienced people. We know that when advocacy is explained by an independent advocacy worker, around 98% of eligible referrals accepted the offer of advocacy. Yet only around 20% of Children's Panel Hearings have an advocacy worker, and many of our regional teams need to operate waiting lists. At the moment, we know we cannot reach everyone who needs and requests advocacy.²⁸ A recent [Research Scotland independent evaluation report \(2024\)](#) of the Children's Hearings System Advocacy Scheme backs up the issue of demand outweighing supply.

Opt-out advocacy is absolutely essential for the protection of children and young people's rights in the Hearings System and access to justice. This position is backed by the CHS Advocacy National Providers Network and we urge Scottish Government to adopt this policy. Failing this, **opt-out advocacy must be established as a legal right for children and young people referred on offence grounds or subject to a secure care "placement" as an absolute minimum to ensure protection of their human rights.**

This should ensure a proportionately sufficient level of independent advocacy provision, in order to ensure all children and young people can access this support at the point of need. These supports must be available across all local authorities, ensuring that young people in rural areas have the same opportunities as those in more connected locations.

Area for Improvement:

- **Section 18 must be strengthened by including an opt-out system of referral for independent advocacy, particularly for any child or young person referred on offence grounds or subject to a secure care "placement".**

²⁸ For more information on the types of issues we support Care Experienced people with, please see our [Advocacy data and impact report, 2024](#). The [Promise Oversight Board's most recent report \(2025\)](#) also highlighted lifelong advocacy as a key right which must be included in the Bill.

Part 2

9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill?

We welcome the extension of statutory responsibility to Integration Joint Boards (IJBs) regarding the development of Children's Services Plans. IJBs are Corporate Parents and will have a beneficial role to play in promoting the health and wellbeing of Care Experienced people in their area.

Other

10. Are there any other comments you would like to make in relation to this Bill?

Who Cares? Scotland strongly supports the general principles of the Bill which are an important step towards keeping the Promise and upholding Care Experienced people's rights. **While ensuring appropriate scrutiny, we encourage swift passage of the Bill before the pre-election period in March 2026.**

Monitoring and Accountability:

We recommend that MSPs add legislative monitoring and accountability measures such as post-legislative scrutiny and streamlined data collection, reporting and planning duties to ensure that:

- The provisions of the Bill are fully acted upon;
- The legislation is kept in focus within the next parliamentary session, and;
- Accountability for keeping the Promise is rooted in primary legislation as opposed to policy, FOIs (in the absence of reliable publicly available data) and rhetoric.

Despite reports, statements and duty bearers insisting that change is happening, many Care Experienced people are not feeling enough change in their own lives. Who Cares? Scotland is deeply concerned about the lack of progress across these areas. For example:

- The [third Oversight Board report](#) this year found that “Scotland is not halfway towards keeping its promise”, and “some people, some organisations and some systems are not yet doing enough, and this risks the country as a whole failing to deliver the promise.”
- Last year, [we reported](#) on the dilution of the original aim for Scotland to become a nation that does not restrain its children as set out in The Promise.
- This year, [our report](#) commissioned by the CYPCS highlighted that given that in 2022/23, the exclusion rate for looked after pupils was almost six times the rate for all pupils; “the Promise commitment to end formal and informal exclusions must be enforced immediately, better understood and properly resourced across local authorities”.
- This year, the Scottish Parliament’s Education, Children and Young People Committee convened a meeting with Care Experienced young people who were involved in boards/steering groups helping to implement the Promise in their local areas. The Committee wanted to gather their views on voice, to hear whether they feel listened to, whether their input is valued and whether they have seen tangible results as a result of their input. On Promise progress, participants raised issues around social work provision, and said that “while there were moves in the right direction, change was not happening fast enough though there was still time.”

²⁹ Unlike in England, it is not mandatory in Scotland to record the ethnicity of children taken into care, or other minority characteristics a parent holds. There is research to suggest numerous minority groups are overrepresented in the care system however without accurate data being collected it is difficult to identify patterns and challenge this.

Area for Improvement:

Include an accountability section in the Bill with provisions on:

- **Post-legislative scrutiny** where the Bill is reviewed two years after enactment, including consideration of what further action may be needed in order to keep the Promise by 2030.
- **Streamlined data collection, reporting and planning duties** for Corporate Parents on existing Corporate Parenting responsibilities, provisions of the Bill and other outcomes of the Promise, to be produced in agreement with the Scottish Government and COSLA.
- **These reporting duties could include areas such as:**
 - Progress to eliminate the practice of restraint of children and young people in care;
 - Progress to eliminate the exclusion of Care Experienced people from education;
 - Longitudinal data on Care Experienced adults' outcomes to inform policy addressing inequalities;
 - Equalities data on children taken into care and the families we remove them from. This could include protected characteristics and care experience to identify patterns and address systemic bias and opportunities to target early intervention and family support.²⁸

Appendix

Decades of Demands

The Fight for Independent Advocacy for Care Experienced People

For over 50 years, Care Experienced people, inquiries, and reports have called for independent advocacy in the care system, a call that has yet to be fully realised.

