



At Who Cares? Scotland, we are pleased with the progress made so far with this Bill, and how our [members' involvement](#) back in October has been considered at every stage of the Bill proceedings.

Our Action on Advocacy campaign, launched last year on Care Day, has been calling for the right to independent advocacy for all Care Experienced people, no matter their age, type of care experience or where they live. With the Bill now entered the final stage, we have been successful in this right being included – with cross-party support. This is a massive win for the Care Experienced community.

At Stage 3, we believe there are a few further tweaks needed to make this legislation as strong as it can be, as outlined below. **We urge all MSPs to vote for the amendments we support below.**

1. Ensuring independent advocacy services are independent from providers of care

We are delighted that independent advocacy is now defined in the Bill. However, the definition is not yet clear enough.

At Stage 3, we support Nicola Sturgeon MSP's amendments 113, 114 and 29A:

113 In section 4, page 8, leave out lines 23 to 32

114 In section 4, page 8, line 32, at end insert—

<() where the person to whom the care experience advocacy services are made available is, or was, placed in residential or secure care, a person who provides care services under a contract or other arrangement with a local authority in the local authority area where the care-experienced person is or was placed,>

29A As an amendment to amendment 29, line 16, at end insert—

<() where the person to whom the care experience advocacy services are made available is, or was, placed in residential or secure care, a person who provides care services under a contract or other arrangement with a local authority in the local authority area where the care-experienced person is or was placed.>

Please note, Natalie Don MSP's amendments 23 pre-empts amendments 113 and 114.

Why? It must be clearer that where a care provider also acts as an advocacy provider in the same local authority area, that advocacy is not independent. While a Care Experienced person may choose or prefer to receive that advocacy – it is not independent advocacy. The Bill should make clear that every Care Experienced person in Scotland should have the option to access independent advocacy no matter where they live or come from.

For example: Even if Tracy Beaker’s children’s home offers her advocacy from someone directly employed by the home, she should have the option to choose between that and an external independent advocate (employed by an advocacy provider not providing care services in that local authority area).

Supported by: This has been our position supported by our campaign partners (SIAA, Action for Children, Partners in Advocacy, Includem) since last June, and we believe it aligns with the [Scottish Independent Advocacy Alliance's definition of independence](#) as being "structurally, financially, and psychologically separate from services." In 2020, [The Promise \(p115\)](#) reiterated this definition. Additionally, the Promise Scotland backs this call, as seen on p.15 of their [Stage 2 Briefing](#), as well as Nicola Sturgeon MSP and Martin Whitfield MSP.

2. Defining Care Experience by regulation instead of guidance

Currently, Section 5 places a duty to publish guidance in relation to care experience. At Stage 3, this should be amended to require Ministers to publish regulations on Care Experience.

At Stage 3, replace “guidance” with “regulations” throughout Section 5. We support Nicola Sturgeon MSP’s amendments 118-120 and 122-133:

118 In section 5, page 10, line 3, leave out <issue guidance> and insert <by regulations make provision>

119 In section 5, page 10, line 8, leave out <Guidance> and insert <Regulations>

120 In section 5, page 10, line 8, leave out <promote best practice in> and insert <provide for requirements in relation to>

122 In section 5, page 10, line 20, leave out <have due regard to guidance issued> and insert <comply with regulations made>

123 In section 5, page 10, line 25, leave out <have due regard to guidance issued> and insert <comply with regulations made>

124 In section 5, page 10, line 29, leave out <guidance issued> and insert <regulations made>

125 In section 5, page 10, line 40, leave out <guidance> and insert <regulations>

126 In section 5, page 11, line 5, leave out <guidance> and insert <regulations>

127 In section 6, page 11, line 14, leave out <issuing guidance> and insert <making regulations>

128 In section 6, page 11, line 16, leave out <guidance> and insert <regulations>

129 In section 6, page 11, leave out lines 24 to 26

130 In section 6, page 11, line 27, leave out <guidance> and insert <regulations>

131 In section 6, page 11, line 28, leave out <Guidance issued> and insert <Regulations made>

132 In section 6, page 11, line 28, leave out <include different guidance> and insert <make different provision>

133 In section 6, page 11, line 30, leave out subsection (4)

Why? Even with a due regard duty added at to the guidance at Stage 2, defining Care Experience in regulations rather than guidance is more likely to bind public authorities to implement the definition. It will better influence future policy developments and support. A definition in regulation would provide clarity and consistency, make this section easier to explain to a child, and reduce the risk of variation in how Care Experience is understood or applied.

Supported by: Backed by Nicola Sturgeon MSP and the Education, Children and Young People Committee at Stage 1. Supported by MCR Pathways, SIAA, Partners in Advocacy, Includem and Action for Children.

3. Opt-out advocacy

Sections 14 and 18 must be strengthened by including an opt-out system of referral for independent advocacy. Ideally all children going through Children’s Hearings would be eligible, failing which, this should be available to any child or young person referred on offence grounds or subject to a secure care “placement.”

At Stage 3, we support the principle of Roz McCall MSP’s amendment 78:

78 After section 18, insert—

<Referral to children’s advocacy services

(1) (2) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In section 122 (children’s advocacy services)—

(a) for subsection (2) substitute—

“(2) The Principal Reporter must refer the child to children’s advocacy services, unless the child indicates that they do not wish to be referred.”,

(b) in subsection (3), for “chairing member” in both places it occurs substitute “Principal Reporter”,

(c) after subsection (3) insert—

“(3A) Where the Principal Reporter refers a child to children’s advocacy services under subsection (2), the Principal Reporter must provide the child with the name of the service the child has been referred to.”.>

Failing which, we support Nicola Sturgeon MSP’s amendments 169, 170, 186, 188, 191, 194, 198 (169, 170, 186, 198 supported by Ross Greer MSP):

169 In section 14, page 33, line 11, at end insert—

<(ba) whether, in the case of a child in relation to whom the children’s hearing is considering whether to make, vary or continue an order, interim order or interim variation of an order— (A) placing a child in secure accommodation, (B) with directions authorising restriction of liberty, (C) with prohibitions, or (D) with movement restriction conditions, the child opts-out of children’s advocacy services, (bb) whether, in the case of a child suspected of having committed an offence, the child opts-out of children’s advocacy services,>

170 In section 14, page 33, line 12, at beginning insert <in a case not mentioned in paragraph (ba) or (bb),>

186 In section 18, page 54, line 27, after <services> insert <, including the child’s right to opt-out from a referral to children’s advocacy services in the case of a child—

(i) in relation to whom a children’s hearing will consider whether to make, vary or continue an order, interim order or interim variation of an order—

- (A) placing a child in secure accommodation,
- (B) with directions authorising restriction of liberty,
- (C) with prohibitions, or
- (D) with movement restriction conditions, or

(ii) who is suspected of having committed an offence>

188 In section 18, page 55, line 6, after <services> insert <, including the child’s right to opt-out from a referral to children’s advocacy services in the case of a child—

(i) in relation to whom a children’s hearing will consider whether to make, vary or continue an order, interim order or interim variation of an order—

- (A) placing a child in secure accommodation,
- (B) with directions authorising restriction of liberty,
- (C) with prohibitions, or
- (D) with movement restriction conditions, or

(ii) who is suspected of having committed an offence>

191 In section 18, page 55, line 13, after <services> insert <, including the child’s right to opt-out from a referral to children’s advocacy services in the case of a child—

(i) in relation to whom a children’s hearing will consider whether to make, vary or continue an order, interim order or interim variation of an order—

- (A) placing a child in secure accommodation,
- (B) with directions authorising restriction of liberty,
- (C) with prohibitions, or
- (D) with movement restriction conditions, or

(ii) who is suspected of having committed an offence>

194 In section 18, page 55, line 21, after <services> insert <, including the child’s right to opt-out from a referral to children’s advocacy services in the case of a child—

(i) in relation to whom a children’s hearing will consider whether to make, vary or continue an order, interim order or interim variation of an order—

- (A) placing a child in secure accommodation,
- (B) with directions authorising restriction of liberty,
- (C) with prohibitions, or
- (D) with movement restriction conditions, or

(ii) who is suspected of having committed an offence>

198 After section 18, insert—

<Children’s advocacy services

(1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In section 122 (children’s advocacy services)—

(a) in subsection (2)—

(i) after “availability of” insert “or child’s referral to”,

(ii) after “services” insert “and, where applicable, the child’s ability to opt-out of those services”,

(b) after subsection (3) insert—

“(3A) The Scottish Ministers must by regulations make provision to ensure that in the case of a child—

(a) in relation to whom a children’s hearing will consider whether to make, vary or continue an order, interim order or interim variation of an order—

(i) placing a child in secure accommodation,

(ii) with directions authorising restriction of liberty,

(iii) with prohibitions, or

(iv) with movement restriction conditions, or

(b) who is suspected of having committed an offence, the child is referred to children’s advocacy services, unless that child opts-out of those services.”.>

Why? Opt-out advocacy is absolutely essential for the protection of children and young people’s rights in the Hearings System and access to justice. 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.

Linked [here](#) is more information on our position.

Supported by: Barnardo’s support opt-out advocacy for all going through CHS. Our position is supported by our campaign partners (Includem, Partners in Advocacy, Action for Children, SIAA, and Fostering Network), backed by the Committee at Stage 1, and the CHS Advocacy National Providers Network.

4. Accountability

While we were encouraged by amendments which passed at Stage 2;¹ accountability for keeping the Promise will be further strengthened by referencing the commitment on the face of the Bill in connection with Corporate Parenting and Children’s Services Planning.

At Stage 3, in section 3, we support Willie Rennie MSP’s amendment 109:

109 In section 3, page 7, line 17, at end insert—

<() In section 59 (planning by corporate parents), after subsection (1), insert—
“(1A) A plan or revised plan must include information on how the corporate parent proposes to exercise its corporate parenting responsibilities in a way that delivers the recommendations set out in the report published on 5 February 2020 on behalf of the Independent Care Review established by the Scottish Ministers in October 2016 (“the Promise”).”.>

In Section 22, we support Willie Rennie MSP’s amendments 204-208:²

204 In section 22A, page 62, line 9, at end insert—

<(iva) supports the delivery of the recommendations set out in the report published on 5 February 2020 on behalf of the Independent Care Review established by the Scottish Ministers in October 2016 (“the Promise”).>

205 After section 22C, insert—

<Review of the Act

- (1) The Scottish Ministers must, before the deadline, carry out a review of the implementation of this Act.
- (2) The deadline, for the purpose of subsection (1), is the day falling 2 years after Royal Assent.
- (3) As soon as reasonably practicable after concluding the review, the Scottish Ministers must—
 - (a) prepare a report on the review,
 - (b) make the report publicly available, and
 - (c) lay a copy of the report before the Scottish Parliament.
- (4) The report may contain any other information that the Scottish Ministers consider appropriate.>

206 After section 22C, insert—

<Report on fulfilment of the Promise

- (1) The Scottish Ministers must, before the deadline, produce a report on the extent to which the recommendations set out in the Promise have been implemented.
- (2) The deadline, for the purpose of subsection (1), is 30 June 2031.
- (3) The report may contain any other information that the Scottish Ministers consider appropriate.
- (4) In this section, “the Promise” means the report published on 5 February 2020 on behalf of the Independent Care Review established by the Scottish Ministers in October 2016.>

¹ On children’s services planning and Ministerial duties to review the operation of the Act and on data collection.

² Amendments 207 and 208 leave out sections 22D and 22E respectively.

Why? The Care Community has voiced loud and clear the need for stronger accountability in primary legislation for keeping the Promise, backed up by the [Audit Scotland report in 2025](#) which evidenced “confusion” five years on from the Promise being made and the difficulty of distributing “accountability”. These amendments will help ensure policy coherence across Corporate Parenting, Children’s Services Planning and the Promise.

Linked [here](#) is more information on our position.

Supported by: MCR Pathways, SIAA, Partners in Advocacy and Action for Children.

5. Other areas for improvement at Stage 3

We continue to encourage the swift passage of the Bill, while ensuring appropriate scrutiny before the pre-election period in April 2026.

We support Ross Greer MSP’s amendment 200:

200 After section 18, insert—

<Children’s advocacy services: non-instructed advocacy

(1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In section 122 (children’s advocacy services), in subsection (7)—

(a) the words from “means” to the end become paragraph (a),

(b) after that paragraph insert “, and

(b) includes, where a child is unable due to the child’s age or capacity to instruct that such services be provided to the child, services provided other than on the child’s own instruction.”.>

Why? Babies, 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. Strengthening the right to supported decision-making in the form of non-instructed independent advocacy would ensure specialist support so babies and children whose rights are most at risk are protected.³

Advocate Shaun W. Alexander (legal opinion available on request) confirms non-instructed advocacy as a required measure through which public authorities can discharge their statutory obligations to children of all ages with complex communication needs, including babies and infants, under the UNCRC (Incorporation) (Scotland) Act 2024, Equality Act 2010, and Public Sector Equality Duty.

If you have any questions about the content of this briefing, please contact policy@whocaresscotland.org.

³ This 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/>