



**WHO
CARES?**
SCOTLAND

EQUALITY | RESPECT | LOVE



Family Returns

Response to the Home Office Consultation on Family Returns, Care Leaver Returns, and the Use of Force on Children.

June 2026

Who we are

[Who Cares? Scotland](#) is Scotland's only national independent membership organisation for Care Experienced people. Our mission is to secure a lifetime of equality, respect, and love for Care Experienced people in Scotland. This includes Unaccompanied Asylum-Seeking Children (UASC), young people in local authority care and care leavers.

At the heart of Who Cares? Scotland's work is the rights of Care Experienced people, and the power of their voices to bring about positive change. We provide individual, relationship-based independent advocacy, and a range of participation and connection opportunities for Care Experienced people across Scotland.

Every year, our advocacy workers support around 1,600 people with around 6,000 individual advocacy issues across all 32 Local Authorities in Scotland. As we take a human rights-based approach to our work, around 10,000 individual rights are logged every year in supporting these issues. We bring Care Experienced people together to connect and shape the world around them. Around 700 unique individuals come together every year to take part in around 800 of our activities across Scotland.

We work alongside [Corporate Parents](#) and various communities to broaden understanding and challenge stigma faced by Care Experienced people. We work with policy makers, leaders, and elected representatives locally and nationally to shape legislation, policy and practice. We do this collaboratively to secure positive change following Scotland's Independent Care Review, [The Promise](#).

Approach

In creating this response, we have used evidence from the Esmée Fairburn Foundation's response and the response from Scotland's Centre for Excellence for Children's Care and Protection (CELCIS). Our response is underpinned by our experience in supporting UASC and migrant care leavers to access their rights through independent advocacy.

Response to the consultation

This response is made, in general, to questions 20-25 which all address the proposed changes to the rights and entitlements of adult care leavers who are also subject to immigration control. We also respond to the proposal to introduce measures of force to be used on children, and highlight the need for a legislative consent motion to be sought before proposals could be implemented in Scotland.

We point out below that the proposals are unhelpfully unclear, but we understand the main thrust of the proposals to mean that:

- In most circumstances, when care leavers are Appeal Rights Exhausted (ARE), all support provided by the Local Authority under the Leaving Care Act (2000) and subsequent relevant legislation will be withdrawn, and young people will be treated as single adults in the asylum system. The exception being that care leaver support will remain during their first Article 8 application.
- ARE care leavers will be eligible for the equivalent of the proposed section 95A support (support that others within the system who are ARE can receive when there is a 'genuine obstacle' to them entering the returns process). It appears this support will be provided by Local Authorities rather than Home Office, but care leavers will only be eligible for it in very specific circumstances.
- Local Authorities, who have statutory duties to all care leavers, will be compelled to comply with these changes and to play a role in the returns process.
- Professionals will have powers to apply varying levels of physical intervention on children to enforce removal.

In this response, we decline to give specific answers to the individual questions of the consultation. This is because the questions are leading, the use of the binary answers provided is unsatisfactory, and because the detail provided in the consultation is not sufficient to properly engage with a set of proposals which, if enacted, will be highly damaging for care leavers subject to immigration control.

At the outset, we would like to state unambiguously, that **we object to all the proposed changes for care leavers who are subject to immigration control in the strongest terms possible.**

1. These proposals should not be adopted for the following reasons:

1.01 Immigration Control would be given primacy over child welfare and protection laws.

Due to the UK's longstanding commitment to human rights, the United Nations Convention on the Rights of the Child, and the Home Office's duties under Section 55 of the Borders, Citizenship and Immigration Act 2009, it has long been the case that we have recognised the special status of children in the law. This country has legislated in accordance with the principle that children are children 'first' and that child welfare and protection take primacy over other policy aims, like immigration control. These proposals stand in contradiction to this principle and should not be implemented.

1.02 These proposals are incompatible with the Home Office's own duties under Section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard children.

Whilst care leavers are adults, these proposals, if enacted, will create a context which undermines the safety of children. These proposals will directly increase the likelihood of; poor mental health among children in care, children in care who are approaching their 18th birthday going missing, and, in general, make children in care who are subject to immigration control more vulnerable to exploitation and modern slavery. This undermines the Secretary of State's ability to effectively safeguard children under the Section 55 duty through the creation of environment of fear and hostility.

1.03 The proposals are not in compliance with the UN Convention on the Rights of the Child.

The UK is a signatory of the Convention.

Convention Article 20 sets out a holistic vision of state care that meets all a child's needs. A child has a need to be properly supported into adulthood – these proposals will not provide holistic support and instead leave care leavers with support only designed to alleviate destitution.

Convention Article 22 affords refugee children access to all the rights of the Convention. Notwithstanding the outcome of any asylum claim, children in care and care leavers should not receive differential treatment because of their immigration status. To proceed with these proposals could risk creating a two-tier system in terms of support available between 'care leavers' who are subject to immigration processes and 'care leavers' who do not interact with the immigration system.

These proposals are not consistent with the UK duties as a signatory of the Convention.

Furthermore, the proposals may extend by regulation to Scotland in the future, where they would be inconsistent with the UNCRC (Incorporation) (Scotland) Act 2024 which fully incorporates the UNCRC into Scots law.

1.04 Children would be held responsible for decisions of adults.

It is a longstanding concept of UK law that children cannot be held responsible for the migration choices of the adults in their lives. These proposals are punitive to all children subject to immigration control in this regard. Undocumented children in care may be held directly responsible for the choices of their parents or carers to overstay a visa, for example.

Even separated children, who arrive in the UK alone, do not do so without adult involvement. Families and communities in their country of origin often compel or demand that children leave, and traffickers are often responsible for moving children across international boundaries – something that a child plays no role in given that international law clearly establishes that a child cannot consent to their own exploitation.

These proposals will have seriously detrimental consequences for children and young people, despite their limited role in the choices that define their migration history.

1.05 Equality Act considerations have not been engaged with.

Among the Care Experienced population there are higher rates of disability, learning difficulties, LGBTQ+ individuals, and mental health conditions. This consultation has not set out the number of care leavers affected, nor their protected characteristics. Given that individuals with disabilities or learning difficulties, for example, are less likely to be able to effectively engage with solicitors and the immigration system to put forward the strongest case for protection, it is our view that these proposals are likely to be discriminatory.¹

The socio-economic duty, set out in the Equality Act 2010, must also be explored. It requires certain public bodies to consider how their strategic decisions might help to reduce inequalities associated with socio-economic disadvantage. This duty was implemented by the devolved governments of Scotland in 2018 as the Fairer Scotland Duty, and in Wales in 2021. Certain public bodies must comply with this duty following its introduction in their respective nations, and the UK government is considering introducing similar legislation in England.

The proposals are contrary to this duty, and detract from current policy across the nations regarding reducing poverty (eg. Scottish Government's Bringing Hope, Building Futures: Tackling Child Poverty Delivery Plan 2026–2031), and improving transitions for care experienced young people moving to adulthood.

A gradual and delayed transition to adulthood has a profoundly positive impact on the lifelong wellbeing of people with care experience.² When support is withdrawn too early or too quickly, every other protective factor around this child or young person is also affected. Scottish legislation and policy aim to support care experienced children and young people to have a gradual transition to adulthood and to delay the age at which this transition occurs.³ This includes support from corporate parents up until the age of 26, including aftercare provisions, an entitlement to continue living in their home up until the age of 21 under Continuing Care provisions, and a range of other entitlements. There is widespread commitment across Scotland to fully implement the principles of these policies as set out by The Promise of the Independent Care Review.⁴ There are many comparable programmes of policy and improvement work that support gradual and delayed transitions to adulthood across other countries in the UK.

¹ [Coram Voice 'From Surviving to Thriving' report \(2025\).](#)

² Baker, C. (2017) [Care leavers' views on their transition to adulthood: A rapid review of the evidence.](#) London: Coram Voice; Mann-Feder, V. and Goyette, M. (eds) (2019), *Leaving Care and The Transition To Adulthood*, Oxford University Press, Stein, M (2005) [Resilience and Young People Leaving Care: Overcoming the odds](#), Joseph Rowntree Foundation, York. and Stein, M. (2012) *Young People Leaving Care*, London: Jessica Kingsley.

³ Fortune, R., Smith, N. (2021) [No Place Like Home. A look at young people's experiences of leaving the care system](#), Ilford: Barnardo's; Office for National Statistics (2023) [More adults living with their parents, Newport: Office for National Statistics.](#)

⁴ Independent Care Review (2020) [The Promise.](#)

This creates further complexity in how practitioners support these young people. There may also be unintended consequences for wider services such as housing, health or safeguarding. Practitioners in CELCIS' networks report difficulty navigating this due to the interaction between devolved and reserved matters.

1.06 The proposals are procedurally unfair, given the lack of immigration legal advice.

All the organisations we fund who work closely with children in care and care leavers subject to immigration control report major challenges in accessing high quality legal aid advice. We know of young people in care who have been unrepresented at critical points in their migration journey, and we know of others who have had to wait months for a solicitor to take on their case. Organisations also repeatedly tell us about young people whose cases are closed by their solicitor following an initial decision from the Home Office because so few providers will support individuals at Appeal. These punitive and highly damaging proposals should not be enacted in an environment where so many care leavers are struggling to properly access justice.

1.07 The current assessment mechanism is legally compliant and young-person centred.

The current use of a local authority-led Human Rights Assessment is the safest, most robust and fairest way for the needs of Appeal Rights Exhausted care leavers to be assessed and then met. The Home Office cannot be a neutral party in assessing young people's situation due to its role in immigration enforcement. Only Local Authorities can holistically assess a young person's needs and make a fair determination about the support they require – the proposed tests in these proposals are not fair to the individuals involved because the party making the assessment is no longer neutral.

1.08 New evidence and changes in home country are not properly respected.

The ambiguities of how Fresh Claims will be treated and the proposal that care leavers will only receive support during their first Article 8 application do not reflect reality. Fresh Claims and Article 8 applications create crucial safety nets which allow children and young people to respond to changing circumstances both in their private life in the UK, but also to changing circumstances in their country of origin. These types of claims cannot be rationed – they are essential in ensuring access to justice. The proposals will arbitrarily discriminate against some young people because of their immigration history.

The most recent figures from the Home Office show that two-thirds of appeals result in the initial asylum refusal being overturned, either because of the tribunal ruling or because the Home Office withdraws its refusal ([Syal, 2026](#)).

The ['On your side, by your side' report](#) highlights the importance of young people being able to get support from social work services such as the Scottish Guardianship Service in order to pursue getting legal representation, making appeals and navigating the complex process (Scottish Guardianship Service, 2020). To remove support from young people after their first Article 8 application fails to recognise the distinct needs of this group due to their age, care experience and lack of family support and their rights to submit further appeals.

“I want to say thank you for all the support I’ve been receiving because I’m sure that if I was alone, I wouldn’t have got this far.” (2020, p3).

“When the police found me, I couldn’t speak any English and I didn’t understand anything. I didn’t know who I could trust. My guardian always brought an interpreter. She explained things to me and helped me with the asylum process and legal appointments. The first person I could trust was [my guardian] Hannah. Without her, I don’t think I would have refugee status.” (2020, p14).

1.09 The immigration system, and wider society, is ill-prepared to cope with the consequences on Article 8 claims.

The emphasis that these proposals place on Article 8 claims is unwarranted and unwise. For undocumented care leavers and those who have asylum claims that are Appeal Rights Exhausted, there are several immigration routes by which status might be regularised. On the advice of their solicitor, they should be able to select whichever route to secure status is in their best interests. These proposals will act to funnel more individuals towards Article 8 applications that may not be in their best interests.

Furthermore, given that legal aid is not available for Article 8 claims without Exceptional Case Funding, there is also a financial barrier that care leavers and local authorities will have to overcome to access this safety net.

1.10 The genuine obstacle test is not reasonable or proportionate.

To require a care leaver, for whom their Local Authority is their corporate parent, to act in a way that directly threatens their health, for example, is completely unreasonable and disproportionate to the stated policy aims of this consultation. These proposals are highly disturbing. In our view, they are not compatible with a liberal democracy like the UK that defends human rights and upholds individual liberty.

1.11 Rights of Appeal are not formally included.

The absence of any formal Right of Appeal to the support decisions being made in these proposals is unacceptable. Even a cursory reading of the genuine obstacles test highlights that issues of life and death will be considered in the decision making of both the Home Office and Local Authorities. For an individual to have no recourse to appeal these decisions, without the use of Judicial Review, is unacceptable.

2. These proposals should not be adopted for the following arguments about young people’s safety and welfare:

2.01 These proposals will increase the number of care leavers who are vulnerable to modern slavery, trafficking and exploitation.

Living on the proposed support, designed only to alleviate destitution, care leavers will be highly vulnerable to exploitation, trafficking and modern slavery. The Government’s stated policy is to end exploitation and modern slavery in this country – these proposals are contradictory to such a policy aim.

ECPAT (Every Child Protected Against Trafficking) has warned that these proposals risks exposing young people to trafficking and exploitation,⁵ potentially including children leaving care early due to fear of deportation.

2.02 Removing Higher Education funding for those with pending applications is unnecessary and counterproductive.

The Government has stated that it wants more care leavers to go to university. This policy will reduce those numbers by discriminating against all those with insecure immigration status.

[Research by Scotland's Independent Care Review](#) published in 2020 found that care leavers were:

- 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;
- Earning three quarters of the salaries of their peers on average.

This will be due to a number of factors, including a lack of family support, a disrupted education and childhood difficulties, and a lack of financial support. Given these challenges, all Care Experienced young people should get the opportunity to secure every qualification possible. Who Cares? Scotland works with many Care Experienced children and young people who have aspirations to go on to higher education. Many frequently want to become qualified for a career that gives back to society, such as social work, teaching, nursing and working in the third sector, and can achieve these dreams thanks to recent financial support such as the Scottish Care Leaver Bursary.

Given the uncertainty of the immigration system, supporting young people into Higher Education is beneficial for both the state and for young people themselves as it will improve personal and societal outcomes regardless of immigration outcomes. It is not in young people's best interests to cut them off from Higher Education arbitrarily. One young person who received support from the Scottish Guardianship Service to pursue higher education whilst waiting for a positive decision on her asylum application said:

“I wanted to do something meaningful with my life. Education is the thing that's given me the strength to continue. It made me get up every morning. What I went through, with all the difficulties I overcame, I think everything's possible. To be patient is not to wait but to act whilst waiting.” ([Scottish Guardianship Service, 2020, p10](#)).

⁵ Every Child Protected Against Trafficking (2026) - [Government proposals risk pushing vulnerable care leavers into exploitation, warns ECPAT UK](#).

2.03 The proposals will result in the breakdown of trusted relationships.

These proposals, if enacted will weaken the trust of care-experienced young people in their local authority. Given the ways in which the proposals require local authorities to comply with Home Office decisions and act in ways that will facilitate Returns, young people may quickly come to view their local authority as not acting in their best interests. Again, this will increase the risks of going missing, self-harm and suicide.

2.04 Social worker professional standards are being undermined.

[Social worker standards](#) clearly state that social workers must act in the best interests of children. Complying with a system that puts care leavers in a state of near destitution and fails to meet any of their broader developmental needs cannot be seen to be in their best interests.

2.05 The proposals create increased risks of suicide.

The Department for Education has recently commissioned a review into the deaths of young people leaving care following the deaths of 91 young people in 2024-25. Amongst these 91 young people were likely to be individuals subject to immigration control given findings from Da'aro Youth Project that at least 31 unaccompanied young people seeking asylum died by suicide between 2015 and 2024. Organisations funded by this programme find that when young people receive negative decisions from the Home Office or courts, or when they receive notice of the Returns Process beginning, incidences of self-harm and suicide attempts are common. These proposals will create increased risks of suicide and directly undermine the efforts of the Department for Education to reduce the number of care leaver deaths ([Da'aro Youth Project \(2026\)](#)).

2.06 The impact on undocumented young people is not fully set out.

This government has committed to creating a clear and accessible pathway to secure immigration status for undocumented children in care and care leavers who are long resident in the UK. This includes those who are unaware they are not British or have no status in the UK, or who are still awaiting a decision on their asylum claim when they turn 18. It also includes young people in Scotland in cross-border placements from England who may become subject to conflicting policies and uncertainty over their support entitlements upon leaving care.

Indeed, CELCIS' evidence from their networks of throughcare and aftercare practitioners show that many young people who arrived in the UK and claimed asylum as an unaccompanied child are still waiting for a decision on their immigration claim when they turn 18 years old, with delays to the age assessment process particularly impacting the timeline for immigration decisions. The Refugee and Migrant Children's Consortium have also raised concerns about delays, and about the quality and transparency of decisions from the National Age Assessment Board.⁶

To bring forward this consultation, without having first designed and implemented such a pathway for undocumented children in care and care leavers could expose undocumented young people to significant risks. These risks are obvious in relation to

⁶ Refugee and Migrant Children's Consortium (2026) [Briefing on the National Age Assessment Board](#)

access to higher education, but, given the poor drafting of the overall consultation document, could also see undocumented care leavers placed at risk of destitution.⁷

3. Use of Force

3.01 The use of force on children is in violation with the UNCRC

The proposals intend to introduce powers to apply varying levels of physical intervention on children by professionals to enforce removal. We are strongly opposed to this due to the incongruence of this policy with:

- Articles 2, 3, 4, 6, 9, 19, 20, 22, 27 and 29 of the UNCRC,
- Children (Equal Protection from Assault) (Scotland) Act 2019;
- Children (Care, Care Experience and Service Planning) (Scotland) Act 2026 which includes a section introducing guidance on restraint in line with the outcome of Scotland's Independent Care review 'The Promise' with the vision that 'Scotland must strive to become a nation that does not restrain its children' (The Promise Scotland, 2020. See p. 65 for guidance on support for UASC);
- Restraint and Seclusion in Schools (Scotland) Act 2026.

Use of physical force on a child can intensify fear and distress, exacerbate existing trauma, stigmatise and have long-term effects on their mental and emotional wellbeing. The UNCRC is explicit that States must take all possible action to protect children from all forms of violence and harm. It is widely agreed across the health, education and social care sector that physical force should only ever be used in situations to prevent immediate harm to a child (UK Government, 2019). It should never be adopted as a tool to create compliance and assist in achieving deportation targets.

4. Devolution

4.01 The UK Government must commit to seek legislative consent from the Scottish Parliament were they to introduce these changes to Scotland via a legislative consent motion, as per the Sewel Convention.

⁷ <https://gmiau.org/guide-to-the-family-returns-consultation/> and <https://www.gov.uk/government/publications/restoring-control-over-the-immigration-system-white-paper>

Summary

We want to emphasise that this consultation process has made no significant and proactive efforts to engage with care experienced young people directly. Their views are crucial. To expect young people to engage with a consultation process that has been unclear and challenging for expert children's legal organisations to engage with is unacceptable. We do not feel that the Home Office has properly met its duties to fully engage with stakeholders affected by these proposals.

We ask that the UK Government:

- Does not go ahead with all the proposals in this consultation.
- Ensures that the support provided for care experienced children and young people in the UK is not prohibited due to immigration concerns.
- Offers guarantees that children's rights, care and corporate parenting rights will continue to be upheld for all UASC and 'care leavers' across the UK.
- Seeks legislative consent from the Scottish Parliament via a legislative consent motion where extending any of the proposals to Scotland, as per the Sewel Convention.

Should you wish to discuss the contents of this response, please contact:

Policy and Public Affairs Team, policy@whocaresscotland.org.