

Briefing paper: The Promise Scotland's advice on the accommodation and return to care provisions in the Children (Care, Care Experience and Services Planning) (Scotland) Act 2026

June 2026

The Promise Scotland commissioned external legal advice to support the development of this paper. The paper highlights how provisions in the Children (Care, Care Experience and Services Planning) (Scotland) Act make changes to the Children (Scotland) Act 1995 and sets out The Promise Scotland's understanding of what the provisions mean in practice.

The Act

The Children (Care, Care Experience and Services Planning) (Scotland) Act 2026 progressed through the Scottish Parliament, passing in March and receiving Royal Assent in May. The Act is wide ranging, covering a number of areas which aim to improve the lives of children, families and care experienced adults and move Scotland closer to the promise being kept. This includes provisions relating to advocacy, aftercare, kinship care, foster care, profit in care, and the redesign of the Children's Hearings System.

The Act also contains new provisions building on existing duties in the Children (Scotland) Act 1995 and the Children and Young People (Scotland) Act 2014 relating to the provision of accommodation, extension of Continuing Care and return to care.

The new provisions

Chapter 2 (Support etc. for provisions in or with experience of children's care system: modification of enactments) contains the following new provisions:

Provision of accommodation

(20) Duty to provide accommodation for children in need

(21) Provision of accommodation for care- experienced persons

Continuing Care

(22) Continuing Care: persons eligible and accommodation to be provided

(23) Power to continue provision of Continuing Care up to person's 26th birthday

(24) Return to care

(20) Duty to provide accommodation for children in need

What is the change that has been made?

This provision was originally amendment 131, which passed at Stage 2. The amendment inserted clause (d) into s.25 of the Children (Scotland) Act 1995 so that it now reads (addition in yellow):

(Children (Scotland) Act 1995): s. 25 Provision of accommodation for children, etc.

(1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—

(a) no-one has parental responsibility for him;

(b) he is lost or abandoned; or

(c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.

(d) he is at least sixteen years of age and—

(i) is homeless, in accordance with section 24 of the Housing (Scotland) Act 1987, or

(ii) the accommodation in which he is residing is not suitable for his welfare needs.

Clause (8) identifies that “In this Part of this Act, accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than twenty-four hours.”

Cause and effect of these changes

This does not remove any provisions but strengthens the existing duty in section 25 of the 1995 Act by making it explicit that any child under 18 who is homeless, or living in accommodation unsuitable for their welfare, must be accommodated as a child.

The new provision (d) makes it clear that the existing duty applies to 16 and 17 year old homeless children. **If the change had not been made, these children would still fall into the existing categories in s.25(1).**

The current safeguards and qualifiers remain in place for s.25 of the 1995 Act and apply to the new provisions. This includes (3) “if the [local authority] considers that to do so would safeguard or promote [the child’s] welfare”, (5) having regard to the child’s views and (6) if a person who has parental rights and responsibilities is willing and able to provide accommodation objects and any such person can remove them from accommodation at any time.

All 16 and 17 year olds for whom this duty applies would become formally ‘looked after’ (even if they weren’t before), having the same entitlements as if they had been looked after pre-16. This is consistent with the scheme of the legislation, which views 16 and 17-year-olds as children: for example, a 16 or 17 year old who came to be accommodated under the criteria in the current section 25(1) is looked after, in terms of section 17(6). The amendment means all children who are determined by a local authority to be **in need of accommodation** are treated the same when it comes to that accommodation being provided.

However, this does not make any ‘new’ children eligible for s.25 accommodation—the local authority already has this duty to all children under 18, including 16-17 year olds, who are in need of accommodation. **If it was not amended at all, local authorities would still have this duty and the exact same number of children would have the enforceable statutory right to s.25 accommodation as children** (the provision strengthens this/ makes it clearer).

This aligns with the conclusions of the promise,¹ existing Scottish Government guidance on the 1995 Act which describes s.25 as creating a duty on local authorities to provide accommodation where a child has no one able to care for them, is abandoned or their carer cannot provide suitable accommodation or care and the incorporation of the United Nations Convention on the Rights of the Child (Scotland), which defines a child as under the age of 18.

In explaining why children in need of accommodation must be dealt with under section 25 rather than via housing services, Baroness Hale put it this way:

“the clear intention of the legislation is that these children need more than a roof over their heads and that local children’s services authorities cannot avoid their responsibilities by passing them over to the local housing authorities.”²

This is not a change to the scope of section 25—however the discussion surrounding it since the amendment was laid at Stage 2 makes it clear that

¹ The promise is clear that children for whom Scotland has parenting responsibility must not be made homeless, yet some 16 and 17 year olds, particularly those with care experience, are being routed through homelessness systems rather than being supported through children’s services.

² In England and Wales of the equivalent provision is section 20 of the Children Act 1989. See *R (M) v Hammersmith and Fulham London Borough Council* [2008] 1 WLR 535; *R (G) v Southwark London Borough Council* [2009] 1 WLR 1299 etc.

clarification of the existing duty is necessary. Vulnerable children must have their rights respected through a consistent understanding and performance of the duties owed to them.

The different pathways for children directly impact their lived experience. At the moment, housing law does not require an assessment of a child's welfare needs, nor does it guarantee child-appropriate accommodation. It does not require regard to be had to wider duties, such as consideration of the child's overall needs and welfare. In practice, this means too many children are still being placed in adult homelessness accommodation or turned away without appropriate support. Children who are experiencing or at risk of homelessness have a right to housing and homelessness assistance through the Housing (Scotland) Act 1987. Children who do not want or need accommodation under s.25 of the 1995 Act are still able to access support under the 1987 Act.

The Promise Scotland's understanding is that these changes would link to a small, but important cohort of vulnerable young persons. Children particularly at risk of 'falling through the gaps' in the current system include: children leaving care from secure accommodation; 16-17 year olds leaving care and returning to families where problems develop; vulnerable unaccompanied asylum seeking 16 and 17 year olds; victims of trafficking; and children who are vulnerable and had social work involvement on an informal voluntary basis or lived in informal kinship care arrangements.

(21) Provision of accommodation for care-experienced persons

What is the change that has been made?

[This provision](#) was originally amendment 132, which passed at Stage 2. The amendment changed the word 'may' to 'shall' in clause (3) and added a new provision thereafter in s.25 of the Children (Scotland) Act 1995 so that it now reads (addition in **yellow**):

(Children (Scotland) Act 1995): s. 25 Provision of accommodation for children, etc.

(1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—

- (a) no-one has parental responsibility for him;
- (b) he is lost or abandoned; or

(c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.

(2) Without prejudice to subsection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare.

(3) A local authority shall (instead of 'may') provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they determine (instead of 'consider') that to do so would safeguard or promote his welfare.

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“(3A) There is a presumption that, in relation to the determination in subsection (3), the provision of accommodation would safeguard or promote the welfare of a person in relation to whom the duty to provide Continuing Care under section 26A— (a) does not apply as a result of the application of section 26A(5), or (b) has ceased as a result of section 26A(7)(b).”.

Cause and effect of these changes

These changes strengthen the existing duty in section 25 of the 1995 Act, changing the current discretionary power to provide accommodation to care-experienced young people aged 18–21 into a mandatory duty where accommodation is needed to safeguard or promote welfare.

The first of those changes makes the duty to provide accommodation mandatory. As presently drafted, the legislation permits an outcome where a local authority assesses a qualifying young person and determines that it would safeguard or promote their welfare to provide accommodation, but nevertheless decide not to provide that. This is inconsistent with the overall, needs-based scheme of the legislation. **This change simply makes clear that if a local authority assess that a qualifying young person has a welfare need for accommodation, they should meet that need.**

The second change is designed to meet a specific, but important situation. At present, some young people leave care and when things go wrong, their only route back is often a homelessness application. That contradicts the promise's conclusions relating to non-linear, supported transitions to adulthood.

The new provision creates a presumption that young people who did not receive Continuing Care - or whose Continuing Care ended because the carer could not continue to provide continuing care - should be accommodated rather than routed into homelessness services. This addresses what happens when care-experienced young people move on from care and things don't go as planned. When this provision commences, any vulnerable care-experienced young person,

aged 18-21 who finds themselves homeless after leaving care - particularly if homelessness results from a care experienced young person not being able to access Continuing Care - is entitled to:

- an assessment of their accommodation and support needs and
- IF the assessment shows that s.25 accommodation is needed to safeguard or promote his welfare the local authority has to provide it.
- There is a presumption of welfare need where a care experienced young person has left or not got Continuing Care.

The original amendment did not make this specifically about care experienced young people because the existing duty under section 25(3) applies to all young people aged 18-21.

As above, the existing qualifier applies, which is clear that a young person only comes within this duty if/when a local authority assesses that doing so “would safeguard or promote his welfare”. In other words, young people who need accommodation would only fall within this provision where they had a welfare need for accommodation. Where that need is welfare based, it is appropriate that it is met through the scheme of legislation concerned with children and young persons’ welfare.

Section 25(3) is voluntary, so no young person aged between 18-21 can be forced to be provided with accommodation.

It is also important to note that young people aged 18-21 years old cannot become ‘looked after’. Only a child can be ‘looked after’, and child here means a person under 18. An adult (anyone over the age of 18) cannot be looked after under s.17(6) beyond age 18, even if they are receiving accommodation for welfare reasons. Receiving accommodation under s.25(3) cannot bring a young person within Aftercare provisions because to be eligible for Aftercare a young person must leave care. Young people accommodated under s.25(3) are not in care and do not leave care.

Young people accommodated under s25(3) are not looked after children. They will not leave care when they leave s25(3) accommodation and they will not become eligible for Aftercare.

Of course, if a child was previously looked after, left care and then returned to care via this duty they would be eligible for Aftercare and Continuing Care. If a young person is previously looked after, leaves care and is accommodated under s.25(3) they will be eligible for Aftercare as someone who left care on or after their 16th birthday. (This will be extended to young people who left care under 16 by the amendments to s.29.) They will not be eligible for Continuing Care as you have to be looked after and accommodated when you leave care over 16 to be eligible, however the amendments taken altogether close this gap allowing care

experienced young people to be accommodated until they are 21, if there is a welfare need.

The extended duties under s.25(3) apply up to the age of 21, which is in line with existing Continuing Care provisions—notwithstanding the discretionary increase to Continuing Care that is outlined below.

(22) Continuing Care: persons eligible and accommodation to be provided

What is the change that has been made?

[This provision](#) was originally amendment 133, which passed at Stage 2. The amendment made the following additions in **yellow**:

(Children (Scotland) Act 1995): s. 26A (provision of Continuing Care: looked after children)

(1) This section applies where an eligible person ceases to be looked after by a local authority **or provided with accommodation under s.25(3).**

(2) An “eligible person” is a person who—

(a) is at least sixteen years of age, and

(b) is not yet such higher age as may be specified.

(3) Subject to subsection (5) below, the local authority must provide the person with Continuing Care.

(4) “Continuing Care” means **either**

a) the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after or provided with accommodation under s.25(3) or

b) such alternative accommodation and assistance as has been assessed by the authority to be the most appropriate to meet the welfare needs of the person.

Cause and effect of these changes

These changes ensure that young people who return to care or accommodation are eligible for Continuing Care. It also allows Continuing Care to be provided in alternative accommodation where staying in the original home is not possible.

This deals with a very specific but important gap in the current system. Currently, young people who return to care can lose access to Continuing Care entirely, creating unfair and damaging “cliff edges” in support.

It also addresses the situation of children who leave their placements for reasons other than their own choice but are still in need of accommodation by allowing the Continuing Care right to be broadened out to “other appropriate accommodation” rather than just the same accommodation. That is an important safety net for that cohort of vulnerable children.

Accommodation under s.25 and s.26 of the 1995 Act can be foster care, kinship care or residential care - if those are not available, or not appropriate to meet the child or young person's needs then the local authority can make any other arrangement that is appropriate. This might include options such as supported accommodation, a tenancy with support, social housing or a private let, depending on the needs of the young person (with or without additional scaffolding or support). As this accommodation is provided under the umbrella of these welfare provisions, the arrangements can be flexible and reactive to an individual child's needs, but always centred on their welfare. Accordingly, there is no question of this extension keeping children accommodated who no longer require it: it is simply to ensure that children's access to accommodation and associated supports is dictated by their needs.

The addition of the wording “**provided with accommodation under s.25(3)**” would allow a young person (age 18-21) who was not previously looked after to be able to stay in their accommodation through s.25(3) up until the age of 21. However, accommodated young people would not be ‘care experienced’ and therefore would not be entitled to Aftercare or other support specifically for care experienced young people, unless they were already eligible for that.

A young person should not lose rights simply because their care journey was non-linear - which is common and entirely expected. They should not have fewer or lesser rights in a situation where a change happens for a reason that does not relate to their welfare needs. Aftercare alone does not provide the stability, accommodation, or continuity of relationships that Continuing Care offers.

There is a need for further clarification of these provisions and clear distinctions in regulations and guidance.

Additional note

As the Act was progressing, CELCIS expressed concern that this would change the definition of ‘Continuing Care’: [CELCIS letter to the Scottish Parliament's Education, Children and Young People Committee about the amount and range](#)

of amendments agreed at Stage 2 of the Children (Care, Care Experience and Services Planning) (Scotland) Bill.

In considering this concern:

- We agree that this legislative change does extend the scope of Continuing Care, but only in a very narrow and precise way. Those young persons aged 18-21 who are receiving accommodation under s.25(3) but cease to receive that will be eligible for Continuing Care until the age of 21. But that is simply intended to create equality and consistency between those young persons and young persons who would have come through the Continuing Care route in the first place. Under the Continuing Care pathway, young persons have an absolute and ongoing right to accommodation or support through to age 21 unless one of the conditions in s.26A(7) is met. Importantly, this means that a Local Authority cannot otherwise withdraw Continuing Care, even if they consider that it is no longer necessary³. In contrast, young person's eligibility to receive ongoing s.25(3) accommodation is qualified by the local authority's assessment they have a welfare need for that. That gives rise to a risk of subjective decision making and/or disagreement between young persons and local authorities. There is no good reason for a young person with a welfare need for accommodation to have their right to that more precarious simply because their age at the point that need first came to the attention of the local authority falls on one side of an arbitrary cut off rather than another.
- In practice, it is anticipated this situation will arise very infrequently. The new presumption in s.25(3A) should mean that the cohort of children who fall out of Continuing Care before they are ready will receive the alternative of s.25(3) accommodation through to 21, as if they had remained in Continuing Care. As such, it is really only the small group of young persons who receive accommodation under s.25(3) without care experience who might gain a new right to Continuing Care. But we would reiterate that those young persons would only be receiving s.25(3) accommodation because they had a genuine, welfare need for that. Those are the young persons who were overlooked for whatever reason; whose welfare needs were shielded from sight because of their particular care arrangements; or whose circumstances have caused an abrupt but genuine welfare need after childhood. That group will be very small, and will be controlled by the gateway provision in section 25(3).

Given the above, if there remains a concern about the terms of the legislation being unwieldy as to the relationship between s.25(3) accommodation and Continuing Care, The Promise Scotland is committed to engaging constructively in trying to resolve those concerns.

³ Under s.26A(7)(c) they can withdraw it if Continuing Care would significantly adversely affect the young person's welfare, but that is a very different threshold.

As to any concern that providing alternative accommodation to ‘the same accommodation’ goes beyond the purpose of Continuing Care, we consider that our explanation above about ensure decision making centred (and only focussed) on welfare need is the answer to that. However, to the extent there is any concern about the specific wording of s.26A(4) as amended, The Promise Scotland previously suggested an alternative option could be considered, which we explained as follows:

“The intention behind that change was to cover situations where young persons would lose the right to Continuing Care because the accommodation ceases to be available, rather than to depart from the premise that the right is designed to give children continuity of care.

Section 26A(5)(b) means that, even if a child still needs accommodation, there is no right to Continuing Care if the previous carer placement is unable or unwilling to continue the placement (irrespective of reason, and with no recourse). Similarly, section 26A(7)(b) brings the right to Continuing Care to an end early if the accommodation ceases to be available (irrespective of the reason). If the general policy of the 1995 Act is to ensure that children receive the care - including accommodation - that their welfare requires, then it is not in keeping with that aim to have such cliff-edge outcomes.

There is a simple solution to this without needing to choose between the original aim of section 26A and the wider policy aim of ensuring children get accommodation that is suitable to their welfare. That can be done by a modest tweak to the wording of 133, by adding the words “Where that accommodation and assistance is not available” to the beginning of sub-section (ii). That means it would read:

(4) “Continuing Care” means either:

(i) the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after or ceased to be in receipt of accommodation under s.25(3) of this Act; or

(ii) where that accommodation and assistance is no longer available, such alternative accommodation and assistance as shall have been assessed by the authority to be the most appropriate to meet the person’s welfare needs.”

(23) Power to continue provision of Continuing Care up to person’s 26th birthday

What is the change that has been made?

[This provision](#) was originally amendment 134, which passed at Stage 2 and was subsequently amended at Stage 3 by the Minister for Children, Young People and the Promise who changed the provision from 25 to 26, in line with corporate parenting and Aftercare duties. The amendment added in the following text in yellow at 3A:

(Children (Scotland) Act 1995): s. 26A (provision of Continuing Care: looked after children)

(1) This section applies where an eligible person ceases to be looked after by a local authority **or provided with accommodation under s.25(3).**

(2) An “eligible person” is a person who—

(a) is at least sixteen years of age, and

(b) is not yet such higher age as may be specified.

(3) Subject to subsection (5) below, the local authority must provide the person with continuing care.

(3A) A local authority may (but is not required to) continue to provide Continuing Care to a person who ceases to be an eligible person until they attain the age of 26, if it is satisfied that doing so will promote or safeguard the person’s welfare.

Cause and effect of these changes

This provision creates a discretionary power for local authorities to continue providing Continuing Care up to age 26 where this safeguards or promotes a young person’s welfare.

It does not impose a blanket duty but allows flexibility where young people are not ready to move on at 21.

This gives local authorities flexibility to continue Continuing Care beyond age 21 where that is clearly in a young person’s best interests.

(24) Return to Continuing Care

What is the change that has been made?

[This provision](#) was originally amendment 108, which passed at Stage 3. The amendment added in the following text in yellow at 7A:

(Children (Scotland) Act 1995): s. 26A (provision of Continuing Care: looked after children)

(1) This section applies where an eligible person ceases to be looked after by a local authority or provided with accommodation under s.25(3).

(2) An “eligible person” is a person who—

(a) is at least sixteen years of age, and

(b) is not yet such higher age as may be specified.

(3) Subject to subsection (5) below, the local authority must provide the person with continuing care.

(3A) A local authority may (but is not required to) continue to provide Continuing Care to a person who ceases to be an eligible person until they attain the age of 26, if it is satisfied that doing so will promote or safeguard the person’s welfare.

(4) “Continuing Care” means either

a) the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after or provided with accommodation under s.25(3) or

b) such alternative accommodation and assistance as has been assessed by the authority to be the most appropriate to meet the welfare needs of the person.

(5) The duty to provide continuing care does not apply if—

(a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,

(b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or

(c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.

(6) A local authority's duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.

(7) The duty to provide continuing care ceases if—

(a) the person leaves the accommodation of the person's own volition,

(b) the accommodation ceases to be available, or

(c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.

“(7A)For the purposes of subsection (7)(a) above, the duty to provide continuing care only ceases until such time (if any) as the person requests to return to the accommodation.”.

Cause and effect of these changes

The effect of this change – 7A - is to make it unequivocal that a care experienced young person has a right to return to accommodation until they are 21. Currently when a young person leaves continuing care by their own choice they cannot return to continuing care, even if they find themselves in homelessness, their only option is making a homeless application. This change, together with the others will allow them to return to ‘continuing care in alternative accommodation’ until they are 21. This is an important safety net to give care experienced young people the confidence to transition to independent living and complements and strengthens the other provisions outlined above.

Those young persons who will return will do so because they genuinely need that. But, equally, those who feel able to attempt independent adult living will be empowered to do so at the earliest opportunity without fear or worry that doing so might cost them their safety net.

Summary

The Independent Care Review concluded that “young adults for whom Scotland has taken on parenting responsibility must have a right to return to care and have access to services and supportive people to nurture them” (the promise, Pg 92). This reinforces pre-existing Scottish Government policy, which is clear that “care leavers must be able to return to care placements or a more supportive care setting—if and when they meet with any difficulty” (Staying Put Scotland, 2013).

The Independent Care Review found that “many care experienced young adults have told the Care Review that they felt abandoned and ill-prepared as they moved from childhood into adulthood” (the promise, Pg 92). Ensuring that children and young people have a clear and accessible right to return to care where their transition has not progressed as planned, or as hoped, would help prevent avoidable hardship, instability, and the risk of experiencing homelessness.

Such a right would enable care experienced young people to access appropriate support at the point of need, improving their stability and strengthening their ability to move on from care successfully over time. Although certain rights already exist through the Children (Scotland) Act 1995, our understanding is that many of these rights are currently poorly understood by local authorities and other duty bearers, applied inconsistently and that implementation is

undermined by resource pressures such as availability of suitable accommodation and use of homelessness route to accommodation. As a result, care experienced children and young people who find themselves without a home after leaving care are directed to homelessness services or local housing associations; placed in unstable, unsuitable adult temporary 'homeless' accommodation for extended periods; end up in accommodation which is not suitable for children and/or for welfare needs; and do not have planned, relationship based support. They do not have equity with many of their non-care experienced peers who can return home, when and if they need to, into adulthood. **The provisions in the Act aim to change that.**