Stage 2 Debate: Children (Care, Care Experience and Services Planning) (Scotland) Bill

February 2026

This briefing represents the views of both The Promise Scotland and Fiona Duncan, Independent Strategic Advisor—the promise. It has been written to inform the Stage 2 Committee session on 4th February and indicates the shared position on each of the amendments made in the order they appear in the groupings. We will provide a further briefing ahead of the second session on 11th February.

the promise

In February 2020, the Independent Care Review published seven reports, including the promise. Over three years, more than 5,500 people shared their experiences, including 2,000 members of the unpaid and paid workforce. Importantly, more than 3,500 children, families and care experienced adults shared their story, often about the most intimate and traumatic events of their lives. They were listened to carefully. They shared their stories in the hope that Scotland would do better, recognising that although the review could not change their lives, it could make Scotland a better place for the children, families and care- experienced adults coming behind them.

The care community led calls for a root and branch review of Scotland's care system and was at the heart of the review itself. They bravely challenged the status quo because it was not working. They crafted a promise that goes beyond systems, policies and processes and instead, focuses on love, relationships, respect and experiences.

When the review concluded, Scotland made the promise, which secured and has sustained cross- party support. Wherever it is safe to do so, children must stay with their families, and when that is not possible, they must be cared for in a loving environment, with loving relationships, so that they are able to fulfil their potential.

As the Children (Care, Care Experience and Services Planning) (Scotland) Bill has progressed we have been encouraged to see parties from across the political spectrum come together to discuss the legislative changes that must be made to keep the promise and to honour the courage and bravery of all who took part in the review and the care community to whom the promise was made.

The provisions in the Children (Care, Care Experience and Services Planning) (Scotland) Bill as laid will make a tangible difference to the lives of children, families and care experienced adults. As the Bill progresses to Stages 2 and 3, there are further opportunities to build on the cross-party support and engagement thus far, and to consider what further improvements must be made in order to embed real and lasting change to keep the promise.

Many of these changes will not be straightforward and must be accompanied by clear plans around about sequencing, resourcing, prioritisation and implementation.

However, the courage of the children, families, care experienced adults and members of the workforce that contributed to the Independent Care Review and since 2020 must be matched by the courage of decision makers and politicians who have the power to implement the required changes.

The Promise Scotland's approach to considering amendments

The following briefing has been provided for the Education, Children and Young People Committee's consideration. It focuses on highlighting our support for the amendments that, in our view, will help to ensure Scotland keeps its promise.

First and foremost, our response is rooted in the voices and experiences heard by the Independent Care Review. It is guided by the strong evidence base created by the review in each of its seven published reports, and by subsequent work such as the Hearings System Working Group's Redesign Report 'Hearings for Children', our advocacy scoping paper and our joint work with Staf, '100 Days of Listening.'

It is clear that all the amendments lodged are brought forward with good intentions and are designed to move forward important aspects of the promise. Even where the Promise Scotland does not support the specific amendments as laid at Stage 2, we continue to be committed to working with all parties to progress change through other means, wherever that is possible.

Where the amendments do not link directly to the conclusions of the Independent Care Review, we have not provided comment. Given the tight timescales, we have provided commentary and a perspective and have indicated where we think further information is required before we can provide a settled view. In particular, we have indicated amendments that, in our view raise important issues and require further work ahead of Stage 3: 87, 4, 5, 6, 217, 136, 137, 138, 141, 166, 169, 221, 224, 139, 142, 102, 196, 158, 165, 151, 150, 168, 11, 12, 13 and 16.

The Promise Scotland uses the term 'children' to include anyone under the age of 18, including babies and infants.

Notwithstanding the need to avoid system language, for the purposes of clarity, this briefing reflects the language used in the legislation.

General Principles and Purpose: Amendments 87, 225

We support	We do not support
	225

General principles of the children's care system (amendment 87)

The Promise Scotland is supportive of the intent of this amendment, which sets out principles relating to the delivery of the children's 'care system'. The promise is clear that

where children are safe in their families and feel loved they must stay—and families must be given support together to nurture that love and overcome the difficulties which get in the way (Pg 15). It is also clear that when that is not possible, children must be cared for in a loving environment, with loving relationships, so that they are able to fulfil their potential.

However, in our view further work is required in order to ensure that the principles of the 'care system' that may be set out in legislation fully align with the conclusions of the Independent Care Review. As outlined in the promise, the 'care system' is a complex, fragmented, multi-purpose and multifaceted entity which does not lend itself to easy definition (Pg 112). At present it is therefore unclear what the parameters of the 'care system' are as outlined in the amendment and there is a need for further consultation about the practical applicability of the principles. The principles must also include specific reference to the voices of children and families as an integral part of the general principles of the 'care system'.

In our view, there is already legislation that underpins some of the principles identified in the amendment—for example, Part 12 of the Children and Young People (Scotland) Act 2014 and parts of the Children (Scotland) Act 1995. Consideration of legislating in this way could therefore also be part of the review of legislation relating to the 'care system' that Professor Norrie is undertaking. In The Promise Scotland's view this must result in consolidation of legislation and new, clear legislation about the 'care system' that upholds the rights of children and families and is clear about the importance of early help, the principle of minimal intervention, the best interests of children and listening to the voices of children and families.

The Promise Scotland is supportive of engaging in further discussions to bring this amendment back at Stage 3, to ensure that the resulting impact of these amendments meet the needs of children and families.

Name of the Bill (amendment 225)

Given the need for further legislation to keep the promise in Scotland, it must not appear that this will be complete with one piece of legislation. Others, including the Children (Care and Justice) (Scotland) Act 2024, contribute to the overall work that is required and other legislation will be needed in the next parliamentary term. Although we understand the intent of this amendment, it is important not to give the impression that the job is done.

We therefore **do not support** amendment 225 (Paul O'Kane)

Kinship care: Amendments 1, 2, 3, 4, 126

We support	We do not support
1, 2, 3, 126	

Kinship care needs assessment (amendment 1), Guidance in relation to kinship care assistance functions (amendment 2), power to require information- sharing by local authority (amendment 3)

The promise is clear that kinship carers must be offered support and assistance and that they must be offered this freely, without having to fight for it (Pg 74). We are supportive of these amendments, which build on existing legislation to support kinship carers and align with the Scottish Government's draft vision for kinship care and reflect the growing importance of kinship care in meeting the needs of children across Scotland.

In proposed sub-section 71A (2) there must be explicit reference to the assessment being comprehensive. There is a need to ensure that the assessment is able to consider major aspects of lived experience such as housing need, financial circumstances and benefits, and mental and therapeutic support for kinship families.

The information sharing provisions will help to understand and improve consistent and equitable access to high-quality support for kinship carers. The ways in which the Scottish Offer to Kinship Families is reflected in local provision, and the information sharing required to understand that will also need to be considered.

There must be adequate resourcing at local and national level available in order to implement these provisions, and there must be further thought into alignment between the vision for kinship care, foster care and adoption. The Scottish Government must also consider how better to support birth parents. There must not be an inequity between support for birth parents and support for kinship carers that may prevent children from returning safely home if the support provided for kinship carers is not available to birth parents.

We **support** amendments 1, 2, 3 (Natalie Don-Innes)

Assistance in relation to kinship care (amendment 4)

We are supportive of the intention behind this amendment, in line with what the Independent Care Review heard about the lack of support experienced by kinship carers. The promise is clear that financial support to kinship carers must match that of foster carers (Pg 74). However, further thought is required to ensure the promise commitment that kinship carers do not have to professionalise their role to access support is met. This includes the need to consider the differences between support required for foster carers and support for family carers, including training and assessments. It is also important to ensure that the provision does not unintentionally reduce the level of support available to other carers due to the financial resourcing available. We are keen to have further discussions about this amendment ahead of Stage 3, to explore in more detail the practical implications of implementation and ensure they meet the needs of children and families.

Information about support for kinship carers (amendment 126)

We support measures to raise awareness of sources of support available to kinship carers. Awareness raising, information and networks of peer support will be essential in ensuring that all kinship families are able to access the support they require.

We **support** amendment 126 (Miles Briggs)

Aftercare: Amendments 88, 127, 89, 128, 5, 90, 6, 91, 7, 86

We support	We do not support
127	

Aftercare (amendments 88, 127, 89, 128, 5, 90, 6, 91, 7, 86)

The Independent Care Review heard from care experienced young people and adults about the 'cliff edges' of care and the lack of support they felt when their legal orders ended before their sixteenth birthday. The promise concluded that 'aftercare' must take a person-centred approach, with thoughtful planning so that there are no cliff edges out of care and support (Pg 92). It was clear that the current system does 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 (Pg 188).

We therefore welcome the Scottish Government's commitment to addressing this issue, and the extension of 'aftercare' within the Children (Care, Care Experience and Services Planning) (Scotland) Bill to children and young people who left care prior to their sixteenth birthday.

We are aware of the concerns that have repeatedly been raised by Clan Childlaw relating to the way in which the aftercare provisions are currently drafted. **Amendment 127** appears to be a simple and effective way of remedying this by ensuring all children will access the welfare based support provided by s.29(1) of the Children (Scotland) Act 1995. This aligns with the concerns raised in the Committee's Stage 1 report. It is unclear to us why this would not be accepted at Stage 2.

We are unclear about the intent of the rest of the amendments in this grouping, and the possibility that terms such as "whatever age the council describes is appropriate" may lead to the determination that aftercare could be stopped at an earlier stage and result in variance in practice. Our view is that **amendments 133, 134, 135 and 136** (Nicola Sturgeon) relating to return to care adequately provide additional safeguards with respect to both aftercare and continuing care.

Amendments 5 and 6 relating to the commencement of aftercare duties require further discussion and consideration ahead of Stage 3.

Aftercare for disabled children (amendment 7)

Amendment 7 seeks to ensure that a local authority must ensure a disabled person to whom the section applies receives support with the transition to adulthood. We are unsure about what this looks like in practice, and what additional support and services this is likely to encompass. Planning for transitions from care must be done on the basis of individual children and young people's needs, which must apply to disabled children too. Although we can see that there is provision for this detail to be considered via regulations it would be helpful to understand more in advance of this amendment progressing, including potential resource requirements.

UNCRC (Incorporation) (Scotland) Act: restatement and application: Amendments 92, 93, 94, 178, 179, 180, 181, 182, 183, 184, 217

We support	We do not support
	92, 93, 94, 178, 179, 180, 181, 182, 183, 184

As we have stated previously, our expectation when the Bill was laid was that all provisions within the Bill would be both within the scope of and compatible with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. We have listened carefully to the evidence sessions on this issue, including the evidence and subsequent correspondence from the Minister for Children and Young People and the Promise and her officials.

While we are disappointed that there remain two parts of the Bill that are outwith the scope of the UNCRC, we accept that repealing parts of the Children (Scotland) Act 1995 and replacing them in other pieces of legislation in a piecemeal way is likely to have the unintended consequence of further complicating the landscape of care.

We support the intention behind these amendments, and we are aware that the Scottish Government has provided a number of steps that it will take to address this. This includes ongoing conversations with the UK Government and the review of the legislative landscape that will be undertaken by Professor Norrie. This review must not simply re-state the problem but also identify tangible solutions and propose a way forward so that the legislation around the 'care system' is clearer and less cluttered and is both in scope and compatible with the UNCRC.

We therefore **do not support** the amendments in this grouping.

We acknowledge the rationale behind **amendment 217** and welcome the impetus it is intended to generate, however it is critical that important provisions that provide help and support for care experienced children, young people and adults do not 'expire'. It is essential that all legislation relating to the promise is both compatible with and in scope of the UNCRC by 2030. The Scottish Government must set out a clear timescale for when these two provisions will be included within the scope of the UNCRC, which would allow this to be revisited at Stage 3.

Care services for young people: continuing care, return to care, and housing: Amendments 129, 130, 131, 132, 133, 134, 135, 98

We support	We do not support
131, 132, 133, 134, 98	

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.

This approach would better reflect the support typically available to young people within family settings, where moves towards independence are often gradual, flexible and non-linear. It would also align with the intent of the promise, which states that "Scotland must be a parent that encourages young people toward a life of independence, self-reliance and stability, but also recognises that, often, young people will need to stay 'at home' or come home for some time and at various times" (The Promise, p.92).

The need for legislation

The Promise Scotland has been clear that the Children (Care, Care Experience and Services Planning) (Scotland) Bill must be amended at Stage 2 to enshrine a statutory right for children for whom Scotland has a parenting responsibility to return to settings of care and support. This includes accommodation and support in terms of the Children (Scotland) Act 1995 and the principle that when a care experienced child or young person experiences "difficulty" they should have a fundamental right to return to accommodation settings of care and support rather than youth homelessness where there is no additional right or access to services (see, for example, Staying Put Scotland, 2013)

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. **This needs to change.**

The proposals to extend aftercare and advocacy in the Children (Care, Care Experience and Services Planning) (Scotland) Bill are important, **but they do not constitute a right to return to care**, and as such further changes are necessary.

The proposed amendments

The Promise Scotland has noted the welcome cross- party support for this issue. In our view, the following areas must be addressed in order for Scotland to uphold the conclusions of the Independent Care Review as they relate to returning to care:

1. Strengthen the duty to accommodate children in terms of s25 of the Children (Scotland) act 1995.

2. Strengthen return-to-care rights for young people aged 18–21

3. Create a route to Continuing Care for care experienced children and young people who return to care

4. Create a right to remain in and return to Continuing Care up to the age of 26

Although we support the intent of amendments 129, 130 and 135 we think that the four areas outlined above are best addressed by amendments 131, 132, 133 and 134. These proposed changes are intended to ensure that difficulties experienced when moving on from care do not escalate into enduring crises for young people. Providing the option of a return to care, for a period tailored to individual needs, would better support young people to address emerging challenges and enable more effective planning for their future.

These changes are not intended to foster over reliance on support. Rather, they aim to ensure that young people are not left to face periods of need or instability in isolation. Evidence gathered through 100 Days of Listening indicates that such an approach would be of particular benefit to young people who are unable to access Continuing Care due to resource constraints; those experiencing periods of ill health; those placed in unsuitable or poor-quality accommodation after leaving care; those at risk of youth homelessness; and those facing relationship breakdown or other significant difficulties.

Implementation of any proposed changes

The Promise Scotland's view is that this should be done pragmatically, with a clear focus on the implementation of existing duties—but the opportunity should not be lost to ensure that the right to return to care is clearly set out in Scots Law. **A number of the**

suggested amendments may appear minor but would make a substantive difference to the way the law is interpreted and implemented and consequently ensure that all children and young people for whom Scotland has taken on parenting responsibility can return to care in the way that the promise intended.

They must also be accompanied by a clear resourcing and implementation strategy, and a plan for commencement/ sequencing and communicating the changes to care experienced children and adults and members of the workforce.

We have published further detail about what is needed to ensure a statutory 'right to return' in the following paper: position-a-'right-to-return'-to-care.pdf.

We therefore **support** amendments 131, 132, 133 and 134 (Nicola Sturgeon).

Access to housing for care- experienced persons (amendment 98)

We also **support** amendment 98 (Roz McCall), which would complement amendments 131, 132, 133 and 134 and ensure that guidance relating to access to secure and sustainable housing for care-experienced persons is issued to local authorities and relevant housing providers.

Corporate Parenting: duties and guidance: Amendments 95, 136, 137, 138, 140, 141, 166, 169, 221, 224

We support	We do not support
136, 140	95

We appreciate the intent behind amendment 95, which would remove the limit of 'age 26' to measures in the Bill relating to corporate parenting. However, the amendment as drafted does not acknowledge that corporate parenting responsibilities exist beyond local authorities which could potentially lead to greater inequity across the country. There is a clear need for a more intense period of support being available to young people leaving care and the age of 26 must not be a 'cliff edge' of support. To achieve this broadly and equitably further discussion is required before potential changes are made.

We **do not support** amendment 95 (Roz McCall).

We welcome the amendment that makes clear where there are reasonable grounds to believe that a young person is under the age of 26 that corporate parenting duties apply. However, it must be clear that corporate parenting duties extend beyond the local authority—this could be clarified at Stage 3.

We **support** amendment 136 (Martin Whitfield).

Duty of corporate parents in relation to the United Nations Convention on the Rights of the Child (amendment 140)

We **support** amendment 140 (Martin Whitfield) relating to the duty of corporate parents in relation to the UNCRC.

Guidance and training for corporate parents & Data collection and reporting

We are supportive of the principle behind the remainder of the amendments in this grouping, which refer to strengthening guidance and training (**137, 138, 141**), data collection and reporting for corporate parents (**166, 169, 221, 224**). This must align with the broader work required on understanding and rationalising reporting requirements for corporate parents given that we often hear about the bureaucratic and administrative burden that reporting places on them. All reporting must be proportionate and its purpose clear and aligned where possible in line with the principle of the Scottish Government 'once for Scotland' approach to data collection which places emphasis on system data sharing to reduce collection burden.

We note, however, that there is some overlap in these amendments and encourage collective work to strengthen the amendments prior to Stage 3.

Employment and training for cared for and care- experienced people: Amendments 139, 142

We recognise the good intentions behind **amendment 139** relating to corporate parents providing pathways to employment and training, including the appointment of employment officers. Most parents would see it as part of their role to support their children to find ways into work or training, and so we understand the underlying principle of the proposed amendment. However, further work is required to consider how this amendment is made practical for the wide range of corporate parents in Schedule 4 of the Children and Young People (Scotland) Act 2014. We would therefore be happy to engage further as the Bill progresses to Stage 3.

We also recognise the good intentions behind **amendment 142**, which states that Scottish Ministers must establish a national employment scheme to ensure that every care- experienced person under the age of 30 has guaranteed access to supported employment opportunities and the publication of annual progress reports. We think that this is worthy of further exploration and discussion, but do not feel that there has been adequate consultation and consideration of the practical implications for this and alignment with existing employment legislation to support it at Stage 2.

We would therefore be happy to engage further in these issues as the Bill progresses to Stage 3.

Public authorities: duties and guidance: Amendments 143, 157, 100, 158, 99, 159, 101, 160, 161, 165, 102, 124

We support	We do not support

143, 100, 159, 101. 160, 161, 165	157, 99

Public authorities: duties and guidance

The promise is clear that, "all of Scotland's institutions, organisations, national bodies and Local Authorities who have responsibilities towards care experienced children and young adults, must be aware of, understand and fully implement all their parenting responsibilities. What care experienced children and young adults need must be at the heart of decision making, so that all of Scotland can live up to its parenting responsibilities" (Pg 112). The Promise Scotland is therefore supportive of the amendment that places a duty on public bodies to have regard to care experienced persons in the exercise of their duties.

We **support amendment 143** (Ross Greer, supported by Nicola Sturgeon).

As the work to progress a universal definition of care experience, led by the Scottish Government, continues we anticipate that this will consider the rights and entitlements of children and care experienced adults who 'self- identify' as care experienced. We are not clear why legislation would be necessary at this point and would not wish to pre-empt the ongoing conversations with the care community about the definition of care experience, the rights and entitlements associated with it and how these will be accessed.

We therefore **do not support amendment 157** (Paul O'Kane).

The Independent Care Review heard from some care experienced children and young adults who felt their time looked after by the state felt cold, overly professionalised, stigmatising and uncaring (Pg 87). We therefore support measures to promote rights-based, relational and trauma- informed practice and support and ways to ensure care experienced people do not feel stigmatized.

We **support amendment 100** (Roz McCall).

While we welcome the intent behind **amendment 158** relating to guidance on providing whole family support to kinship carers and children we are unsure why whole family support for kinship care has been singled out. We are also unsure how the proposed guidance would link to the existing National Guidance on Part 13 of the Children and Young People (Scotland) Act 2014: Support for Kinship Care. We anticipate that this guidance will need to be updated subject to changes relating to kinship care that may be included within this Bill and as a result of the consultation on the draft Kinship Vision. The promise is clear that whatever issues families face, intensive whole family support must be available to all families that need support to stay together (Pg 55). We would welcome further consideration of this ahead of Stage 3, however it does not seem appropriate to add this amendment in the specific section on guidance in relation to care experience.

With regard to **amendment 99**, family time was an issue that was discussed in detail by the Hearings System Working Group. 'Hearings for Children' recommended that national best practice guidance around the issue of 'contact' and maintenance, repair and development of safe, relationships must be developed (recommendation 11.11). The report stated that:

"This should not just be applicable with respect to the Children's Hearings System but should be relevant to all decision makers who make important decisions about who, and how children should be in contact with. These decisions require skilled, thoughtful decision makers, able to synthesise and analyse information through a child rights framework and high levels of collaborative working alongside children, families, and the people working alongside them who know them best. It is also vital that Sheriffs, who have a role in making early decisions around contact before grounds are established, are fully confident of a child's needs and the purpose of contact when faced with legal representation and unproven allegations. To assist with this, it may be helpful for Sheriffs to be able to access a specific Contact Guideline, similar to the Young Person's Sentencing Guideline to ensure consistency of understanding and application of contact across Scotland" (Pg 240).

The Scottish Government's response to 'Hearings for Children' states that the importance of 'contact' is already recognised within the legislative framework and accompanying guidance, however it said that "initial discussions with stakeholders suggest that some form of further guidance on maintaining 'contact' and developing safe relationships could be helpful". The response goes on to say that this should build upon existing guidance and that the Hearings Redesign Board will connect with relevant stakeholders and policy functions in advancing this recommendation (Pg 37).

The Promise Scotland is therefore of the view that the proposed guidance described in **amendment 99** on decision-making in relation to family time between infants and their parents must be part of this broader work and linked to the ongoing work of the Redesign Board to implement the recommendations of the Hearings System Working Group. We are also unclear why this would sit in the section specific to guidance in relation to care experience.

We do not **support amendment 99** (Roz McCall).

The Independent Care Review and the 100 Days of Listening undertaken as part of the 'Moving On' Change Programme consistently heard from care experienced young people and adults the challenges they faced in accessing adequate help and support between local authority areas. The 100 Days of Listening heard how the housing protocol for care experienced young people moving on from care into a tenancy is only accessible for those who originate from the local authority where the housing is located. It is essential that this disparity does not exist, and instead young people with experience of care have the same level of support regardless of which local authority they are seeking support from. Amendment 158 to produce guidance that provides that a person's entitlement to support, guidance or advocacy by virtue of being care-experienced is not affected by a change to the local authority area in which the person resides will help to address some of these concerns.

We **support amendment 159** (Roz McCall).

Amendments 101, 160 and 161 seek to strengthen the duty placed on public authorities from having 'regard' to the guidance issued in relation to care experience. The Promise Scotland supported this change in our original consultation response and welcome amendments in this regard, noting the duplication of **amendment 101 and 160** and the need for only one of them to be pressed.

We **support <u>amendments 101, 160 and 161</u>** (Roz McCall, Paul O'Kane)

Guidance on restraint and seclusion in care settings (amendment 165)

<u>Amendment 165</u> introduces a duty on Scottish Ministers to issue guidance on the definition and use of restraint and seclusion in relation to children in care settings.

The promise is clear that Scotland must strive to become a nation that does not restrain its children (The Promise, pg. 85). By 2030, Scotland must be a nation that does not restrain its children unless in exceptional circumstances, and when it is unavoidable it is co-regulated, trauma-informed, lawful, recorded and used only to keep a child safe.

Following the tireless work of campaigners such as Beth Morrison and Kate Sanger, the passing of the Restraint and Seclusion in Schools (Scotland) Bill at Stage 1 and the work of Daniel Johnson MSP and the Scottish Government commitments to a statutory code of conduct and regulation and monitoring for mental welfare, significant strides have been made to make this a reality. This has been accompanied by work focusing on changes to culture and practice—including the CELCIS research project 'Holding Differently'. However, there remains significant gaps in the statutory framework relating to care settings.

The Committee will be aware that in its Stage 1 report it states:

"The Committee agrees that the approach taken on the use of restraint and seclusion in schools must align with practice expectations across all children's services, such as care settings... The Committee recommends that the Scottish Government outlines how it will ensure a consistent approach across all children's services is adopted..." (Para 88).

In her response to the Committee's report, Cabinet Secretary for Education and Skills wrote to the Children, Young People and Education Committee on 26th January 2026., stating that she is in agreement regarding the alignment of policy on the use of restraint across children' services.

In December 2025, The Promise Scotland worked with stakeholders including the Care Inspectorate, HMIE, the Mental Welfare Commission and the Children and Young People's Commissioner, Scotland and the Scottish Physical Restraint Action Group (SPRAG) to develop a routemap for keeping the promise relating to restraint. The agreed milestones identify that the Children (Care, Care Experience and Services Planning) (Scotland) Bill could be an opportunity to consider further legislation to close any remaining gaps in the statutory framework around restraint and seclusion.

<u>Amendment 165</u> will ensure that Scottish Ministers issue guidance on the definition and use of restraint and seclusion in relation to children in care settings, which will include information on monitoring, recording and reporting. This will allow for coordination and sequencing with the implementation of the Restraint and Seclusion in Schools (Scotland) Bill and for the inspectorates to work on a consistent definition.

It will further support broader alignment to ensure the same statutory obligations with regards to reporting and recording of instances of restraint apply in all settings where children are cared for. This will ensure the framework of statute is robust and children's rights are upheld and respected in all settings.

As currently drafted, the definition of "children in care settings" is, in our view, too expansive—however this can be resolved at Stage 3 and we are committed to working with MSPs to ensure the resulting duty is effective alongside the other

We urge MSPs to vote for this amendment at Stage 2, to bring care settings in line with the changes that have been made in education and mental welfare and to bring Scotland closer to keeping the promise.

We **support amendment 165, based on the need for amendments at Stage 3 relating to the definition** (Martin Whitfield)

Duty to ensure access to services to prevent family separation (amendments 102, 124)

The promise is unequivocal that where children are safe in their families and feel loved they must stay—and families must be given support together to nurture that love and overcome the difficulties which get in the way. This must result in a fundamental shift of thinking about when a child should be removed from their family [and] Scotland must provide families with support that lasts as long as required, with the collective acceptance that for some families this will be a long- term commitment (Pg 15).

The Promise Scotland is supportive of the intention of this amendment, to ensure that services are available that allow an eligible child to continue or resume residing with their parents. All children and families must be able to access help and support in line with the ten principles of intensive family support to enable to them to stay together, wherever it is safe to do so. This must include practical, emotional and financial help and support and, where appropriate, Family Group Decision Making and specialised services such as drug and alcohol support, domestic abuse support and trauma recovery. The Promise Scotland's joint work with OPFS on supporting families with experience of care highlighted the importance of financial support and poverty proofing pathways for families with children in-or on the edges- of care.

As currently drafted, **amendment 102** is not clear about what services must be available or how this links to the existing provisions outlined in Part 12 of the Children and Young People (Scotland) Act 2014 and the Relevant services in relation to children at risk of becoming looked after etc. (Scotland) Order 2016. Guidance also already exists (National Guidance on Part 12: Services in relation to Children at Risk of Becoming Looked After, etc) though this is non- statutory. There is much to build on in terms of this existing legislation—including considering whether the guidance must be statutory and understanding more about why the current duties are not being effectively implemented—as demonstrated in CELCIS' May 2019 Learning Review led by Dr Louise Hill.

The Promise Scotland's view—as highlighted in our initial briefing on legislative change to the Scottish Government in December 2024 is that there is a need for absolute clarity about what the rights are of children and their families in need of early help and support and what the existing statutory duties are—and whether these must be built upon. We suggested that there should be consideration of a duty to provide early help and support services, consideration of clear milestones to ensure that the commitment to

preventative spend is met and strengthening of the existing provisions in Part 12 of the 2014 Act and updating the guidance so that rights and duties are clearer and in line with the ten principles of intensive family support. There must also be alignment with the implementation of the Government's Whole Family Support Programme and other important policies and funds to address child poverty linked to whole family support.

There is scope for further discussions about what amendment 102 aims to achieve ahead of Stage 3, however given the timescales it may be appropriate for the Scottish Government to work alongside local authorities, children, families and stakeholders to ensure that both the legislation and available support and services better enable children to remain safely at home wherever possible. Some of the milestones relating to how to achieve this are set out in Plan 24-30.

Advocacy services for care experienced persons: independence: Amendments 144, 146, 147, 8, 151, 97

We support	We do not support
151	

The Promise Scotland is supportive of the calls to define "independence".

The promise is clear that care experienced children and adults must have the right to and access to independent advocacy, at all stages of their experience of care and beyond (Pg 115).

We note that there are a number of amendments that reflect a range of slightly different positions on what the definition of "independent" should be as it applies to advocacy for care experienced children and adults. Careful consideration must be given to ensuring that the core principles outlined in the promise—that "independent advocacy organisations must be commissioned to ensure that advocacy is structurally, financially and psychologically separate from statutory organisations and service providers" (Pg 115)—are upheld. This is likely to mean that local authorities cannot provide independent advocacy and that care providers cannot provide independent advocacy in the areas in which they provide care services. It is also important to ensure that any definition encourages choice for children and adults.

There is also a need to ensure that there are adequate numbers of independent providers able to work alongside children and adults and that the definition of "independent" does not unintentionally limit the choices available to children and adults in the area in which they live. It is particularly important that the changes do not unintentionally negatively impact on the operation of the National Practice Model for children in the Children's Hearings System, which The Promise Scotland understands is working well.

Given the need for further alignment in positions and careful thinking about the impact of a statutory definition of "independent" advocacy, The Promise Scotland considers that **amendment 151**, which makes clear that care experience advocacy services must be

independent and makes provision for regulation to specify what that definition must look like, is an appropriate way forward. We note that **amendment 150** provides further detail about what such regulations could include and consider that these could be combined and discussed ahead of Stage 3.

We **support amendment 151** (Jackie Dunbar).

Advocacy services for care experienced persons: other matters: Amendments 145, 148, 9, 10, 96, 149, 150, 154, 155

We support	We do not support
145, 154, 10, 96	9

Access to advocacy for families

The promise expects advocacy to also be available for families: "Advocacy must be readily and quickly available to all families who are in contact with the 'care system'" (Pg 115). The proposed right of access to care experienced advocacy services must therefore also apply to family members.

We **support amendments 145, 154** (Paul O'Kane)

Rural and deprived areas

We fully support measures to ensure children, families and care experienced adults can access advocacy in rural and deprived areas as set out in **amendments 148, 149, 155.** However, we are unclear why explicit reference is needed to this in primary legislation.

Opt in advocacy (amendment 9)

We are unclear the intent behind this amendment, given that advocacy services at present are 'opt-in'.

We **do not support amendment 9** (Jeremy Balfour)

Earlier access to advocacy (amendment 10)

The Bill proposes in Chapter 3 that children in the Children's Hearings System are offered advocacy at an earlier point. In our view this offer must be extended even further, in line with Recommendation 4.1.2 of Hearings for Children, which states that: "*The Promise Scotland's work to develop a lifelong advocacy service for care experienced children and adults should include the extension of advocacy support beyond the entry point to the Children's Hearings System to children working voluntarily alongside local authorities and to parents and carers too*." This recommendation was accepted in full by the Scottish Government in their response to 'Hearings for Children'. This amendment would allow for the regulations that

will be developed relating to the care experience advocacy service to include earlier access to advocacy for children and families.

We **support amendment 10** (Jeremy Balfour)

Availability of care experience advocacy services where other advocacy services are available (amendment 96)

Amendment 96 seeks to ensure that care experience advocacy can still be accessed even when other advocacy is available.

We **support amendment 96** (Roz McCall).

Estranged children: Amendments 152, 153, 156, 162, 163, 164

We understand that children and young people who are estranged from their family might require additional help and support. We also recognise that some of the support requirements for people estranged from their families might be similar to those of care experienced people. We are unclear how the amendments, which refer to children who are/ were 'cared for or supported as a consequence of being estranged from their family' differ from children who are 'looked after' in legal terms. In our view, this is an important issue which requires further consideration as part of the work to develop a definition of care experience, the implementation of the UNCRC (Incorporation) (Scotland) Act 2024 and ongoing work to support practice development to ensure all children and young people have their rights upheld.

Permanence: Amendments 167, 196, 222

We support	We do not support
	167, 222

The Independent Care Review, the Hearings System Working Group and the 'Moving On' Change Programme, led by STAF and The Promise Scotland heard evidence of the harm caused when children and families lack clear, long-term plans for their future. This is detailed within the 100 Days of Listening report. The Independent Care Review concluded that:

- if required, safe and loving homes must be found for children as quickly as possible;
- the number of moves for children must be limited;
- where appropriate there must be robust concurrency planning;
- safe, consistent relationships must be prioritised; and
- there must be a broadened approach to understanding risk, shifting from the risk of possible harm to the risk of not having stable, long term, loving relationships.

The Independent Care Review did not conclude that there was a need for statutory timescales for permanence planning**.**

We understand and appreciate the sentiment of these amendments and recognise the existing challenges of the harm caused when children and families lack clear, long-term plans for their future. However, we would envisage a different approach to addressing the problem of system drift and delay than the one proposed in this amendment.

Children's futures must be secured as early as possible, in line with the robust evidence about the importance of children's early years. Measures must be in place to prioritise the developmental needs of infants and babies where systemic delays may impact on their ability to form lasting and consistent relationships.

However, the promise demands that Scotland is different. That it takes a new and innovative approach to risk and that a new approach is taken that places the needs and best interests of children at the centre. This means that further care and thought is required about how the voices and experiences of children and families can guide and inform decision making processes in line with what the Independent Care Review heard.

Action must be taken to reduce unnecessary drift and delay in decision making and care planning for children. Where appropriate this must include the introduction of statutory and non-statutory timescales that apply directly to the 'system' to address systemic challenges that cause delay. This must not, however, introduce the sense of a 'ticking clock' for families - the pressure must be on the system to deliver change.

Systemic issues that cause drift and delay cannot be addressed by the introduction of timescales alone. Attention must be paid to the broader root causes of the problems causing delays in making decisions for children and families, including workforce recruitment and retention, systemic delays in the Courts, delays with accessing independent and evidence- based reports, access to legal aid and securing the right sustainable, high- quality and often intensive support for families at the right time, in ways that make sense to them.

Statutory timescales must not be introduced without a robust assessment of the current capacity of the system to deliver intensive help and support for families. Any action to do so must be accompanied by consideration of how, in parallel, to ensure families are able to access high-quality intensive support, rehabilitation and Family Group Decision Making.

Our view, therefore, is that a move to legislate for statutory timescales in this Bill is premature given the need to undertake both the robust and detailed consultation, including with children and families to determine the deliberately different decision-making landscape within Scotland and how the changes contained within the Bill will interact and impact on the decision-making process for children and families.

We **do not support amendments 167 and 222** (Martin Whitfield).

Amendment 196, relating to a post- Hearing report on permanence, links to the recommendations of 'Hearings for Children' requiring closer links between local authority decision-making relating to adoption, permanence and residence orders and the legal tribunal of the Children's Hearing. Specifically, the need for an 'exit plan' out of the Children's Hearings System, with clear targets and timescales. We are unclear the impact

that a post- Hearing report on permanence would have and how it would link to the work of the Permanence Panels. We would be keen to discuss this suggestion further ahead of Stage 3.

Data collection and reporting on services and outcomes: Amendments 168, 185, 103, 104

We support	We do not support
	185

Report on premature deaths of care experienced people (Amendment 168)

Evidence is clear that care experienced young people and adults are more likely to experience extremely poor outcomes in comparison to their peers. The Promise Scotland therefore supports the intent of **amendments 168** regarding a report on premature deaths of care experienced people, which aims to help to ensure that there is a better understanding nationally of trends and learning to help prevent premature deaths.

However, this must be balanced with the need to focus resources on ensuring that the conclusions of the Independent Care Review are implemented in full, including increased help and support for care experienced young people and adults and significant upscaled investment in practical and financial support, and mental health. There is already work underway in this area by the National Hub for Child Death Reviews which reviews the death of every child to the age of 18, and up to age 26 for care leavers in receipt of aftercare. Established in 2021, it is focused on identifying patterns and lessons to ensure policy and practice improves and learning is acted upon.

Over and above this, the mechanisms are not in place to collect the information on care experienced adults these amendments require at the national level, especially given a potentially broad definition of care experience. It is also important to ensure that the right to privacy is upheld for care experienced people. Data reporting at the scale identified in these amendments would require significant resource and capacity and the data it would be produce would be subject to many caveats that would reduce its reliability.

Given these issues, further work must be done to understand how this information can and should be collated in a way that upholds the rights of care experienced people and improves practice and support. This could be done at Stage 3, or as part of the broader work required relating to monitoring and reporting of the promise that must be progressed as part of the Promise Story of Progress.

Data collection on outcomes for care experienced people (Amendments 103 and 104)

Care experienced people experience a range of outcomes that are significantly poorer than their peers. The Promise Scotland therefore supports the intent of **amendments 103 and 104** that aim to provide greater focus on understanding more about their lives

and what additional help and support can be provided to target support to where it is needed most. Understanding outcomes is an important part of achieving that.

However, this must be balanced with the need to focus resources on ensuring that the conclusions of the Independent Care Review are implemented in full, including increased help and support for care experienced young people and adults and significant upscaled investment in practical and financial support.

Collecting data and information on outcomes for care experienced adults at the national level is challenging, and current systems are not set up to progress this reliably, especially given a potentially broad definition of care experience and the need to ensure that the right to privacy is upheld for care experienced people. It is possible, and some evidence shows more likely to achieve improved outcomes, to increase local level understanding of need without introducing national reporting. Further thought is required to be given to all of the above, and the impact national reporting would have on the known reporting burdens, prior to legislating.

Reviewing systems (Amendment 185)

The promise was clear, it must never again be necessary to conduct a review of care of the scale undertaken by the Independent Care Review (Pg.30). We recognise the intent of **amendment 185** to develop greater understanding of change and progress via review and planning, however the lack of clarity on how it will fit with existing planning processes and resourcing remains challenging. Significant work is already underway through Plan 24-30 and the Promise Story of Progress to understand progress made, progress still required, and the barriers to change, including bureaucracy, that are getting in the way.

We **do not support Amendment 185** (Miles Briggs).

Support for adoption: Amendments 11, 12, 13, 14, 15, 16

We support	We do not support
15	14

Provision of post-adoption social work, provision of peer support, sustainable funding for adoption

The promise is clear that adoption has an important role in providing permanent, loving nurturing homes. Adoption must continue to be supported in policy and planning (Pg 75). We are supportive of all measures to ensure that adoptive parents and children living with them are fully supported, in line with the conclusions from the Independent Care Review and the ten principles of intensive family support. The promise highlighted the importance of peer support in particular (Pg 76).

Amendments 11, 12, 13 and 16 reflect the spirit and intention of what is set out in the promise; however we are unclear about the practical implementation of these

amendments. This includes both financial and human resourcing, given the current workforce challenges. Further discussion is required with Social Work Scotland, COSLA and adoptive parents and children and there must be alignment with the Scottish Government's Adoption Vision. Following this it may be possible to bring a further amendment back at Stage 3—or look to further legislation on the promise.

Adopted persons to be recognised as having care experienced status

Amendment 14 reflects the promise's clear steer that the definition of care experience must be broad. However, given the ongoing work relating to the definition of care experience, including the guidance set out in this Bill, it appears pre-emptive to make legislative changes relating to care experienced status. This could have the further effect of cluttering the landscape and causing confusion amongst children, families and the workforce. In our view, this must be progressed through the broader work on the definition of care experience rather than by amending the Adoption and Children (Scotland) Act 2007.

We **do not support Amendment 14** (Fulton MacGregor).

Adoption breakdown definition and collection

The promise is clear that Scotland must avoid adoption breakdown and mitigate the impact it has on children and families. A key part of this is better understanding the experiences and outcomes of children and families who find themselves in a breakdown situation and so and collecting data on the extent and reasons for adoption breakdown is essential. That data collection must follow the experience of children whose adoption has broken down, recognising the prevalence of and impact on late teens and early adulthood (Pg 76). We therefore support Amendment 15, which provides for Scottish Ministers to provide for a definition of 'adoption breakdown' and guidance on the collection and sharing of information relating to adoption breakdown via regulation.

We **support Amendment 15** (Fulton MacGregor).

Children's residential care services: Amendments 17, 170, 171, 18, 19

We support	We do not support
17, 170, 171, 18	

We support the amendments in this grouping, which add secure care to the scope of the profit limitation provisions and make clarifications. We note the duplication in amendment 17 and 170.

Register of foster carers: Amendments 172, 173, 174, 175, 176, 177

We support	We do not support
172, 173	174, 175, 176

We recognise the intention of the amendments in this grouping to strengthen the provisions relating to the register of foster care. We are supportive of Amendments 172 and 173, which provide important safeguards and strengthens foster carers' ability to access and correct their own information.

We **support Amendments 172 and 173** (Martin Whitfield).

Amendment 174 introduces additional detail with respect to transparency and safeguarding in relation to the register of foster cares. While we are supportive of the intention, the specific detail set out requires further thought and consideration and pre-empts the consultation that must take place on the register.

We **do not support Amendment 174** (Roz McCall).

Amendment 176 establishes a Scottish Foster Carers Council. Our understanding is that there has been no consultation on this and therefore there it is pre-emptive to include in legislation at this stage.

We **do not support Amendment 175 and 176** (Martin Whitfield).

Allowances: Amendments 20, 21

We support	We do not support
20, 21	

The Promise Scotland is supportive of the amendments in this grouping, which will up-rate the Scottish Recommended Allowance in line with inflation and will improve consistency and fairness across the country.

The Promise Scotland will send an updated briefing relating to the remaining amendments for the Children (Care, Care Experience and Services Planning) (Scotland) Bill ahead of the second Stage 2 session on 11th February.

About The Promise Scotland

The Promise Scotland was established in 2021 and exists to support Scotland as it works to keep the promise to Scotland's children, families and care experienced adults following the conclusions of the Independent Care Review. Since the organisation was established,

it has supported and delivered a wide range of projects and programmes, which you can read more about in our organisational review and our strategic work programme.

Keeping the promise involves transforming the entirety of Scotland's 'care system', so that children, young people, families and care experienced adults are at its centre. The Promise Scotland directly supports the work of multiple organisations and agencies, across many sectors working to make that happen by 2030 at the very latest, with a commitment to its own obsolescence by that date.

If you want to get in touch to discuss any of the areas raised in our briefing, please do not hesitate to contact our Policy Lead, Chloe Riddell on chloe@thepromise.scot.