

Children (Care, Care Experience and Service Planning (Scotland) Bill

Stage 3 MSP Briefing

Children and Young People's Commissioner Scotland

March 2026

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

We have previously provided the Education, Children and Young People Committee with Stage 1 written¹ and in-person evidence on this Bill² as well as a briefing ahead of their Stage 2 consideration of it.³

In addition to contributing towards implementation of the Promise, this bill engages with a number of key children's rights issues for care experienced children and young people. The care system inevitably interferes with children's human rights under the UNCRC and other international human rights treaties including the European Convention on Human Rights (ECHR) – by removing them from the care of their parents (Articles 9 and 20 of the UNCRC) and through interfering with their right to a private and family life (Article 16 UNCRC and Article 8 ECHR). This is justifiable only when done as a proportionate measure to protect their rights, particularly their right to be protected from “all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse...” (Article 19 UNCRC).

The state has an obligation to ensure that appropriate legislative and administrative processes are in place to protect the full range of children's rights, including putting in place mitigations to ensure the right to a fair trial (Article 6 ECHR) and the right to participate in decisions (Article 12 UNCRC). This is particularly important where a child is in conflict with the law (Article 40 UNCRC). In the most serious cases, where a deprivation of liberty is being considered, it is essential that robust measures are in place to ensure children's rights are fully protected (Article 5 ECHR).

Our office's statutory remit covers children and young people under the age of 18 and young people under the age of 21 if they have been in the care of, or looked

¹ CYPSCS, 2025. <https://www.cypcs.org.uk/resources/children-care-care-experience-and-services-planning-scotland-bill-stage-1-evidence/>

² Scottish Parliament. *Official Report*. <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=16565>

³ CYPSCS, 2026. *Children (Care Experience and Service Planning) (Scotland) Bill – Stage 2 briefing*. <https://www.cypcs.org.uk/resources/care-etc-stage-2/>

after by, a local authority.⁴ On that basis, we do not take a position on issues which primarily or wholly relate to people aged 21 or over.

Group 1: Aftercare

Support	Oppose	No position
91, 6, 7, 8, 93, 9, 13, 14, 15, 33, 209, 88		92, 96, 97

This section of the Bill, as amended at Stage 2, demonstrates that it is possible to bring measures into scope of the United Nations Convention on the Rights of the Child (Scotland) Act 2024 (UNCRC Act), rather than persisting with amending pre-1999 legislation. We will continue to call on the Scottish Government to take this approach wherever possible.

On balance we support the Scottish Government's amendments, which consolidates changes made at Stage 2.

We take no position on amendment **92**, but are concerned about potential resource implications resulting in a negative impact on children currently in care.

We would support amendments **96** and **97**, were it not that earlier amendments we support require removal of Section 1A (as passed at stage 2).

Group 2: Provision of accommodation and continuing care

Support	Oppose	No position
		99, 100, 101, 102, 98, 103, 104, 105, 106, 107, 108, 144

We take no position on the amendments in this group. Whilst we welcome the intent to bring these provisions into scope of the UNCRC Act, we are concerned that there may be unintended consequences relating to these particular sections.

Group 3: Family group decision-making

Support	Oppose	No position
10		94, 95, 79, 80, 81, 82, 83, 203, 84

We support amendment **10**, which fulfils commitments made by the Scottish Government at Stage 2 in response to a range of amendments on this issue being lodged. We do not take a position on the other amendments in this group.

Group 4: Kinship care

Support	Oppose	No position
		11, 12

We take no position on these amendments.

⁴ Commissioner for Children and Young People (Scotland) Act 2003.
<https://www.legislation.gov.uk/asp/2003/17/section/16>

Group 5: Corporate parenting: duties and guidance

Support	Oppose	No position
18, 19, 19A, 19B	20, 109, 110	16, 17

We oppose amendment **20**, which removes a duty on corporate parents relating to Article 8 of the UNCRC. We supported the amendment that introduced this at Stage2.

At Stage 2 we raised concerns that some amendments were founded in a lack of awareness of the diverse range of organisations defined as Corporate Parents by Schedule 4 of the Children and Young People (Scotland) Act 2014.

Whilst this includes large public bodies who directly deliver services to care experienced children and young people, it also includes a number of small organisations. These include Bòrd na Gàidhlig, Creative Scotland and the Scottish Sports Council. Some of the requirements in these amendments would not be practical or possible for these organisations. On this basis we oppose amendments **109** and **110**.

We support amendments **18, 19, 19A, and 19B** on Guidance on Corporate Parenting. These consolidate and strengthen changes made at Stage 2. We feel that better guidance for corporate parents, taking into account their diversity, will improve recognition of corporate parenting and help corporate parents fulfil their duties.

Group 6: Advocacy services for care-experienced persons

Support	Oppose	No position
		21, 22, 111, 23, 112, 113, 114, 115, 116, 24, 117, 25, 26, 27, 29, 29A, 86

We support the principle of care experienced children and young people having access to advocacy services to better enable them to express their views in a children's hearing and in other interactions with services. There are strong arguments that independent advocacy services should be available, however we do not take a position on the technicalities of what is and isn't independent.

Some of the amendments in this group are, in our view, excessively prescriptive and may reduce children's ability to choose who supports them in sharing their views.

In the context of children's hearings, it is also important to note that advocacy services should complement, not replace, children's right to legal representation.

Group 7: Structure of Act

This group is technical in nature and we take no position on these amendments, save to warmly welcome the inclusion of amendment **89** which unequivocally defines a child as a person aged under 18, in line with the UNCRC.

Group 8: Guidance in relation to care experience

Support	Oppose	No position
118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133		

We support this group of amendments which transforms the proposed guidance on care experience into regulations, on the basis they will extend rights protections for care experienced children.

Group 9: Permanence

Support	Oppose	No position
134		135

At Stage 2 we acknowledged ongoing concerns about delays in achieving permanence for some children. However, we remain concerned there may be significant unintended consequences in specifying a timescale for permanence. This could move the focus away from the child's best interests and reduce the possibility of reuniting the child with their parent(s).

A report on permanence would seem to be a way to further consider these issues. On balance, we prefer amendment **134**.

Group 10: Children's residential care services: profit limitation

Support	Oppose	No position
35, 36, 37, 38, 140, 39, 40, 141, 3, 41, 143	2, 136, 137, 142	138, 139

We support amendments **35, 36, 37, 38, 140, 39, 40, 141** and **41** which address potential loopholes in profit limitation.

We support amendments **141** and **3** which make children's wellbeing a primary concern when Scottish Ministers impose or modify a profit limitation requirement.

We do not agree that charities should be exempted from profit limitation and therefore cannot support amendments **2, 136, 137** and **142**.

Group 11: Allowances and other payments

Support	Oppose	No position
145, 146, 147, 148, 149, 150, 151, 152, 210		

We support all amendments in this group on payment of allowances and other payments to foster carers.

Group 12: Guidance on use of restraint and seclusion in relevant care services

Support	Oppose	No position
44		

We support this amendment which will place existing guidance on the recording and monitoring of restraint and seclusion on a statutory basis. This mirrors the position which will be put in place by the Restraint and Seclusion in Schools (Scotland) Bill, should it pass. It is essential that use of restraint and seclusion is subject to statutory guidance, including reporting and monitoring, to meet Scotland's obligation to protect the human rights of children and young people in residential care.

We note that this amendment addresses the concern that the equivalent amendment at Stage 2 was drawn too broadly.

Group 13: Reports on deaths of care-experienced persons

Support	Oppose	No position
		153

Group 14: Support for adoption

Support	Oppose	No position
155, 157, 158		154, 156, 159

We recognise the longstanding concerns about post-adoption support and recent discussion on the breakdown of adoptions. It is important that adopted children and their parents are supported to ensure the adoption can be sustained. We therefore support amendment **155** on post-adoption social work support and amendment **157** which clarifies that adopted persons should be considered care experienced.

We also support amendment **158** which aims to improve data collection on adoption breakdown. We take no position on the other amendments in this group.

Group 15: Children's hearings: composition, functions and location of members

Support	Oppose	No position
45	47, 168	160, 161, 162, 46, 162. 163, 164, 49, 50, 51, 165, 166, 52, 167

We support amendment **45** which creates regulations regarding the functions of the chairing member as we believe this could do with further clarification.

We oppose amendments **47** and **168**. We understand the intention is to ensure that panel members are local to the area – however we are concerned that the unintended consequences of these amendments would lead to operational restrictions which would not benefit children. In small local authorities, a small number of panel members and increased risk of conflict of interests, such a restriction may be particularly problematic.

While we in principle support increased continuity, including chair continuity, where this is in the best interests of the child, we do not see that legislative provisions are necessary to achieve this and they may have unintended consequences.

Group 16: Children's hearings: general

Support	Oppose	No position

175, 179, 180	53, 54, 76	48, 55, 56, 57, 58, 59, 60, 61, 62, 176, 177, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 73A, 178
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We support amendment **179** which addresses the omission of Article 16 of the UNCRC in the original text, which only refers to the equivalent Article 8 of the ECHR. Amendments **175** and **180** are relatively minor but useful changes.

We oppose amendment **53** in its current form. We would welcome guidance on the attendance of children at children's hearing, however we feel that this should not be restricted to circumstances of ages and stages of development.

We have serious concerns regarding the non-attendance of children at hearings regarding offence grounds or the risk or the potential for deprivation of liberty.

We oppose amendment **54**. We have expressed our concerns regarding the appropriateness of the proposed 'post referral' discussion procedure. This amendment removes an important mitigation against those concerns.

We oppose amendment **76** and ask the Government to reconsider this amendment. We are not convinced that defining children's hearings as inquisitorial is necessary or appropriate. We are concerned that this could interfere with a child's rights to a fair hearing under Art 6 ECHR and Art 40 UNCRC. In addition, this amendment failed to define what an 'inquisitorial manner' is.

Group 17: Children's hearings: advocacy

Support	Oppose	No position
196, 197	169, 170, 185, 186, 187, 188, 190, 191, 193, 194, 78, 198, 199, 200	

We oppose opt-out advocacy models on principle. Advocacy is imported and children should be made aware of its availability at the earliest opportunity. It is right that the State funds advocacy services to support care experienced children.

However, we are concerned about discussions about advocacy being the responsibility of the Principal Reporter in the setting of a post-referral discussion. The power dynamics of this setting would undermine the opt-out nature of the services, as children may be unwilling to exercise their opt-out.

We are further concerned that these amendments promote advocacy but not legal representation which could result in compatibility issues with the Article 6 ECHR and Article 40 UNCRC right to a fair trial. Advocacy services are an important part of supporting children to share their views in a children's hearing, however they are not a substitute for qualified legal representation, particularly where offence grounds or a deprivation of liberty (including restrictions on liberty which could amount to a deprivation of liberty) are being considered.

Amendments **196** and **197** strengthen the existing text without moving to an opt-out model, but we do not believe the Principal Reporter is the appropriate person to be making this referral.

We are not convinced that ‘non-instructed advocacy’ would be able to work in practice without fundamentally changing the role of advocacy. We therefore oppose amendment **200**. It risks introducing more adults with competing statutory roles into an already complex system.

Group 18: Children’s hearings: timescales

Support	Oppose	No position
	171, 181	182

We understand why these amendments have been lodged and share concerns about the length of time some cases take but have serious concerns that arbitrarily restraining timescales risks unintended consequences, particularly in criminal cases.

We oppose amendment **171**. ‘Exceptional circumstances’ will be interpreted by the court as just that, exceptional and limited. It may not cover all situations where extended timescales are appropriate, for example complex proofs or where a separate criminal case relating to a parent must first conclude.

The consideration of the ‘best interests of the child’ in amendment **181** could have unintended consequences for some proof cases, such as criminal cases. These provisions may also have implications for victims’ rights, including child victims who have their own rights under the UNCRC to be upheld.

Group 19: Children’s hearings: infants

Support	Oppose	No position
	172, 173, 174,	183, 184

We oppose amendments **172**, **173** and **174**. We do not feel that an arbitrary age of 5 is appropriate. A disabled child of any age could face similar barriers and decisions should be made on the needs, best interests and rights of each individual child.

Group 20: Children’s hearings: legal advice and representation and legal aid

Support	Oppose	No position
75, 77, 189, 192, 195, 201		74

We support the introduction of accreditation of solicitors representing children and on balance we prefer the provisions in amendment **75**. We note that requiring accreditation may impact the availability of solicitors and this should only be brought into force at a time when there is sufficient capacity in the system.

We support the extension of automatic legal aid for children in the hearings system in amendments **77**, **189**, **192**, **195** and **201**.

Group 21: Places of safety for arrested children

Support	Oppose	No position
202, 211		

We support amendments **202** and **211**. There is a longstanding concern about children being held in police stations and a lack of alternatives places of safety. While we would have preferred this to happen without legislation we support on the basis that it can be brought into force when sufficient places of safety are available.

Group 22: Children's services planning

We take no position on this group.

Group 23: Reviews and reporting in relation to the Act and the Promise

Support	Oppose	No position
	208	

Although we generally take no position on the various options for reviews and reports, we oppose amendment **208** which would remove section 22E, which requires a report on the operation of the Act to include progress on eliminating the practice of restraint of children and young people in care and the exclusion of care-experienced people from education.

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774