

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1958](#): ‘Extend aftercare for previously looked after young people, and remove the continuing care age cap’, lodged by Jasmin-Kasaya Pilling on behalf of Who Cares? Scotland

Introduction

The Committee will take evidence from Minister for Children, Young People and Keeping the Promise Natalie Don MSP as part of consideration of [PE1958: Extend aftercare for previously looked after young people, and remove the continuing care age cap](#).

The Petition

The petitioner calls for the Scottish Parliament to urge the Scottish Government to extend aftercare provision in Scotland to ‘previously looked after’ young people who left care before their 16th birthday, on the basis of individual need. The petitioner suggests this could be done by amending Section 66 of the Children and Young People (Scotland) Act 2014.

The petition also calls for an extension to continuing care throughout Care Experienced people’s lives, on the basis of individual need; and for Care Experienced people to have lifelong rights. This includes ensuring that the UN Convention on the Rights of the Child and the findings of The Promise are fully implemented in Scotland.

Previous consideration by Committee

The Committee first discussed the petition at the [meeting on 7 December 2022](#) alongside written submissions from the [Scottish Government](#) and the [petitioner](#) that were received ahead of the meeting.

The Committee agreed to write to CELCIS (Centre for Excellence for Children’s Care and Protection) and Staf (Scottish Throughcare and Aftercare Forum). The Committee also agreed to invite the petitioner, representatives from Who Cares? Scotland, CELCIS, Staf, the Promise, the Children and Young People’s Commissioner, and individuals with lived experience, to a roundtable discussion.

On 18 April 2023, the Committee held an informal online discussion on the petition with the petitioner and individuals with lived experience. Written case studies were also provided. A summary of this evidence can be [read on the Committee webpage](#).

On **support available when leaving care**, Members heard:

- For many people there was no meaningful help or support.
- Some people were not aware they were considered to be in care or that they were eligible for any support;
- There are concerns about young people being removed from Compulsory Supervision Orders (CSOs) ahead of turning 16. This prevents them from accessing support offered to Care Experienced people in future.
- Available support varies between local authority.

On **challenges faced when leaving care**, Members heard:

- Many faced financial insecurity, mounting debt, mental ill-health, and bureaucracy around accessing support.
- Those with 'informal' care arrangements (e.g. kinship care) felt they 'fell through the cracks' as no-one took responsibility for their support.
- Those who have never had a CSO or had this removed before their 16th birthday found they were not eligible for aftercare support.
- Access to housing was an issue, as people found housing and homelessness points are only applied when an individual makes an application in the council area where they were first placed into care.
- Advice around accessing support was varied, with some people stating they did not know what they were eligible for and others highlighting the challenges of council tax exemption for care leavers.
- Some highlighted that even where they were aware of their rights, it was not always possible to access them.

Participants **identified improvements** that could be made to the system:

- Having someone – such as a teacher or social worker - to reach out to. Professionals should be aware of culture and race sensitivities.
- Teachers being compassionate and trauma informed to enable them to support Care Experienced young people.
- Being spoken to as an adult when decisions about CSOs and leaving care are being taken.

- Availability of lifelong support recognising Care Experienced people may need support with mental ill health, employment and housing throughout their lives.
- Providing support to help maintain sibling relationships, in care and after leaving care.
- Removal of arbitrary age cut-offs for support, and recognising support should be needs-based, consistent and the process around accessing it easier to navigate. Care Experienced people must also be informed about their rights.
- The Scottish Government and public bodies' corporate parenting role should extend to providing support to Care Experienced people where they need it throughout their lives.
- Improved support for informal and semi-formal kinship care arrangements. [Currently, kinship carers of 'looked after children' in formal kinship care arrangements are eligible for Kinship Care Allowance, while non-looked after children in informal arrangements are not. More information can be found on the [Citizen's Advice Scotland website](#).]
- Greater flexibility and discretion for social workers when making decisions on providing support.

At its meeting on [19 April 2023, the Committee heard evidence](#) from Petitioner, Jasmin-Kasaya Pilling, a Who Cares? Scotland member, and Laura Pasternak of Who Cares? Scotland. This was followed by a roundtable with stakeholders from CELCIS (the Centre for Excellence for Children's Care and Protection), the Children and Young People's Commissioner Scotland and The Promise Scotland.

Jasmin-Kasaya Pilling told Members:

- Present definitions of 'looked after' children do not ensure that all Care Experienced people can access continuing care and aftercare.
- Being able to access continuing care and aftercare services offers support that can be vital to those leaving care.
- Homelessness, poverty, poor mental health and a lack of advocacy to access services can arise as a result of not having access to continuing care and aftercare. These issues can contribute to an environment in which Care Experienced people die at a younger age than the average.
- Barriers to setting up bank accounts, applying for a [Care Experienced bursary](#), and not applying for Council Tax exemption are made difficult due to having to prove Care Experienced status.
- Who Cares? Scotland are concerned that young people coming off CSOs ahead of their 16th birthdays do not realise this means they will not qualify for support when leaving care.

- Many Care Experienced young people do not know their rights.
- Support offered to those on CSOs and therefore eligible for support when leaving care varies by local authority. There can also be a lack of clarity around which authority should support a young person in cases where they have moved.
- Rights breaches are often seen in the area of continuing care, and the current approach focuses on resources and capacity rather than the needs of the young person.
- The upcoming Promise Bill and Human Rights Bill should look at how individuals can receive lifelong support based on their Care Experienced identity.

When asked what needs to change, Jasmin-Kasaya Pilling said:

“We need to work on the legislation and to ask the Scottish Government to amend the legislation that is currently in place. We also need to highlight the issue of young people being removed from CSOs. Funding will need to be provided for the process. In line with the Promise, we know that the workforce will be working towards the massive area of scaffolding, which I think is vital.” – [Official Report, 19/04/23](#)

Laura Pasternak set out Who Cares? Scotland’s call for Section 66 of the Children and Young People Scotland Act 2014 to be amended to:

- Remove the need for a young person to still be in care on their 16th birthday to access support.
- Remove the age limit of 26 for accessing aftercare.

During the roundtable with stakeholders, Joanne McMeeking from CELCIS stated current provision of aftercare is “patchy”, even within local authority areas. Megan Farr from the Children and Young People’s Commissioner Scotland and Fiona McFarlane of The Promise Scotland agreed with this assessment. Megan Farr echoed Jasmin-Kasaya Pilling’s earlier point that many young people do not know their rights and their entitlement to advocacy.

Joanne McMeeking said that while continuing care and aftercare provisions of the 2014 Act were in force:

“...they have not always been properly implemented and understood according to the letter of the law.” – [Official Report, 19/04/23](#)

Joanne McMeeking also highlighted resource and capacity issues for local authorities and the third sector organisations commissioned to deliver services. Recruitment challenges, low wages and year-to-year funding were mentioned as particular challenges.

Fiona McFarlane highlighted the need to ensure third sector organisations providing statutory services on behalf of local authorities are funded and supported to deliver these services.

Fiona McFarlane said if the Committee recommended amending continuing care and aftercare eligibility in the 2014 Act this move “would be positive”.

Background Information

Local authorities have a duty to provide support to children who are 'looked after' by them, as set out in the [Children \(Scotland\) Act 1995](#). This includes a duty to "safeguard and promote" the welfare of children in their care.

The [Children's Social Work Statistics Scotland](#) includes data on looked after children and those in continuing care or eligible for aftercare. The latest statistics for 2021-22 find there are 12,596 children and young people looked after by local authorities across Scotland.

In 2021-22, 696 young people were recorded as entering Continuing Care – a 26% increase on the previous year. As at 31 July 2022, 8,132 young people were eligible for aftercare – an 11% increase on the previous year.

Aftercare

- Aftercare is defined by the [Children \(Scotland\) Act 1995](#) as ‘advice, guidance, and assistance’. This can include (but is not restricted to) helping a young person to secure accommodation, education and employment opportunities, and financial support.
- Section 66 of the [Children and Young People \(Scotland\) Act 2014](#) extended access to aftercare services to include any young person who at the point of leaving care, has reached 16 years of age.
- Since April 2015, aftercare eligibility was also extended to cover all care leavers up to, and including, people aged 25 years (where it previously only covered young people up to their 21st birthday).

Continuing Care

- Continuing Care is the continued provision of accommodation and other assistance provided by local authorities immediately before the young person ceased to be looked after. Only children who cease to be looked after aged 16 years or over and were looked after away from home are eligible for Continuing Care. Section 67 of the 2014 Act places a legal duty on local authorities to support looked after young people to remain in positive care, and the Continuing Care (Scotland) Order 2015 sets out that this duty extends until the young person is 21 years of age.

- [Staying Put Scotland Guidance](#) emphasises the crucial importance of continuity of relationships and the expectation that staying put in positive continuing care arrangements becomes the default and new norm for Scotland’s looked after children and young people.

Independent Care Review and The Promise

A ‘root and branch’ review of the care system in Scotland was announced by First Minister Nicola Sturgeon in October 2016. Chaired by [Fiona Duncan](#), CEO of the [Corra Foundation](#), 5,500 people with experience of the care system were involved over the course of the review.

[The review – called The Promise](#) – was published in February 2020, setting out steps Scotland can take to embed significant change in the care system.

With regards to Continuing Care, Aftercare, and the rights of Care Experienced young people, The Promise recommended:

- Aftercare to take a person-centred approach, with thoughtful planning so that there are no cliff edges out of care and support.
1. Young people must be encouraged to ‘stay put’ in their setting of care for as long as they need to. Rules, regulations and systems must support that approach. There must be no regulatory barrier for young people to stay with foster carers for as long as is required.
 2. Scotland must ensure that current definitions that act as the access point for rights and entitlements are inclusive enough to benefit all people for whom Scotland has had parenting responsibility. [The Promise states](#) changes to definitions “must reflect the ongoing responsibility Scotland has for the children for whom it has had parenting responsibility and whose family life has been disrupted by the decisions of the State.”

The report recognises that present definitions that operate do 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. Current definitions also prohibit those who have experienced adoption disruption from being able to redress the failure of this decision and access those entitlements.

The Promise Scotland created [Plan 21-24](#) which sets out what people and organisations must do by 2024 in order to meet these recommendations. It is the first of three phases intended to imbed the changes by 2030.

The [Promise Oversight Board’s latest report, published in June 2023](#), found that the number of young people staying in continuing care placements is increasing as part of work to reduce homelessness for care experienced people as set out Plan 21-24.

The Scottish Government has stated it plans to introduce a Promise Bill before the end of this Parliamentary session. The Bill was not included in the latest Programme for Government announced in September 2023.

United Nations Convention on the Rights of the Child (UNCRC)

Article 1 of the UNCRC states that “for the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”

The Scottish Government intends to incorporate the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) into law.

The UNCRC Incorporation (Scotland) Bill was passed in March 2021 but could not be enacted following the Supreme Court's judgement that the Bill went beyond the powers of the Scottish Parliament.

The [Bill has been reintroduced to Parliament](#) and is at Reconsideration Stage. Amendments. In a [letter to the Equalities, Human Rights and Civil Justice Committee](#) on 13 September 2023, Cabinet Secretary for Social Justice Shirley-Anne Somerville said that proposed amendments to the Bill will mean:

“...Public Authorities will be required to comply with the UNCRC requirements only when delivering devolved functions conferred by or under Acts of the Scottish Parliament or under common law powers.”

Suggested Questions

Members may wish to explore with the Minister:

1. What consideration the Scottish Government is giving to extending eligibility for continuing care and aftercare through legislation.
2. Whether the Scottish Government will amend Section 66 of the Children and Young People Scotland Act 2014 to be amended to:
 - Remove the need for a young person to still be in care on their 16th birthday to access support.
 - Remove the age limit of 26 for accessing aftercare.
3. Whether the Scottish Government will consider amending regulations to increase eligibility for continuing care from 21 years of age.

4. What provisions the planned Promise Bill will contain around improving continuing care and aftercare and when the Bill will be introduced to Parliament.
5. What the Scottish Government can do now to end the practice of young people being taken off CSOs ahead of their 16th birthdays.
6. What consideration the Scottish Government is giving to updating definitions that act as access points for rights and entitlements to continuing care and aftercare.
 - Whether updated definitions will reflect “the ongoing responsibility Scotland has for the children for whom it has had parenting responsibility and whose family life has been disrupted by the decisions of the State”, as set out by The Promise.
7. What action the Scottish Government is taking to help address capacity and workforce issues impacting on support for Care Experienced young people accessing continuing care and aftercare.
8. What action the Scottish Government is taking to ensure that the provisions of the Children and Young People (Scotland) Act 2014 are fully implemented in practice, as well as in law.
9. What the Scottish Government is doing to ensure that Care Experienced children and young people know their rights and can access them.

Lynne Currie

Senior Researcher (Children’s social work, child protection and adoption)

September 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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