

Briefing: Amendment on Continuing Care for stage two of the Children (Care, Care Experience and Services Planning) (Scotland) Bill

4th February 2026

This briefing sets out our support for an amendment to the Children's Bill on Continuing Care, tabled by Martin Whitfield MSP. The amendment brings Continuing Care within scope of the UNCRC (Incorporation) (Scotland) Act 2024; extends the upper age threshold for Continuing Care to age 26; introduces a right to return to Continuing Care; and requires fostering services to provide the same allowances for Continuing Care as for foster care. We urge the Education, Children and Young People Committee to support this amendment to enable young people to stay with their foster carers for longer and ensure foster carers are not financially disadvantaged by continuing to provide a stable family environment for young people they have fostered.

Extending Continuing Care to age 26

Continuing Care currently allows young people leaving foster, kinship or residential care to stay in their care setting until the age of 21. However, The Independent Care Review's [The Promise](#) report (p.92) states that "Young people must be encouraged to 'stay put' in their setting of care for as long as they need to". [ONS data](#) shows that young people across the UK now leave home at an average age of 24, so the upper age threshold of 21 for Continuing Care puts care-experienced young people at a further disadvantage at a time when they are particularly vulnerable.

The Independent Care Review's [The Money](#) report (p.10) states that care-experienced adults are over twice as likely to experience homelessness, almost twice as likely to have poor health, and over 1.5 times more likely to have financial difficulties than their peers without care experience. Removing the greatest source of security and protection – their home – before they are ready can therefore be extremely dangerous.

In responses to our 2024 [State of the Nations' Foster Care survey](#) (SotN), many foster carers in Scotland strongly supported increasing the upper age threshold for Continuing Care. This was also a priority for members of our Foster Carer Advisory Board, who agreed on the specific threshold of 26.

"Young people are made to leave before they are ready... this is sad as we do not put an age limit on our biological kids to live independently." – foster carer, 2024 SotN survey

While ideally there would be no upper age threshold for Continuing Care at all, allowing the system to be completely person-centred, we recognise the need to deliver change in a realistic and phased way. The threshold of 26 aligns with the upper limit for aftercare and is slightly above the average age at which young people across the UK leave home, in recognition of the trauma and developmental delay many care-experienced people have faced.

This amendment would extend the upper age threshold for Continuing Care to age 26 by defining an "eligible person" in the new provisions as a person aged between 16 and 26.

Introducing a right to return to Continuing Care

The Promise report (p.92) also says 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.” While we appreciate that in some cases it will not be possible for a young person to return to their foster family after moving on, we believe that if they wish to return, the foster family is willing and able to support this, and a Welfare Assessment does not advise otherwise, the local authority’s duty to provide Continuing Care should still apply. This would bring experiences of transitions for care-experienced young people closer in line with those of their peers without care experience who, [research](#) shows, often return to live with their family at various points in early adulthood.

This amendment would deliver a right to return by excluding the provision in the original legislation stating that a local authority’s duty to provide Continuing Care ends when a young person leaves their care arrangement “of the person’s own volition”.

Requiring parity between fostering allowances and Continuing Care allowances

The [Scottish Recommended Allowance](#) for foster and kinship carers does not include a set rate for Continuing Care. As a result, many foster carers experience a drop in their allowances when a young person they foster moves into a Continuing Care arrangement with them. In our 2024 SotN survey, 57% of foster carers supporting a young person in Continuing Care said they are worse off financially as a result of offering Continuing Care.

Quotes from carers show that reduced allowances are a clear disincentive – and often a barrier – to them supporting young people they have fostered to stay with them in Continuing Care.

“I have refused to do continuing care again, as I am much worse off financially.” – foster carer, 2024 SotN survey

This amendment would address this by requiring fostering services to provide the same allowances to carers supporting a young person in Continuing Care as they would provide if that young person were looked after in foster care.

Bringing Continuing Care in scope of the UNCRC Incorporation Act

Continuing Care was introduced in law as an amendment to the [Children \(Scotland\) Act 1995](#) by the [Children and Young People \(Scotland\) Act 2014](#). As the 1995 Act was passed pre-devolution, it is outwith the scope of the [UNCRC \(Incorporation\) \(Scotland\) Act 2024](#). This means children have no legal remedy if their rights are not upheld by public bodies carrying out their duties under the 1995 Act, including in relation to Continuing Care.

While most individuals accessing Continuing Care are aged 18 or over, and therefore not rights-holders under the UNCRC, the latest [statistics](#) show that around 10% are aged 16 or 17, making it important that the legislation is in scope of the UNCRC Act.

There has been widespread concern across the children’s sector, including from [Together Scotland](#), about existing parts of the current Children’s Bill not being in scope of the UNCRC Act. Therefore, to avoid making the same mistake in seeking to amend Continuing Care provisions, this amendment restates them in full to bring them in scope of the UNCRC Act.

Full amendment text

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After section 2, insert—

Provision of continuing care: looked after children

- (1) This section applies where an eligible person ceases to be looked after by a local authority.
- (2) An “eligible person” is a person who—
 - (a) is at least sixteen years of age, and
 - (b) is not yet twenty-six years of age.
- (3) Subject to subsection (5) below, the local authority must provide the person with continuing care.
- (4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of Chapter 1 of Part II of the Children (Scotland) Act 1995, immediately before the person ceased to be looked after.
- (5) The duty to provide continuing care does not apply if—
 - (a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,
 - (b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or
 - (c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.
- (6) A local authority's duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.
- (7) The duty to provide continuing care ceases if—
 - (a) the accommodation ceases to be available, or
 - (b) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.
- (8) For the purposes of subsection (7)(a) above, the situations in which accommodation ceases to be available include—
 - (a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
 - (b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
 - (c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.
- (9) The Scottish Ministers may by order—
 - (a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(b) above is the case,
 - (b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,

- (c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
- (10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—
 - (a) the Scottish Ministers, and
 - (b) Social Care and Social Work Improvement Scotland.
- (11) Local authorities must ensure that any carer providing continuing care under this section is paid the same allowances in respect of the eligible person as they would have been if that person was looked after.
- (12) An order under this section—
 - (a) may make different provision for different purposes,
 - (b) is subject to the affirmative procedure.
- (13) Before making an order under this section, the Scottish Ministers must consult—
 - (a) each local authority, and
 - (b) such other persons as they consider appropriate.
- (14) In this section—
 - “carer”, in relation to a care placement, means the family or persons with whom the placement is made,
 - “care placement” means a placement such as is mentioned in section 26(1)(a) of the Children (Scotland) Act 1995,
 - “specified” means specified by order made by the Scottish Ministers.>

Summary

This amendment delivers on two key commitments in The Promise: enabling young people to ‘stay put’ in their care setting for as long as needed and introducing a right to return. It does so in a way that is fully UNCRC-compliant and recognises the financial pressures facing foster carers. We are calling on MSPs to support this amendment to provide the continued security of a safe home, supportive relationships and a gradual transition to independence for young people who need it most.

For more information on the contents of this briefing, please contact Sioned Ellis, Policy and Public Affairs Officer at The Fostering Network, on Sioned.Ellis@fostering.net or 01412046585.