

Children (Care, Care Experience and Services Planning) (Scotland) Bill Calls for View includem Response

About includem:

Includem are a Scottish charity that provides Whole Family Support to children, young people and families to help them transform their lives. We support children, young people and families to make positive life choices and progress towards the type of future they want to live. To do this, we work with social services, schools and a variety of partners including statutory services to identify which children, young people and families would benefit from our support. We then engage the child or young person and their family or carer to develop a package of support, tailored to their specific needs. We don't use a 'one size fits all' approach when it comes to supporting children, young people and families to achieve positive outcomes. Instead, our support is unique to each individual. We work with children and young people aged 0 – 26 across Scotland.

In our work, we support children who are in need of care or are in conflict with the law and have extensive experience of supporting children and families through the hearings system. Many of our services provide targeted and intensive support to children, young people, and families who are at the edges of care or already involved with statutory services. Our response is based on the experiences we have of supporting children, young people, and families and has been developed in partnership with colleagues and those we support.

Fundamentally, we do not believe that this Bill is fit for purpose in its current state.

While there are several worthwhile proposals, the overall benefit to children, young people, and their families is not always clear, and we are concerned that bureaucratic processes and resource constraints are driving some of the proposed changes more than the impact they will have on care experienced children and young people. As supporters of The Promise, we are deeply committed to ensuring children and young people grow up loved, safe, and able to reach their full potential. Currently, the Bill misses out crucial aspects of this for example provision of Whole Family Support, support to return home, and ensuring that sufficient resources are available to statutory services and the third sector to deliver the supports families

need if they are to reach positive destinations. We recommend that more time is taken to consider the details of the Bill to ensure maximum impact for children and young people, and avoid complicating the legislative landscape further, when current Acts have not yet been brought into force fully, or where implementation has been patchy and unsatisfactory.

1. Extension of eligibility to receive aftercare support

The Bill will expand eligibility for aftercare to a wider group of care experienced children and young people by introducing a right for those who were ‘looked after’ but who left care before their 16th birthday to apply for aftercare from their 16th birthday up to age 26, subject to an assessment of their needs.

Call for Views Questions:

What are your views on the aftercare provisions set out in the Bill?

As an organisation we support the extension of aftercare provision as set out in the Bill to include young people who left care before their 16th birthday. However, we are concerned by the access to an ‘assessment’ of need, and reference to eligibility criteria, placing the burden of accessing support and proving eligibility, involving potentially the re-telling of traumatic incidents and personal history repeatedly to professionals.

Includem recently undertook engagement work with children, young people, and families we work with around the challenges they face in accessing supports and services around housing. We were worried, and unsurprised, to learn that care experienced young people face significant challenges when trying to access support.

We heard from young people who are currently 15 or 16 and whose family relationship breakdown has recently resulted in them being homeless and sofa-surfing. In these cases, local authorities are unwilling to declare them homeless as temporary accommodation is unsuitable and unsafe, and alternative suitable accommodation does not exist.

Care experienced young people told us that they are catapulted into independent living when they turn 16, regardless of their level of skill, knowledge or experience of independent living. Care experienced young people are being set up to fail. They do not have guaranteed access to housing, and even if this was included in legislation, the housing emergency means that local authorities would not be able to

meet their legal obligations of housing young people who are care experienced safely.

The Bill and the accompanying documents also make no reference to timescales that young people may wait for an assessment for, meaning many could be waiting for years to access their entitlements. If expectations around timeframes and level of support aren't set out clearly, there is a risk that this will not be implemented in a way that benefits young people and misses provision for many who require the additional support.

Data sharing or investment in life-long advocacy are areas that we feel must be further explored to establish how the system might support care experienced young people to smooth their transition from care into independent living without having to go through the complex process of accessing this support.

Additionally, when young people are not aware of their right to access services, they do not claim these. Due to the under resourced nature of services we know that information about entitlements may not always be shared as a matter of priority, and that need and eligibility are considered when offering limited resources. Unless significant investment is made in universally educating young people about their rights and their entitlements, legislative changes may not have any real impact on the lives of young people.

Even when young people do manage to access an assessment, this process in itself may be traumatic or cause the young person stress and anxiety. Further thought must be given to how the legislation can support a streamlined process that guarantees support seamlessly throughout a young person's life, should they wish to make use of it.

We are further concerned that, as indicated by Who Cares Scotland?, that this part of the Bill will amend legislation which falls outwith the scope of the UNCRC (Incorporation)(Scotland) Act 2024 and will therefore not be subject to legal challenge should this obligation not be upheld.

We are also concerned that young people who have been 'voluntarily' looked after by the local authority are not included in the criteria of eligible extension for aftercare provision. There are many young people who have experience of statutory services for long-periods of their life who may not be able to access these supports and services unless they are explicitly included in the legislation. We urge the Scottish

Government to consider the needs of this group of care experienced people before progressing with the Bill.

Experience also tells us about the vast difference in provision of support and services depending on the local authority area. Currently, nothing in the Bill addresses how local authorities will ensure that the provision of support, including aftercare, is consistent and does not lead in unequal provisions. In our view, the Scottish Government and local authorities must work together more closely and agree how this may be framed in legislation to ensure a minimum standard of care and support for young people with care experience across the country.

There must be a presumption of care and support set out, to national standards, enforceable through appropriate mechanisms and developed alongside people with care experience before legislation is created, especially considering the complex landscape that exists already. This means that Local Authorities should have to evidence why a young person is NOT receiving support, rather than the young person having to prove why they should be entitled to the support. This is the radical change required to keep The Promise.

For the reasons outlined above we support the extension of aftercare to young people who have left care before their 16th birthday but we do not agree with the current legislative mechanism for making this happen and urge the Scottish Government to revisit these proposals and consider the journey through the system of accessing support from the perspective of a young person with care experience more thoroughly before creating legislation.

What are your views on the corporate parenting provisions set out in the Bill?

As with our response above, we are concerned that young people and adults who care experienced do not have the information and knowledge about the supports and services available to them, or how to access them. We do not believe that corporate parenting, or corporate parenting responsibilities and their duties are well enough understood by the sector, the general public, or the community of care experienced young people.

In our view, similarly to the extension of eligibility for aftercare support, the onus should be placed on corporate parents to evidence why they are not providing support to individuals and must clearly set out what they have done to identify care

experienced young people who are entitled to support as set out in legislation currently.

2. Introduction of a right to advocacy for children, young people and adults with care experience

The Bill places a duty on Scottish Ministers to make provision for advocacy support for people with care experience.

Call for Views Question:

What are your views on the advocacy proposals set out in the Bill?

In our view, the expression of the right to advocacy, and crucially independent, well-resourced, advocacy that is genuinely life-long and available to people with care experience when they need it, without complex applications, assessments of eligibility or waiting times.

We are concerned that the current Bill does not make the need for advocacy to be independent explicit enough which risks creating a conflict of interest if local authorities decide to deliver this service themselves. Advocacy provisions must be strengthened in the text of the Bill to ensure it is independent and that choice exists for those accessing it.

As previously discussed, varying provision between local authorities does not inspire confidence that adequate provision will exist for those who need it across the country. A legal right of access to advocacy services does not guarantee access.

When considering these provisions, Ministers should take care to consider definitions of advocacy, standards of delivery, and resourcing.

Instead of creating a duty, we feel that legislation can be strengthened by mandating that well-resourced, sustainable, independent advocacy services are provided to care experienced people, regardless of their age at a place and time when they need it. These services must be well advertised and easy to access.

3. Guidance in relation to ‘care experienced’

To build on existing local good practice, the Bill places a requirement on Scottish Ministers to publish guidance in relation to ‘care experience’. The guidance will raise awareness and understanding of care and care experience and set a national and consistent direction for the language used in and around the care system.

Call for Views Question:

What are your views on the proposals for guidance in relation to care experience?

We have previously responded to the consultation on a universal definition of care experience and agree that guidance in relation to care experience is important to provide a shared understanding of the different experiences that may make up care experience and to tackle stigma, discrimination and misconceptions.

It is not clear to us, however, what the value of introducing this guidance is if it does not change the existing statutory definitions which apply to those who are care-experienced or affect their existing legal entitlements. As set out in the Policy memorandum accompanying the Bill, there is already uncertainty and confusion around the different statutory definitions of care experience, and we do not see how this guidance will clear up this confusion or lead to better outcomes for care experienced young people unless access to services and supports is implemented alongside this.

If the desire is to genuinely create a universal definition that applies to the wide range of care experience, previous legislation should be amended to create consistency, rather than confusing the current landscape further by introducing additional guidance, which does not have legal standing.

We know that children and young people across Scotland are not having their rights met. Creating this guidance and all the processes that will be involved in doing so are important but cannot be a priority while young people with care experience are homeless, are living in insecure placements, and continue to have the poorest outcomes. There are much more urgent priorities, including implementation challenges of existing legislation that should be prioritised, depending on the impact they will have on the community of care experienced children, young people, and adults.

4. Legislative steps to address issues around profit from residential care

The Bill enables the Scottish Ministers through regulations to enhance financial transparency by requiring certain residential childcare providers to provide financial and other relevant information about the operation of their services. In addition, should it be determined that excessive profits are being made, Scottish Ministers also have enabling powers through this Bill to make further regulations to limit profit being made from children's residential care.

Call for Views Question:

What are your views on proposals designed to limit profits for children's residential care services?

We agree with the principle that profit should not be made off the care of Scotland's children and young people. However, it is not clear to us how this will necessarily benefit or improve the care of children and young people who are, or will be, subject to legislation or in need of care now and in the future. It appears to us that much of the information required to ascertain the levels of care and support provided according to fees does already exist.

We are also concerned that under the guise of transparency and accountability, the focus shifts from quality to affordability, which is not in the best interest of children and young people, or their families.

Rather than focusing on limiting profits, the Scottish Government should focus their energy and resources into ensuring residential care services are fit for purpose, and investment is made in early intervention and prevention services including Whole Family Support to work with families in need of support before reaching crisis point.

5. Strengthening the not-for-profit principle in relation to foster care

the Bill will require all Independent Fostering Agencies (IFAs) in Scotland to be registered charities. This change will close existing loopholes that may allow public funds to be diverted for private gain, ensure that all surplus is reinvested into services for children and carers, and create a consistent legal and regulatory framework across the sector.

Call for Views Question:

What are your views on proposals to require fostering services to be charities?

We do not understand the reasoning for this proposal, especially considering the difficulties that currently exist in recruiting foster carers. While we agree that caring for Scotland's children and young people should not lead to excessive private gain, we acknowledge that independent fostering agencies are able to provide different levels of support for foster carers and believe there is sufficient value in maintaining the model as long as foster carers, and children and young people in their care, continue to benefit from this model. It is unclear to us what benefit has been identified to children and young people in need of care, beyond the not-for-profit principle.

In our view, addressing issues of implementation, providing sufficient resources and investment and ensuring provision of early intervention including Whole Family Support must take precedence over issue like not-for-profit foster care.

6. Provision for a national register for foster carers

The Bill gives the Scottish Ministers the power to make arrangements for the establishment (and maintenance) of a national register for foster carers.

Call for Views Question:

What are your views on proposals to maintain a register of foster carers?

We wish to re-iterate our response to the Scottish Government consultation on the Future of Foster Care where we set out that, on balance, we support the creation of a national register for foster carers in Scotland. A national register has the potential to improve safeguarding through national oversight of foster carers and ensure a national approach to registration and de-registration. A national register can provide transparency and can ensure consistency across independent fostering agencies and local authorities. During our discussions with colleagues and families we were clear that information held as part of the register must be appropriately managed to ensure confidentiality and data safeguarding.

We do believe a register would be strengthened by including records of complaints or comments made by children and young people in the care of foster carers.

It is our view that investment in support for families, children, young people, and foster carers must be a priority, and resources should be allocated where they are most urgently needed in the first instance, before considering developments such as the database.

7. Redesign of the Children's Hearing's System

The Bill introduces a number of changes to the Children's Hearing System including single member panels for certain defined preliminary decisions; the appointment of specialist and remunerated children's panel members; removing the existing obligation for a child to attend their hearing unless the child or young person is required to attend; earlier engagement with the Principal Reporter and an enhanced role for the Principal Reporter in relation to ascertaining scope for agreement and understanding of the statement of grounds; powers for automatic relevant person status to be removed from an individual where they meet clearly defined criteria that form part of a high-bar test; changes to the test for referral to Principal Reporter; information about the provision of advocacy and information-sharing with advocacy workers; the duration of interim compulsory supervision orders and interim variations of compulsory supervision orders; and the bill gives the Principal Reporter the power to call a review hearing, in certain circumstances, without the need for new grounds to be investigated and established, and before the expiry of the relevant period.

Call for Views Question:

What are your views on the proposed changes to the Children's Hearings system?

In our view, more time must be invested in developing the proposed changes to the Children's Hearings system before we are able to support the Bill. The number of proposed changes is significant, and we are not confident that the practice and resource implications, as well as implications for children, young people and their families have been sufficiently considered to justify legislative amendments. This is especially true when considering that these legislative changes are introduced to help Scotland keep The Promise and it is not clear to us how this will be achieved through the Bill. At the same time, children, young people, and families as well as professionals often speak about the complex legislative landscape, and our worry is

that this piece of legislation is rushed and will further contribute to complexity rather than improve it.

Crucially, the Children (Care and Justice) (Scotland) Act 2024 is currently being implemented and will continue to have significant impact on practice and resources in Scotland. Not all of the provisions of the act have come into force yet and in our view, it is premature to create further legislative change without assessing the impact of these legislative changes in practice first.

Single panel member decisions: we would require further information on what preliminary decisions are considered appropriate for a single panel member before commenting further on the proposal. We are concerned that the change to the single panel member is primarily driven by resourcing issues rather than the best interest of a child or young person. While we agree that there may be benefits for an engagement with a single panel member for some decisions, the information provided by the Bill and the policy memorandum is not sufficient to enable us to support this proposal. It is also not clear from the Child Rights and Wellbeing Impact Assessment whether this change has genuinely been considered in detail, and in the long-term.

Specialist and remunerated children's panel members: We understand the rationale for specialist support for the Children's Hearings system but in our view, this should be addressed by ongoing training and development of panel members, rather than specialist remunerated members. Where specialist panel members are to be appointed, we would like to further understand the circumstances in which this may happen, how a specialist will be recruited, and what their remuneration may be. As with the not-for-profit principle of foster and residential care, we worry about the professionalisation of the Children's Hearings system and require further information about the identified need and the associated risks of this approach.

Removing the existing obligation for a child to attend their hearing unless the child or young person is required to attend: We support the rationale for this change as outlined in the policy memorandum and agree that significant efforts must be made to ensure that children and young people's views are included in the hearing, even when they do not attend. We remain concerned that children and young people will not be provided with sufficient opportunities or creative solutions for sharing their views with the hearing if the obligation for them to attend is removed. Significant efforts must be made to develop mechanisms and safeguards, alongside people with lived experience of the panels, to ensure we do not lose the

voices of children and young people in the significant decisions that affect their lives. Consideration of independent advocacy must feature in these processes so that children and young people are afforded independent opportunity to consider their right to attend, and the different mechanisms for feeding their views into the panel, without attending.

Earlier engagement with the Principal Reporter and an enhanced role for the Principal Reporter in relation to ascertaining scope for agreement and understanding of the statement of grounds: When discussing this proposal, we were unclear about who the Principal Reporter would be in each case and how easy it would be for families to engage with the Principal Reporter to discuss statement of grounds. Our concern is that if the family does not agree to the statement of grounds this will be referred to the Sherrif, increasing the workload for the courts while also necessitating more children, young people, and families have contact with the courts, not fewer. Clearer explanation for these proposed changes including the impact on courts and families must be provided before we can commit to an answer on the proposed changes.

Powers for automatic relevant person status to be removed from an individual where they meet clearly defined criteria that form part of a high-bar test: we support this proposal for reasons outlined in the policy memorandum. In our view, where someone automatically deemed a relevant person may cause fear, harm, or threaten the wellbeing of a child or young person there must be routes to remove their status.

Changes to the test for referral to Principal Reporter: We understand the reasoning for the proposed change to ensure children and young people who are referred to the Principal Reporter are likely to need protection or guidance. Nevertheless, we are concerned that changing the threshold will mean some children and young people who would benefit from support from statutory services will be missed if the criteria is changed. In our experience, the role of the Principal Report in deciding whether families should be subject to the hearings system is sufficient in ensuring families move through the system appropriately.

In our view, the language of referral should change to reflect our evolving understanding of language and the impact it has on communities and wider society. Despite concerns by the Faculty of Advocates and the Law Society of Scotland we support the change in criteria and believe that the numerous adults and professionals who are responsible for supporting children, young people, and their

families throughout the children's hearings system are well placed to explain the referral criteria, the processes and possible outcomes of children's hearings.

Information about the provision of advocacy and information-sharing with advocacy workers: we support the proposed changes that there will be enhanced duty on statutory services engaging with a child or young person to make them aware of their right to access advocacy services. Alongside this change, efforts must be made to ensure advocacy provision matches the demand and is responsive, independent, and well resourced. Given the vital role advocacy services play in upholding children's rights to have their views heard in decisions made about their life, the proposal that the child's advocacy worker should be provided with sufficient information by the Principal Reporter about when and where a children's hearing or, as the case may be, hearing before the sheriff is to take place in a timely manner to enable them to represent the views of the child in a children's hearing is a proposal we support.

The duration of interim compulsory supervision orders and interim variations of compulsory supervision orders: we do not support the proposed changes to the duration of interim Compulsory Supervision Orders and interim variations of Compulsory Supervision Orders especially as the decision-making route for this has not been adequately set out by the Bill or the accompanying policy memorandum. Our concern is that children and young people may be subject to long orders, authorised by a single panel member, without due consideration for their needs and the associated risks. In our view, this proposal appears driven by a desire to ensure the system is less burdened by repetitive decisions but the gravity of these decisions and the sometimes significant restrictions placed on a child or young person should apply for the shortest possible time, and reviewed by a full panel when they are due to be amended or the circumstances surrounding the child or young person have changed. As included in our response to the redesign of the children's hearings system consultation, we are also concerned that extending timeframes of interim compulsory supervision orders and interim variations of compulsory supervision orders will introduce drift and delay, meaning children and young people are placed on longer interim orders to alleviate pressure on the system, not because it is in their best interest.

The bill gives the Principal Reporter the power to call a review hearing, in certain circumstances, without the need for new grounds to be investigated and

established, and before the expiry of the relevant period: We support this proposal as it is imperative that the system is responsive to the needs of children, young people, and their families and having the ability to call a review hearing in certain circumstances enables the Principal Report to exercise this principle in practice.

8. Extension of the statutory responsibility to Integration Joint Boards in the development of Children Services Plans

The Bill places the same duties onto IJBs as are conferred on local authorities and health boards and would create a tripartite accountability between the three public bodies in respect of children's services plans (preparing, reviewing, implementing, reporting and directions from Scottish Ministers).

Call for Views Question:

What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill?

We support the changes proposed in the Bill conferring the same duties on IJBs as those currently conferred on local authorities and health boards. Increased oversight and responsibility for planning, resourcing and delivery of work intended to keep The Promise is vital to ensure progress and continued improvement.