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# Scotland's care system for children and young people: subject profile

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This subject profile provides an introduction to the care system for children and young people in Scotland. It gives an overview of policy issues, recent developments and legislation in these areas. It has been designed as a resource for MSPs and their staff to help answer constituent queries.



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# Introduction

This subject profile provides an introduction to the care system for children and young people in Scotland. It gives an overview of policy issues, recent developments and legislation in these areas. It has been designed as a resource for MSPs and their staff to help answer constituent queries. The Centre for Excellence for Children's Care and Protection (CELCIS) contributed valuable information and insight to inform this work.

All children in Scotland need the same things to develop and thrive: a stable and supportive home with consistent loving relationships. Children may become involved in the care system when their parents have trouble navigating the challenges of their lives.

For example, children who have experienced abuse or neglect, have been involved in the youth justice system or have disabilities requiring specialist care may become involved with the care system. This is where their local authority takes on some legal responsibility for the child's care and the child becomes formally 'looked after'. <sup>1</sup>

The 'care system' is the term used to describe a complex landscape; in the final report of the 2020 [Independent Care Review](#) it is described as:

“ ... a labyrinth of legislation, policy and practice reflective of how rules and systems have evolved over decades, often in response to changes the system requires. It does not reflect the needs of Scotland's children or their journeys into adulthood. <sup>2</sup> ”

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 child's welfare. <sup>3</sup>

The process of a child becoming 'looked after' can happen through Scotland's [children's hearings system](#), through the Scottish courts, and, in some cases, on a voluntary basis between the local authority and family. <sup>1</sup>

Children who are formally 'looked after' can live in different arrangements such as <sup>4</sup> :

- [at home](#), where a child continues to live with their parents or carers under a [Compulsory Supervision Order \(CSO\)](#) granted [by a children's hearing](#) - this specific arrangement does not exist in the rest of the UK
- in [foster care](#)
- in [kinship care](#), with friends or relatives
- with [potential adopters](#)
- in a [residential house or school](#)
- in a [secure care setting](#).

Further information about the placement types listed above, the children's hearing system and orders such as CSOs can be found in the '[Types of care placement](#)' section of this briefing. Some children may only experience one of these arrangements, but some will

experience different arrangements at different times in their childhood.

The [Scottish Government's Children's Social Work Statistics Scotland](#) are published annually and are the main source of data on the number of children in Scotland who are looked after or on the child protection register. The latest publication covers the period **1 August 2019 to 31 July 2020** and was published in **March 2021**. These statistics therefore include the first lockdown of the COVID-19 pandemic.

As at 31 July 2020, there were **16,530 children who were looked after or on the child protection register**. 14,458 of these children were looked after, while 2,654 were on the child protection register. 582 children were looked after and on the child protection register.  
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The **child protection register** is a list of children and young people in a local authority area who have been assessed as being at risk of significant harm <sup>6</sup>. The [National Guidance for Child Protection in Scotland](#) sets out the multi-agency responsibilities in relation to risk to children. This non-statutory guidance sets out how agencies should work together with parents, families and communities to protect children from abuse and neglect. <sup>7</sup>

**Please note**, while the recent Independent Care Review notes children and young people prefer the term 'care experienced' to describe their circumstances, the term 'looked after' has a particular meaning in law. Therefore, this briefing will use the term 'care experienced' where possible, but 'looked after' will be used in relation to the relevant legislation and policy. The legal term of 'care leaver' will also be used in relation to relevant legislation and policy for those who are leaving or have left care.

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# Key legislation

Legislative and policy measures for the care and protection of children in Scotland are complex. They involve a number of different systems including: local authorities, health boards, courts and the children's hearing system, the voluntary sector and the police.<sup>8</sup>

The main **legislative and regulatory measures** in Scotland are listed below:

- The **Social Work (Scotland) Act 1968** is the framework for social work intervention in Scotland.<sup>8</sup> This Act introduced a general duty for local authorities to safeguard and promote the welfare of children in need in their area through appropriate service provision, and established Scotland's children's hearing system.
- The **Foster Children (Scotland) Act 1984** sets out local authority duties in relation to children in private foster care arrangements arranged by the child's parent.
- The **Foster Children (Private Fostering) (Scotland) Regulations 1985** sets out regulations for private fostering arrangements. In this scenario, a parent is making arrangements to have their child cared for by someone who is not an approved [foster](#) or [kinship carer](#).
- The **Children (Scotland) Act 1995** is the primary piece of legislation relating to the care and welfare of children and young people in Scotland. It sets out local authority services for children and families in need of support. It also sets out [parental responsibilities and rights](#) of birth parents regarding how their child is brought up and situations in which these rights may be removed. Recent amendments to the 1995 Act via the **Children (Scotland) Act 2020** introduced duties for the local authority, when making decisions about the care of a looked after child, to take the views of their siblings into account; and to promote direct contact and personal relations between a looked after child and any of their siblings.
- The **Adoption and Children (Scotland) Act 2007** modernised adoption, introducing [Scotland's Adoption Register](#) to help match children placed for adoption with families. It also gives local authorities the ability to apply to court for '[Permanence Orders](#)', vesting [parental responsibilities and rights](#) in the authority. This Act also gives unmarried couples the right to adopt.
- The **Looked After Children (Scotland) Regulations 2009** are an important operational piece of legislation in the Scottish looked after system. Through the revocation and amendment of much previous legislation, and the introduction of new provisions related to assessment and planning, '[looked after at home](#)', [kinship care](#), [foster care](#) and [residential care](#), the regulations underpin many of the 'looked after child' processes in operation. They set out local authority duties and functions in relation to children in their care and are underpinned by three principles:
  - to give paramount consideration to the welfare of the child;
  - to consider the views of the child; and
  - to avoid delay and to make the minimum intervention necessary to a child's life.

A recent amendment to the 2009 Regulations introduced a duty for local authorities to

place siblings together in care, as long as this is in their best interests. If it is not in their best interests to be placed together, siblings must be placed in homes near to one another.

- The **Adoption Support Services and Allowances (Scotland) Regulations 2009** set out the steps Adoption Agencies are required to make before making decisions about individual adoption cases. The Regulations also cover the provision of Permanence Orders with the authority to adopt, and how the views of the child, dependent on age and maturity, must be taken into account, as well as those of other relatives.
- The **Education (Additional Support for Learning) (Scotland) Act 2009** amended the **2004 Act of the same name** to clarify that all looked after children are automatically considered to have additional support for learning needs, and that they must be assessed to determine whether or not they require a Co-ordinated Support Plan. Under the 2004 Act, local authorities and other agencies have a duty to assess, monitor and support any child who requires additional support in order to engage in education.
- The **Children's Hearings (Scotland) Act 2011** fundamentally overhauled legislation on the children's hearings system and sought to strengthen children's rights in the context of that system.
- The **Secure Accommodation (Scotland) Regulations 2013** make provision for the use and management of secure care accommodation for children. These include the conditions under which a looked after child may be placed in secure care, and the duties and actions of local authorities and others when such an action is taken.
- The **Children and Young People (Scotland) Act 2014** introduced a range of significant reforms across children's services. These include 600 hours of free early learning and child care for looked after two year olds and **corporate parenting duties** for certain publicly funded individuals and organisations to meet the needs of care experienced people. The Act also: sets out local authority duties to provide services and support for children at risk of becoming 'looked after' and **assistance for kinship carers**; extends the age of eligibility for **aftercare support** for young people leaving care to 26; and introduces 'continuing care', providing care leavers up to the age of 21 with the opportunity to continue with accommodation and support they were provided with immediately before they ceased to be looked after.

In addition, the Scottish Government intends to fully 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 cannot be enacted following the Supreme Court's judgement that it goes beyond the powers of the Scottish Parliament.<sup>9</sup> The Scottish Government has restated its commitment to full incorporation but the timescale and process for this is not yet clear.<sup>10</sup> Full incorporation of UNCRC would ensure rights-based approaches are taken and rights breaches are prevented, giving children access to legal redress if their rights are breached.

While full incorporation of UNCRC has not yet been achieved, it remains the case that recent policy and legislation for children's care and protection in Scotland have been informed by UNCRC.



# Getting it Right for Every Child (GIRFEC)

**Getting it Right for Every Child (GIRFEC)** underpins the public sector approach to all children's services, from early years to school education to child protection arrangements.

“... as its name suggests [GIRFEC] applies to every child, and not just those who are in need or at risk and there are no thresholds for access to support.”

Guthrie, 2018<sup>11</sup>

Developed in pathfinder areas since 2006, GIRFEC was implemented as a national approach to supporting children's wellbeing across Scotland in 2011. The Children and Young People (Scotland) Act 2014 gave certain elements a statutory basis<sup>12</sup>. GIRFEC aims to bring a child-centred approach to children's service provision and decision making, reflecting the principles of the [United Nations Convention on the Rights of the Child](#).

The GIRFEC approach is:

- child-focused, ensuring the child and their family is at the centre of decision-making and support
- based on understanding of the child's wellbeing in their current situation
- built on early identification of need
- reliant on joined-up working.

In terms of the care system, GIRFEC principles mean that decisions about a child or young person should be based on an understanding of needs and wellbeing, with co-ordination between services and a focus on early intervention. Each child in need of extra support should have a [child's plan](#). This keeps record of why the plan is in place, what needs to improve for the child, and planned actions.<sup>13</sup> Multi-agency activity is co-ordinated by a Lead Professional; for children in need of care and protection, this is usually a social worker.

Part 4 of the [Children and Young People \(Scotland\) Act 2014](#) makes provision for every child in Scotland to have a 'named person' to act as a first point of contact for children and families seeking information or advice about a child or young person's wellbeing. Following a [successful legal challenge](#), the provisions have not been brought into force and the Scottish Government intends to repeal the relevant legislation<sup>14</sup>. However, as a key element of the national GIRFEC approach, in many local authorities children under 18 do have a non-statutory key point of contact known as the 'named person'. For pre-school children, the named person will usually be a health visitor and for school aged children it will likely be a senior, deputy or head teacher.

GIRFEC also incorporates national wellbeing indicators known as SHANARRI. These indicators consider whether a child is **Safe**; **Healthy**; **Achieving**; **Nurtured**; **Active**; **Respected**; **Responsible and Included**.<sup>11</sup> The Scottish Government states that these wellbeing indicators help to aid discussions around how a child is doing and is influenced by each child's experiences and needs.<sup>15</sup>

# Types of care placement

As mentioned in the [introduction to this briefing](#), children in care can live in a number of different settings, sometimes referred to as 'placements'. This section of the briefing explains:

- further information about these settings
- the legislation underpinning them
- the support available for children and their parents or carers, where applicable.

All children who are looked after by local authorities should have a care plan - or [child's plan](#) - in place. This is set out in the **Looked After Children (Scotland) Regulations 2009**. This should be developed with involvement from:

- the child (whose views should be heard and taken into account wherever possible)
- their parents
- their prospective carers.

Care plans should reflect an assessment of the needs of the child and how these needs will be met. They should include information about:

- where the child will live
- arrangements for contact with birth parents, siblings and wider family members
- plans for moving back with parents or finding permanence in another way (for example, in kinship care, permanent fostering or adoption).

The process of a child becoming 'looked after' can happen through Scotland's children's hearings system, through the Scottish courts, and in some cases on a voluntary basis between the local authority and family.<sup>1</sup> In 2020, there were 2,848 children 'looked after' under voluntary arrangements in Scotland. This represents 20% of the total number of looked after children<sup>16</sup>.

The children's hearings system was introduced by the [Social Work \(Scotland\) Act 1968](#) and recently updated by the [Children's Hearings \(Scotland\) Act 2011](#). Hearings are organised and administered by [Children's Hearings Scotland](#) and children are referred to the hearings via the [Scottish Children's Reporters Administration \(SCRA\)](#).<sup>11</sup>

A list of reasons, known as 'grounds' why a child may be considered to be at risk form the basis of a referral to a children's hearing. Any person (private individuals, teachers, social workers, health professionals, police etc.) may refer a child to SCRA, who will consider whether grounds exist for a hearing. Section 67 of the [Children's Hearing \(Scotland\) Act 2011](#) sets out the grounds on which a Reporter may refer a child to a children's hearing.

Children's hearings can decide whether or not to make a [Compulsory Supervision Order \(CSO\)](#). Introduced by the Children's Hearings (Scotland) Act 2011, CSOs can contain conditions of residence stating where the child must live, in addition to other conditions



such as contact with family members. A CSO is a legal order that means the local authority is responsible for implementing the child's care plan and promoting their welfare.

<sup>17</sup> Becoming subject to a CSO is one of the ways in which child can become 'looked after'.

## Looked after at home

Children who are looked after at home continue to live with their parents or carers with compulsory social work involvement. A child becomes 'looked after at home' when placed under a [Compulsory Supervision Order](#) with no condition of residence by a children's hearing. This may be done because:

- a child's situation requires monitoring without having to remove them from their parents'/carers' home
- a child has returned home after being looked after away from home and supervision is needed to minimise risks. <sup>18</sup>

The Centre for Excellence for Children's Care and Protection (CELCIS) states that a child looked after at home:

“ ... may have experienced neglect, physical, mental or emotional abuse, or may live with parents with substance abuse issues, or poor parenting skills. They continue to live at home because it is hoped that by providing support to child and family, the problems affecting the child can be resolved, without the need to separate them from their family.”

CELCIS, 2021<sup>1</sup>

### Looked after at home statistics

The number of children looked after at home has reduced in recent years. The latest Scottish Government [Children's social work statistics](#) published in March 2021 shows in **2010 there were 6,193 children looked after at home; by 2020 the figure had fallen to 3,563**. Despite this fall, children looked after at home represented 25% of all looked after children in 2020. <sup>4</sup>

## Kinship care

Kinship care is where a child who cannot be looked after by their parents is looked after by extended family or someone known to them. Section 10(2) of the **Looked After Children (Scotland) Regulations 2009** defines a kinship carer as: “a person who is related to the child” or “a person who is known to the child and with whom the child has a pre-existing relationship”.

Children living in kinship care are not always formally 'looked after'. Children can live with kinship carers in informal (private agreement within families) or formal arrangements (involving local social work departments and the children's hearings system).

[CELCIS states](#) <sup>19</sup> kinship care arrangements can often arise as a result of an emergency,

for example, a child's parent being taken into hospital. They are also an important way to provide children with stability from family or friends when parents cannot provide this themselves. When a local authority is placing a child with a kinship carer, under Section 10(3) of the **Looked After Children (Scotland) Regulations 2009**, they must undertake an assessment of the kinship carer's suitability to care for the child. The assessment of kinship care arrangements is undertaken by local social work teams. There is no statutory requirement for the review or re-approval of kinship carers, although some local authorities do have a process of assessment and/or kinship care panels in place.

## Kinship care arrangements

As noted above, kinship care arrangements can be formal or informal. The [Scottish Government's National Guidance for Child Protection](#)<sup>7</sup> states that placements for children placed with their approved kinship carer under the **Looked After Children (Scotland) Regulations 2009** are "often referred to as formal kinship care".

The 2009 Regulations give local authorities powers to approve a kinship carer for a child looked after by a local authority under the terms set out in section 17(6) of the Children (Scotland) Act 1995. This section of the Act has been amended in recent years to include:

- looked after children subject to [Compulsory Supervision Orders](#)
- the introduction of [Permanence Orders](#), which have the potential for parental rights to be shared between kinship carers, parents and the local authority. This was introduced under section 80 of the [Adoption and Children \(Scotland\) Act 2007](#).<sup>19</sup>

Children in informal kinship care arrangements are not considered 'looked after' by a local authority. Their kinship care arrangement may have come about in one of the ways set out below:

- Via the [Children and Young People \(Scotland\) Act 2014](#), which introduced the provision of 'kinship care orders'. This describes existing court orders made under [section 11 of the Children \(Scotland\) Act 1995](#) granting parental responsibilities and rights to a qualifying person or residence orders regulating where a child lives.<sup>20</sup> If the child was looked after previously, once a kinship care order has been granted a child is no longer looked after by a local authority.<sup>21</sup>
- Some children may be living in a completely private arrangement, with no involvement from the local authority, no court orders and no granting of guardianship. There is no legal requirement for the state to be notified of such an arrangement when a child is being cared for by a close relative (through blood, marriage or civil partnership).<sup>19</sup> Informal kinship care differs from private fostering. Private fostering is where a parent makes an arrangement to have their child cared for by someone who is not an approved foster or kinship carer, guardian of the child or close relative of the child.<sup>22</sup>

## Children in kinship care

The number of children looked after in formal kinship care arrangements has risen in recent years. The latest Scottish Government [Children's social work statistics](#) published in March 2021 find there were **4,456 children in formal kinship care in 2020; up from 4,175 the previous year and 3,172 in 2010.**

The total figure is far higher, as these figures do not include children living in informal kinship care. Using census data, a [2017 policy report from the Hadley Centre for Adoption and Foster Care Studies at the University of Bristol](#) <sup>23</sup> **estimated 12,630 children in Scotland were living in some form of kinship care arrangement in 2011.**

## Local authority assistance for kinship carers

Eligibility for local authority assistance and financial support largely depends on the legal basis of and details behind the kinship care arrangement in place. Looked after children in formal kinship care will generally qualify for support, while those in informal arrangements only qualify in certain circumstances, as explored later in this section.

Local authorities can make financial payments to eligible kinship carers in the ways listed below. <sup>24</sup>

- Under Section 22 of the [Children \(Scotland\) Act 1995](#), which sets out the local authority's duty to safeguard and promote welfare of children 'in need'. Payments made under this power are often short-term or occasional, but regular payments can also be made.
- Section 50 of the [Children Act 1975](#), which enables a local authority to make payments for a child under 18 and living with someone other than their parent, however this provision does not place a duty on the local authority to make payment.
- Regulation 33 of the **Looked After Children (Scotland) Regulations 2009**, and section 110 of the [Adoption and Children \(Scotland\) Act 2007](#), which allows the local authority to pay an allowance to kinship carers of looked after children.

Most recently, the [Children and Young People \(Scotland\) Act 2014](#) introduced a new duty for local authorities to provide assistance to informal kinship carers where a kinship care order is in process or in place and the child was previously looked after, at risk of becoming looked after or placed with local authority involvement. Following the passage of the 2014 Act the **Kinship Care Assistance (Scotland) Order 2016** came into force on 1 April 2016, introducing the duty for local authorities to provide assistance. Section 3 of the Order sets out:

“ A local authority must provide kinship care assistance in such a way as to safeguard, support and promote the wellbeing of an eligible child.”

Section 4 of the Order details ‘assistance’ may include support, information or financial assistance. Scottish Government guidance <sup>25</sup> states that the financial allowance is intended to recognise the “additional costs associated with caring for a child in kinship

care”.

The [Programme for Government 2015-16](#) announced that from October 2015, eligible kinship care families would receive the same kinship care allowance as foster carers. Funding of £10.1 million per year for local authorities was also announced.<sup>26</sup>

While the Scottish Government aims to offer the same level of support to kinship carers and foster carers, individual local authorities currently determine allowance rates and CELCIS highlights<sup>19</sup> there is currently no statutory national guidance in place, or thresholds indicating minimum or maximum payments. Further information on moves toward national allowances for kinship and foster carers can be found in the [Review of foster, kinship care and adoption allowances](#) section of this briefing.

## Other financial support

Kinship carers may also be eligible for other benefits such as Housing Benefit, Child Tax Credit, [Best Start Grant](#), [Scottish Child Payment](#) and Child Benefit. [Citizens Advice Scotland notes](#) the rules around kinship care and benefits are complicated, and there are different entitlements for kinship carers of looked after and non-looked after children<sup>27</sup>.

The [National Kinship Care Advice Service for Scotland website states](#) that being in receipt of Kinship Care Allowance can impact on entitlement to other Social Security benefits and tax credits, though child benefits and child-related tax credits should not be impacted<sup>28</sup>.

Further information on benefit entitlement for kinship carers can be found on the [Citizens Advice Scotland website](#). [Citizens Advice Bureaus](#) can also provide information and advice to kinship carers.

The [Child Poverty Action Group's November 2021 briefing on kinship care and Universal Credit](#) (UC) looks at eligibility of kinship carers of looked after and non-looked after children for each element of UC.

## Adoption

Adoption is a legal process offering permanence to looked after children placed with approved adopters. Once adopted, a child is no longer considered 'looked after'. The adopters have [parental responsibilities and rights](#) for the child, and the child is treated in law as if they were born to the adoptive parents.

In recent years, there have been significant changes to adoption legislation. The [Adoption and Children \(Scotland\) Act 2007](#) ('the 2007 Act') sought to "modernise, improve and extend the system of adoption in Scotland."<sup>29</sup> Prior to this, the law relating to adoption was found in the Adoption (Scotland) Act 1978, the Children (Scotland) Act 1995 and the Adoption (Intercountry Aspects) Act 1999.<sup>29</sup> The 2007 Act was passed following a 2005 review of adoption law which recommended modernisation.<sup>11</sup>

The 2007 Act's key aims were to increase the number of potential adopters and improve stability and permanence for children unable to live with their birth families<sup>30</sup>. Changes

made by the 2007 Act:

- made it possible for unmarried couples to adopt jointly
- placed a duty on local authorities to provide adoption support services
- gave those directly affected by an adoption (the child, parents and adoptive parents) the right to pre-adoption services and post-adoption services where there is assessed need
- introduced [permanence orders](#) to allow parental responsibilities to pass to the local authority, giving them the right to decide where the child lives.

The [Children and Young People \(Scotland\) Act 2014](#) ('the 2014 Act') gave [Scotland's Adoption Register](#), which had existed in practice since 2011, a legal basis. This placed duties on Scottish Ministers to maintain it and on adoption agencies to provide the relevant information. It also introduced a duty for adoption agencies to provide information about children seeking adoption placement and approved adopters. Since April 2016, all adoption agencies use this to refer children and approved adopters within three months of approval. The register is intended to provide:

“... opportunities for children to be matched with families across Scotland, if they cannot be matched locally.”

Scottish Parliament, 2017<sup>31</sup>

### Adoption statistics in Scotland

The Scottish Government's latest [Children's social work statistics](#) published in March 2021 found there were **299 children living with prospective adopters in 2010, by 2020 there were 185 children.**

The statistics also show the number of children ceasing to be looked after due to being legally adopted: **in 2010, 218 children were adopted; in 2019 there were 265 children adopted; and in 2020 192 children were adopted.**

Generally over the last decade, children leaving care due to adoption have represented around **5% of the total numbers of children leaving care.**

## The adoption process

Anyone in Scotland over the age of 21 can apply to adopt a child through a local council adoption agency or a third sector registered adoption agency such as Barnardo's. Agencies cannot charge a fee, though prospective adopters may have to pay for their own police check.<sup>32</sup>

During the application process, a registered adoption agency will assess suitability to adopt. This is often called a home study. This can include checking medical history, criminal history, finances and the home of the prospective adopter or adopters. During this time, an allocated social worker will carry out assessments. They may meet with prospective adopters' friends and family as part of the process. The home study can take several months.<sup>32</sup>

Once the assessment is complete, the agency's adoption panel provides a recommendation about whether to approve the application. The adoption panel is appointed by the local authority or registered adoption service, and must comprise at least six panel members, a medical adviser and a legal adviser.<sup>33</sup>

Once an adopter is approved, the agency will then seek to match them with a child. This process can take up to a year. [Scotland's Adoption Register](#) is used by adoption agencies to refer children and approved adopters within three months of approval.

Once a child is placed with an adopter, an application is made to court for an **adoption order**. This is a court order giving legal responsibilities and rights for the child to their adopters, making them the child's legal parents and giving [parental responsibilities and rights \(PRRs\)](#) to them. Once an adoption order has been granted, the child's birth parents no longer have PRRs for the child and the child is no longer considered to be looked after.

Section 40 (1) of the Adoption and Children (Scotland) Act 2007 states:

“ An adopted person is to be treated in law as if born as the child of the adopters or adopter.”

Other points to note about the court process for adoption are listed below<sup>34</sup> :

- an adoption order cannot be granted until a child has lived with the prospective adopters for at least 13 weeks and is at least 19 weeks old
- the court's main concern is ensuring the welfare of the child throughout their life
- having reviewed available assessments and reports, the court must decide it is better for the child that an adoption order is made than not made in order to grant one
- birth parents must either agree to the order being made or the court may decide officially that the consent of the birth parents is not needed.

## Adoption support and leave

The [Adoption and Children \(Scotland\) Act 2007](#) ('the 2007 Act') sets out local authority duties to provide support for adoptive families. Local authorities have a duty to prepare and publish a plan for the provision of adoption services in their area.

Local authorities also have a duty to assess the support needs of those affected by an adoption, if requested to do so by a person eligible for such an assessment. The 2007 Act sets out the following groups as eligible for assessment of support needs:

- children who have or may be adopted
- parents and guardians of children
- natural parents of children



- people who cared for the child prior to the completion of adoption
- siblings
- natural grandparents
- former guardians
- people who may adopt and people who have adopted a child
- the children of those who have or may adopt.

The **Adoption Support Services and Allowances (Scotland) Regulations 2009** set out that:

- an assessment request from an eligible person must be started within four weeks of receipt
- the person must be informed of the decision about whether or not to provide support.

The 2007 Act states that adoption support services include the provision of:

- counselling
- guidance
- and any other assistance the local authority considers appropriate to the circumstances of a case.<sup>33</sup>

Adoption pay and leave is administered by [HMRC](#) in much the same way as maternity leave and pay. Key points and sources of further information are outlined in the following sections on adoption leave, adoption pay and adoption allowances.

### **Adoption leave**

Adopters who have been matched with a child are entitled to **adoption leave of up to 52 weeks**, plus paid time off work to attend up to five adoption appointments. Only one person in a couple can take adoption leave; the other partner can take [paternity leave](#). The right to adoption leave applies to adopters who have been matched with a child through an adoption agency, or have been officially notified of an overseas adoption.<sup>35</sup>

Adoption leave can start up to 14 days before the child starts living with their adopters in the case of UK adoptions or when the child arrives in the UK for overseas adoptions.<sup>36</sup>

### **Adoption pay**

**Statutory Adoption Pay is paid for up to 39 weeks.** Payments are made in the same way as wages, with tax and National Insurance deducted. Payments are broken down as follows<sup>36</sup> :

- 90% of average weekly earnings for the first 6 weeks.
- £151.97 or 90% of average weekly earnings (whichever is lower) for the next 33

weeks.

Some employers will also have an adoption pay scheme, which may offer higher rates of pay. It is important to note that employer schemes cannot offer adopters less than the statutory entitlements outlined above.<sup>37</sup>

Further information about adoption leave and pay is available on the [Citizens Advice Scotland website](#).

## Adoption allowances

Local authorities have the ability to award adoption allowances in certain circumstances, as set out in the **Adoption Support Services and Allowances (Scotland) Regulations 2009**. These allowances provide financial payment to adopters in certain circumstances. Scottish Government guidance on adoption allowances states that allowances may be agreed either to support and enable the placement of a child or to support the continuation of an adoption after the placement has been made. This means that an assessment for adoption allowance can take place where the need for it only emerges after the child has been placed.<sup>33</sup> For example, adopters might request an assessment where the special care needs of a child only become known following the adoption. The guidance states this is in recognition that:

“... many children placed do not have diagnosed medical needs or disabilities but have ‘emotional or behavioural difficulties or the continuing consequences of past abuse or neglect’.”

Scottish Government, 2011<sup>33</sup>

Local authorities may also pay an allowance 'where it is necessary to ensure that the adoptive parent can look after the adoptive child'<sup>38</sup>. This gives local authorities discretion to pay an allowance in situations where further financial support might enable a family to access forms of support needed to help make the adoption work. For example, an allowance may enable a parent to spend more time at home with their child without losing income.<sup>33</sup>

## Foster care

When children cannot be cared for by their birth parent(s) or by a kinship carer, they may be placed in foster care. Often this is a temporary arrangement, but it can become permanent under some circumstances.

A [review of foster care](#) was carried out in 2013, and its recommendations led to the introduction of

- a [national learning and development framework for foster carers](#)
- national agreed definitions for foster care placements
- a foster care placement limit of three unrelated children (with exemptions in certain emergency circumstances).<sup>39</sup>

A recommendation to develop a national foster carer database was not taken forward after exploration.<sup>40</sup>

Types of foster placement are set out in the [Scottish Government's Glossary of Placement Descriptions](#):<sup>41</sup>

- **Permanent:** Secured by a [Permanence Order \(PO\)](#), as introduced by the [Adoption and Children \(Scotland\) Act 2007](#). This means the child will not return home to family. A local authority applies for a PO through the courts and, if granted, this can allow foster carers to have some or all of the parental rights and responsibilities for the child. The child's views should be considered prior to granting a PO and consent of children over 12 is required in most circumstances.<sup>42</sup>
- **Long-term:** A placement in place for over 24 months, not secured by a PO.
- **Interim:** A placement in place for under 24 months and not secured by a PO. Children in interim placements may be working towards moving back to live with birth family, towards a PO with a different foster carer, or towards an Adoption Order or PO with current carer.
- **Emergency:** An unplanned placement made where there are immediate concerns for a child's safety and wellbeing. Must be reviewed within three days and cannot extend beyond 12 weeks.
- **Short break:** This placement gives children in special circumstances and their carers short breaks, sometimes for therapeutic services.

Some children may also be in private foster care arrangements. Private fostering is where a parent makes an arrangement to have their child cared for by someone who is not an approved foster or kinship carer, guardian of the child or close relative of the child.<sup>22</sup>

### Children in foster care

Foster care is the most common accommodation type for looked after children, with **foster care representing around 30% of all accommodation placements for looked after children**. The Scottish Government's latest [Children's social work statistics](#) published in March 2021 show that in **2020, there were 4,744 children in foster care placements**.

## The foster care process: approval and placement

Adults in Scotland can apply to be approved as a foster carer through their local authority or an independent provider registered with the [Care Inspectorate](#).<sup>39</sup> Approval of prospective foster carers take around six months, with applicants assessed by a fostering panel.<sup>43</sup> If the applicant has a partner, they will also be assessed.

Fostering panels must have at least six members and the panel must also have access to a medical adviser and legal advice. Often legal advice is provided by the local authority's own legal services. Fostering panels consider:

- whether foster carer applicants should be approved

- whether existing foster carers continue to be suitable for approval
- the suitability of foster carers to look after a particular child
- the maximum number of children a foster carer may have in their care.<sup>11</sup>

The panel then makes a recommendation to the local authority as to whether the applicant should be approved. The local authority has the final say over approval.<sup>11</sup> Following this, foster carers are reviewed once a year, and their approval can be withdrawn following review.<sup>43</sup>

A child can only be placed with an approved foster carer. The **Looked After Children (Scotland) Regulations 2009** sets out local authority duties and responsibilities around the placement of a child with a foster carer. The placement must be in the best interests of the child; placement with family members must have first been considered. The foster carer must also have written agreement with the local authority, outlining support and training to be given and contact arrangements for the child and their family.<sup>43</sup>

Like all children, children in foster care have the right to have their views heard. Depending on age and understanding, children should know who within the local authority is responsible for them and should be able to speak to this person if they need to.<sup>43</sup>

## Foster care allowances

Foster carers receive an allowance from their local authority to cover the cost of caring for children in their care. Allowances can vary depending on the age and needs of a child.<sup>43</sup> Local authorities currently have discretion around the rate of fostering allowances they offer, however in recent years there have been [moves toward the setting of a national rate](#). A national rate is already in place in England, Wales and Northern Ireland.<sup>44</sup>

The [Fostering Network](#) runs an annual survey in Scotland to gather details on levels of fostering allowance given by local authorities throughout Scotland. It should be noted that the Fostering Network is a charity representing the interests of foster carers, however the survey provides useful findings gathered by Freedom of Information requests to each local authority.

A full breakdown of foster care allowances by local authority in 2020-21 can be found on the [Fostering Network's website](#). Overall, the Network's 2020 survey found the allowances given by local authorities in Scotland to foster carers were in the following ranges for each age group<sup>45</sup>:

- allowances for children **aged 0 to 4** ranged from **£77.96 to £200 per week**
- for **5 to 10s**, allowances ranged from **£96.40 to £200 per week**
- for **11 to 15s**, allowances ranged from **£120 to £240.40 per week**
- for those **aged 16+**, allowances ranged from **£155.36 to £261.52 per week**.

By comparison, foster care **allowance rates in England range from £134 to £235 per**

**week**, depending on the age of the child and what area of the country foster carers live in.  
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## Residential care

Residential care homes are another care setting that children and young people may be placed in via [children's hearing](#) or on a voluntary or emergency basis. Most residential homes are run by local authorities, though some are run by the voluntary or independent sector. There is variation in terms of provider, purpose and size of residential care home.

Residential placements are regulated by the **Looked After Children (Scotland) Regulations 2009**, and the **Residential Establishments – Child Care (Scotland) Regulations 1996**. These regulations set out the responsibilities of the establishments. These include ensuring the child receives "adequate and efficient" <sup>47</sup> education and their welfare is safeguarded and promoted. Local authorities are also required to assess whether the proposed residential placement is suitable for the child. <sup>33</sup>

### Children and young people in residential care

The Scottish Government's latest [Children's social work statistics](#) published in March 2021 show there were **1,436 children and young people in residential accommodation in 2020; a very slight fall on the 2010 figure of 1,480.**

## Secure care

Children and young people who, for a variety of reasons reflecting the childhood adversity they have faced, pose a risk to themselves or others in the community may be placed in secure care. This is a locked environment where children's freedom is restricted while they are provided with intensive support in order:

“... to help these highly vulnerable children re-engage and move forward positively in their communities.”

Scottish Government, 2021<sup>48</sup>

In addition to the responsibilities set out for providers of residential placements, as covered in the '[Residential care](#)' section of this briefing, secure care is also regulated by the **Secure Accommodation (Scotland) Regulations 2013**. These regulations make provision for the use and management of secure care accommodation for children. These include the conditions under which a looked after child may be placed in secure care, and the duties and actions of local authorities and others when such an action is taken.

In October 2020, the Scottish Government published new guidance on secure care. The [Secure Care: Pathway and Standards](#) sets out support that should be provided to children before, during and after a placement in secure care. <sup>49</sup> The guidance was written in consultation with young people with experience of secure care, and aims to ensure the rights of children and young people are respected and their experiences and outcomes

improved.<sup>50</sup>

### Children and young people in secure care

The Scottish Government's latest [Children's social work statistics](#) published in March 2021 show that of the 1,436 children and young people in residential accommodation in 2020, **59 of these were in secure accommodation.**

The number of children and young people in secure care has fallen in a decade: in **2010 there were 82 young people in secure care and in 2020 there were 59.**

## Support for care leavers

In recent years there has been growing recognition of the need to ensure continued support for young people leaving care. The Scottish Government's 2013 [Staying Put Scotland guidance](#) sets out:

“ In order to meet our aspirations for looked after children and young people we therefore need to ensure that they are encouraged, enabled and empowered to remain in stable and secure care settings until they are ready to move on into adulthood; and that the same supports, standards and expectations are applied to them in throughcare and aftercare.<sup>51</sup> ”

The [Children and Young People \(Scotland\) Act 2014](#) amended the [Children \(Scotland\) Act 1995](#) to extend the age that care leavers can **continue to receive support from local authorities from 21 to 26 years**. Local authorities were previously required to provide support to 17 and 18 year old care leavers and had discretion to provide support to 19 and 20 year olds.<sup>52</sup>

'Aftercare' provisions in the 2014 Act set out that any young person leaving care on or after their 16th birthday will be eligible for aftercare support services. Local authorities have a duty to provide these to young people under the age of 19. In addition, any care leaver aged 25 and younger can request assistance from their local authority, and the local authority must assess their support needs.<sup>53</sup> Examples of aftercare support can include helping a young person find accommodation, education and employment opportunities and/or financial support.

The 2014 Act introduced 'continuing care', which places a duty on local authorities to provide care leavers previously looked after away from home in foster, kinship or residential care with continuation of support.<sup>53</sup> Extending care placements is associated with better educational and employment outcomes for care leavers.<sup>54</sup> Section 67 (4) of the 2014 Act defines continuing care as:

“ ... the same accommodation and other assistance as was being provided for the person by the authority ... immediately before the person ceased to be looked after.”

legislation.gov.uk, 2014<sup>55</sup>

The only circumstances in which a care leaver is not provided with continuing care is



where the care would "significantly adversely affect the welfare of the young person" <sup>54</sup>. This must be evidenced in a welfare assessment prior to leaving care. Local authorities have a duty to carry out a welfare assessment for all prospective care leavers within a reasonable time before a young person leaves care. This must take the young person's views into account, and can also seek views from family, caregivers, accommodation providers and school, college or university providers.

Areas the welfare assessment should cover include:

- the young person's interests and wellbeing
- family relationships
- caring responsibilities
- friends and relationships
- general health
- school
- plans for study, training or work
- accommodation arrangements and options for the future
- knowledge of the young person's rights and legal entitlements. <sup>54</sup>

Following the welfare assessment, the local authority must provide a decision regarding the young person's continuing care in writing. <sup>54</sup>

The local authority's duty to provide continuing care ends when:

- a care leaver decides to leave their accommodation placement
- the carer cannot or will not continue to provide the placement
- the local authority decides the placement would have a negative impact on the person's welfare. <sup>56</sup>

A care leaver in continuing care cannot receive aftercare support at the same time. <sup>53</sup>

## Support in further and higher education

Care experienced students can apply for a non-repayable bursary to support them through college or university. The **Care Experienced Bursary was introduced in 2017/18**, at an initial rate of £7,625 per year for students in Higher Education (HE) and £4,185 for Further Education (FE) students.

Following the independent review of student support in 2017, Scottish Ministers announced the **bursary would rise to £8,100 per year for HE and FE students from Academic Year (AY) 2018/19**. <sup>57</sup> There is now no age limit on eligibility for the bursary, as the upper limit of age 26 was removed from AY 2020-21. <sup>58</sup>

FE students can apply for the bursary through their college. Students in HE courses can apply through the [Student Awards Agency for Scotland](#).

Under section 30 of the 1995 Act, local authorities can provide **discretionary financial support to care leavers between the ages of 16 and 25** to help them with the costs associated with education and training.<sup>53</sup> Receipt of the Care Experienced Bursary should not impact on the eligibility of a care leaver to receive this support. The Scottish Government clarified in a Policy Note from Deputy First Minister, John Swinney MSP, to Local Authority Chief Executives that:

“ ... the policy intention of the [Care Experienced Bursary] was not to replace any other financial support given to this group, rather to add value to the existing support provided by Local Authorities ...”

Scottish Government, 2020<sup>57</sup>

# Recent policy developments

This section of the briefing looks at recent policy developments impacting children's care and protection that will be relevant in Session 6 of Parliament. These issues are as follows:

- [the Independent Care Review](#)
- [taking forward the Independent Care Review recommendations](#)
- [the National Care Service consultation](#)
- [review of foster, kinship care and adoption allowances.](#)

## The Independent Care Review

In October 2016, First Minister Nicola Sturgeon MSP committed to a review of the care system for looked after children in Scotland. This followed calls from [Who Cares? Scotland](#), an advocacy and membership organisation for care experienced young people, for a 'root and branch review' to address the inequality of outcomes care experienced people face in many areas of their lives such as health and education.

The Independent Care Review was commissioned in February 2017. People with experience of the care system represented half of the review group's co-chairs and working group members. During the lifetime of the review, the views of over **5,500 care experienced children and adults, as well as parents, carers and the care workforce, were listened to.**

The review findings were published in February 2020<sup>59</sup>, setting out steps Scotland can take to embed significant change to the care system. Accompanying reports examined different aspects of the care system. The main findings were set out in [The Promise](#)<sup>60</sup>, alongside the [Pinky Promise](#)<sup>61</sup> for younger readers.

The Promise set out a vision for a Scotland where all children grow up loved, safe and respected. This vision is built on five foundations listed below.

- **Voice:** Children must be listened to and involved in decisions about their care.
- **Family:** Children feel loved and safe in their families and families are given the support they need.
- **Care:** Children must not be separated from their brothers and sisters wherever possible. Legislation to help siblings in care stay together has since come into force in July 2021.<sup>62</sup>
- **People:** Care experienced children must be supported to develop relationships.
- **Scaffolding:** Children, families and the workforce must be supported by an accountable system that provides help and support when required.

Four reports were published alongside The Promise:

- [The Plan](#)<sup>63</sup> sets out how change to the care system must happen.
- [Follow the Money](#)<sup>64</sup> and [The Money](#) look at spending within the current care system, the implications of current system outcomes for looked after children and public finances. They also explore the societal costs of failing to support care experienced young people to fulfil their potential. This report states that a needs-led care system would have multiple benefits for young people and society.
- [The Rules](#)<sup>2</sup> looks at existing legislation around child protection, social work and the care system overall. It concludes that the legislation, policy and practice within the care system is complex and does not reflect the needs of Scotland's care experienced children and young people. It says that new rules, underpinned by the [United Nations Convention on the Rights of the Child \(UNCRC\)](#), must be developed over time. Meanwhile, work will also be done to ensure children and young people's existing rights are upheld.

Responding to the publication of the review report, the [First Minister said in a statement to the Scottish Parliament](#)<sup>65</sup> on 5 February 2020:

“ "We will work with local authorities, care providers and all other relevant partners to make the necessary changes to care. We will deliver that change as quickly and as safely as possible - and starting now. And we will ensure that people with care experience remain at the heart of the process." <sup>65</sup> ”

The First Minister also stated that the Scottish Government would act to implement 'The Plan' section of the report, establishing a team to work on a detailed delivery plan. The establishment of an independent oversight body to monitor progress was also announced, with requirements for both groups to include care experienced people.

## Taking forward the Independent Care Review recommendations

Following publication of the Independent Care Review conclusions, The [Promise Scotland](#) was set up by Scottish Ministers as an independent organisation to drive change using the review findings. It is a non-statutory company and will exist either until the promise is kept or 2030 at the latest. Its goal is to enable Scotland to '#KeepThePromise' to care experienced children and young people by 2030. It does not hold statutory powers or responsibilities and exists instead to **oversee, drive and support change**. It will work with organisations and individuals all over Scotland to help others deliver change for care experienced children and young people.

Deputy First Minister, John Swinney MSP, has responsibility at Cabinet level for cross-government delivery of 'The Promise' to care experienced young people.

In a [written answer published in March 2021](#)<sup>66</sup>, the then Minister for Children and Young People, Maree Todd MSP, stated the Scottish Government will “underpin the work that needs to be done to make the real transformation to developing policy”:

“ We all knew that keeping The Promise would require doing things differently. I am therefore delighted to announce that ‘The Promise Scotland’ will later today be established as a non-statutory company with Fiona Duncan as ex-officio Chair. The Promise Scotland, independent from Scottish Government, will help drive forward the change needed for Scotland to keep “The Promise”. Following engagement with over 100 organisations, including The Scottish Government, they will soon publish a plan for the next three years. We recognise the pivotal role that the Scottish Government will play in responding to this. I can confirm that the Scottish Government will underpin the work that needs to be done to make the real transformation to developing policy and focus on what matters, the people, the children and families most in need of support. <sup>66</sup> ”

The Promise Scotland’s [Plan 21-24](#) <sup>67</sup> is the first of three publications setting outcomes to be fulfilled by organisations and individuals across Scotland by 2024. The Promise Scotland will monitor progress organisations across Scotland make to deliver change. Annual rolling change programmes will be produced to provide a framework for delivery. [Change Programme One](#) <sup>68</sup> is the first of these.

Change Programme One contains shorter term actions for the year ahead, aligned with the five priority areas of Plan 21-24. A full list of actions and an outline of their progress can be viewed on [The Promise Scotland website](#). Key commitments and actions so far are listed below.

- COSLA and the Scottish Government’s establishment of the [Children and Young People’s Mental Health and Wellbeing Joint Delivery Board](#) to oversee reform across education, health, community and children’s services. This will promote prevention and early support around mental health and wellbeing.
- Support for care experienced children and young people to thrive at school, including: [Supporting Young People through Mentoring and Leadership Programme](#); [Scottish Attainment Challenge](#); [Care Experienced Children and Young People’s Fund](#); [Young Person’s Guarantee](#).
- Legislation to help siblings in care stay together came into force in July 2021 <sup>62</sup> . This is set out in section 13 of the [Children \(Scotland\) Act 2020](#).
- Work to address the disproportionate criminalisation of care experienced children and young people is underway. [The Rights-Respecting Approach to Justice for Children and Young People Action Plan 2021-22](#) was published in June 2021.
- The Family Support Delivery Group will lead national effort to embed principles of non-stigmatising, responsive and timely support for children and their families. The Scottish Government, [Scottish Social Services Council](#) and others will work to ensure a children’s rights-based approach is also embedded across the workforce.
- Work toward implementation of a national, strategic planning process to ensure children cared for away from home ‘belong to a loving home’. The [Care Inspectorate](#) and others will lead elements of this work.
- A commitment to review legislation underpinning the [children’s hearing system](#). The Promise Scotland will facilitate this.
- The [2021-22 Programme for Government \(PfG\)](#) committed to a [Whole Family](#)

[Wellbeing Fund](#) of £500m over Session 6 of Parliament. This is aimed at tackling issues faced by families before they need crisis intervention. The PfG also states that from 2030, at least 5% of community-based health and social care spend will be focused on preventative measures. The overall intention of this preventative spend is to reduce the number of children being taken into care.

## The National Care Service consultation

On 9 August 2021, the Scottish Government launched a [consultation on a proposed National Care Service \(NCS\) for Scotland](#)<sup>69</sup>. This followed the publication of the [Independent Review of Adult Social Care \(IRASC\) in February 2021](#)<sup>70</sup>, which recommended the establishment of an NCS.

While the IRASC focused on adult social care, and did not consider children's social work and social care, children's services **are** included in the NCS consultation. The consultation document states that not including them within the NCS:

“ ... risks fragmenting the current system of care and assessment and further adding to complexity for services users.<sup>69</sup> ”

Local authorities currently have responsibility for delivery of most children's social work and social care services.

The NCS consultation proposes children's social care services should be located within the NCS in order to aid integration of health, social work and social care. It does not provide detail on how this might be done.

The consultation asks respondents:

- whether they support this proposal
- whether it will reduce complexity for children and their parents accessing services
- whether it will approve alignment with community child health services
- whether there are any risks involved.

The consultation document describes the overall package of proposals as having:

“ ... the potential to be the biggest public sector reform in Scotland for decades.<sup>69</sup> ”

The inclusion of children's services was **not** anticipated when the implementation plan taking forward the [recommendations of the Independent Care Review was in development](#).

At this stage, it is not clear whether children's social work and social care services will be included in the draft National Care Service Bill.

[Cabinet Secretary for Education and Skills, Shirley-Anne Somerville MSP, told the Education, Children and Young People Committee on 6 October 2021:](#)



“ One of the areas on which we are genuinely keen to seek people’s views ... as we look to establish the National Care Service is how we get the best outcomes for children out of it, particularly with a view to transition. That is part of the consultation. The Government has not taken a view on it ... We will, of course, analyse the responses to that consultation. However, there is an understandable body of opinion that having adult services separate from children’s services would be detrimental to how the system operates. It is one body of opinion — there are others— but that is the position that we are considering at the moment. <sup>71</sup> ”

In its [response to the consultation, the Promise Scotland stated](#): “there is no simple yes or no answer to the question ‘will a National Care Service #KeepThePromise?’”, adding that the consultation did not address key questions in relation to the impact of the NCS on care reform:

“ ... there is little evidence provided in the Scottish Government’s consultation that the carefully crafted approach to change, as detailed in the promise and the other Independent Care Review reports, and endorsed by Scottish Government and local government, among hundreds of others, is understood. <sup>72</sup> ”

The Promise Scotland also stated that the consultation has “interrupted and delayed both the process and pace of change”, creating uncertainty which has “allowed inertia to thrive”. <sup>72</sup>

The consultation on the NCS has now closed. A **report on the NCS consultation is expected in early 2022 and a draft Bill by June 2022.**

## Review of foster, kinship care and adoption allowances

The [Programme for Government 2017-18](#) committed to review foster, kinship care and adoption allowances and bring forward proposals for national allowances by summer 2018. <sup>73</sup>

The subsequent [National review of care allowances published its report](#) and recommendations in September 2018. The report called for improved consistency and transparency in the delivery of child allowances and information provided for families <sup>74</sup> .

In [response to a written question in December 2018](#), the Scottish Government welcomed the report recommendations and said a joint response with COSLA was planned <sup>75</sup> . At the time of writing (December 2021), a response to the recommendations has not yet been published.

In [February 2021, the Scottish Government responded to another written question](#) seeking an update on plans to introduce a national allowance for kinship and foster carers. This response reiterated the commitment to taking forward review recommendations, including consideration of a recommended allowance for foster and kinship care <sup>76</sup> .

A further [written answer from August 2021](#) also stated work to take forward recommendations including a Scottish Recommended Allowance for foster care and kinship care was continuing, however no further detail was provided.<sup>77</sup>

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