

*These notes refer to the Children (Leaving Care) Act (Northern Ireland)
2002 (c.11) which received Royal Assent on 22 November 2002*

Children (Leaving Care) Act (Northern Ireland) 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2 – Additional functions of authorities in respect of certain children

Section 2 amends Article 25 of the Children Order and inserts new Articles 34B to 34D in the Order. These Articles impose new duties on authorities towards children formerly looked after by them.

Subsection (1) amends Article 25 of the Children Order to allow an authority to provide accommodation for a child who has left care, without the fact of their doing so classifying that child as still being looked after.

Subsection (2) amends the cross-heading before Article 35 of the Children Order as the new Articles being inserted in the Order affect young people over age 18 as well as children under age 18.

Subsection (3) inserts new Articles 34B, 34C and 34D into the Children Order. These Articles impose new duties on authorities in respect of relevant children and former relevant children.

Article 34B – The responsible authority and relevant children

This Article and Article 34C make provision for those young people aged 16 and 17 who leave care. Article 34B defines the terms “relevant child” and “responsible authority”.

Paragraph (1) provides that in relation to a relevant child, the “responsible authority” (see paragraph (4) below) will have the functions set out in Article 34C.

Paragraph (2) defines a “relevant child” as a child aged 16 or 17 who has left care and before leaving care was an “eligible child”.

Paragraph (3) makes parallel provision to that made in Article 34A(4) for eligible children. It allows the Department to prescribe additional categories of relevant children and to exclude certain groups from the definition.

Paragraph (4) defines the “responsible authority” as the authority which last looked after a child. That authority will remain responsible for the young person wherever that young person is currently living. This is to ensure continuity of care and to avoid any disputes amongst authorities concerning who should have responsibility for providing after care support for a young person who moves to live in the area of another authority.

Paragraph (5) gives the Department a regulation making power to make an authority responsible for any child who has been looked after by a Scottish, English or Welsh local authority, if they come to live here. If regulations are made under paragraph (3)(a) to make such children a new category of relevant child, the power in paragraph (5) is needed to ensure that they have a “responsible authority” under Northern Ireland legislation.

Article 34C – Additional functions of the responsible authority in respect of relevant children

Article 34C sets out the duties of the responsible authority towards “relevant children”. Some of the duties towards relevant children will in practice be continuations of those already delivered to them as eligible children.

Paragraph (1) places a duty on the responsible authority to take reasonable steps to keep in touch with a relevant child, whether the young person lives within its area or not.

Paragraph (2) requires the responsible authority to appoint a personal adviser for each relevant child, should it not already have done so when the child was being looked after as an eligible child.

Paragraph (3) requires the responsible authority to carry out a needs assessment and to prepare a pathway plan for each relevant child if this has not already been carried out when the child was being looked after as an eligible child.

Paragraph (4) enables the responsible authority to carry out an assessment of a young person’s needs at the same time as his or her needs are being assessed under the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978, the Disabled Persons (Northern Ireland) Act 1989, the Education (Northern Ireland) Order 1996 or any other statutory provision. This allows for joint assessments of the needs of young people whenever this is practicable.

Paragraph (5) enables the Department to make regulations about needs assessments.

Paragraph (6) provides that the regulations made under paragraph (5) may cover the same matters as are specified in Article 34A(9) in relation to needs assessments for eligible children.

Paragraph (7) requires the responsible authority to keep a pathway plan under regular review.

Paragraph (8) imposes a duty on the responsible authority to safeguard and promote the welfare of a relevant child unless it is satisfied that his or her welfare does not require it. The authority must provide the child with maintenance and suitable accommodation and such other support as may be prescribed in regulations. When a young person leaves care it may not be possible for them to return to their family: they may have none, or they may be estranged. The Act aims to ensure that children leaving care can expect to receive the same sort of support from their responsible authority as a child might expect from his or her parents. This might be moral support or practical support.

Paragraph (9) makes it clear that support for relevant children may be given in cash as well as in kind.

Paragraph (10) enables the Department to make regulations about the meaning of “suitable accommodation”. The regulations may also make provision about the suitability of potential landlords or other providers in the light of the vulnerability of young care leavers.

Paragraph (11) places a duty on the responsible authority to take reasonable steps to keep in touch with a relevant child. Where contact is lost, the authority must immediately take reasonable steps to re-establish contact and to continue doing so until it succeeds in making contact. This duty applies until the child reaches his or her 18th birthday and so ceases to be a relevant child.

Paragraph (12) applies Article 18(7) to (9) of the Children Order to assistance which may be given under this Article. Paragraphs (7) to (9) of Article 18 require an authority to have regard to the means of the child concerned and each of his or her parents, and permits the authority, depending on their means, to require some or all of this assistance to be repaid.

Paragraph (13) provides that paragraphs (2) and (3) of Article 26 of the Children Order apply to decisions taken under Article 34C. This means that the authority must, so far as is reasonably practicable, ascertain and give due consideration to the wishes and feelings of the child concerned, his or her parents and anyone else whom the authority considers to be relevant. The authority must also give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background.

Article 34D – Continuing functions in respect of former relevant children

Article 34D sets out the duties of the responsible authority towards “former relevant children”.

Paragraph (1) defines a “former relevant child” as one who qualified for the new support arrangements under the Act either as an “eligible” or “relevant” child and who is aged 18 to 21.

Paragraph (2) places a duty on the responsible authority to take reasonable steps to keep in touch with a former relevant child wherever he or she might be living and to re-establish contact where this is lost.

Paragraph (3) requires the responsible authority to continue to provide the young person with a personal adviser and to regularly review his or her pathway plan.

Paragraph (4) imposes a duty on the responsible authority to provide assistance to a former relevant child with: (a) expenses associated with employment; (b) expenses associated with education or training; and (c) general assistance. In each case, the duty is to provide assistance to the extent that the young person's welfare (or, where relevant, his educational or training needs) requires it.

Paragraph (5) provides that the assistance provided under paragraph (4)(c) may be given in kind or, exceptionally, in cash.

Paragraph (6) provides that the duties under this Article last until the young person reaches the age of 21.

Paragraph (7) provides that if a former relevant child is being assisted with education or training pursuant to his or her pathway plan, the duty to provide assistance will continue until the end of the agreed programme of education or training, even if this runs beyond the young person's 21st birthday. The duties to keep in touch, to provide a personal adviser and to review the pathway plan also extend to the end of the programme.

Paragraph (8) requires the responsible authority to disregard any interruption in the young person's attendance at a programme of education or training provided that he or she resumes it as soon as is reasonably practicable.

Paragraph (9) requires the responsible authority to provide, should it be needed, out of term accommodation, or the funds to secure it, for a former relevant child whom the authority is assisting with full-time further or higher education.

Paragraph (10) has the same effect as Article 34C(12).