

POLICY NOTE

THE AFTERCARE (ELIGIBLE NEEDS) (SCOTLAND) ORDER 2015

SSI 2015/xxx

The above instrument is made in exercise of the powers conferred by section 29(8) of the Children (Scotland) Act 1995. The instrument is subject to affirmative procedure.

Policy Objectives

The instrument specifies types of support that constitute “eligible needs” for the purposes of section 29(5A)(a) of the Children (Scotland) Act 1995 (“the 1995 Act”).

Section 29 of the 1995 Act makes provision as to the duties and powers of local authorities to provide aftercare assistance to young people who were formerly looked after by them in terms of section 17(6) of the 1995 Act.

Section 66 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) amends section 29 of the 1995 Act as of 1st April 2015, by virtue of provision made in Children and Young People (Scotland) Act 2014 (Commencement No. 7) Order 2015 which is laid at the same time as this instrument.

Amongst other things, section 66 of the 2014 Act makes an amendment to increase the upper age limit for aftercare support from twenty-one to when the person reaches the age of twenty-six. It also inserts new subsections (5A) and (5B) into section 29. In particular, new subsection (5A)(a) provides that, after assessing under section 29(5) a person applying for aftercare under section 29(2), the local authority must, if satisfied that the person has eligible needs and that cannot otherwise be met, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs. Under new subsection (5A)(b) the local authority may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare. New subsection (5B) provides that a local authority can continue to provide advice, guidance and assistance after a person reaches the age of twenty-six, but they are not required to do so.

Section 29(8) of the 1995 Act (as inserted by section 66 of the 2014 Act) provides that, for the purposes of section 29(5A)(a), a person has “eligible needs” if the person needs care, attention or support of such type as the Scottish Ministers may by order specify. As a result, this instrument specifies-

- (a) financial support to meet essential accommodation and maintenance costs;
- (b) support, in the form of information or advice, to assist the person to access education, training, employment, leisure and skills-related opportunities; and
- (c) so far as not covered by paragraph (b), support, in the form of information or advice, relating to the person’s wellbeing, as types of support that constitute “eligible needs” for the purposes of section 29(5A)(a) of the 1995 Act.

The overall policy objective behind this instrument and the relevant provisions in the 1995 and 2014 Acts in relation to aftercare is to support young people through a more graduated transition out of care.

Consultation

Whilst there is no statutory requirement to consult on this Order prior to it being made a public consultation on the draft instrument took place from 21 October to 29 December 2014. This consultation covered the draft secondary legislation for Parts 9, 10 and 11 of the 2014 Act (this instrument relates to Part 10 of the Act). A full list of those consulted is included in Annex 5 to the consultation paper¹, however, it included COSLA, all Scottish local authorities and stakeholders from the sector such as CELCIS, Aberlour Trust, Barnardo's Scotland, Who Cares? Scotland and the Scottish Throughcare and Aftercare Forum. During the consultation a series of stakeholder engagement sessions were also run covering the draft Orders and the accompanying draft guidance, which is currently still undergoing consideration by focus groups including a broad range of stakeholders from across the sector.

Sixteen responses were received to the consultation. As a result of those responses, in relation to this instrument, some adjustments were made to include, in the types of specified support, support (in the form of information or advice) to assist the person to access education, training and skills-related opportunities. Also, to continue the dialogue with the sector, the draft instrument consulted on contained a draft provision which reflected discussions from Stage 2 of the Bill process about the possible parameters for extending the categories of formerly looked after young people who would be eligible for aftercare support group using powers in section 29(1)(b) of the 1995 Act (as inserted by section 66 of the 2014 Act). However, in light of consultation responses, that draft provision, which would have extended eligibility for aftercare support to a further category of formerly looked after young people, is not being taken forward at this point in time until further evidence is gathered from the sector to ensure its deliverability.

Impact Assessments

An equality impact assessment has not been completed on the instrument as this is an extension of aftercare support that is currently available.

Financial Effects

The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as, in line with the Financial Memorandum, the Scottish Government will fully fund the additional costs of measures in the 2014 Act. The Financial Memorandum was developed in conjunction with key stakeholder bodies including COSLA.

Scottish Government
Children and Families Directorate
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¹ Which can be found at - <http://www.scotland.gov.uk/Resource/0046/00464718.pdf>