

Draft Order laid before the Scottish Parliament under section 26A(11)(b) of the Children (Scotland) Act 1995 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

CHILDREN AND YOUNG PERSONS

The Continuing Care (Scotland) Order 2015

Made - - - - 2015
Coming into force - - 1st April 2015

The Scottish Ministers make the following Order in exercise of the powers conferred by section 26A(2)(b), (6) and (9)(a) of the Children (Scotland) Act 1995⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 26A(12) of that Act they have consulted with each local authority and such other persons as they consider appropriate.

In accordance with section 26A(11)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Continuing Care (Scotland) Order 2015 and comes into force on 1st April 2015.

(2) In this Order—

“the 1995 Act” means the Children (Scotland) Act 1995; and

“welfare assessment” means an assessment carried out by a local authority in accordance with article 7 of this Order.

Eligible person: specified age

2. The higher age specified⁽²⁾ for the purposes of section 26A(2)(b) of the 1995 Act is seventeen years of age.

(1) [1995 c.36](#). Section 26A was inserted by section 67(1) of the Children and Young People (Scotland) Act 2014 ([asp 8](#)). Section 67(1) was partially brought into force on 1st August 2014 by [S.S.I. 2014/131](#) so far as is necessary to enable Scottish Ministers to make orders under section 26A(2)(b), (6), (9) and (11)(a) of the Children (Scotland) Act 1995.

(2) Section 26A(13) contains a definition of “specified” for the purposes of section 26A.

Duty to provide continuing care: specified period

3. The period specified for the purposes of section 26A(6) of the 1995 Act is the period from the date on which an eligible person ceases to be looked after by a local authority until the date of that person's twenty-first birthday.

Assessment of the welfare of an eligible person before ceasing to be looked after

4. For the purposes of section 26A(5)(c) of the 1995 Act, a local authority must consider whether providing an eligible person with continuing care would significantly adversely affect the welfare of that person—

- (a) as soon as reasonably practicable before the person ceases to be looked after by them; and
- (b) by carrying out a welfare assessment of the person in accordance with article 7.

Assessment of the welfare of an eligible person receiving continuing care

5. For the purposes of section 26A(7)(c) of the 1995 Act, a local authority must consider whether continuing to provide an eligible person with continuing care would significantly adversely affect the welfare of that person—

- (a) at intervals not exceeding twelve months (the first interval starting from the date on which the person ceases to be looked after by a local authority); and
- (b) by carrying out a welfare assessment of the person in accordance with article 7.

Welfare assessment — general

6.—(1) The local authority must prepare and publish a written statement detailing the manner in which the welfare of eligible persons is to be assessed.

(2) Nothing in this Order prevents the carrying out of any welfare assessment under this Order at the same time as any assessment or other consideration under any other enactment is being carried out.

Welfare assessment — individual cases

7.—(1) In carrying out a welfare assessment, the local authority must, unless it is not reasonably practicable to do so—

- (a) seek and have regard to the views of the eligible person to whom the assessment relates; and
- (b) take all reasonable steps to enable the eligible person to attend and participate in any meetings at which a welfare assessment relating to that person is being considered.

(2) The local authority must carry out a welfare assessment in accordance with the written statement published under article 6(1).

(3) The local authority must ensure that—

- (a) a written record of the views of the eligible person obtained under paragraph (1)(a) is prepared;
- (b) as soon as reasonably practicable, a copy of that written record is made available to the eligible person; and
- (c) the written record is taken into account and recorded in the welfare assessment.

(4) In carrying out a welfare assessment, the local authority must consider each of the matters referred to in the Schedule.

- (5) In carrying out a welfare assessment, the local authority may seek the views of—
- (a) the parents of the eligible person;
 - (b) any person who is not a parent but has parental responsibilities for an eligible person;
 - (c) any person who on a day to day basis is the carer for, or provides accommodation for, the eligible person;
 - (d) the head teacher or principal of any school, college or university attended by the eligible person;
 - (e) any person providing health care or treatment to the eligible person; and
 - (f) any other person whose views the local authority, or the eligible person, consider may be relevant,

and the local authority must take into account any such views that have been obtained.

- (6) The local authority must ensure that a written record is prepared of the—
- (a) information and views obtained in the course of carrying out a welfare assessment;
 - (b) deliberations at any meeting held in connection with any aspect of a welfare assessment;
and
 - (c) results of a welfare assessment.

(7) The local authority must, as soon as reasonably practicable, provide the eligible person with a copy of the written record of the results of the welfare assessment and must ensure that the contents of that record are explained to the eligible person.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 7(4)

Matters to be considered in the welfare assessment

1. The eligible person's emotional state, day to day activities, personal safety, influences on the eligible person and the eligible person's personal identity.
2. The eligible person's family relationships, children, other caring responsibilities, life story, friends and relationships with other significant people in the eligible person's life, including the eligible person's carer (if in a care placement).
3. The eligible person's general health (including any mental health needs), contact with health services, medical conditions and disabilities, activities that might affect the eligible person's health and emotional and mental wellbeing.
4. The eligible person's schooling, skills and experience, qualifications and certificates, training and work.
5. The eligible person's future plans for study, training or work.
6. The eligible person's current accommodation arrangements, practical living skills, accommodation options for the future and any support required for everyday living.
7. The eligible person's sources of income, outgoings, savings and debts, requirement for financial support and budgeting skills.
8. The eligible person's knowledge of their rights and legal entitlements, any previous or current involvement in legal proceedings, including criminal proceedings as a victim, witness, or alleged perpetrator.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes the provision in relation to the duty placed on local authorities by section 26A of the Children (Scotland) Act 1995 ("the 1995 Act") to provide eligible persons with continuing care where they cease to be looked after by them. Section 26A was inserted by section 67 of the Children and Young People (Scotland) Act 2014 which will come into force fully at the same time as this Order.

Continuing care is defined in section 26A(4) of the 1995 Act as meaning the same accommodation and other assistance as was being provided for the eligible person by the local authority, immediately before the person ceased to be looked after.

Article 2 specifies that the higher age limit for "eligible persons" for the purposes of section 26A(2) (b) of the 1995 Act is seventeen years of age. This means that an "eligible person" for the purposes of the duty to provide continuing care is a person who is at least sixteen years of age and who has not yet reached the age of seventeen.

Article 3 specifies that the period the expiry of which ends the local authority's duty to provide continuing care in terms of section 26A(6) of the 1995 Act is the period from the date on which an eligible person ceases to be looked after by a local authority until the date of their twenty-first birthday.

Article 4 makes provision as to when and how a local authority is to consider whether section 26A(5) (c) of the 1995 Act applies (i.e. whether providing an eligible person with continuing care would significantly adversely affect the welfare of that person). It provides that the local authority must carry out an assessment (“welfare assessment”) of the eligible person as soon as reasonably practicable before the person ceases to be looked after by them in accordance with article 7.

Article 5 makes provision as to when and how a local authority is to consider whether section 26A(7) (c) of the 1995 Act applies (i.e. whether continuing to provide an eligible person with continuing care would significantly adversely affect the welfare of that person). It provides that the local authority must carry out a welfare assessment of the eligible person receiving continuing care at intervals not exceeding twelve months (the first interval starting from the date the person ceases to be looked after) in accordance with article 7.

Article 6 makes general provision as to welfare assessments requiring a local authority to prepare and publish a written statement detailing the manner in which the welfare of eligible persons is to be assessed. It also provides that nothing in this Order shall prevent the carrying out of any welfare assessment under this Order at the same time as any assessment or other consideration under any other enactment is being carried out.

Article 7 sets out the matters to be considered or taken into account by a local authority in carrying out a welfare assessment in individual cases (including the matters listed in the Schedule), lists the range of persons whose views they may seek in that connection, details how the eligible person is to be involved in the assessment process and also the written records that the local authority must keep in relation to an assessment.