

POLICY NOTE

THE CONTINUING CARE (SCOTLAND) AMENDMENT ORDER 2018

SSI 2018/xxx

The above instrument is made in exercise of the powers conferred by section 26A(2)(b) of the Children (Scotland) Act 1995. The instrument is subject to affirmative procedure.

Policy Objectives

1. This instrument relates to the duty placed on local authorities by section 26A of the Children (Scotland) Act 1995 (“the 1995 Act”) to provide continuing care (subject to certain exceptions in section 26A(5)) to eligible young people when they cease to be looked after by them (sections 26A(1) and (3)). 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 person by the authority immediately before the person ceased to be looked after.
2. This instrument amends article 2 of the Continuing Care (Scotland) Order 2015 (S.S.I. 2015/158) with the effect that the higher age limit for “eligible persons” specified for the purposes of section 26A(2)(b) of the 1995 Act is twenty years of age (increased from nineteen). This means that an “eligible person” for the purposes of the duty on local authorities to provide continuing care under section 26A of the 1995 Act is a person who is at least sixteen years of age and who has not yet reached the age of twenty. In line with discussions during the passage of the Children and Young People (Scotland) Bill when the Continuing Care provisions were being developed this upper age limit will be extended annually, by way of further amendments to the Continuing Care (Scotland) Order 2015, to ensure the upper age limit is raised annually up to the age of twenty-one.
3. The policy objective behind this instrument and section 26A of the 1995 Act is to support young people through a more graduated transition out of care. This will help to normalise the experience, by allowing strong and positive relationships between young person and carer to be maintained into adulthood. The provision of continuing care where an eligible young person ceases to be looked after by a local authority is in keeping with the aims of supporting a graduated transition towards independence.
4. This instrument also revokes the Continuing Care (Scotland) Amendment Order 2017 (S.S.I. 2017/62) which was the instrument which increased the higher age limit to nineteen in April 2017.

Consultation

5. To comply with the requirements of section 26A(12) of the 1995 Act a public consultation on the draft instrument took place from 16 October to 13 November 2017. We actively targeted stakeholders involved in campaigning for the Continuing Care and those responsible for the delivery of these provisions including COSLA, all Scottish local authorities, all Corporate Parents listed in schedule 4 of the Children

and Young People (Scotland) Act 2014, the Centre for Excellence for Looked After Children in Scotland (CELCIS), and third sector children's organisations.

6. We received 24 responses to this consultation, of which the majority 21 were supportive of this continued extension of the higher age limit for eligible persons from nineteen to twenty years of age as of 1 April 2018. This feedback came from 10 individuals and 14 organisations including local authorities (North Ayrshire, Perth & Kinross, Glasgow, South Lanarkshire and Argyll & Bute), national regulatory and administration bodies (Scottish Children's Reporter Administration, Care Inspectorate), professional associations (British Association of Social Work UK, Social Work Scotland) third sector organisations (Who Care's Scotland, Scottish Independent Advocacy Alliance) and CELCIS.
7. Two individual responses said 'no' to raising the age but the reasoning was not related to the drafting of the instrument nor specifically about the Continuing Care policy. These were more generally about having adequate recourse to support for all children in need, and a view that by age twenty young people should be able to look after themselves. We also received one 'don't know' from an individual voicing concern about possible impact for younger children entering the system. This point was debated by parliament when the policy was being developed and resulted in the agreement to eligibility for Continuing Care initially only being applied to a single age cohort of 16 year olds in the first instance with subsequent annual extension to facilitate more realistic, sustainable service provision.
8. We therefore propose that no adjustments should be made to the draft instrument.

Impact Assessments

9. An equality impact assessment has not been completed on the policy objective as this is an extension of support currently available to looked after young persons.

Financial Effects

10. The Minister for Childcare and Early Years 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
14 December 2017