
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes 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.