

*These notes refer to the Children (Leaving Care) Act 2000
(c.35) which received Royal Assent on 30 November 2000*

CHILDREN (LEAVING CARE) ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Children (Leaving Care) Act 2000 which received Royal Assent on 30 November 2000. They have been prepared by the Department of Health, with input from the Department of Social Security, the Scottish Executive and the National Assembly for Wales in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not intended to be a comprehensive description of the Act, so where a section or part of a section does not seem to require any comment, none is given.

SUMMARY AND BACKGROUND

3. This Act implements the proposals set out in the consultation document *Me, Survive, Out There? – New Arrangements for Young People Living in and Leaving Care* published in July 1999. The consultation document set out detailed proposals for improving the life chances of young people living in and leaving local authority care. It followed up the White Paper *Modernising Social Services* (Cm 4169) and *The Government's Response to the Children's Safeguards Review* (Cm 4105), both published in November 1998. These documents both included a commitment to legislate when Parliamentary time allowed to create new and stronger duties on local authorities to support care leavers up to at least 18.
4. The provisions of the Act except section 6 (exclusion from welfare benefits) extend to England and Wales. Sections 6 and 8 also extend to Scotland.
5. The Act's main purpose is to help young people who have been looked after by a local authority move from care into living independently in as stable a fashion as possible. To do this it amends the Children Act (c.41) to place a duty on local authorities to assess and meet need. The responsible local authority is to be under a duty to assess and meet the care and support needs of *eligible* and *relevant* children and young people and to assist *former relevant children*, in particular in respect of their employment, education and training. Key features and definitions are:
 - a) **Eligible children** are those in care aged 16 and 17 who have been looked after for a period to be prescribed. The age at which spells in care start to count towards eligibility will also be prescribed.
 - b) **Relevant children** are those aged 16 and 17 who meet the criteria for eligible children but who leave care. Regulations may exclude certain groups, such as children who return home permanently and children who receive respite care. Local authorities may, for example, take highly dependent children for short periods to give their carers a break. This group would remain the responsibility of their families and would not be eligible for the new arrangements even if their periods of respite care added up to the prescribed period for eligibility.

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- c) **Former relevant children** are those who before reaching the age of 18 were either eligible or relevant children.
- d) **The responsible local authority** to be whichever one last looked after an eligible or relevant young person. That local authority will retain its responsibility wherever the young person may be living in England or Wales. At present responsibility falls to the authority in whose area they live. This has given rise to disputes over responsibility between authorities which the new arrangements are intended to avoid.
- e) **A duty to keep in touch.** The responsible local authority to be under a duty to keep in touch with all its care leavers who qualify for these new support arrangements, including those aged 18-21 and beyond in some cases.
- f) **Pathway Plans.** All eligible and relevant and former relevant children and young people must have a Pathway Plan. This will take over from the existing care plan and will run at least until they are 21, covering education, training, career plans and support needed, for example to move into supported lodgings. Regulations may be made about Pathway Plans and their review. It is envisaged that they will be reviewed every six months or more frequently as needed.
- g) **Personal Adviser.** All eligible, relevant and former relevant children and young people must have a Young Person's Adviser (referred to in the Act as a personal adviser) who will help to draw up the Pathway Plan and to make sure that it develops with the young person's changing needs and that it is implemented. When the young person leaves care and until they are at least 21 the Young Person's Adviser will be responsible for keeping in touch with them and ensuring that they receive the advice and support to which they are entitled. Regulations may provide that children in other groups might also have Young Person's Advisers.
- h) **Vacation support.** The responsible local authority must assist care leavers in higher education, or in residential further education, with vacation accommodation where this is needed.
- i) **Assistance with employment.** The responsible local authority must assist a former relevant child (and may assist other care leavers) with the costs associated with employment to the extent that his welfare requires it.
- j) **Education and training support.** The responsible local authority must assist a former relevant child (and may assist other care leavers) with the costs of education and training up to the end of the agreed programme, even if that takes the young person past the age of 21, to the extent that his welfare and educational and training needs require it.
- k) **General assistance.** The responsible local authority must assist a former relevant child (and may assist other care leavers) to the extent that his welfare requires it, either in kind or, exceptionally, in cash.

New financial regime

- 6. The Act simplifies the arrangements for financial support of young people leaving care. Previously, young people who left care at 16 could claim welfare benefits. Depending on their circumstances these might have been Income Support, Housing Benefit or income-based Job-Seekers Allowance. .
- 7. The Act places local authorities under a new statutory duty to support these care leavers and at the same time removes entitlement to these means-tested benefits from *eligible* and *relevant* children.

8. These measures are intended to ensure that vulnerable young people receive the care and help they need to grow into independence. Local authorities provide far higher levels of support than simply cash, especially when they work across Departments to fulfil their role as corporate parents. They will be able to ensure that young people in and leaving care are suitably accommodated, supported and advised according to their needs, rather than simply given money and obliged to fend for themselves.

Exceptions

9. Regulations will provide for exceptions to the removal of benefits rule. It is envisaged that these will provide for cases such as lone parents and disabled children who would be able to claim benefits even if they were living with their parents. These young people will otherwise be eligible for the new arrangements under this Act.

OUTLINE OF THE EXISTING LAW

10. All statutory references are to the Children Act 1989. A child is a person under the age of 18 (section 105).
11. A “looked after” child is a child who is provided with accommodation by a local authority in the exercise of its social services functions, or who is in its care under a care order (section 22(1)). There are many social services functions which may involve the accommodation of a child, but the most important are contained in sections 20 (general powers and duties to accommodate children in need) and 21 (duty to accommodate children on remand or in police protection).
12. There is a general duty under section 20(1) to accommodate all children in need of accommodation. Additionally, by section 20(3) a local authority is under a duty to accommodate any child in need in its area over the age of 16 whose welfare the local authority consider is likely to be seriously prejudiced if they do not provide him with accommodation, and by section 20(5), a local authority has the power to provide accommodation in a community home for those aged over 16 and under 21 if it considers that to do so would safeguard and promote their welfare.
13. The general duties of local authorities towards children in need are set out in section 17, and their duties towards children in need they are looking after are set out in sections 22, 23, and 26 of the Act. In a nutshell, the duties towards looked after children are to safeguard and promote their welfare (section 22(3)(a)), to provide them with accommodation and maintenance (section 23(1)), to review their cases regularly (section 26(1)) and to provide a system for dealing with complaints (section 26(3)). Before making any decision about a looked after child a local authority must consider the wishes and feelings of the child and his family, and his background characteristics (section 22(4) and (5)).
14. Aftercare duties towards formerly looked after young people and other “qualifying persons” aged 16 and over are contained in section 24. Local authorities may (or in some cases must) advise, befriend and assist these young people, and help certain of them with education, employment and training. If a qualifying person is under the age of eighteen, section 24 after care duties may overlap with the general duty under section 17 towards children in need. Once they are over 18, only section 24 (and section 20 (5)) duties apply.

OVERVIEW OF THE ACT

15. The Act amends Part III of the Children Act, in particular by introducing into that Act new sections 23A to 23E and substituting section 24 with new sections 24 and 24A to 24D. Section 6 of the Act provides for changes to social security legislation.

COMMENTARY ON SECTIONS

Section 1: Eligible children: preparation for leaving care

16. This section amends Schedule 2 to the Children Act , inserting new paragraphs 19A, 19B and 19C after paragraph 19 to impose duties on local authorities towards children whom they are looking after.

19a

17. Paragraph 19A restates the duty at present in section 24(1)

19b

18. Paragraph 19B makes provision about *eligible children*. Sub-paragraph (2) defines an eligible child as one who has been looked after for a prescribed period after a prescribed age, and is aged 16 or 17. The prescribed period need not be continuous but could be aggregated from more than one episode of care. In order to avoid including young people who may have been looked after as infants and happen to return briefly to care after they are 16, regulations will specify the age above which episodes of care count towards the qualifying period.
19. Sub-paragraph (3) provides for regulations to be made to include or exclude particular groups. For example, it is possible that some local authorities might try to sidestep these new arrangements by discharging children from care at 15. Should this turn out to be the case it would be possible to include this younger group within the category of eligible children.
20. Conversely, there are some other groups of young people for whom this package of care would not be appropriate. Some young people normally live at home with their families and are only looked after for short periods of respite care in order to give their carers a rest. These periods of respite care could amount to the prescribed period but the Government believes that these young people are the responsibility of their families and should not become subject to this new regime.
21. Similarly, care leavers who successfully return to their families should become their families' responsibility and should not remain within this new regime. Sections 24, 24A and 24B (see section 4) will continue to apply to them.
22. The mechanism for determining what support the authority will provide will be the needs assessment and the pathway plan provided for in sub-paragraph (4). Pathway plans are defined in new section 23E. Guidance and regulations will be issued on the detail of the pathway plan. It is envisaged that it will dovetail with and in due course take over from the care plan which the authority will have made in respect of the child. It will be prepared by the local authority with the child and other key people such as his parents, social worker and Young Person's Adviser. The Pathway Plan will represent an agreement between the child and the authority as to what his needs are, what his future plans are, and how the authority will support him to meet his needs and fulfil his plans. Wherever possible, therefore, the Pathway Plan is to be jointly prepared and agreed by the child and the authority. It will set out a career path with milestones such as education, training, career plans, a planned date for leaving care and where and how he will live thereafter. It will set out the support which the local authority will provide at all stages of the plan, while he is being looked after and when he leaves care and sets up home independently.
23. The plan will be reviewed regularly (sub-paragraph (5)). It is envisaged that this will mean at least every six months or more often if needed. These reviews will provide the opportunity to update and revise the plan, adding more detail to the later stages which may be sketchy to begin with. A child might perform better than expected at school,

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for instance, and his plan be amended to include a degree course. If so, the authority's planned support would also be updated.

24. Sub-paragraph (6) allows for a streamlining of any statutory reviews which fall due for a given child, so that they can all be carried out together. Sub-paragraphs (7) and (8) provide for regulations to be made about assessments.

Section 2: relevant and former relevant children

25. **Section 2** amends section 22 and inserts new sections 23A to 23C. These sections impose new duties on local authorities towards children and young people formerly looked after by them.
26. Subsection (2) amends section 22 of the Children Act to allow local authorities to provide accommodation for a child who has left care, without the fact of their doing so classifying him as still being "looked after".

Section 23A

27. This section and section 23B provide for those aged 16 and 17 who leave care. Section 23A defines *relevant child* and *the responsible authority*.
28. By subsection (2) a relevant child is defined as a child of 16 or 17 who would have been an eligible child had they stayed in care but who leaves. Subsection (3) makes parallel provision to that made in paragraph 19B(3) for eligible children.
29. Subsection (4) defines *the responsible authority* as the one which last looked after the child. This is to ensure continuity of care and to avoid the difficulties which have arisen in cases where local authorities have been reluctant to provide after care support to care leavers in their area who were formerly looked after by another authority.
30. Subsection (5) allows for regulations to make English or Welsh authorities responsible for children who had been looked after by a Scottish local authority, if they come to England or Wales. If regulations are made under subsection 3(a) to make such children a new category of relevant children, this power is needed to ensure that they have a "responsible authority" under this Act. These regulations are therefore intended to ensure that English and Welsh authorities are able to take responsibility for Scottish children under these circumstances.
31. Until such time (if any) when Scottish legislation is enacted, English children who move to live in Scotland will continue as now to be able to claim social security benefits in Scotland. Scots children who move to England will not become eligible or relevant children but will be able to claim benefits as now.

Section 23B

32. **Section 23B** sets out the duties of the responsible local authority towards relevant children.
33. **Subsection 23B(1)** places a duty on a local authority to keep in touch with relevant children, wherever they choose to live.
34. Subsection (2) requires the local authority to appoint a personal adviser for each relevant child, should they not already have done so.
35. By subsection (5) regulations may be made about the needs assessment which will inform the pathway plan required by subsection (3). Subsection (6) sets out some of the specific matters which may be prescribed in regulations. The assessment will be carried out in the context of subsection (8) which sets out the local authority's duty to safeguard and promote the child's welfare.

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36. Subsection (8) establishes the local authority's duty to meet the needs of a relevant child. The local authority must provide the child with maintenance and suitable accommodation. Other forms of support which may be appropriate may be prescribed in regulations. This 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 parents. This might be moral support or practical support.
37. Subsection (9) makes it clear that support for relevant children may be given in cash as well as in kind. Where appropriate such cash support may be given regularly; the circumstances need not be exceptional.
38. Subsection (10) allows regulations to be made about the meaning of suitable accommodation. The regulations will also provide for checks to be carried out on potential landlords or other providers of accommodation in the light of the vulnerability of these young people.
39. Subsection (11) places a duty on a local authority to take reasonable steps to trace a relevant child if they have lost touch with him. This duty applies until the child reaches his 18th birthday and so ceases to be a relevant child.
40. By subsection (12) section 17(7) to (9) of the Children Act is applied to assistance which may be given under this section. Sections 17(7) to (9) require the local authority to take account of the means of the child and his parents, and permit the local authority, depending on their means, to require some or all of this assistance to be repaid.
41. Subsection (13) provides that subsections (4) and (5) of section 22 of the Children Act apply to decisions taken under section 23B. This means that the local authority must, so far as is reasonably practicable, ascertain and give due consideration to the wishes and feelings of the child, his parents and other people deemed to be relevant in his case, and must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

Section 23C

42. **Section 23C** sets out the duties of the responsible authority towards a former relevant child.
43. Subsection (1) defines a former relevant child as one who qualified for the new arrangements for support under this Act either as an eligible or as a relevant child. Subsection (2) provides that the responsible authority must continue to keep in touch with a former relevant child. Subsection (3) requires the responsible authority to provide him with his personal adviser and his pathway plan
44. Subsection (4) imposes a duty on the responsible authority to assist a former relevant child (a) with the expenses associated with employment; (b) with the expenses associated with education and training; and (c) to provide him with general assistance. Subsection (5) provides that the assistance provided under subsection 23C(4)(c) can be given in kind or, exceptionally, in cash. 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.
45. Subsection (6) provides that these duties normally apply until the former relevant child's 21st birthday. However, subsection (7) provides that if a former relevant child is being assisted with education or training pursuant to his pathway plan, the duty to assist him with it lasts to the end of the agreed programme of education or training, even if it runs beyond the young person's 21st birthday. The duties to keep in touch and to provide a personal adviser and to review the pathway plan also extend to the end of the programme.
46. Subsection (8) requires the responsible authority to disregard any interruption in the young person's attendance on a course provided that he resumes it as soon as

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is reasonable. Subsection (9) requires the responsible authority to provide vacation accommodation, or funds to secure it, for a former relevant child whom they are assisting with full-time higher education under subsection (4)(b), should this be necessary.

47. Subsection (10) has the same effect as section 23B(12).

Section 3: Personal Advisers and Pathway Plans

48. This section inserts sections 23D and E which set out the detail of personal advisers and pathway plans..

Section 23D

49. By subsection (1), regulations may be made to allow other individuals aged between 16 and 21 to have personal advisers in addition to those children and young people listed in sub-paragraphs (a) to (c) whom this Act entitles to a personal adviser.
50. Subsection (2) provides for regulations to be made about the functions of advisers appointed under this Act.

Section 23E

51. **Section 23E** deals with the content of pathway plans for the different groups of children and young people who are to have them. It provides for regulations to be made giving more detail of what they are to cover and how they are to be reviewed.

Section 4: Advice and assistance for certain children and young persons aged 16 or over

52. By this section, section 24 of the Children Act is restated and divided into four (24, 24A, 24B and 24C) to make it simpler to follow. It has also been amended in particular to take account of the new concept of the responsible authority and to increase local authority responsibilities to assist care leavers with further and higher education.

Section 24

53. Subsections (1) to (3) restate the previous definition of a person qualifying for advice and assistance. It includes care leavers as a whole, as well as children and young people leaving accommodation provided by certain other providers.
54. Subsection (4) establishes a new duty on a local authority to keep in touch as they think appropriate with any child whom they have looked after. This duty is intended in practice to apply to those formerly looked after children who are not included in the new duty to keep in touch in sections 23B or 23C.
55. Subsection (5) defines which local authority is to be responsible for providing services (the relevant authority) to a person qualifying for advice and assistance. By subsection (5)(a) the relevant authority for formerly looked after young people is in all cases the authority which last looked after them. By subsection (5)(b) for other young people qualifying for help under section 24 the relevant authority will be the one in whose area they are living.

Section 24A

56. **Section 24A** restates with amendments the powers and duties of local authorities in respect of qualifying persons previously found in section 24(4) to (7) and (10).
57. Subsection (1) places a duty on local authorities to consider whether a qualifying person meets the conditions set out in subsection (2).

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58. Subsection (2) sets out the conditions, which are (a) that the qualifying person needs help of a kind which the local authority can give him, and (b) in the case of a qualifying person who was not looked after by a local authority, that the local authority is satisfied that the person who was looking after him is not in a position to offer the help. Subsection (2)(b) rephrases the condition previously in section 24(5)(b) in a way which, taken with the new definition of a relevant authority at new section 24(5)(a), is intended to solve the difficulties of interpretation which have arisen over out of area placements.
59. If these conditions are met, subsection (3) states that if the qualifying person was looked after by a local authority or a voluntary organisation, the relevant authority must advise and befriend him. In other cases, it may do so. This is a restatement of the provision previously made by section 24(4).
60. Subsection (4) empowers an authority under these circumstances also to provide assistance, which may in accordance with subsection (5) be in kind or – though this is to be for exceptional cases only – in cash.
61. Subsection (6) applies existing section 17 (7) to (9) to any assistance which may be given under this section or section 24B. This requires the local authority to take account of the means of the child and his parents, and permits it, depending on their means, to require some or all of this assistance to be repaid.

Section 24B

62. Subsection (1) to (4) of section 24B restate and amend powers to provide assistance with employment, education and training previously in section 24(8) and (9).
63. Subsection (5) obliges authorities to provide, or enable the same young persons to pay for, suitable vacation accommodation, should it be needed, if they are in full-time higher education or further education as prescribed.

Section 24C

64. **Section 24C** provides for the necessary communication and liaison between local authorities for care leavers who move around the country. Subsection (1) extends the previous notification obligations under section 24(11) to all children with whom the local authority is under a duty to keep in touch, including eligible and relevant children, and former relevant children. In all these cases, the relevant local authority must inform another local authority if a child or young person plans to live or is living in their area.
65. Subsections (2) and (3) restate with minor amendments the provisions of existing section 24(12) and (13).

Section 5: Representations

66. This section inserts new section 24D into the Children Act .
67. **Section 24D** requires local authorities to establish arrangements for dealing with complaints about their services under sections 23B and C, and sections 24, 24A and 24B. Regulations will be made setting out the procedures to be followed.

Section 6: Exclusion from benefits

68. **Section 6** falls to the responsibility of the Secretary of State for Social Security and covers all of Great Britain.
69. The purpose of this section is to remove entitlement to income-based Jobseeker's Allowance, Income Support and Housing Benefit from those young people who will be supported by local authorities under the arrangements made in this Act until age 18.
70. There is a provision at subsection (3) to provide in regulations for certain groups of eligible young people to be exempted from this loss of benefit. It is envisaged that this

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provision will be used to ensure that Income Support and Job Seeker's Allowance will still be available to care leavers who would otherwise be relevant children but who are lone parents or disabled.

71. There is no provision to remove non-means tested benefits (such as Disability Living Allowance) and these benefits will continue to be paid to all those care leavers who qualify for them.
72. There is no reference to Council Tax Benefit because people under age 18 are not liable for Council Tax.

Section 7

73. This section makes consequential amendments.
74. Subsection (3) makes provision for local authorities to recoup costs from each other in respect of services provided following a request for co-operation under section 27(2), for children who fall to each other's responsibility. The subsection amends section 29 of the Children Act to take account of the new concept that the responsible authority for a relevant or former relevant child will be the last authority to have looked after him. It does this by amending subsection (9) and inserting a new subsection (10). New subsection (10) provides that one local authority may recover its expenses from another in the case of relevant children, former relevant children; and those who, having been looked after, are being helped under section 24.
75. Subsection (4) adds the new services detailed in sections 23B to 23D and 24A and 24B to the list of those services about which a local authority is obliged to publish information under paragraph 1 of Schedule 2 to the Children Act. Subsection (5) makes minor amendments consequent on the Care Standards Act 2000 (c.14).

Section 8: interpretation etc

76. This section deals with commencement and other issues. By subsection (3) commencement orders other than in respect of section 6, may be made separately as respects each of England and Wales.
77. The effect of subsection (7) is that regulations made under the provisions of this Act which amend the Children Act, will be made in respect of England by the Secretary of State and in respect of Wales by the National Assembly for Wales.
78. Subsection (8) puts it beyond doubt that section 8(7) does not affect any power to vary or revoke the reference to the Children Act in the National Assembly for Wales (Transfer of Functions) Order 1999 by further Order.

COMMENCEMENT

79. The Act will come into force in England and Wales on a date or dates to be determined. Section 6, as applied to Scotland, will come into force in Scotland at a later date to be determined.

DETAILS OF THE BILL'S PASSAGE THROUGH PARLIAMENT WERE AS FOLLOWS:

House of Lords	Date	House of Lords Hansard
Introduction	18 November 1999	Vol 607 Col 23
Second Reading	7 December 1999	Vol 607 Cols 1156-1191
Order of Commitment discharged	3 February 2000	Vol 609 Col 350-351

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Grand Committee	10 February 2000	Vol 609 Col CWH1-CWH66
Report	9 March 2000	Vol 610 Cols 1243-1274
Third Reading	22 May 2000	Vol 613 Cols 477-488
Consideration of Commons Amendments	28 November 2000	Vol 619 Cols 1259-1262
House of Commons	Date	House of Commons Hansard
Brought from the House of Lords	23 May 2000	
Second Reading	21 June 2000	Vol 352 No 119 Cols 357-420
Committee	6 July-13 July	Hansard Standing Committee A
Report and Third Reading	31 October 2000	Vol 335 No 150 Cols 634-685
80. Royal Assent	30 November 2000	