

CHILDREN (LEAVING CARE) ACT 2000

EXPLANATORY NOTES

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, 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.

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(c.35) which received Royal Assent on 30 November 2000*

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.
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 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 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).
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 .

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(c.35) which received Royal Assent on 30 November 2000*

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 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.