

*These notes refer to the Children (Leaving Care) Act (Northern Ireland)
2002 (c.11) which received Royal Assent on 22 November 2002*

Children (Leaving Care) Act (Northern Ireland) 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Further duties of authorities towards children whom they are looking after

Section 1 inserts new Article 34A into the Children Order to impose further duties on authorities towards children whom they are looking after. In particular, it places a duty on an authority to prepare young people it is looking after for the time when they cease to be so looked after and leave care.

Article 34A – Preparation for ceasing to be looked after

Paragraph (1) requires an authority looking after a child to advise, assist and befriend that child with a view to promoting his or her welfare when he or she ceases to be looked after. This restates the duty previously found in Article 35(1) of the Children Order *before* amendment by the Act.

Paragraph (2) places additional duties on an authority in relation to any child it is looking after who is also an eligible child. The additional duties are set out in the remainder of this Article.

Paragraph (3) 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.

Paragraph (4) gives the Department the power to make regulations to include or exclude particular groups from the definition of eligible child. For example, there are 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 and thereby meet the eligibility criteria but the Department is of the view that these young people are the responsibility of their families and should not become

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subject to the new leaving care arrangements. Similarly, care leavers who successfully return to their families should become their families' responsibility and should not be brought within the new arrangements. The provisions of Articles 35, 35A and 35B (see section 4) will, however, continue to apply to such young people.

Paragraph (5) requires an authority to carry out an assessment of the needs of each eligible child with a view to determining what advice, assistance and support it would be appropriate to provide while the young person is in care and after he or she has left care. It also requires the authority to prepare a pathway plan for each eligible child. Pathway plans are defined in the new Article 34F (see section 3).

Paragraph (6) requires pathway plans to be reviewed regularly. It is envisaged that this will mean at least every six months or more often if the young person or the personal adviser asks for one. These reviews will provide the opportunity to update and revise the pathway plan in order that it may develop in line with the young person's changing ambitions and circumstances. The review will make sure that the levels of support, both financial and other, are adequate and are being delivered according to the pathway plan.

Paragraph (7) provides that pathway plans may be reviewed at the same time as other statutory reviews under the provisions of the Children Order. This will allow for a streamlining of any reviews which fall due for a given child, so that they can all be carried out together.

Paragraph (8) enables the Department to make regulations about needs assessments for eligible children.

Paragraph (9) specifies the matters which may be included in regulations made under paragraph (8). The regulations may make provision about who is to be consulted about an assessment, the way in which an assessment is to be carried out, who will perform the assessment and when, how the outcome of the assessment is to be recorded and the type of considerations an authority is to have regard to in carrying out an assessment.

Paragraph (10) requires an authority to arrange for each eligible child to have a personal adviser.

Section 2 – Additional functions of authorities in respect of certain children

Section 2 amends Article 25 of the Children Order and inserts new Articles 34B to 34D in the Order. These Articles impose new duties on authorities towards children formerly looked after by them.

Subsection (1) amends Article 25 of the Children Order to allow an authority to provide accommodation for a child who has left care, without the fact of their doing so classifying that child as still being looked after.

These notes refer to the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11) which received Royal Assent on 22 November 2002

Subsection (2) amends the cross-heading before Article 35 of the Children Order as the new Articles being inserted in the Order affect young people over age 18 as well as children under age 18.

Subsection (3) inserts new Articles 34B, 34C and 34D into the Children Order. These Articles impose new duties on authorities in respect of relevant children and former relevant children.

Article 34B – The responsible authority and relevant children

This Article and Article 34C make provision for those young people aged 16 and 17 who leave care. Article 34B defines the terms “relevant child” and “responsible authority”.

Paragraph (1) provides that in relation to a relevant child, the “responsible authority” (see paragraph (4) below) will have the functions set out in Article 34C.

Paragraph (2) defines a “relevant child” as a child aged 16 or 17 who has left care and before leaving care was an “eligible child”.

Paragraph (3) makes parallel provision to that made in Article 34A(4) for eligible children. It allows the Department to prescribe additional categories of relevant children and to exclude certain groups from the definition.

Paragraph (4) defines the “responsible authority” as the authority which last looked after a child. That authority will remain responsible for the young person wherever that young person is currently living. This is to ensure continuity of care and to avoid any disputes amongst authorities concerning who should have responsibility for providing after care support for a young person who moves to live in the area of another authority.

Paragraph (5) gives the Department a regulation making power to make an authority responsible for any child who has been looked after by a Scottish, English or Welsh local authority, if they come to live here. If regulations are made under paragraph (3)(a) to make such children a new category of relevant child, the power in paragraph (5) is needed to ensure that they have a “responsible authority” under Northern Ireland legislation.

Article 34C – Additional functions of the responsible authority in respect of relevant children

Article 34C sets out the duties of the responsible authority towards “relevant children”. Some of the duties towards relevant children will in practice be continuations of those already delivered to them as eligible children.

Paragraph (1) places a duty on the responsible authority to take reasonable steps to keep in touch with a relevant child, whether the young person lives within its area or not.

These notes refer to the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11) which received Royal Assent on 22 November 2002

Paragraph (2) requires the responsible authority to appoint a personal adviser for each relevant child, should it not already have done so when the child was being looked after as an eligible child.

Paragraph (3) requires the responsible authority to carry out a needs assessment and to prepare a pathway plan for each relevant child if this has not already been carried out when the child was being looked after as an eligible child.

Paragraph (4) enables the responsible authority to carry out an assessment of a young person's needs at the same time as his or her needs are being assessed under the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978, the Disabled Persons (Northern Ireland) Act 1989, the Education (Northern Ireland) Order 1996 or any other statutory provision. This allows for joint assessments of the needs of young people whenever this is practicable.

Paragraph (5) enables the Department to make regulations about needs assessments.

Paragraph (6) provides that the regulations made under paragraph (5) may cover the same matters as are specified in Article 34A(9) in relation to needs assessments for eligible children.

Paragraph (7) requires the responsible authority to keep a pathway plan under regular review.

Paragraph (8) imposes a duty on the responsible authority to safeguard and promote the welfare of a relevant child unless it is satisfied that his or her welfare does not require it. The authority must provide the child with maintenance and suitable accommodation and such other support as may be prescribed in regulations. When a young person leaves care it may not be possible for them to return to their family: they may have none, or they may be estranged. The 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 or her parents. This might be moral support or practical support.

Paragraph (9) makes it clear that support for relevant children may be given in cash as well as in kind.

Paragraph (10) enables the Department to make regulations about the meaning of "suitable accommodation". The regulations may also make provision about the suitability of potential landlords or other providers in the light of the vulnerability of young care leavers.

Paragraph (11) places a duty on the responsible authority to take reasonable steps to keep in touch with a relevant child. Where contact is lost, the authority must immediately take reasonable steps to re-establish contact and to continue doing so until it succeeds in making contact. This duty applies until the child reaches his or her 18th birthday and so ceases to be a relevant child.

Paragraph (12) applies Article 18(7) to (9) of the Children Order to assistance which may be given under this Article. Paragraphs (7) to (9) of Article 18 require

an authority to have regard to the means of the child concerned and each of his or her parents, and permits the authority, depending on their means, to require some or all of this assistance to be repaid.

Paragraph (13) provides that paragraphs (2) and (3) of Article 26 of the Children Order apply to decisions taken under Article 34C. This means that the authority must, so far as is reasonably practicable, ascertain and give due consideration to the wishes and feelings of the child concerned, his or her parents and anyone else whom the authority considers to be relevant. The authority must also give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

Article 34D – Continuing functions in respect of former relevant children

Article 34D sets out the duties of the responsible authority towards “former relevant children”.

Paragraph (1) defines a “former relevant child” as one who qualified for the new support arrangements under the Act either as an “eligible” or “relevant” child and who is aged 18 to 21.

Paragraph (2) places a duty on the responsible authority to take reasonable steps to keep in touch with a former relevant child wherever he or she might be living and to re-establish contact where this is lost.

Paragraph (3) requires the responsible authority to continue to provide the young person with a personal adviser and to regularly review his or her pathway plan.

Paragraph (4) imposes a duty on the responsible authority to provide assistance to a former relevant child with: (a) expenses associated with employment; (b) expenses associated with education or training; and (c) general assistance. 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.

Paragraph (5) provides that the assistance provided under paragraph (4)(c) may be given in kind or, exceptionally, in cash.

Paragraph (6) provides that the duties under this Article last until the young person reaches the age of 21.

Paragraph (7) provides that if a former relevant child is being assisted with education or training pursuant to his or her pathway plan, the duty to provide assistance will continue until the end of the agreed programme of education or training, even if this runs beyond the young person's 21st birthday. The duties to keep in touch, to provide a personal adviser and to review the pathway plan also extend to the end of the programme.

Paragraph (8) requires the responsible authority to disregard any interruption in the young person's attendance at a programme of education or training provided that he or she resumes it as soon as is reasonably practicable.

These notes refer to the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11) which received Royal Assent on 22 November 2002

Paragraph (9) requires the responsible authority to provide, should it be needed, out of term accommodation, or the funds to secure it, for a former relevant child whom the authority is assisting with full-time further or higher education.

Paragraph (10) has the same effect as Article 34C(12).

Section 3 – Personal advisers and pathway plans

Section 3 inserts new Articles 34E and 34F into the Children Order which set out the detail of personal advisers and pathway plans. These Articles contain regulation-making powers enabling the Department to make further provision with regard to personal advisers and pathway plans.

Article 34E – Personal advisers

Paragraph (1) enables the Department to make regulations to allow other individuals aged between 16 and 21 to have a personal adviser in addition to those children and young people listed in sub-paragraphs (a) to (c) who are entitled to a personal adviser by virtue of other provisions of the Children Order (as inserted by the Act).

Paragraph (2) gives the Department the power to make regulations about the functions of personal advisers.

Article 34F – Pathway plans

Article 34F deals with the content of pathway plans and provides for regulations to be made giving more detail about what they are to cover and how they are to be reviewed.

Paragraph (1) defines a “pathway plan” for the purposes of Part IV of the Children Order. It provides that in respect of an eligible child the plan should set out the advice, assistance and support which an authority intends to provide while the young person is in care and after he or she has left care. The plan should also indicate when the young person might leave care. In relation to a relevant child who does not already have a pathway plan, it provides that the plan should set out the advice, assistance and support which the authority intends to provide.

Paragraph (2) enables the Department to make regulations about what may be included in pathway plans and how they are to be reviewed.

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

Section 4 restates Articles 35 and 36 of the Children Order and divides them into four (Articles 35, 35A, 35B and 35C) to make the provisions simpler to follow. They have also been amended to take account of the new concept of the responsible authority and to increase an authority’s responsibilities to assist care leavers with further and higher education.

Article 35 – Persons qualifying for advice and assistance

Paragraphs (1) to (3) restate the definition of “a person qualifying for advice and assistance” previously found in Article 35(2) and (3) of the Children Order *before* amendment by the Act. The term applies to any person who is under the age of 21 who was after reaching the age of 16, but whilst still under 18, looked after by an authority, accommodated in a voluntary or private children’s home or privately fostered. The term also applies to such a person who was accommodated for a consecutive period of 3 months in certain other establishments. This applies even if the 3-month period began before the young person reached the age of 16.

Paragraph (4) provides that in the case of a young person qualifying for advice and assistance, the authority which last looked after the young person must take such steps as it considers appropriate to keep in touch with him or her in order to discharge its functions under Articles 35A and 35B. This duty is intended to apply to those young people who leave care but do not qualify for the full package of support under the provisions of the Act.

Paragraph (5) defines which authority is to be responsible for providing aftercare services (the “relevant authority”) to a person qualifying for advice and assistance. Paragraph (5)(a) provides that the relevant authority for a care leaver is the authority which last looked after the young person. Paragraph (5) (b) provides that for any other young person qualifying for help under Article 35, the relevant authority is the one in whose area the young person is currently living.

Article 35A – Advice and assistance

Article 35A restates with amendments the powers and duties of authorities in respect of qualifying persons previously found in Articles 35(4) to (6) and 36(1) and (4) of the Children Order *before* amendment by the Act.

Paragraph (1) places a duty on the relevant authority to consider whether a qualifying person meets the conditions set out in paragraph (2).

Paragraph (2) sets out the conditions, which are: that the qualifying person needs help of a kind which the relevant authority can give him, and (if not qualifying by virtue of being a care leaver) the authority is satisfied that the person who was looking after the young person is not in a position to offer that help.

Paragraph (3) states that if the conditions in paragraph (2) are met, the relevant authority must advise and befriend a young person who has been looked after by an authority or voluntary organisation, and may advise and befriend other qualifying young people.

Paragraph (4) provides that where an authority has a duty or a power to advise and befriend someone under this Article, it may also give him assistance.

Paragraph (5) enables an authority which gives assistance under paragraph (4) to provide such assistance in kind or, in exceptional circumstances, in cash.

Paragraph (6) applies existing Article 18(7) to (9) of the Children Order to any assistance which may be given under this Article or Article 35B. This requires an authority to take account of the means of the child concerned and his or her parents, and permits the authority, depending on their means, to require some or all of this assistance to be repaid.

Article 35B – Employment, education and training

Article 35B replaces the powers to provide assistance with employment, education and training previously found in Article 36(2) and (3) of the Children Order *before* amendment by the Act. In addition to the general powers to provide assistance under Article 35A, an authority has specific powers to provide assistance to young care leavers where this is in connection with the young person's employment (Article 35B(1)), education or training (Article 35B(2)).

Paragraph (1) provides that a relevant authority may give assistance to a person under 21 who was looked after by the authority after reaching the age of 16, by contributing to expenses incurred by the young person in living near the place where he or she is, or is to be, employed.

Paragraphs (2) and (3) provide that a relevant authority may give assistance to a person under the age of 24 who was looked after by the authority after reaching age 16, by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training. The authority may also make a grant to enable the young person to meet expenses in connection with his or her education or training.

Paragraph (4) enables an authority to disregard any interruption in a young person's attendance at a course connected with education or training if he or she resumes it as soon as is reasonably practicable.

Paragraph (5) places a new duty on an authority to provide, should it be needed, suitable out of term accommodation, or the funds to secure it, to young care leavers in full-time further or higher education.

Paragraph (6) gives the Department the power to make regulations to define the terms "full-time", "further education", "higher education" and "vacation" for the purposes of this Article.

Article 35C - Information

Article 35C provides for the necessary communication and liaison between authorities in respect of care leavers who move from one authority area to another. It replaces the notification provisions previously found in Article 37(3) and (4) of the Children Order *before* amendment by the Act.

Paragraph (1) requires authorities to notify each other in certain circumstances. If an authority is under a duty to keep in touch with an "eligible", "relevant"

or “former relevant” child and becomes aware that he or she proposes to live, or does live, in the area of another authority, it must inform the other authority. An authority is under the same duty if it is advising or assisting a young person under Article 35A or 35B of the Children Order.

Paragraph (2) provides that if a young person ceases, after reaching the age of 16, to be accommodated by or on behalf of a voluntary organisation or in a private children’s home or in accommodation mentioned in Article 35(2)(d) of the Children Order, then the person providing the accommodation must inform the authority in whose area the young person proposes to live.

Section 5 – Representations

This section inserts a new Article 35D into the Children Order. It requires each authority to establish arrangements for dealing with complaints about its services under Articles 34B and 34D, and Articles 35, 35A and 35B. Article 35D replaces the representation provisions previously found in Article 37(1) and (2) of the Children Order *before* amendment by the Act.

Article 35D – Representations: Articles 34B to 35B

Paragraph (1) requires each authority to establish a procedure for hearing representations, including complaints, made by young people who qualify for the new support arrangements under the Act about the way an authority is carrying out any of its functions under Part IV of the Children Order.

Paragraph (2) requires an authority to comply with any regulations made by the Department when considering any representations under paragraph (1).

Section 6 – Exclusion from benefits

Section 6 deals with changes to social security legislation. It removes entitlement to income-based Jobseeker's Allowance, Income Support and Housing Benefit from those young people who will be supported by authorities under the new after care arrangements until they reach the age of 18.

Subsection (1) provides that no person to whom this section applies will be entitled to income-based Jobseeker's Allowance, Income Support or Housing Benefit.

Subsection (2) provides that, subject to subsection (3), this section applies to eligible and relevant children. In the relation to both eligible and relevant children, the responsible authority will have a duty to meet their maintenance and accommodation needs until they reach the age of 18.

Subsection (3) gives the Department for Social Development the power to make regulations to provide for certain eligible or relevant children to be exempted from the provisions of this section. It is envisaged that this provision will be used to ensure that Income Support and Jobseeker's Allowance will still be available to care leavers who would otherwise be relevant children but who are lone parents or disabled.

These notes refer to the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11) which received Royal Assent on 22 November 2002

Subsection (4) enables the Department for Social Development to make regulations to make transitional, consequential and saving provisions in connection with the commencement of this section.

Subsection (5) provides that section 171(3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 applies to the regulation-making powers in this section. As with other social security legislation, this makes it clear that regulations may make different provisions for different cases and for different purposes and provides powers for discretion to be exercised in dealing with various matters.

Subsection (6) provides that regulations made under this section shall be subject to negative resolution procedure.

Section 7 – Minor and consequential amendments and repeals

Section 7 makes a number of consequential amendments to the Children Order.

Subsection (1) provides that the Children Order will have effect subject to the amendments and repeals set out in subsections (2) to (6) of this section.

Subsection (2) amends Article 2(8) of the Children Order to ensure that the accommodation provided to care leavers under Articles 34C and 35B is not regarded as accommodation used by authorities for the purposes of accommodating looked after children.

Subsection (3) updates the statutory references in Article 18(5)(a) of the Children Order by adding the new services in Articles 34C to 34E and 35A and 35B to the list of services which authorities are required to facilitate others to provide (particularly voluntary organisations).

Subsection (4) repeals Articles 36 and 37 of the Children Order.

Subsection (5) makes provision for authorities to recoup costs from each other in respect of services provided (following a request for co-operation under Article 46(2) of the Children Order) for children who fall to each other's responsibility. The subsection amends Article 46 to take into account the new concept of responsible authority. It does this by amending paragraph (4) and inserting a new paragraph (4A). Paragraph (4A) provides that following a request under Article 46(2) of the Children Order, one authority may recover reasonable expenses from another. This ability to recoup costs applies in the case of "relevant" and "former relevant children" and those who, having been looked after at any time after reaching the age of 16, are being helped under Article 35 of the Children Order.

Subsection (6) amends paragraph 2(1)(a) of Schedule 2 to the Children Order by adding the new services in Articles 34C to 34E and 35A and 35B to the list of those services about which an authority is obliged to publish information. It also adds these new services to the list of services which Health and Social Services Boards are required to review and include in their Children's Services Plans.

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Section 8 - Interpretation

Section 8 defines the term “the Children Order” which is used throughout the Act.

Section 9 - Short title and commencement

Subsection (1) sets out the title of the Act.

Subsection (2) deals with the commencement of the Act. It gives the Department of Health, Social Services and Public Safety the power to make a commencement order to bring sections 1 to 5 and 7 of the Act into operation on such day as it may decide.

Subsection (3) deals with the commencement of section 6 of the Act. It gives the Department for Social Development the power to make a commencement order to bring section 6 into operation on such day as it may decide.

Subsection (4) permits commencement orders made under subsections (2) and (3) to include transitional, consequential or savings provisions of existing legislation as the Department of Health, Social Services and Public Safety or the Department for Social Development consider necessary.