

POLICY NOTE

THE CONTINUING CARE (SCOTLAND) AMENDMENT ORDER 2017

SSI 2017/

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 nineteen years of age (increased from eighteen). 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 nineteen. 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 2016 (S.S.I. 2016/92) which was the instrument which increased the higher age limit to eighteen in April 2016.

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 19 December 2016 to 20 January 2017. Those consulted included COSLA, all Scottish local authorities and stakeholders from the sector such as CELCIS, Aberlour Trust, Barnardo’s Scotland, Who Cares? Scotland and the Scottish Throughcare and Aftercare Forum.

6. Twelve responses were received to the consultation. No adjustments have been made to the drafting of this instrument as a result of those responses, which were all supportive.

Impact Assessments

7. 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

8. 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
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