

**2016 No. 732**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**SOCIAL SECURITY**

**The Children and Young People (Scotland) Act 2014  
(Consequential Modifications) Order 2016**

<i>Made</i> - - - -	<i>11th July 2016</i>
<i>Laid before Parliament</i>	<i>13th July 2016</i>
<i>Coming into force</i> - -	<i>5th August 2016</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998(a):

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016 and shall come into force on 5th August 2016.

(2) This Order extends to England and Wales and Scotland.

**Amendment of the Income Support (General) Regulations 1987**

**2.**—(1) The Income Support (General) Regulations 1987(b) are amended as follows.

(2) In paragraph 28 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in sub-paragraph (1)(c), for “29” substitute “26A, 29”;
- (b) in sub-paragraph (2), for the words from “or 29” to “their care)” substitute “, 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”(c); and
- (c) for sub-paragraph (5)(b) substitute—

“(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

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(a) 1998 c.46.  
(b) S.I. 1987/1967; relevant amending instruments are S.I. 2008/698 and 2010/2429.  
(c) 1995 c.36; Section 26A was inserted by section 67(1) of the Children and Young People (Scotland) Act 2014 (asp 8).

- (3) In paragraph 17 of Schedule 10 (capital to be disregarded)—
- (a) in sub-paragraph (1)(c), after “section” insert “26A,”;
  - (b) in sub-paragraph (2), for the words from “or section 29” to “their care)” substitute “or section 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”;
  - (c) for sub-paragraph (5)(b) substitute—
    - “(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

### **Amendment of the Jobseeker’s Allowance Regulations 1996**

**3.**—(1) The Jobseeker’s Allowance Regulations 1996(a) are amended as follows.

(2) In paragraph 29 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in sub-paragraph (1)(c), for “29” substitute “26A, 29”;
- (b) in sub-paragraph (2), for the words from “or 29” to “their care)” substitute “, 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”;
- (c) for sub-paragraph (5)(b) substitute—
  - “(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

(3) In paragraph 22 of Schedule 8 (capital to be disregarded)—

- (a) in sub-paragraph (1)(c), after “section” insert “26A,”;
- (b) in sub-paragraph (2), for the words from “or section 29” to “their care)” substitute “or section 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”;
- (c) for sub-paragraph (5)(b) substitute—
  - “(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

### **Amendment of the State Pension Credit Regulations 2002**

**4.**—(1) The State Pension Credit Regulations 2002(b) are amended as follows.

(2) In regulation 17B(4)(b) (earnings of self-employed earners), in the inserted paragraph (2)—

- (a) for sub-paragraph (b)(ii) substitute—
  - “(ii) section 26 or 26A of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority and duty to provide continuing care), or”;
- (b) after sub-paragraph (d) insert—

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(a) S.I. 1996/207; relevant amending instruments are S.I. 2008/698 and 2010/2429.

(b) S.I. 2002/1792; relevant amending instruments are S.I. 2002/3019 and 2010/2429.

- “(da) any payment or part of a payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995 (duty to provide continuing care) to a person (“A”) which A passes on to the claimant where A—
  - (i) was formerly in the claimant’s care;
  - (ii) is aged 16 or over; and
  - (iii) continues to live with the claimant;”.

(3) In Part 1 of Schedule 5 (income from capital: capital disregarded for the purpose of calculating income) after paragraph 23C insert—

“**23D.**—(1) Any payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995.

(2) Subject to sub-paragraph (3), any payment or part of a payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995 to a person (“A”) which A passes on to the claimant.

(3) Sub-paragraph (2) only applies where A—

- (a) was formerly in the claimant’s care;
- (b) is aged 16 or over; and
- (c) continues to live with the claimant.”.

#### **Amendment of the Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004**

**5.** Regulation 2 of the Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004 (entitlement to benefits (Scotland))(a) is amended as follows—

(a) for paragraph (2)(b) substitute—

“(b) to whom a local authority in Scotland is obliged to provide—

- (i) continuing care in accordance with section 26A of the Children (Scotland) Act 1995 (duty of local authorities to provide accommodation and assistance to persons who were, but are no longer, looked after by a local authority), or
- (ii) advice, guidance and assistance in accordance with section 29(1) of the Children (Scotland) Act 1995 (duty of local authorities to provide after-care to persons who were, but are no longer, looked after by a local authority);”;

(b) in paragraph (2)(d)(ii), for “in terms of that section” substitute “under that section 29(1)”.

#### **Amendment of the Housing Benefit Regulations 2006**

**6.**—(1) The Housing Benefit Regulations 2006(b) are amended as follows.

(2) In Schedule 5 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 28, for the words from “29” to the end substitute “26A, 29 or 30 of the Children (Scotland) Act 1995 (provision of services to children and their families and provision of advice and assistance for certain young persons).”; and

(b) in paragraph 28A—

- (i) in sub-paragraph (1), for the words from “or section 29” to “their care)” substitute “or section 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons).”; and
- (ii) for sub-paragraph (2)(b) substitute—

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(a) S.I. 2004/747, amended by S.I. 2009/3152 and 2013/1465.

(b) S.I. 2006/213; relevant amending instruments are S.I. 2008/698, 2008/2767 and 2010/2429.

“(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

(3) In Schedule 6 (capital to be disregarded)—

(a) in paragraph 19, for the words from “sections 22” to the end substitute “section 22, 26A, 29 or 30 of the Children (Scotland) Act 1995 (provision of services to children and their families and advice and provision of assistance for certain young persons).”; and

(b) in paragraph 19A—

(i) in sub-paragraph (1), for the words from “or section 29” to “their care)” substitute “or section 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”; and

(ii) for sub-paragraph (2)(b) substitute—

“(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

### **Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

7.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(a) are amended as follows.

(2) In regulation 38(2) (earnings of self-employed earners)—

(a) in sub-paragraph (b)(i), for the words from “section 26(1)” to the end substitute “section 26 or 26A of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority and duty to provide continuing care); or”; and

(b) after sub-paragraph (d) insert—

“(da) any payment or part of a payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995 (duty to provide continuing care) to a person (“A”) which A passes on to the claimant where A—

(i) was formerly in the claimant’s care;

(ii) is aged 16 or over; and

(iii) continues to live with the claimant;”.

(3) In Schedule 6 (capital to be disregarded), after paragraph 26F insert—

“**26G.**—(1) Any payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995.

(2) Subject to sub-paragraph (3), any payment or part of a payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995 to a person (“A”) which A passes on to the claimant.

(3) Sub-paragraph (2) only applies where A—

(a) was formerly in the care of the claimant;

(b) is aged 16 or over; and

(c) continues to live with the claimant.”.

### **Amendment of the Employment and Support Allowance Regulations 2008**

8.—(1) The Employment and Support Allowance Regulations 2008(b) are amended as follows.

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(a) S.I. 2006/214; relevant amending instruments are 2010/2429, 2011/2425 and SI 2014/513.

(b) S.I. 2008/794, amended by S.I. 2010/2429.

(2) In paragraph 30 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)—

(a) for sub-paragraph (1)(c) substitute—

“(c) section 22, 26A, 29 or 30 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance to certain young persons).”;

(b) in sub-paragraph (2), for the words from “or section 22” to “their care)” substitute “or section 22, 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”;

(c) for sub-paragraph (3)(b) substitute—

“(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

(3) In paragraph 22 of Schedule 9 (capital to be disregarded)—

(a) for sub-paragraph (1)(c) substitute—

“(c) section 26A, 29 or 30 of the Children (Scotland) Act 1995 (local authorities’ duty to provide continuing care and provision of advice and assistance for certain young persons).”;

(b) in sub-paragraph (2), for the words from “ or section 29” to “their care)” substitute “or section 26A or 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children, duty to provide continuing care and provision of advice and assistance for certain young persons)”;

(c) for sub-paragraph (3)(b) substitute—

“(b) is aged 18 or over or, in the case of a payment or part of a payment made in accordance with section 26A of the Children (Scotland) Act 1995, aged 16 or over, and”.

11th July 2016

*David Mundell*  
Secretary of State  
Scotland Office

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes amendments in consequence of the Children and Young People (Scotland) Act 2014 (2014 asp 8) (“the Act”). The Act inserted a new section 26A into the Children (Scotland) Act 1995 which places a duty on local authorities to provide ‘continuing care’ to eligible people who have ceased to be looked after by the local authority.

Article 2 amends Schedules 9 and 10 to the Income Support (General) Regulations 1987 (S.I. 1987/1967). The amendment of Schedule 9 has the effect that any payments in the form of income made by a local authority with respect to a person who is the subject of the continuing care arrangements are disregarded when calculating the claimant’s income support. The amendment of Schedule 10 has the same effect with respect to any payments that are made in the form of capital.

Articles 3, 4 and 6 to 8 make similar provision for the disregard of payments made in the form of income and capital with respect to the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794).

Currently, regulation 2 of the Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004 (S.I. 2004/747) (“the 2004 Regulations”) excludes from entitlement to income-based jobseeker’s allowance, income support and housing benefit a person who has ceased to be “looked after” by a local authority in Scotland and to whom the local authority is obliged to provide advice, guidance and assistance under section 29(1) of the Children (Scotland) Act 1995 (c. 36), where the other conditions in regulation 2(2) are met. However, where a person falls within the category in regulation 2(3)(b) of the 2004 Regulations (persons who are sick or disabled or lone parents), he or she is only excluded from entitlement to housing benefit.

Article 5 of this Order amends regulation 2 of the 2004 Regulations to add a reference to a person to whom a local authority in Scotland is obliged to provide continuing care (accommodation and other assistance) under section 26A of the Children (Scotland) Act 1995 (as inserted by section 67(1) of the Act) where that person has ceased to be “looked after” by the local authority.

This has the effect that such a person is excluded from entitlement to income-based jobseeker’s allowance, income support and housing benefit on the same basis as a person to whom the local authority owes an obligation to provide advice, guidance and assistance under section 29(1) of the Children (Scotland) Act 1995.

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations.

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