

# **Children and Young People (Scotland) Act 2014:**

## **Analysis of Consultation on The Continuing Care (Scotland) Amendment Order 2017**

## **INTRODUCTION**

### **Consultation summary**

The consultation took place over the period 19 December 2016 to 20 January 2017. The public consultation resulted in 13 responses from 10 organisations and 3 individuals. We have published the responses with respect to the handling permissions provided to us.

At initial implementation on 1 April 2015, eligibility for Continuing Care only applied to a single age cohort of care leavers, aged sixteen, to facilitate sustainable service provision within existing resources. This is the second annual amendment to The Continuing Care (Scotland) Order 2015 and is in line with our publically stated policy intention to increase the higher age limit for Continuing Care on an annual basis.

There was unanimous support from respondents to increase the higher age limit for persons eligible for Continuing Care from eighteen to nineteen years of age from April 2017. This ensures the current cohort of young people continue to be eligible as they increase in age and will continue to rise until the duty to provide Continuing Care extends from sixteen to twenty-one years of age. This positive support provided a definite basis for proceeding with laying [The Continuing Care \(Scotland\) Amendment Order 2017](#) in draft in the Scottish Parliament on 27 January 2017. Subject to final scrutiny and parliamentary approval, the Order is expected to come into force on 1 April 2017.

This Order will mean that Continuing Care applies to those young people in foster, kinship or residential care who ceased to be looked after aged between sixteen and nineteen years of age. Annual increases in the age range will follow until eventually the entitlement to remain in Continuing Care extends up to twenty-one years of age.

The consultation allowed respondents to offer any additional comments on the content of the Draft Order or Continuing Care more broadly. Some respondents used this opportunity so we have summarised the points raised and where appropriate offered a response.

### **Engagement approach**

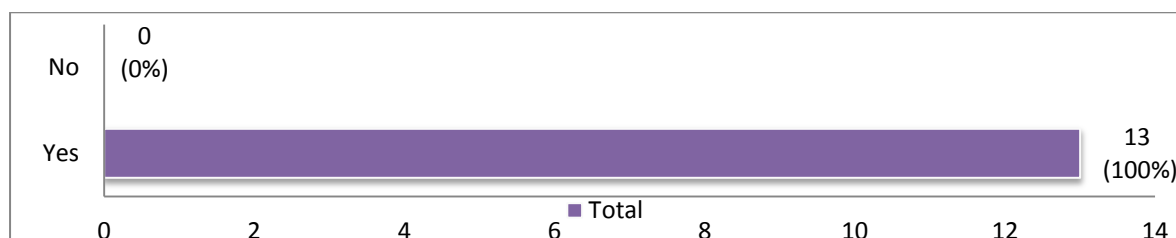
As this is simply a procedural amendment we followed the same process of consultation conducted last year for the 2016 Amendment Order. Our engagement was proportionately managed by email targeting COSLA, all Scottish local authorities and stakeholders from the child social care sector, including the Third Sector, and Corporate Parents listed in schedule 4 of the Children and Young People (Scotland) Act 2014.

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## SUMMARY OF CONSULTATION RESPONSES AND KEY ISSUES

**Question 1: Do you agree with our intention, as stated during development of the 2014 Act, to further increase the higher age limit for persons eligible for Continuing Care from eighteen to nineteen years of age from April 2017 to ensure the current cohort of young people continue to be eligible as they increase in age until the duty to provide Continuing Care extends from 16 to 21 years of age?**



### Highlights

- All 13 responses supported continued extension of the higher age limit for eligibility for Continuing Care from eighteen to nineteen years of age as of 1 April 2017.
- No adjustments were requested to the draft instrument as a result of consultation feedback.

### Response

- A few small legal procedural amendments were made to the [Draft Order](#) before it was laid in the Scottish Parliament on 27 January 2017. These were mainly to clarify that the Order would revoke the Continuing Care (Scotland) Amendment Order 2016.
- Subject to scrutiny and approval by the Scottish Parliament, this means the legislation will be amended to enable teenagers who turn sixteen but have not yet reached aged nineteen while in residential, foster or kinship care to remain in their current care setting 'continuing care' after they cease to be formally looked after by the local authority.
- Annual increases to the higher age of the first eligible cohort will follow until eventually the entitlement will enable all young people who cease to be looked after to remain in Continuing Care between sixteen and twenty-one years of age by 2019.
- Parliament approved this Order on 2 March 2017.

## SUMMARY OF CONSULTATION RESPONSES AND KEY ISSUES

### Please provide any other comments:

- A few respondents commented that the intention to increase the eligibility criteria annually, had been clearly communicated by Scottish Government, and widely supported by others, throughout the consultation phase of developing the Continuing Care provisions within the Children and Young People (Scotland) Bill. This Order follows through on its original intention of ensuring all eligible young people can remain in their care setting until the age of twenty-one, without interruption.
- All respondents' comments supported the policy aim of Continuing Care to provide young people with a more graduated transition out of care, reducing the risk of multiple simultaneous disruptions occurring in their lives while maintaining supportive relationships. They were supportive of the Draft Order to ensure continued delivery of Continuing Care, as part of the Staying Put agenda and the intentions of the Children and Young People (Scotland) Act 2014 Act more broadly.
- A few respondents highlighted concerns about the effectiveness of policy implementation, and these can be summarised as;
  - Variable knowledge and understanding of some workers in the sector around the Continuing Care legislation, in turn, misinforming young people of their entitlements, including on;
    - the eligibility age (i.e. born on or after 1st April 1999);
    - the age that the duty to provide Continuing Care ends, particularly whether this should happen on the young person's 21st or 22nd birthday; and
    - supported accommodation or hostels being viewed as appropriate alternatives to Continuing Care placements.
  - Strict application of the legislation, without taking account of 'Staying Put' guidance.
  - Continuing Care should not be imposed on young people who don't want it.
- Some local authorities raised concerns that the Scottish Government's agreed package of funding for Continuing Care may not be sufficient. The annual amendments to the Order will increase the number of young people eligible for Continuing Care, and will add further pressure on local authority budgets.
- The detailed guidance for Part 11 (Continuing Care) of the Children and Young People (Scotland) Act 2014 published by the Scottish Government in November 2016 was welcomed. Respondents stated that it usefully highlights exceptions on eligibility, the role of Throughcare and Aftercare practitioners, and that Continuing Care may not be the only option available to eligible young people.

## **Response**

The Scottish Government would like to thank all the organisations and individuals who have replied to this consultation and for providing constructive feedback on considerations around the policy implementation. We have offered some clarification to the points raised and we will continue to give consideration to these as we assess how Continuing Care is being rolled out and whether it is having the effect that it was intended to make for our young people.

### **Continuing Care policy aims and objectives**

The specific aim of Continuing Care is to ensure that all eligible young people are enabled and empowered with the choice of staying in an existing care placement, maintaining supportive relationships with their carers and reducing the risk of multiple simultaneous disruptions occurring in their lives, until they are able to demonstrate their readiness and willingness to move on to interdependent living. Interdependence more accurately reflects the day to day realities of an extended range of health inter-personal relationships, social support and networks.

Where a young person does not want to remain in an existing care placement, or where any of the exemptions to providing Continuing Care apply, local authorities will want to ensure that the young person is provided with advice and assistance with a view to preparing them for when they cease to be looked after. This should be based on plans which reflect their individual needs and aspirations, backed up by consistent, personalised support from their local authority and other corporate parents.

Continuing Care is part of our overall objectives to:

- address the inequalities between looked after children and their non-looked after peers by providing a stable home and ensuring that young people are not discharged from care until they are prepared and ready to leave;
- improve the assessment, preparation and planning for young people leaving care; and
- provide better personal support for young people after leaving care.

### **Eligibility Criteria for Continuing Care**

In relation to the points raised about varying levels of knowledge and understanding, we can clarify the details of the eligibility criteria, as follows:

- In order to provide local authorities and carers with adequate time to plan and prepare, it was agreed that Continuing Care would be introduced gradually.
- In the first year from 1 April 2015-16, only young people who ceased to be looked after, born in the twelve months from 1 April 1999 to 31 March 2000 were eligible for Continuing Care.
- From April 2016, the eligibility was to be extended annually to match the increase in age of the initial group of young people until all looked after children age sixteen or older, who leave foster, looked after kinship care or residential care will be eligible to remain in their care placement up to their 21<sup>st</sup> birthday.

- In practice this means that until April 2017 young people who are born between 1 April 1999 and 31 March 2001 are eligible, and from 1 April 2017 young people born between 1 April 1999 and 31 March 2002 will be eligible. Meaning all 16-18 years olds leaving care will be eligible from 1 April 2017.

## Funding

For clarity, the Scottish Government set out the total funding commitment for Continuing Care in in the financial memorandum that accompanied the Children and Young People (Scotland) Bill. This included the net totals costs each year from 2016-17 to 19-20. These are lower in the first year of implementation at **£4.2 million, rising to 9.3 million by 2019-20** at which point they are expected to stabilise along with the additional numbers estimated at 164 young persons in Continuing Care between the ages of sixteen to twenty-one.

For more details, please see the Financial Memorandum to the Children and Young People (Scotland) Bill, as amended at Stage 2, 31 January 2014, Table 13: net annual costs of staying in care for all cohorts (£)  
[http://www.scottish.parliament.uk/S4\\_Bills/Children%20and%20Young%20People%20\(Scotland\)%20Bill/b27as4-stage2-fm.pdf](http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27as4-stage2-fm.pdf)

For all young people who choose Continuing Care, there is a saving arising in the form of the foregone Aftercare service costs. Funding **allocations to local authorities for the changes to throughcare and aftercare requirements** in the Children and Young People (Scotland) Act 2014 and **separate allocations to cover the change to ‘the age at leaving care’** eligibility criteria for Aftercare support from ‘beyond school minimum leaving age’ to ‘age 16’ were set out in the Financial Memorandum.

Further information on the calculations and allocation of funding for Aftercare 2015/16 and 2016/17 is available here: <http://www.gov.scot/Topics/People/Young-People/protecting/lac/careleavers/AftercareFunding>

## Supporting the implementation of Continuing Care

We acknowledge the work and support of all in the sector, for their preparations and delivery of this policy over the last two years and we will continue to work closely with the sector to further support full implementation. We appreciate the collaborative work that takes place at local level to adapt transitions planning and outcomes, underpinned by GIRFEC principles, for young people particularly as they transition to adulthood.

We appreciate the support that takes place at national level such as through the focus group work by Staf (the Scottish Throughcare and Aftercare Forum) to help managers and practitioners to work collaboratively on identify challenges and solutions.

We also appreciate the support of carers who are adapting to a new mind-set and culture encouraged by the Continuing Care policy and their role in helping to empower young people to take up this option.

Finally, we appreciate the joint work being taken forward between Who Cares? Scotland and the Children and Young People's Commissioner for Scotland to produce resources aiming to further inform young people and professionals alike, on Part 9 (Corporate Parenting), Part 10 (Aftercare) and Part 11 (Continuing Care). In addition, we welcome support from Scottish Throughcare and Aftercare Forum (STAF) who will trial the resources with their members. We recognise the benefit of ensuring throughcare and aftercare workers around Scotland are aware of these resources and are encouraged to hear that these are shared with the young people they support.

The Scottish Government would be happy to help promote the resources in our engagement and communications. We know that it is important for people across Scotland to be able to access the information they need in suitable formats that will help them to fully understand the legislation and enable the best possibly delivery of Continuing Care for our looked after young people.

In November 2016, the Scottish Government published guidance which was developed in close engagement and collaboration with managers, practitioners, carers, and young people to help all corporate parents, local authorities and carers who support support looked after children and care leavers understand the legal duties of providing Continuing Care. We hope that this has also provided a good basis for these additional resources to be built on. This guidance is available here:

<http://www.gov.scot/Publications/2016/11/4644>



**LIST OF ORGANISATION THAT RESPONDED TO THE CONSULTATION**

Aberdeenshire Council  
Aberdeenshire Health and Social Care Partnership  
Care Inspectorate  
Cosla  
Dumfries and Galloway Council  
North Ayrshire Health and Social Care Partnership  
Perth and Kinross Council  
West Lothian Council  
Who Cares? Scotland



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