

Children and Young People (Scotland) Act 2014:

Analysis of Consultation on The Continuing Care (Scotland) Amendment Order 2019

Introduction

Consultation Background

Section 67 of the Children and Young People (Scotland) Act 2014 inserts a new section 26A into the Children (Scotland) Act 1995 in relation to Continuing Care.

Continuing Care is defined in new section 26A(4) of the 1995 Act as meaning the same accommodation and other assistance as was being provided for the eligible person by the local authority, immediately before the person ceased to be looked after. These provisions entitle an eligible young person who is looked after in foster, kinship or residential care to remain in their current care placement, currently up to their twentieth birthday.

At initial implementation on 1 April 2015, eligibility for Continuing Care only applied to a single cohort of care leavers, aged sixteen, to facilitate sustainable service provision within existing resources.

So following through on our publicly stated policy intention to increase the higher age for Continuing Care on an annual basis to keep pace with the higher age of the initial eligible cohort, this is the fourth and final in the planned series of amendments to the Continuing Care (Scotland) Order 2015 to increase the higher age to twenty-one.

Following the introduction of the legislation, each proposed amendment to increase the higher age limit has been consulted on. Previous consultations can be viewed here:

2016 Amendment Order which raised the higher age to eighteen, <http://www.gov.scot/Publications/2015/08/5064>;

2017 Amendment Order which raised the higher age to nineteen, <https://consult.gov.scot/children-and-families/amending-continuing-care-scotland-order/>;

2018 Amendment Order which raised the higher age to twenty, <https://consult.gov.scot/children-and-families/continuing-care-amendment/>;

And 2019 Amendment Order proposing the higher age is raised to twenty-one, <https://consult.gov.scot/children-and-families/continuing-care/>.

Consultation Summary

The public consultation on this draft Amendment Order took place from 14 November to 12 December 2018. Engagement was encouraged by actively targeting all Scottish local authorities and stakeholders from the social care sector, as well as Corporate Parents listed in schedule 4 of the Children and Young People (Scotland) Act 2014, and following the same format of consultations in 2016, 2017 and 2018.

The public consultation received 26 responses from 4 individuals and 22 organisations, including the Convention of Scottish Local Authorities (COSLA), local authorities, third sector organisations, regulatory and professional bodies, and the Centre for Excellence for Looked After Children in Scotland (CELCIS). All the consultation responses have been made public where we have permission to do this. These are available here: <https://consult.gov.scot/children-and-families/continuing-care/>

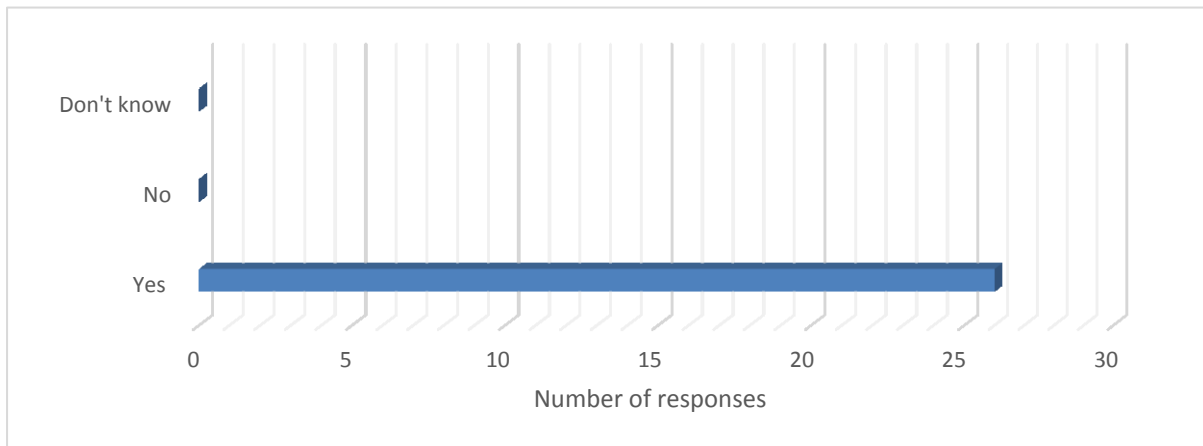
Support for the Amendment and concerns highlighted

Of the responses received there was universal agreement that extending the upper age limit of eligibility to twenty-one is the expected and welcomed course of action. Respondents were given the opportunity to offer any other comments on the draft Order and on Continuing Care provisions more broadly. Where respondents have offered comment highlighting experiences and challenges leading to inconsistencies of the policy implementation we have summarised the key points raised and, where appropriate, given a response.

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SUMMARY OF RESPONSES AND RESULT

Question 1: Do you agree with the intention of this draft order to further increase the higher age limit for persons eligible for Continuing Care from twenty to twenty-one years of age, with effect from 1 April 2019?



Highlights

- All 26 responses fully supported the extension of the higher age limit for eligibility for Continuing Care from twenty to twenty-one years of age from 1 April 2019.
- Most local authorities highlighted that this was the expected and welcomed course of action and some indicated that the outcomes sought from Continuing Care, through providing stability and continuity for young people remaining in their care setting after compulsory measures are removed, are already a priority for them.
- One individual commented that the age should be increased to twenty-five. Whilst we have no intention at this stage to move the eligibility age beyond twenty-one, we would highlight that local

authorities continue to have duties to provide care leavers with Aftercare advice, guidance and assistance up to age twenty-six. Discretionary powers also allow local authorities to provide a Continuing Care placement beyond age twenty-one should this be manageable and in the best interests of the young person.

- The majority of respondents' comments reflected their understanding and support for the principles of Continuing Care within the wider context of the Staying Put¹ agenda and broader intentions of the Children and Young People (Scotland) Act 2014, in providing young people leaving care with the support they need to secure a positive and sustained transition into adulthood, as well as with a feeling of connectedness and belonging. There was almost unanimous agreement that providing looked after young people with the opportunity to make a graduated transition out of care was crucial in achieving positive outcomes in the longer term.
- Included below is a small sample selection of quotes from respondents which indicate support for the Order:

“COSLA continues to support the delivery of the Children and Young People (Scotland) Act 2014 and therefore supports the principles of increasing the higher age limit from twenty to twenty-one for persons eligible for continuing care” COSLA

¹ Staying Put Scotland Guidance 2013, <https://www.gov.scot/publications/staying-put-scotland-providing-care-leavers-connectness-belonging/>

“In full agreement with the increase in the age limit” Fife Council

“I agree. In practice this is what is happening in Scottish Borders Council.” Scottish Borders Council

“This a progressive draft where the rights of the young person to remain are secured at a more significant level and in some ways offering a level of compassion to the wider community (and their peers) to have worthwhile additional security” Argyll and Bute Health and Social Care Partnership

“Yes. Perth and Kinross Council has embraced the philosophy set out in Staying Put Scotland Guidance 2013 and already has a positive track record of supporting young people to remain in their care placements beyond their 16th birthday.” “We have made appropriate arrangements to ensure that the cohort of young people affected by the proposed amendment are aware of their right to choose to remain in a continuing care placement and the necessary support to do so.” Perth and Kinross Council

“Yes, Social Work Scotland agree with the intention to increase the higher age limit to 21 years, being in support of the policy intention to encourage and enable young people to remain in safe, supported environments, sustaining significant relationships until they are ready to make the transition to independent living.” Social Work Scotland

“Who Cares? Scotland agrees with the intention to increase the higher age limit for eligibility from 20 to 21 years of age from April 2019. This intention was clearly communicated by Scottish government, and widely supported by others, throughout the consultation phase of Part 11 (continuing care) of the Children and Young People (Scotland) Act 2014.” Who Cares? Scotland

“Staf is fully supportive of the policy intention of this Order” Staf (Scottish Throughcare and Aftercare Forum)

“Kibble support the step-change to increase the higher age limit to twenty-one years from 1 April 2019.” Kibble Education and Care Centre

Result

- **As a result of consultation feedback, no adjustments have been requested or made to the draft Order.**
- Most respondents took the opportunity to provide additional comments and highlighted challenges related to full and consistent implementation of the duties. These complexities are acknowledged, but do not have any impact on the drafting of the Order or respondents’ support of increasing the higher age limit for eligibility to twenty-one years of age. Points relating to policy implementation are summarised in the next section of this report alongside Scottish Government response.

Next steps

- This will be the final planned increase, which will ensure that the current cohort of young people (born on or after 1 April 1999) continue to be eligible as they increase in age to twenty-one and so that the duty to provide Continuing Care is extended in full to all eligible persons from sixteen to twenty-one years of age. This is in line with the policy intention stated during development of the Children and Young People (Scotland) Act 2014.
- The draft Order will be laid in the Scottish Parliament by 25 January 2019, and accessible on the UK legislation website here: <http://www.legislation.gov.uk/ssi>
- Subject to scrutiny and approval by the Scottish Parliament, this Order will ensure that the legislation is amended to enable young people who turn sixteen, but have not yet reached the age of twenty-one whilst 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.
- Subject to Parliament's approval, this Order will come into force on 1 April 2019.

- In the event that the draft Order is not approved by the Scottish Parliament, the immediate effect would be that the upper age would remain at age twenty. This would mean that after 1 April 2019, young people on turning age twenty would cease to have a statutory entitlement to Continuing Care until such time as an Order to increase the upper age to twenty-one could be agreed by parliament.

SUMMARY OF KEY IMPLEMENTATION ISSUES RAISED IN QUESTION 2: DO YOU HAVE ANY OTHER COMMENTS?

Among the overwhelming support for the principles of Continuing Care provisions, some respondents' highlighted concerns about the consistency of understanding and implementation of the policy amongst the different parts of the sector and from experiences of young people.

Again it should be noted that these points do not undermine the support for making this Order to raise the age of higher age of eligibility to twenty-one. The challenges raised in responses have been summarised as follows:

1. Understanding of the policy and practice implementation

- Notable variation in local practice and understanding of the policy at practitioner and managerial level, meaning young people are not receiving consistent information about their entitlements.
- More consistent information around Continuing Care needs to be supplied to both professionals and young people.
- The age eligibility for the duty to provide Continuing Care is not consistently being understood by practitioners, affecting whether some young people may benefit from Continuing Care.
- Some local authorities applying the legislation inflexibly rather than in respect of the principles of Staying Put guidance, and some inconsistency in practice and resourcing to provide adequate alternative 'Staying Put' placements.

- Need to consider greater methods of support for young care leavers, including the framework of Aftercare supports, options to return to care placements and for young people leaving the justice system.
- More clarity and consistency needed in relation to supporting Continuing Care placements and good transition into adult services when the time is right for young people.
- Clarifying the role of the Care Inspectorate and more consistency needed in their approach to supporting the registration of 'adult placement carers' and integrated inspection of Continuing Care placements as set out in their guidance.
- A shift in culture and attitudes still needing as it is felt that decisions are being driven by age rather than development stage, and also by, availability of resources and cost. Views being that Continuing Care should be the normal expectation for care experienced young people.
- A greater need to ensure that young people's views are sought at all times within planning and decision making.

- Views that welfare assessments are not fully meeting the requirements set out in legislation, including: assessments not taking place in sufficient time before a young person is due to leave care; young people not being kept informed about this or their views sought; and the local authority not making sure that a written record of the young person's views is kept and made available to the young person.
- Young people should have access to independent advocacy with children's rights and other advocacy groups being supported to ensure that all young people are made aware of their rights to Continuing Care and where to get support to challenge decisions that they believe are not in their best interest.
- Need for a dedicated statutory rights of appeal process for Continuing Care.

2. Funding and resourcing concerns including placement instability, commissioning of independent/out of authority placements

- Concerns that Scottish Government funding as set out in the Financial Memorandum was not enough to meet the full costs of implementation for the potential increasing numbers of young people exercising the right to Continuing Care support including for staff, placements and additional support resources.

- Additional pressures on capacity and resources as a result of higher numbers of young people choosing to take up their right to remain in Continuing Care placements – exceeding original modelling costs. This also creating a greater need for local authorities to give consideration when resourcing and commissioning services. This is leading to, for example, greater need to use higher cost purchased placements as local authority placements are occupied by young people remaining in Continuing Care placement and also the emergence of Fostering Agencies introducing Continuing Care Contracts with additional built-in costs.
- Concerns around inconsistency of how foster carers are categorised in relation to Continuing Care (e.g. foster carer or supported carer/adult placement service) and how they are supported both financially and with the appropriate training. Recognised need for greater clarity for local authorities to address the important difference in status and expectations when looked after children become young adults.

3. Evidence and data

- A small number of respondents highlighted that there has not yet been an official statistical return or other data around this relatively recent Continuing Care provision and the importance of having high quality data to inform wider understanding and effective implementation of the legislation.

4. Other

- More clarification needed around Continuing Care interactions with transitions to adult services for young people with particular additional support needs, and new policies such as the Care-Experience Bursary for students in further and higher education.
- Consider the opportunities for local authority/corporate parents in supporting young people who leave care before reaching age 16.

Response

The Scottish Government would like to thank the organisations and individuals who replied to this consultation. We are pleased that the majority of respondents support the continued roll out of Continuing Care proposed by the Order and thank them for taking the time to offer additional constructive comments on implementation of the policy.

As part of our ongoing work to support policy development we remain dedicated to work collaboratively to address the points raised. We value the ongoing dialogue, emerging evidence and the work that all parts of the sector have undertaken so far towards making Continuing Care a reality for young people. We also recognise that there is still more to do to ensure that all eligible young people can equally and consistently benefit from the best Continuing Care or Aftercare support to meet their individual changing needs.

In reply to issues raised by respondents to this consultation we have offered information to help clarify some of these issues and also our plans for future engagement and support to deliver improvements.

Continuing Care policy aims and objectives

The aim of Continuing Care is to ensure that all eligible young people have the choice of staying in an existing care placement; maintaining supportive relationships with their carers. This reduces 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.

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 should 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.

As has been highlighted by East Ayrshire Council in their response, a smooth transition from “Looked After” to “Continuing Care” status is critical, and requires strong and well developed partnership arrangements in supporting this. A strong commitment from providers and foster carers to ensure the best possible outcomes for care experienced young people and those in Continuing Care also needs to remain.

Supporting the implementation of Continuing Care

We appreciate the support of the sector and all practitioners in implementing this policy. We recognise the collaborative work, underpinned by Getting it Right For Every Child (GIRFEC)² principles, taking place locally and at national level to assist local authorities in transitions and outcomes planning for young people; particularly as they move towards adulthood. Much has also been done to support managers and practitioners in identifying challenges and solutions.

The Scottish Government understands the importance of ensuring that looked after young people and practitioners across Scotland are able to access information in suitable formats to help them fully understand the legislation and enable the best possible delivery of Continuing Care. In November 2016, the Scottish Government published guidance, which was developed in collaboration with managers, practitioners, carers and young people to help corporate parents, and anyone who supports looked after children and care leavers, understand the Continuing Care duties. We hope this provides a good basis on which to build additional resources. This guidance is available here:

[http://www.gov.scot/Publications/2016/11/4644.](http://www.gov.scot/Publications/2016/11/4644)

The Scottish Government has taken a number of steps to ensure that everyone whose work relates to the support of looked after young people and care leavers, is informed of legislation on Continuing Care. We are proactive in promoting published guidance including material developed by the sector.

² GIRFEC policy <https://www.gov.scot/policies/girfec/>

‘Your Rights to Care’ by Who Cares? Scotland and the Children and Young People’s Commissioner for Scotland, is one example of young person friendly guidance that is available here:

<https://www.cypcs.org.uk/rights/your-rights-to-care>

We also welcome the **Care Inspectorate’s 2017 ‘Guidance for care services for looked after and accommodated children and young people who need ongoing support as young adults’**. This explains steps taken to ensure foster agencies incur no additional fees and integrated inspections for providing Continuing Care and is available here: <http://www.careinspectorate.com/index.php/care-news-online/30-publications/professionals-registration/professionals-guidance/4092-guidance-for-care-services-for-looked-after-and-accommodated-children-and-young-people-who-need-ongoing-support-as-young-adults>

Guidance on providing advice to care leavers about their benefit entitlements was developed by the Child Poverty Action Group in Scotland in collaboration with Staf (Scottish Throughcare and Aftercare Forum). This advice can be found on the Child Poverty Action Group in Scotland’s website: <http://www.cpag.org.uk/content/care-leavers-and-benefits-giving-good-advice>. UK Benefit Regulations have also been amended by the Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016 which takes account of the particular status of young people in Continuing Care placements and their entitlements to benefits:

<http://www.legislation.gov.uk/ukxi/2016/732/contents/made>.

Through membership groups which consist of frontline practitioners and managers from Scottish local authorities and third sector and private sector providers, Staf (the Scottish Throughcare and Aftercare Forum) have worked collectively to identify obstacles to implementation and shared good practice. A briefing on this work is available here:

<https://www.staf.scot/implications-of-continuing-care-report>

We also understand that Clan Childlaw now has a dedicated Scotland-wide service to provide care leavers and young people preparing to leave care with representation about how to realise, protect and enforce their rights including to Continuing Care. The service will train and inform practitioners working with care leavers so they have increased capacity to enable young people to realise their rights.

Monitoring of Continuing Care data

We understand the importance of gathering high quality data in monitoring the effectiveness of Continuing Care policy. The Scottish Government's annual National Statistics publication 'Children's Social Work Statistics Scotland³' will, depending on data quality, publish data on the number of young people who move into Continuing Care from 2019. We also continue to work regularly with local authorities and with our stakeholders in the care sector to improve the collection of information around uptake and eligibility for Continuing Care. We will monitor this information and any other evidence offered to clarify numbers in the years following implementation.

³ <http://www.gov.scot/Topics/Statistics/Browse/Children/PubChildrenSocialWork>

Funding

The funding commitment for Continuing Care has been set out by the Scottish Government in the Financial Memorandum that accompanied the Children and Young People (Scotland) Bill; this funding commitment remains unchanged. This included the net total costs each year from 2016-17 to 19-20. These were 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 an expected 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 including entitlement up to age 26 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 also set out in the Financial Memorandum, available on the Scottish parliament website here:

<http://www.parliament.scot/parliamentarybusiness/Bills/62233.aspx>

The Scottish Government's policy towards local authorities' spending is to allow local authorities the financial freedom to operate independently. As such, the vast majority of the revenue funding is provided by means of a block grant. It is the responsibility of individual local authorities to manage their own budgets and to allocate the total financial resources available to them on the basis of local needs and priorities, including the amounts allocated for infrastructure and local services. There are no current plans to review funding arrangements for Continuing Care.

Interactions with other new policies

Since the commencement of the Continuing Care duties, there has been a number of new policies introduced that provide support to care leavers, including for example, the exemption to council tax, Care-Experienced Bursary, and the new Social Security funds such as the Best Start Grant. As with any new policy we fully understand the need to ensure that the interactions between new and existing provisions across the policies are clearly communicated and consistently understood in practice and we are working with the sector to provide this.

Next steps to support policy implementation

The Scottish Government values the ongoing feedback and information shared with us during this consultation exercise. We have also welcomed a number of opportunities for stakeholder engagement over the last year. All evidence highlighting both challenges and successes will be considered and used to support on-going improvements to achieve consistent implementation of the Continuing Care policy.

We are committed to undertaking further work to understand the issues that have arisen in the implementation of the Continuing Care policy, and ensure its successful delivery in line with the original policy intention. We are happy to accept offers from COSLA, Social Work Scotland and other partners such as CELCIS, Staf, and Clan Childlaw to work together to address the challenges and to ensure full and consistent implementation so that young people who want and need it can benefit from their Continuing Care entitlement.

Furthermore, we will take account of any emerging recommendations from the Independent Care Review.

Organisations and individuals which Responded to the Consultation

Aberdeen City Council

Advocacy Service Aberdeen

Argyll and Bute Health and Social Care Partnership

Barnardo's Scotland

Care Inspectorate

Centre for Excellence for Looked After Children in Scotland (CELCIS)

Clan Childlaw

Convention of Scottish Local Authorities (COSLA)

East Ayrshire Health and Social Care Partnership

Fife Council

Glasgow City Health and Social Care Partnership

Kibble Education and Care Centre

North Ayrshire Health and Social Care Partnership

Perth and Kinross Council

Professor Kenneth Norrie

Scottish Borders Council

Scottish Children's Reporter Administration (SCRA)

Shetland Islands Council

Social Work Scotland

Staf (Scottish Throughcare and Aftercare Forum)

Stirling Council

West Lothian Council

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