

Consultation on Draft Secondary Legislation Amending the Continuing Care (Scotland) Order 2015

November 2018



Scottish Government
Riaghaltas na h-Alba
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To:
Corporate Parents
Looked after children stakeholders

14 November 2018

Dear All,

CONSULTATION ON DRAFT SECONDARY LEGISLATION AMENDING THE CONTINUING CARE (SCOTLAND) ORDER 2015

I enclose a draft version of The Continuing Care (Scotland) Amendment Order 2019, which is the most recent and final in the series of planned annual amendment Orders, for your information and to invite any comments.

This draft Order will further increase the higher age limit for persons eligible for continuing care from twenty to twenty-one years of age from 1 April 2019 to ensure that the current cohort of young people continue to be eligible as they increase in age, and will ensure the duty to provide continuing care is extended to all persons eligible from sixteen to twenty-one years of age. This Order will be made using powers inserted into section 26A of the Children (Scotland) Act 1995 by Part 11 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”).

The Explanatory Notes that accompany the draft Order in Annex B explain the provisions and are in line with our policy intention, stated during development of the 2014 Act, of increasing the higher age limit on an annual basis. This position was agreed to ensure that the care system was more able to put in place arrangements which could deliver the principles in a measured way¹. I have also provided a summary in Annex A as a reminder of the provisions included in the 2014 Act and what is set out in secondary legislation.

¹ Education and Culture Committee Official Report of 14 January 2014, column 3319, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=9120&mode=pdf>

The consultation is available on the Scottish Government website here: <https://consult.gov.scot/children-and-families/continuing-care>. Please send any comments using the website or by email to me at looked_after_children@gov.scot by **Wednesday 12 December 2018**. Unless you state otherwise your response will be made public but if you ask for your response not to be published we will treat it as confidential. More information about responding to the consultation is in Annex C. You should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and must consider any request made to it under the Act for information relating to responses made to this consultation exercise. Please do not hesitate to contact me if you have any questions.

Yours sincerely,

Louise Piaskowski
Policy Officer

ELIGIBILITY FOR CONTINUING CARE FROM APRIL 2019

The Children and Young People (Scotland) Act 2014:

Section 67 of the 2014 Act 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.

New section 26A(1) provides that the local authority's duty to provide continuing care applies where an eligible person ceases to be looked after by a local authority. New section 26A(2) defines "eligible person" as a person who is at least 16 years of age and is not yet such higher age as may be specified by Ministers by order. New sections 26A(5) and (7) detail when the duty to provide continuing care does not apply and ceases to apply respectively. New section 26A(6) provides that a local authority's duty to provide continuing care lasts, subject to section 26A(7), until the expiry of such period as may be specified by Ministers by order. Subsections (9) and (11) to (13) make further provision as to orders which may be made by Ministers.

Part 11 of the 2014 Act also reflects the philosophy of care set out in the Scottish Government's 'Staying Put-Scotland' guidance of October 2013. This stressed the importance of encouraging and enabling young people to remain in safe, supported environments until they are better ready to make the transition into independent living.

The Continuing Care (Scotland) Order 2015:

Article 2 specifies a higher age of 17 years of age for young people to be eligible for continuing care. In line with discussions during the Bill development process this higher age limit was to be extended annually to ensure this cohort continue to be eligible as they increase in age until the duty to provide continuing care extends to care leavers aged from 16 to 21 years of age.

Article 3 specifies the period that the local authority's duty to provide continuing care in terms of new section 26A(6) of the 1995 Act lasts is from the date on which the eligible person ceases to be looked after until the date of their twenty-first birthday.

Articles 4 and 5 cover assessment of eligible young people to ensure that continuing care would not significantly adversely affect the welfare of the young person. In a similar way to the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 and associated guidance on Supporting Young People Leaving Care in Scotland, the local authority must carry out a welfare assessment of the eligible person as soon as reasonably practicable before the person ceases to be looked after by them. They also must carry out a welfare assessment of eligible persons receiving continuing care at intervals not exceeding twelve months starting from the date the person ceases to be looked after. Such welfare assessments are to be carried out in accordance with articles 6 and 7.

Articles 6 and 7 make general provisions about welfare assessments and set out the issues to be taken into account by a local authority in completing a welfare assessment, which includes considering each of the matters listed in the Schedule, and lists the range of persons whose views they may seek in that connection. These are currently drafted to complement the provisions in the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 and associated guidance on Supporting Young People Leaving Care in Scotland. They emphasise the importance of seeking and recording the views of the young person and other relevant people in reaching agreement about the welfare status of the young person.

This is all set out in more detail in the Guidance on Part 11, which was published on 3 November 2016 and can be found at: <http://www.gov.scot/Publications/2016/11/4644>

The Continuing Care (Scotland) (Amendment) Order 2016:

This Order increased the higher age limit for eligible persons in section 26A(2)(b) of the Children (Scotland) Act 1995 to eighteen years of age. This means that from 1 April 2016 the duty on local authorities to provide continuing care under section 26A of the 1995 Act was to a person who is at least sixteen years of age and who had not yet reached the age of eighteen.

The Continuing Care (Scotland) (Amendment) Order 2017:

This Order increased the higher age limit for eligible persons in section 26A(2)(b) of the Children (Scotland) Act 1995 to nineteen years of age. This means that from 1 April 2017 the duty on local authorities to provide continuing care under section 26A of the 1995 Act was to a person who is at least sixteen years of age and who had not yet reached the age of nineteen.

The Continuing Care (Scotland) (Amendment) Order 2018:

This Order increased the higher age limit for eligible persons in section 26A(2)(b) of the Children (Scotland) Act 1995 to twenty years of age. This means that from 1 April 2018 the duty on local authorities to provide continuing care under section 26A of the 1995 Act was to a person who is at least sixteen years of age and who had not yet reached the age of twenty.

The Draft Continuing Care (Scotland) (Amendment) Order 2019:

This Order increases the higher age limit for eligible persons in section 26A(2)(b) of the Children (Scotland) Act 1995 to twenty-one years of age. This means the duty on local authorities to provide continuing care under section 26A of the 1995 Act will from 1 April 2019 be to a person who is at least sixteen years of age and who has not yet reached the age of twenty-one.

Revocation of the Continuing Care (Scotland) Amendment Order 2018

3. The Continuing Care (Scotland) Amendment Order 2018⁽⁵⁾ is revoked.

Name

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

⁽⁵⁾ S.S.I. 2018/96.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order 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 Children (Scotland) Act 1995 (“1995 Act”) is twenty-one years of age (increased from twenty). 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 twenty-one.

Responding to this Consultation

We are inviting responses to this consultation **by Wednesday 12 December 2018**.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/children-and-families/continuing-care>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Wednesday 12 December 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send it by post to:

Louise Piaskowski
Scottish Government
Care, Protection and Justice Division
2A-South
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them by email to looked_after_children@gov.scot or by post to:

Louise Piaskowski
Scottish Government
Care and Protection Division
2A-South
Victoria Quay
Edinburgh
EH6 6QQ

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



THE CONTINUING CARE (SCOTLAND) AMENDMENT ORDER 2019 CONSULTATION

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes No

THE CONTINUING CARE (SCOTLAND) AMENDMENT ORDER 2019 CONSULTATION

QUESTIONNAIRE

Q1. 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?

This will be the final such 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, in line with the policy intention stated during the development of the Children and Young People (Scotland) Act 2014, to all eligible persons from sixteen to twenty-one years of age.

Q2. Do you have any other comments on this consultation on the Continuing Care (Scotland) Amendment Order 2019?



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