

Consultation on The Continuing Care (Scotland) Amendment Order 2017

December 2016



Scottish Government
Riaghaltas na h-Alba
gov.scot

Children and Families Directorate
Care and Protection Division

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To:
All Corporate Parents
Stakeholder Representatives

Our ref:

December 2016

Dear All

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

I am pleased to enclose a draft version of The Continuing Care (Scotland) (Amendment) Order 2017, which is the second in the series of planned annual amendment Orders, for your information and to invite any comments.

This draft will 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. This relates to powers set out in Part 11 of the Children and Young People (Scotland) Act 2014 ("the 2014 Act").

The Explanatory Notes at the back of the draft Order 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. I have summarised this below in Annex A as a reminder of the provisions included in the 2014 Act and what is set out in secondary legislation.

An online version of this consultation is available on the Scottish Government website and please send any comments to me at looked_after_children@gov.scot by **Friday 20 January 2017**. Unless you state otherwise your response will be made public but if you ask for your response not to be published we treat it as confidential.

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

Carolyn Younie

ELIGIBILITY FOR CONTINUING CARE FROM APRIL 2017

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 upper age limit will extend 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 21st 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 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 increases 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 the duty on local authorities to provide continuing care under section 26A of the 1995 Act is to a person who is at least sixteen years of age and who has not yet reached the age of eighteen.

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

This Order increases 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 the duty on local authorities to provide continuing care under section 26A of the 1995 Act is to a person who is at least sixteen years of age and who has not yet reached the age of nineteen.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

CHILDREN AND YOUNG PERSONS

The Continuing Care (Scotland) Amendment Order 2017

Made - - - - 2017

Coming into force - - 2017

The Scottish Ministers make the following Order in exercise of the powers conferred by section 26A(2)(b) of the Children (Scotland) Act 1995(1) and all other powers enabling them to do so.

In accordance with section 26A(12) of that Act, the Scottish Ministers have consulted with each local authority and such other persons as they consider appropriate.

In accordance with section 26A(11)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

This Order may be cited as the Continuing Care (Scotland) Amendment Order 2017 and comes into force on 1st April 2017.

Amendment of the Continuing Care (Scotland) Order 2015

—(1) The Continuing Care (Scotland) Order 2015(2) is amended as follows.

(2) In article 2 (eligible person: specified age), for “eighteen” substitute “nineteen”.

[]
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
[]

1 1995 c.36. Section 26A was inserted by section 67(1) of the Children and Young People (Scotland) Act 2014 (asp 8).
2 S.S.I. 2015/158.

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 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.

Responding to this Consultation

We are inviting responses to this consultation by **Friday 20 January 2017**.

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.scotland.gov.uk/children-and-families/amending-continuing-care-scotland-order>. 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 Friday 20 January 2017.

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

Carolyn Younie
Scottish Government
Care and Protection Division
2A - North
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:

Carolyn Younie
Scottish Government
Care and Protection Division
2A - North
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.



Consultation on Draft SSI - The Continuing Care (Scotland) Amendment Order 2017

RESPONDENT INFORMATION FORM

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

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 (anonymous) – Individuals only
 Do not publish response

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



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