

Children and Young People (Scotland) Act 2014:

Analysis of Consultation on The Continuing Care (Scotland) Amendment Order 2018

Introduction

Consultation Summary and 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 up to their twenty-first 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. This is the third annual amendment to the Continuing Care (Scotland) Order 2015 to increase the higher age to twenty, which is in line with our publicly stated policy intention to increase the higher age for Continuing Care on an annual basis. Annual increases in the age range will continue to be made to keep pace with the higher age of the initial eligible cohort until the entitlement to remain in Continuing Care extends up to twenty-one years of age.

Following the introduction of the legislation, each proposed amendment to increase the higher age limit has been consulted on. Previous consultations on the 2016 Amendment Order, which raised the higher age to eighteen, and in 2017, which raised the higher age to nineteen, can be found here: <http://www.gov.scot/Publications/2015/08/5064> and here: <https://consult.gov.scot/children-and-families/amending-continuing-care-scotland-order/>

Engagement approach

The public consultation on this draft Amendment Order took place from 16 October to 13 November 2017. 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. This followed the same format as 2016 and 2017.

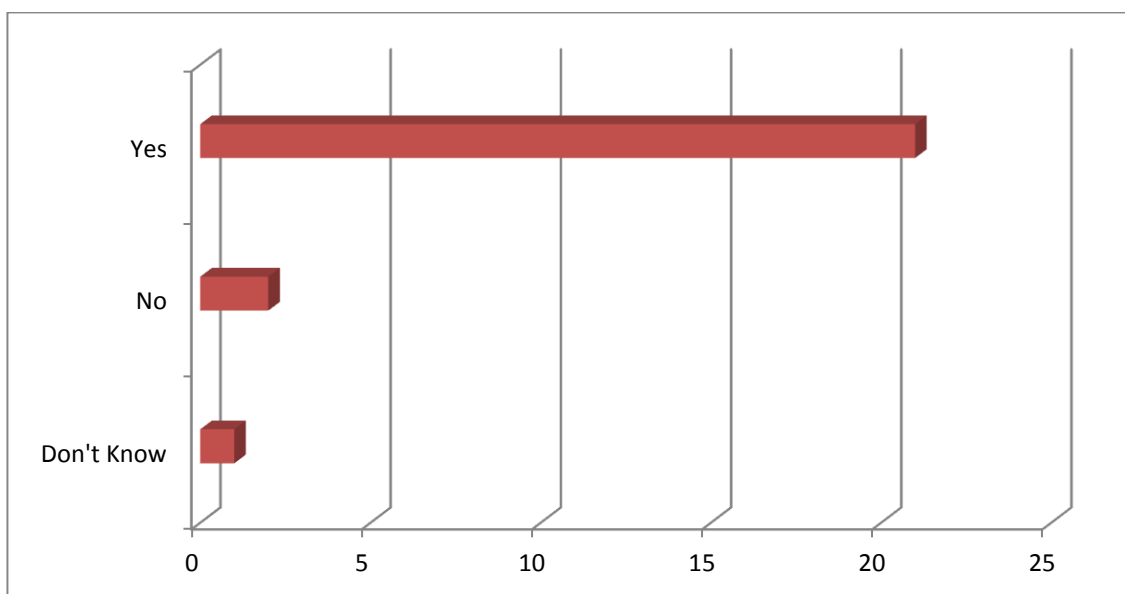
The public consultation received 24 responses from 10 individuals and 14 organisations. We have published the responses with respect to the handling permissions provided to us.

Respondents were given the opportunity to offer additional comments on the draft Order and on Continuing Care provision more broadly. Where respondents have offered comment we have summarised the key points raised and, where appropriate, given a response.

Contents	Page
Summary of responses and key issues to: Question 1: Do you agree with the intention, as stated during development of the 2014 Act, to further increase the higher age limit for persons eligible for Continuing Care from nineteen to twenty years of age from April 2018 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?	5
Summary of key issues raised in ‘any other comments’	9
List of organisations and individuals which responded to the consultation	16

SUMMARY OF RESPONSES AND KEY ISSUES

Question 1: Do you agree with the intention, as stated during development of the 2014 Act, to further increase the higher age limit for persons eligible for Continuing Care from nineteen to twenty years of age from April 2018 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?



Yes: **21**

No: **2**

Don't know: **1**

Highlights

- The majority, 21 of 24 responses, fully supported extension of the higher age limit for eligibility for Continuing Care from nineteen to twenty years of age from 1 April 2018.
- The majority of respondents' comments in support of this reflected their understanding and support of the principles of Continuing Care within the wider context of the Staying Put agenda and

broader intentions of the Children and Young People (Scotland) Act. There was an 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 are a selection of short quotes from respondents which elaborate on their support for the Order:

“The longer young people have access to supportive care as they mature, the greater the likelihood of producing more confident and resilient adults for the future.” Individual Respondent

“Young people who are care experienced are likely to have less alternative support networks and be more reliant on continuing care. As corporate parents, care and support should continue for at least as long as other parents generally offer.”

Highland Children’s Forum

“Parents do not have a cut of point for care/ love. Neither should our corporate parents.” Individual Respondent

“It gives very valuable time for partners and families to work closely with young people in terms of their transition and their individualised needs in terms of their preparedness, which will be different for each young person.”

Glasgow Health and Social Care Partnership

“Increasing the higher age limit will guarantee that this piece of legislation follows through on its original promise and will ensure that young people can remain in care until the age of 21.”

Who Cares? Scotland

“We fully support the Order, which will ensure the continued eligibility of the current cohort of young people to continuing care as they increase in age. Enabling young people to remain in positive care settings for longer reflects the philosophy of care set out in 2013’s Staying Put Scotland guidance, and recognises the importance of young people remaining in safe, supported environments until they are fully prepared for more independent living.” The Centre for Excellence for Looked After Children in Scotland (CELCIS)

- A small portion of respondents (3 of 24) either did not agree with the principles of Continuing Care, or were undecided. Among the reasons given by respondents were possible impacts on provision for younger children; that this may be unfair to those young people who were not looked after but equally vulnerable; and that at 20 years old young people should be able to look after themselves.

Response

- **As a result of consultation feedback, no adjustments have been requested or made to the draft Order.**

- Most respondents used the opportunity to provide additional comments and highlighted challenges related to full and consistent implementation of the original policy intention. However, these do not affect the drafting of the Order or its intention to increase the higher age limit for eligibility to twenty years of age. Points relating to policy implementation are summarised in the next section of this report and sets out the Scottish Government response.
- The draft Order was laid in the Scottish Parliament on 22 January 2018, the Order can be viewed here:
<http://www.legislation.gov.uk/sdsi/2018/9780111038017/contents>
- 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 the age of twenty 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.
- Subject to Parliament's approval, this Order will come into force on 1 April 2018.

SUMMARY OF KEY ISSUES RAISED IN ‘ANY OTHER COMMENTS’

Among the overwhelming support for the principles of Continuing Care provisions, some respondents highlighted concerns about consistent understanding and implementation of the policy. Again it should be noted that these points do not affect the support for making this Order. Those challenges have been themed and summarised as follows:

Understanding of the policy

- Some variation in local practices 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 of eligibility (1 April 1999), affecting whether some young people may benefit from Continuing Care, is not consistently being understood.
- The age that the duty to provide Continuing Care ends (e.g. the young person’s 21st or 22nd birthday) is not consistently being understood.
- Inflexibility of some local authorities in applying the legislation rather than honouring the principles of Staying Put guidance.

- Also despite best counsel, some young people are still opting for difficult to support and sustain community-based housing options.
- Lack of advice about what support there is for young people not entitled to Continuing Care.
- The importance of independent advocacy for young people with experience of care was also raised.

Funding and resourcing concerns including placement instability and 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.
- Additional pressures on capacity and resources as a result of increasing numbers of young people eligible for and remaining in Continuing Care placements. This includes an increase in the use of purchased placements as local authority placements are occupied by young people remaining in placement.
- Concerns around how foster carers are supported.
- One respondent drew attention to inconsistent or unclear information from the Department for Work and Pensions around eligibility for benefits of young people in Continuing Care.

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.

Response

The Scottish Government would like to thank all the organisations and individuals who replied to this consultation for participating and for providing constructive responses. 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 comments over and above this on implementation of the policy.

As part of our ongoing work to support policy development, we remain keen to work with you to address the points raised and, in the meantime, we have offered some more general information that we hope that will offer helpful clarification.

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. Interdependence more accurately reflects the day to day realities of an extended range of healthy interpersonal 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 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.

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 GIRFEC 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.

We would like to thank Who Cares? Scotland and the Children and Young People's Commissioner for Scotland for developing resources to inform young people and professionals alike on Parts 9 (Corporate Parenting), 10 (Aftercare) and 11 (Continuing Care) of the Children and Young People (Scotland) Act 2014. We would also like to thank the Scottish Throughcare and Aftercare Forum, (STAF) for their work in

trailing resources with their membership. These resources can be found on the Children and Young People's Commissioner for Scotland website here: <https://www.cypcs.org.uk/rights/your-rights-to-care>.

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 for additional resources to be built on. This guidance is available here: <http://www.gov.scot/Publications/2016/11/4644>.

The Scottish Government is taking 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 will achieve this through active promotion of published guidance developed by the sector, and materials developed by Who Cares? Scotland and the Children and Young People's Commissioner for Scotland.

In addition to the guidance mentioned above we also welcome the Care Inspectorate's 2017 publication '**Guidance for care services for looked after and accommodated children and young people who need ongoing support as young adults**'. This is available here: <http://www.careinspectorate.com/images/documents/4092/Guidance%20for%20services%20->

[%20looked%20after%20&%20accomm.%20children%20needing%20on going%20support%20as%20young%20adults.pdf](#) and explains steps taken to ensure foster agencies incur no additional fees or inspections for providing Continuing Care.

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. 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/uksi/2016/732/contents/made>.

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 Scotland¹' will, depending on data quality, publish data on Continuing Care from 2019. We also continue to work regularly with local authorities and with our stakeholders in the care sector to collate 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.

¹ <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 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 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 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>.

Organisations and individuals which Responded to the Consultation

Argyll and Bute Health and Social Care Partnership

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

Care Inspectorate

Glasgow City Health and Social Care Partnership

Highland Children's Forum

North Ayrshire Health and Social Care Partnership

Perth and Kinross Council

Scottish Association of Social Work (part of BASW UK)

Scottish Children's Reporter Administration

Scottish Independent Advocacy Alliance

Social Work Scotland

West Lothian Council

Who Cares? Scotland



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