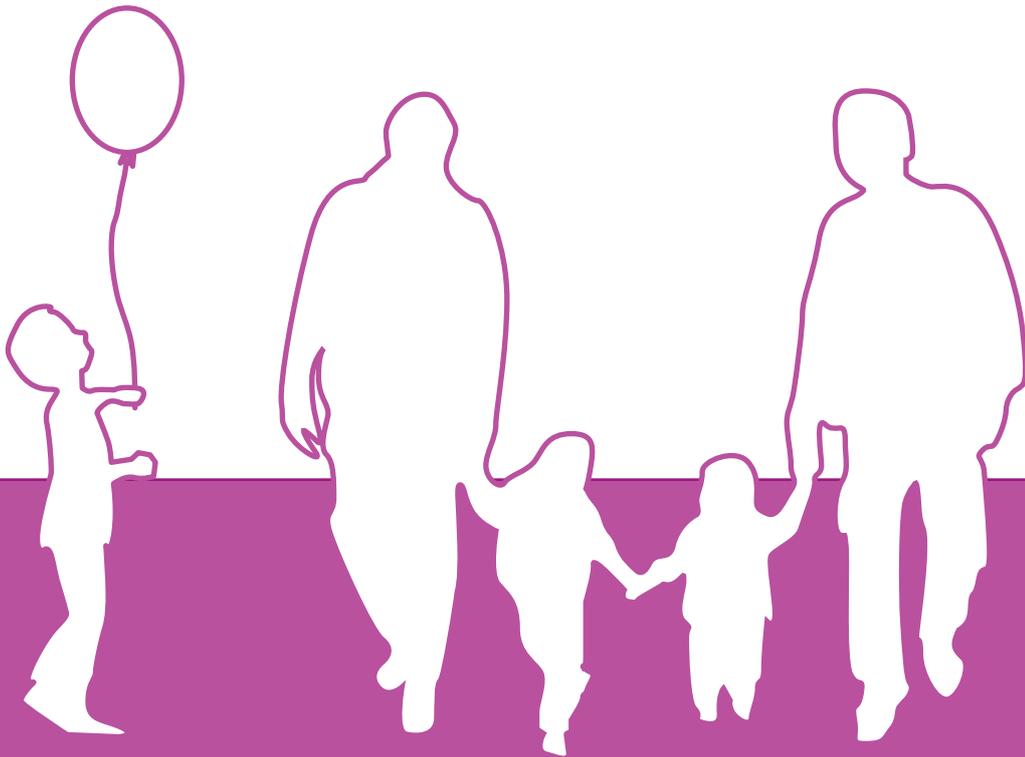




# **CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014:**

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## **Guidance on Part 11: Continuing Care**



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## CONTENTS

Preface.....	1
The Children and Young People (Scotland) Act 2014.....	3
Introduction .....	6
Interpretation of key terms.....	7
Eligibility for Continuing Care .....	13
Gradual introduction of Continuing Care.....	13
Legal status and policy intentions of Continuing Care .....	14
Provision of Continuing Care .....	15
Exemptions to providing Continuing Care.....	17
Welfare Assessments.....	20
Assessing young people for Continuing Care .....	24
Duty of local authority to assess need and provide support.....	24
Providing Continuing Care placements .....	25
Continuing Care allowances .....	26
Protocol between local authorities .....	28
Young people previously looked after in England and Wales .....	29
Reviewing Continuing Care placements.....	30
Managing the end of a Continuing Care placement .....	31
Disputes and complaints .....	32
Reporting on death of young people in Continuing Care.....	34
In summary .....	35
Throughcare and Aftercare process diagram.....	36
Appendix A: Legislative framework .....	37

## PREFACE

1. The principal relevant primary legislation to which this guidance refers is the [Children and Young People \(Scotland\) Act 2014](#) (“the 2014 Act”). This guidance provides local authorities and their community planning partners (CPPs) with information and advice about how they should fulfil their duties under Part 11 (Continuing Care) of the 2014 Act. The duties came into force on 1 April 2015. To ensure full compliance with the legislation it is recommended that this guidance is read as a whole. Sections should not be read in isolation from each other, or without reference to guidance on relevant parts of the 2014 Act and other legislation.
2. In particular, this should be read alongside the guidance relating to the Children and Young People (Scotland) Act 2014 as each of the relevant parts is commenced.
3. For a full explanation of the principles on which this guidance is based (and the Scottish Government’s policy objectives) please refer to Staying Put Scotland published in 2013<sup>1</sup>. Other relevant legislative and policy guidance is listed at Appendix A. This guidance may be reviewed, as necessary, when all the other relevant parts of the Children and Young People (Scotland) Act 2014 are commenced.
4. Although the guidelines set out in this document are not in themselves statutory requirements, all local authorities and CPPs should have regard to them. They reflect the expectations of Scottish Ministers, in accordance with current legislative requirements and may be referenced by scrutiny bodies in the course of external inspection.
5. Moreover, this guidance has been designed to support effective implementation of the Continuing Care provisions introduced by Part 11 the 2014 Act, highlighting issues which local authorities are likely to encounter, and outlining

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<sup>1</sup> Staying Put Scotland Guidance published 2013 <http://www.gov.scot/Resource/0043/00435935.pdf>

potential solutions. It is also useful to frontline practitioners, providing an explanation of how the duties should be applied in day-to-day practice. However, this guidance is not intended to provide answers to every unique situation, and where appropriate looked after young people and local authorities should seek independent legal advice.

6. The aims of this guidance are:
  - a) to reinforce the legal and ethical responsibilities of local authorities towards looked after young people and care leavers;
  - b) to explain local authorities' duty to provide Continuing Care;
  - c) to provide a framework for enhanced and improved personal support (based on on-going personal contact) for Scotland's young people when they cease to be looked after.
  
7. This guidance is directed towards local authorities, but it will also be of importance to corporate parents (as defined by schedule 4 of the 2014 Act) and other individuals and organisations involved in supporting looked after children, young people and care leavers.

## THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

8. The [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act) was passed by the Scottish Parliament on 19 February 2014, and received Royal Assent on 27 March 2014. The legislation is a key part of the Scottish Government's ambition for making Scotland the best place in the world to grow up. By facilitating a shift in public services towards the early years of a child's life, and towards early intervention whenever a family or young person needs help, the legislation encourages preventative measures, rather than crises responses.
9. Underpinned by the Scottish Government's commitment to the [United Nations Convention on the Rights of the Child 1989](#) (UNCRC), and the national children's services improvement programme, [Getting it Right for Every Child](#) (GIRFEC), the 2014 Act also establishes a new legal framework within which services are to work together in support of children, young people and families.
10. The 2014 Act introduces a number of important changes for looked after children and care leavers in Scotland. In summary, these are:
  - 600 hours of free early learning and child care for all two year olds who are looked after or secured with friends or relatives through a Kinship Care Order (Part 6, sections 47 and 48);
  - Corporate Parenting duties for certain individuals and organisations (Part 9);
  - Extended eligibility for Aftercare assistance until their twenty-sixth birthday and a new duty on local authorities to report on the death of a young person in receipt of Aftercare services (Part 10);
  - Introduction of Continuing Care, providing certain care leavers with the opportunity to continue with the accommodation and assistance they were provided with immediately before they ceased to be looked after and a new duty on local authorities to report on the death of a young person in receipt of Continuing Care (Part 11);
  - Support for children at risk of becoming looked after (Part 12);

- Assistance for applicants and holders of a Kinship Care Order (Part 13);
- Use of Scotland's Adoption Register made a duty on all adoption agencies (Part 14); and
- Assessment of Wellbeing (Part 18, section 96).

11. Guidance on all of these provisions is being made available by the Scottish Government. All guidance, when available, should to be considered together as a whole. This guidance relates specifically to Part 11 (Continuing Care) of the 2014 Act.

## INTRODUCTION

12. Part 11 of the 2014 Act concerns itself with Continuing Care, which is a new status established by the 2014 Act and is a significant change to both legislation and policy in Scotland. It inserts a new section 26A into the Children (Scotland) Act 1995 (the 1995 Act) to place local authorities under a duty to provide Continuing Care in certain circumstances. Effectively it offers eligible young persons the entitlement to remain in their care setting up to their twenty-first birthday where they cease to be looked after by a local authority.
  
13. The principle of Continuing Care should be understood in the overall context of the Scottish Government's aims and objectives that are:
  - 1) 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;
  - 2) To improve the assessment, preparation and planning for young people leaving care; and
  - 3) To provide better personal support for young people after leaving care.
  
14. Local authorities have a duty, under section 17 of the Children (Scotland) Act 1995, to provide advice and assistance with a view to preparing children for when they cease to be looked after by them. Continuing Care is part of that continuum of care that better prepares looked after young people for successful transitions out of the looked after system, based on plans which reflect their needs and aspirations, backed up by consistent, personalised support from local authorities and other corporate parents.

15. Continuing Care is an opportunity to plan in a gradual way increasing independence at a rate and stage that suits the evolving capacity of the young person. The aim of the provision is to ensure that where it does not significantly adversely affect their welfare then all eligible looked after young people are encouraged, enabled and empowered to stay in an existing care placement until they are able to demonstrate their readiness and willingness to move on to interdependent living. Interdependence more accurately reflects the day to day reality of an extended range of healthy inter-personal relationships, social supports and networks.<sup>2</sup>

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<sup>2</sup> Staying Put Scotland Guidance published 2013 <http://www.gov.scot/Publications/2013/10/7452>

## **INTERPRETATION OF KEY TERMS**

### **Aftercare**

16. The term 'Aftercare' refers to the advice, guidance and assistance provided to care leavers under section 29 of the 1995 Act. Section 29(1) and (2) of the 1995 Act (as amended by section 66 of the 2014 Act) specifies the descriptions of care leavers that are eligible or potentially eligible for Aftercare. Any young person who ceases to be looked after on or after their sixteenth birthday and is less than twenty-six years of age are eligible (between sixteen and nineteen) or potentially eligible (between nineteen and twenty-six) for Aftercare. Prior to the 2014 Act changes young people who ceased to be looked after beyond their minimum school leaving age and were less than twenty-one years of age were eligible or potentially eligible for Aftercare.
17. It is important to note that eligibility for Aftercare applies to all care leavers, regardless of their placement type while they were looked after.

### **Care Leaver**

18. For the purposes of this guidance a 'care leaver' is a young person who meets the descriptions set out in section 29 and section 30 of the 1995 Act (as amended by section 66 of the 2014 Act).
19. From 1 April 2015 a care leaver is a young person who ceased to be looked after on, or at any time after, their sixteenth birthday. This replaces the previous care leaver definition of a young person who ceased to be looked after over school leaving age.
20. Please note that care leavers under the previous definition will continue to be considered care leavers after 1 April 2015, and therefore remain covered by the duties set out in section 29 and section 30 of the 1995 Act (as amended by section 66 of 2014 Act). This definition also applies to duties set out in Part 9 (Corporate Parenting) of the 2014 Act.

## **Care Placement**

21. The term 'care placement' refers to a placement for a looked after child (as described in section 26(1) (a) of the 1995 Act) with a family, relative or other suitable person or residential establishment.

## **Carer**

22. Under the Continuing Care provisions of the 2014 Act, 'carer' means the family or persons with whom the placement is made.

## **Continuing Care**

23. The term 'Continuing Care' refers to a local authority's duty under section 26A of the 1995 Act to provide, subject to a welfare assessment, young people born after 1 April 1999 and who are at least aged sixteen but have not reached the higher age (as specified by Ministerial Orders) and whose final 'looked after' placement was in foster, kinship or residential care with the same accommodation and other assistance as was being provided by the local authority, immediately before the young person ceased to be looked after.
24. The aim of Continuing Care is 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. It is a new term introduced by Part 11 of the 2014 Act.

## Corporate Parent

25. The definition of a 'corporate parent' is provided by section 56 of the Children and Young People (Scotland) Act 2014. An organisation or individual is a corporate parent if they are listed, or within a description listed, in schedule 4<sup>3</sup> of the Act.

## Corporate Parenting

26. For the purposes of the [statutory guidance on Part 9 \(Corporate Parenting\) of the Children and Young People \(Scotland\) Act 2014](#), the term corporate parenting is defined as

“An organisation's performance of actions necessary to uphold the rights and safeguard the wellbeing of a looked after child or care leaver, and through which physical, emotional, spiritual, social and educational development is promoted.”<sup>4</sup>

27. In relation to wellbeing, the term 'promoted' means 'actively encouraged or further developed'. The term 'safeguarded' means 'protected from harm or damage'. The term 'affected' means 'influenced, changed'.
28. The necessary actions or duties of corporate parents are set out in Part 9, section 58 (Corporate Parenting responsibilities) of the 2014 Act.

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<sup>3</sup> Children and Young People (Scotland) Act 2014, schedule 4 corporate parents  
<http://www.legislation.gov.uk/asp/2014/8/schedule/4/enacted>

<sup>4</sup> Definition is adapted from Sonia Jackson's definition of 'parenting' presented in M. Davies (ed)(2000) The Blackwell Encyclopedia of Social Work, Oxford, Blackwell, and cited in the Scottish Government (2008) [These Are Our Bairns: A Guide for Community Planning Partnerships on Being a Good Corporate Parent](#)

## Looked After Child

29. The definition of a 'looked after child' is set out in section 17(6) of the Children (Scotland) Act 1995 (the 1995 Act), as amended by the Adoption and Children (Scotland) Act 2007 (the 2007 Act) and Children's Hearings (Scotland) Act 2011 (the 2011 Act). A child is 'looked after' by a local authority when he or she is:
- a) provided with accommodation by a local authority under section 25 of the 1995 Act; or
  - b) subject to a compulsory supervision order or an interim compulsory supervision order made by a children's hearing in respect of whom the local authority is the implementation authority (within the meaning of the 2011 Act); or
  - c) living in Scotland and subject to an order in respect of whom a Scottish local authority has responsibilities, as a result of a transfer of an order under regulations made under section 33 of the 1995 Act or section 190 of the 2011 Act; or
  - d) subject to a Permanence Order made after an application by the local authority under section 80 of the 2007 Act.
30. To assist in the provision of their care some children and young people with disabilities are 'looked after' by local authorities (often under section 25 of the 1995 Act arrangement). These children and young people are legally 'looked after', and so covered by the duties set out in Part 11 of the 2014 Act.
31. A child who has been adopted, or a child who is secured in a placement with friends or relatives by means of a Kinship Care Order (under section 11 of the 1995 Act), is not considered 'looked after'. In this guidance the terms 'looked after young person' and 'looked after young people' refer to any individual falling into the definition provided above.
32. As young people can be uncomfortable with the label 'looked after child', and in view of the focus of this guidance (Continuing Care) the terms 'looked after young person' or 'looked after young people' are used.

## Needs

33. An individual's 'needs' will be unique, identified through the process of assessment. For details about how 'needs' should be identified please refer to the section of the guidance on Welfare Assessment and assessing young people for Continuing Care.

## Throughcare

34. The term 'throughcare' refers to the advice and assistance provided to looked after children with a view to preparing them for when they are no longer looked after by a local authority. Local authorities are under a duty to provide such assistance to all looked after children under section 17(2) of the Children (Scotland) Act 1995. For more guidance on throughcare, please refer to the [Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004.

## Wellbeing (as described in section 96 of the 2014 Act)

35. Section 96(2) of the Act describes the term 'wellbeing' in terms of eight indicators. A person assessing a child or young person's wellbeing is to do so by reference to the extent to which the child or young person is or, as the case may be, would be:
- **Safe:** protected from abuse, neglect or harm.
  - **Healthy:** having the best possible standards of physical and mental health, supported to make healthy and safe choices.
  - **Achieving:** accomplishing goals and boosting skills, confidence and self-esteem.
  - **Nurtured:** having a nurturing and stimulating place to live and grow.
  - **Active:** having opportunities to take part in activities.
  - **Respected:** being given a voice, being listened to, and being involved in the decisions which affect their wellbeing.

- **Responsible:** taking an active role within their home, school and community
- **Included:** being a full member of the communities in which they live and learn, receiving help and guidance to overcome inequalities.

36. These eight wellbeing indicators are sometimes known collectively by the acronym 'SHANARRI'. While each indicator is separately defined, in practice they are connected and overlapping. Taken together the eight indicators offer a holistic view of each child or young person, identifying strengths as well as barriers to growth and development.

## **ELIGIBILITY FOR CONTINUING CARE**

37. In terms of Continuing Care an eligible person is described in section 26A of the 1995 Act, as inserted by section 67 of the 2014 Act, as a person who is at least sixteen years of age (i.e. born after 1 April 1999) but has not reached the 'higher age' as specified by Order made by Scottish Ministers.
38. Article 3 of [The Continuing Care \(Scotland\) Order 2015](#) (the 2015 Order) specifies that the period to provide Continuing Care under section 26A(6) of the 1995 Act is the period from the date on which an eligible person ceases to be looked after by a local authority until the date of that person's twenty-first birthday.

## **Gradual Introduction of Continuing Care**

39. In order to provide local authorities and carers with adequate time to plan and prepare, Continuing Care is being introduced gradually. In the first year (2015-16) only sixteen year old looked after children (who leave foster, kinship or residential care on or after 1 April 2015) will be eligible. These young people will have been born in the twelve months from 1 April 1999 to 31 March 2000. Article 2 of the 2015 Order states that the 'higher age' specified for the purpose of section 26A(2)(b) of the 1995 Act was 'seventeen' years of age. Article 2 of the 2015 Order was amended by [The Continuing Care \(Scotland\) Amendment Order 2016](#) which extended the specified higher age from 'seventeen' to 'eighteen' years of age.
40. In subsequent years the Scottish Government will extend the entitlement to Continuing Care by annually amending The Continuing Care (Scotland) Order 2015 to increase the 'higher age' for eligible persons by a year at a time (using the power in section 26A(2)(b) of the 1995 Act.
41. The gradual extension of eligibility as enabled by section 26A(2)(b) of the 1995 Act also means that any eligible young person (i.e. those born after 1 April 1999) who remains looked after until seventeen or eighteen years of age will be

entitled to receive Continuing Care support when they cease to be looked after up until their twenty-first birthday.

42. Continuing Care enables a young person to remain in the placement they were in when they were looked after. Local authorities should consider Continuing Care among all the options available to young people ceasing to be looked after. It should not be used as an alternative to remaining looked after under the 1995 Act if it is in the best interest of the young person. A young person who is currently looked after under section 17(6) of the 1995 Act should remain 'looked after' up until the age of eighteen years if that is in their best interest.

### **Legal status and policy intentions of Continuing Care**

43. A young person in Continuing Care is not 'looked after' under section 26(A) of the 1995 Act, they are in a Continuing Care placement. Continuing Care is a legal term to describe the placement. Section 26(A) of the 1995 Act states that young people in Continuing Care are entitled to the same supports (i.e. accommodation and other assistance) as when they were looked after.
44. Local authorities should develop Staying Put<sup>5</sup> policies that provide carers with information and guidance relating to all aspects of continuing the young person's accommodation and support with them when they cease to be looked after.
45. Continuing Care is available to all eligible young people who were looked after in foster care, in formal kinship care (if they were looked after under section 17(6) or section 25 of the 1995 Act) and in residential care. This includes young people in foster care or residential education/care purchased by the local authority from private and third sector providers. Children and young people who are 'looked after at home', are not eligible for Continuing Care, but may go on to receive Aftercare support. Please see Guidance on Part 10 (Aftercare) of the 2014 Act.

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<sup>5</sup> Staying Put Scotland Guidance published 2013 <http://www.gov.scot/Resource/0043/00435935.pdf>

46. Children and young people who are in a placement by means of a kinship care order under section 11 of the 1995 Act are not looked after and therefore not entitled to Continuing Care. Good practice would be for local authorities to provide appropriate support, advice and guidance to young people when an order under section 11 of the 1995 Act comes to an end.
47. Section 26A of the 1995 Act (Provision of continuing care: looked after children) was inserted by section 67 of the 2014 Act. Section 26A(1) states that the section applies where an eligible person ceases to be looked after by a local authority and section 26A(2) defines an 'eligible person' as a person who is at least sixteen years of age and is not yet such higher age as may be specified in an Order made by Scottish Ministers.
48. A local authority must, under section 26A(3) of the 1995 Act, provide such an eligible person with Continuing Care, subject to the exceptions listed in section 26A(5).

### **Provision of Continuing Care**

49. Section 26A(4) of the 1995 Act requires local authorities to provide eligible care leavers with a continuation of the same accommodation and other assistance as was being provided for the person by the authority, immediately before the person ceased to be looked after. This means that if an eligible young person in a foster placement, residential care, or looked after in kinship care requests Continuing Care then they are requesting to remain in that placement with the same carers and they will receive the same package of support they were receiving before they entered Continuing Care.
50. A young person who is the subject of a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 is 'looked after' until eighteen years old. They are therefore eligible for Continuing Care and entitled to request this prior to the end of a permanence order at any point on or after the young person's sixteenth birthday or on reaching age eighteen years. This

should be discussed as part of the planning process for the young person leaving care.

51. The only reason for failing to provide Continuing Care is if to do so would significantly adversely affect the welfare of the young person (section 26A(5)(c)). This must be evidenced in a Welfare Assessment carried out under articles 4 and 7 of [The Continuing Care \(Scotland\) Order 2015](#).
52. For some looked after children who have complex needs, this will require detailed discussion, planning and collaboration by all relevant parties to agree a level of support that meets the needs of the young person and is supported by the carer. All corporate parents have a duty to collaborate in order to meet the needs of looked after children under their Corporate Parenting responsibilities in Part 9 (Corporate Parenting) of the 2014 Act. Please see the [Children and Young People \(Scotland\) Act 2014: Statutory Guidance on Part 9 Corporate Parenting](#) published August 2015
53. Continuing Care must also be provided by Residential Schools who provide a targeted service. It may be that these resources can only offer Continuing Care until age eighteen which is the age at which children must leave Secondary Education. Local authorities will want to ensure that proper planning for a placement move is in place at this point and the young person receives support of an equivalent standard provided previously by the school.

## Exceptions to providing Continuing Care

54. There are three circumstances as detailed in section 26A(5) of the 1995 Act as inserted by section 67 of the 2014 Act where a local authority does not have a duty to provide Continuing Care to an eligible young person;
- a) If the young person was accommodated in secure care immediately before ceasing to be looked after;
  - b) If the young person was in a care placement where the carer/provider has indicated that they are unable or unwilling to continue to provide the placement; or
  - c) If the local authority considers that providing the care would significantly adversely affect the welfare of the person.
55. 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 in an Order made by Scottish Ministers. Article 3 of [The Continuing Care \(Scotland\) Order 2015](#) specifies that this period is the period from the date on which an eligible person ceases to be looked after by a local authority until the date of that person's twenty-first birthday.
56. Section 26A(7) of the 1995 Act states that the duty to provide Continuing Care ceases if:
- a) the person leaves the accommodation of their own volition,
  - b) the accommodation ceases to be available, or
  - c) the local authority considers that continuing to provide the care would significantly affect the welfare of the person.
57. In relation to section 26A(7)(c) of the 1995 Act it is expected that only in exceptional circumstances will a local authority cease provide a Continuing Care placement because continuing to do so would significantly adversely affect the young person, if they were to remain in placement. The Welfare

Assessment which a local authority must carry out to reach this conclusion is described in more detail later in this guidance.

58. Section 26A(8) of the 1995 Act describes, for the purposes of section 26A(7)(b), the situations in which accommodation ceases to be available and includes:
- a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
  - b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
  - c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.
59. In relation to 26A(8)(b) or (c)(i) where accommodation ceases to be available this will only be applicable in exceptional circumstances, such as a residential establishment closing without any alternative provision being provided or where the arrangements under which the establishment was provided come to an end. It will not be due to the accommodation provider being unable or unwilling to continue the placement, unless section 26A(7)(c) of the 1995 Act applies and the local authority considers that remaining in the placement would significantly adversely affect the welfare of the young person.
60. Article 4 of The Continuing Care (Scotland) Order 2015 states that, for the purposes of section 26A(5)(c) of the 1995 Act, a local authority must consider whether providing an eligible person with Continuing Care would significantly adversely affect the welfare of that person;
- a) as soon as reasonably practicable before the person ceases to be looked after by them; and
  - b) by carrying out a welfare assessment of that person in accordance with Article 7.

61. Article 5 of The Continuing Care (Scotland) Order 2015 states that, for the purposes of section 26A(7)(c) of the 1995 Act, a local authority must consider whether continuing to provide an eligible person with Continuing Care would significantly adversely affect the welfare of that person;
- a) at intervals not exceeding twelve months (the first interval starting from the date on which the person ceases to be looked after by the local authority); and
  - b) by carrying out a welfare assessment of the person in accordance with Article 7.
62. The local authority must prepare and publish a written statement detailing the manner in which the eligible person is to be assessed (The Continuing Care (Scotland) Order 2015, Article 6).
63. The purpose of the Welfare Assessment is to assess if the placement is appropriate and not significantly adversely affecting a young person's welfare. Matters to be considered by the local authority in carrying out the Welfare Assessment are set out in Article 7(4) of The Continuing Care (Scotland) Order 2015. By virtue of the provision in new section 23A(1) and (2) of the 1995 Act (as inserted by section 95 of the 2014 Act) when exercising their Continuing Care functions under section 26A the local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing. In assessing the wellbeing of a child or young person the local authority is to do so by reference to the extent to which the matters listed in section 96(2) of the 2014 Act (i.e. the wellbeing indicators) are, or as the case may be, would be satisfied in relation to the child or young person (section 23A(3)).

## WELFARE ASSESSMENTS

64. Local authorities will need to consider how they will incorporate the Welfare Assessment, having regard to the wellbeing indicators, into their current processes. It may be as part of an existing assessment or as a new Continuing Care assessment. The existing Pathways materials<sup>6</sup> are still relevant to all young people preparing to leave care and can be used to support the final Welfare Assessment.
65. Whatever assessment process is used, best practice would be to incorporate the assessment outcomes into the young person's plan. A copy of the plan must be shared with the young person and the service provider in relation to the young person unless they consider that to do so would place the young person at risk or be incompatible with any legal obligation to which the authority is subject.
66. A young person's Continuing Care placement cannot be ended because there are concerns regarding the welfare or wellbeing of another person in the same placement. It can only be ended if the welfare of the young person in the Continuing Care placement is significantly adversely affected.
67. This does not mean that a challenging relationship within the placement should not be considered as part of a Welfare Assessment but it must be shown that the welfare of the young person in the Continuing Care placement will be significantly adversely affected by the challenging relationship and by continuing to live in the same accommodation.
68. It is expected that all efforts will be made to resolve any issues before they can be considered as a reason for ending a placement. If the placement was suitable when the young person was looked after it is unlikely it would not be suitable when they cease to be looked after.

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<sup>6</sup> Pathways Handbook published 2004 <http://www.gov.scot/Publications/2004/05/19357/37092>

69. The relationships between a carer and a looked after child is of paramount importance and one of the main reasons along with a consistent home environment that Continuing Care should be encouraged.
70. If neither the relationship between a young person and their carer nor the accommodation can be maintained, it may be that the alternative provided by the local authority comes from another part of the service such as the Aftercare service.
71. As corporate parents all local authority departments including housing departments must work collaboratively to provide suitable accommodation for care leavers. Whatever the resource and service provided, the local authority should ensure that the transition for the young person is as seamless as possible whilst best meeting their needs.
72. Where the duty to provide Continuing Care does not apply or where it cannot be provided due to the circumstances above, the local authority should make every effort to provide a support of an equivalent standard including maintaining existing relationships with carers if appropriate.
73. There will be challenges in providing equivalent support and accommodation particularly if a young person is no longer able to stay within a long established foster placement. In this case the local authority should endeavour to provide accommodation and support which best meets the needs of the young person and should, at least, reflect the support and accommodation that would have been offered had Continuing Care been available.
74. It should again be noted that only if the Welfare Assessment identifies an issue that significantly adversely affects the welfare of a young person, should ending the placement be considered. A local authority must make it clear in the Welfare Assessment that this is something that poses a serious risk to the young person's health and/or wellbeing and cannot be rectified.

75. Every attempt should be made to resolve the issues that are significantly adversely affecting the young person to enable the placement to continue wherever possible. Only in the most exceptional of circumstances would it be expected that an issue identified in a Welfare Assessment as significantly adversely affecting a young person's welfare would be unresolvable.
76. The Welfare Assessment should explicitly evidence and record how ending the placement will reduce the harm being caused to the young person. It must also be shown in a Welfare Assessment how any new accommodation will address the issue that is significantly affecting the young person's welfare, and why this could not have been addressed while staying in the original placement.
77. In carrying out a Welfare Assessment, the local authority must, unless it is not reasonably practicable to do so, seek and have regard to the views of the young person and take all reasonable steps to enable the eligible person to attend and participate in any meetings relating to the Welfare Assessment. (2015 Order, Article 7(1)).
78. The local authority must also ensure that a written record of the views of the young person is prepared and as soon as is reasonably practicable, a copy of that written record is made available to the young person. The written record must be taken into account and recorded as part of the Welfare Assessment. (2015 Order, Article 7(3)).
79. The local authority must also ensure that a written record is prepared of the information and views obtained in the course of carrying out a welfare assessment; the deliberations at any meeting held in connection with any aspect of a welfare assessment and the results of a welfare assessment (2015 Order, Article 7(6)). Local authorities must, as soon as reasonably practicable, provide the eligible person with a copy of the written record of the results of the welfare assessment and must ensure that the contents of that record are explained to the eligible person (2015 Order, Article 7(7)).

80. As Continuing Care is a service provided to young people who are transitioning out of care, [The Pathways Handbook](#) is relevant to Continuing Care, and will help practitioners to properly engage a young person in this process.

## ASSESSING YOUNG PEOPLE FOR CONTINUING CARE

### Duty of local authority to assess need and provide support

81. Chapter 6 of [Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities published in 2004](#) state that a local authority must carry out a pathway assessment for all currently looked after young people and every compulsorily supported person. The Pathways Handbook<sup>7</sup> materials were prepared to help local authorities carry out pathway assessments effectively and may be useful in completing a Welfare Assessment for Continuing Care. However, local authorities should always have regard to the particular statutory requirements for Welfare Assessments for Continuing Care which are set out in Articles 4 to 7 of The [Continuing Care \(Scotland\) Order 2015](#).

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<sup>7</sup> Pathways Handbook published 2004 <http://www.gov.scot/Publications/2004/05/19357/37092>

## PROVIDING CONTINUING CARE PLACEMENTS

82. The children's hearing will be interested to know what provisions are being made for a young person for whom they are considering removing a compulsory supervision order in the same way as they do currently. The option of Continuing Care should have already been discussed with a looked after young person as part of their throughcare support and prior to a hearing. This information should be included in the report for the hearing.
83. Continuing Care should not be seen by practitioners as a reason for removing a compulsory supervision order if this remains necessary to best support a young person. If it is in the best interest of a young person to remain looked after until eighteen years old then this should be the recommended option. It is important to understand that a young person can leave a Continuing Care placement at any time and is unlikely to be able to return to the placement. This does not prevent a local authority re-accommodating under section 25 of the 1995 Act.
84. Local authorities may also provide a voluntary placement under section 25 of the 1995 Act if it is in the best interest of the young person however, a placement under section 25 of the 1995 Act should not be used as an alternative to a Continuing Care placement. A Continuing Care placement offers significantly more security for the young person than a placement under section 25 of the 1995 Act.
85. Where a young person has on-going complex needs, such as a disability, local authorities and health boards, as corporate parents, will need to ensure that they work collaboratively together to meet the needs of a young person who requests Continuing Care. It will be of crucial importance, in these circumstances, that all parties have the necessary supports and framework to ensure that their respective needs are addressed.

86. Where the Continuing Care provider is a foster carer the provision of foster care for other children and/or young people is not affected by providing a Continuing Care placement. The young person in Continuing Care does not count towards the number of foster placements permitted in the placement.
87. It may be that a foster carer providing a Continuing Care placement will need to apply to be registered as an adult placement in addition to any current registration with children's services. Whilst this may be seen as an additional responsibility for the service provider it may be required to fulfil their responsibilities to provide Continuing Care in the spirit of the legislation. Further advice is available from the Care Inspectorate<sup>8</sup>.
88. Failing to register carers as an adult placement provider is not a sufficient reason for not providing a young person with Continuing Care. Local authorities as corporate parents are expected to work collaboratively with providers of foster care to fulfil their obligation to provide Continuing Care. They are also required to report to ministers on how they have fulfilled their role as corporate parents.

### **Continuing Care allowances**

89. Continuing Care should be considered only if a compulsory supervision requirement needs to be removed. It is strongly advisable that young people remain 'looked after' until eighteen years old. A local authority should carefully consider the financial implications for a carer offering a Continuing Care placement to ensure that a lack of financial support is not a barrier to the continuation of the placement regardless of whether the young person is in a residential, foster or looked after kinship care placement.
90. Finance should be considered early in the planning process for a Continuing Care placement and as part of throughcare support. The young person should be included in all aspects of planning their Continuing Care placement.

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<sup>8</sup> Care Inspectorate website <http://www.careinspectorate.com>

Payments made to care leavers for Continuing Care are made under section 26A of the Children (Scotland) Act 1995.

91. Careful consideration should be given to the balance of meeting a carers costs and providing financial support to the young person as part of the on-going process of increasing the young person's personal responsibility. There should be no difference between the planning for a young person's finances before they ceased to be looked after and when they are in Continuing Care. Each case should be assessed based on individual circumstances.
92. Although a young person being provided with Continuing Care under section 26A of the 1995 Act is not, during this period, eligible for aftercare financial support under section 29 of the 1995 Act (see new section 29(2A) of the 1995 Act) as they are not considered care leavers, the support they receive should be no less than a young person in receipt of Aftercare support (Part 10 of the 2014 Act). The 2014 Act provides that young people in Continuing Care are entitled to the same support they received prior to ceasing to be looked after. This includes financial support.
93. A young person in Continuing Care is entitled under section 26A(4) of the 1995 Act to:

“The same accommodation and other assistance as was being provided for the person by the authority..., immediately before the person ceased to be looked after.”
94. Once a young person in Continuing Care reaches their eighteenth birthday they may be eligible for Universal Credit, Working Tax Credits and/or Housing Benefit. As corporate parents local authorities and other partners should work collaboratively to ensure that the young person is in receipt of all eligible supports and this should be taken into account in the young person's plan.

95. Following consequential amendments made by The Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016<sup>9</sup>, any payments in the form of income made to the young person or their carer under section 26A of the 1995 Act (Continuing Care) should be disregarded by the Department for Work and Pensions when calculating that person's benefits, including income support, job-seeker's allowance and housing benefit. This means that such payments will not be taken into account in any benefits claim.
96. If a carer is caring for a sixteen or seventeen year old in a Continuing Care placement it may be that the young person is eligible for job seekers allowance. This allowance should not impact on any benefits claim made by the carer. The local authority must cover the full cost of the Continuing Care placement.
97. It is expected that this may affect a very small number of carers, if any, and a local authority should in this case make every effort to offset any financial burden.

### **Protocol between local authorities**

98. There may be circumstances in which a young person is provided with a Continuing Care placement out with the local authority that had responsibility for their care order. This may be desirable if the young person has lived in the placement for a significant period and has established relationships, education and/or employment in that area and wishes to remain there.
99. Section 21 of the Children (Scotland) Act 1995 sets out expected cooperation between local authorities. Section 26A(4) of the 1995 Act states that a young person who is in Continuing Care is entitled to the same supports as they received when they were last looked after and the principle that the local authority who last looked after a young person should remain responsible should be applied for young people in Continuing Care. Where this is

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<sup>9</sup> The Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016 <http://www.legislation.gov.uk/uksi/2016/732/contents/made?article-8-2-a>

impractical local authorities may wish to enter into financial agreements with each other regarding the management of support to the young person.

### **Young people previously looked after in England and Wales**

100. Local authorities should consider that similar principles apply to young people leaving care and requesting a Continuing Care placement in England and Wales.
  
101. If it is a Scottish local authority that is responsible for the young person, they remain responsible for the young person and have a duty to provide a Continuing Care placement, unless a Welfare Assessment demonstrates that the placement would significantly adversely affect the welfare of the young person and that this cannot be resolved in their current placement. Such circumstances will be extremely rare, as noted earlier in this guidance.

## REVIEWING CONTINUING CARE PLACEMENTS

102. Article 5(a) of the Continuing Care (Scotland) Order 2015 sets out the requirement to assess whether continuing to provide an eligible person with Continuing Care would significantly adversely affect the welfare of that person must occur at least once a year. The purpose of this Welfare Assessment is to ascertain that whether continuing to provide the Continuing Care placement would significantly adversely affect the welfare of the young person. Under section 26A(7)(c) of the 1995 Act, the local authority's duty to provide Continuing Care ceases if the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the young person. The local authority will want to ensure that the placement is still meeting the needs of the young person and that future planning is discussed and future plans are in place.
103. In any situation in which a local authority has evidence of an issue significantly affecting the young person's welfare, it is very unlikely that no action will be taken until the next scheduled annual review meeting. In these circumstances it is in the best interests of the young person and carer(s) that the assessment takes place as soon as practicably possible. It should therefore be extremely rare that a regular review meeting will recommend anything other than the continuation of the placement.
104. If a Welfare Assessment assesses a situation as potentially significantly adversely affecting the welfare of a young person in a Continuing Care placement all reasonable steps must be taken to address the issue in order to allow the placement to continue.
105. A young person over sixteen years in Continuing Care, who remains in the same placement, may require to undergo a Disclosure check depending on their specific individual circumstances e.g. where there are unrelated children in the same household. However the outcome of any Disclosure check would not impact on the provision of a Continuing Care placement. Advice should be sought from the Care Inspectorate.

## MANAGING THE END OF A CONTINUING CARE PLACEMENT

106. A young person can choose to leave Continuing Care at any point and no compulsion to return to the care placement should be brought to bear although, where it is felt that Continuing Care continues to best meet the needs of the young person and to keep them safe, practitioners will wish to make this clear and discuss this with young people.
107. The duty to provide Continuing Care ceases when the young person leaves the placement of their own free will (section 26A(7)(a) of the 1995 Act). They cannot return to a Continuing Care placement under section 26A of the 1995 Act. This should not preclude local authorities considering other suitable options appropriate to the young person's needs. This should include re-accommodating the young person under section 29 (Aftercare) of the 1995 Act (as amended by the 2014 Act) or section 25 of the 1995 Act, if necessary.
108. It may be that young people on their first attempt at independent living fail to cope with the many responsibilities of living away from home. They may have left too early or underestimated the complexities of being independent. It is incumbent on all local authorities to consider the variety of ways that these young people can be helped. It may be through section 25 of the 1995 Act in alternative accommodation or if the Continuing Care placement or looked after placement is still available, there is no reason why the young person cannot return to it as accommodation provided under section 29 (Aftercare) of the 1995 Act.
109. The duty to provide Continuing Care may also cease if the accommodation in which the young person is staying ceases to be available (section 26A(7)(b) of the 1995 Act). Section 26A(8) elaborates further on the situations in which accommodation ceases to be available. In the case of a care placement, this can be where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement (section 26A(8)(a)). In the case of a residential establishment provided by the local authority, this can be where the authority closes the establishment (section 26A(8)(b)). In the case of a

residential establishment provided under arrangements made by the local authority, where the arrangements come to an end (section 26A(8)(c)).

110. For whatever reason it ceases, once the Continuing Care placement comes to an end the local authority is still under a duty to assess the young person for Aftercare support (by virtue of section 29(5) of the 1995 Act) and, if the young person applying for support is deemed to have eligible needs which cannot otherwise be met, the local authority is under a duty to provide the young person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs (potentially up to their twenty-sixth birthday).
111. A local authority has a duty to provide Aftercare support to all young people leaving care after they turn sixteen until their nineteenth birthday (section 29(1) of the 1995 Act, as amended by the 2014 Act). Care leavers who are at least nineteen but less than twenty-six years of age may apply to their local authority to seek Aftercare support by virtue of section 29(2) of the 1995 Act (as amended by the 2014 Act). As described in the previous paragraph, if such a young person making an application is assessed and found to have eligible needs that cannot otherwise be met, the local authority is under a duty to the young person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs (potentially those services up to their twenty-sixth birthday) (section 29(5A)(a) of the 1995 Act). Even if the young person is not found to have such eligible needs, a local authority has the discretion to provide such advice, guidance and assistance as it considers appropriate having regard to the person's welfare (section 29(5A)(b)). A local authority may also, but it is not legally required to, provide Aftercare to a care leaver beyond the age of twenty-six years old (see section 29(5B)).

## DISPUTES AND COMPLAINTS

112. A young person receiving Continuing Care may make a complaint to the local authority about the service they have received or how any dispute has been handled. Complaints should be made through the normal methods of complaint about social work services under the Social Work (Scotland) Act 1968 or any other appropriate complaints procedures for the local authority. Current Guidance and Directions on the 1968 Act procedure were laid out in Circular Number SWSG 5/1996 of 15 March 1996<sup>10</sup>.
113. The 1968 Act procedure requires that the local authority instigate an informal problem solving stage where every attempt is made to resolve the complaint. If this is not successful, unresolved complaints will then be investigated by specially designated staff.
114. Local authorities should ensure that young people have knowledge, access to and support to engage with complaints procedures. This will mean that information, in a format which young people can understand, needs to be available as does other such support, for example advocacy.
115. Looked after disabled young people need access to complaints also and this might require additional support from the local authority.
116. The young person should also be made aware of other bodies they can seek advice from, such as the Care Inspectorate<sup>11</sup> or the Children and Young People's Commissioner Scotland<sup>12</sup>.
117. Once all local authority complaints procedures have been exhausted, a young person remaining aggrieved could raise a complaint with the Scottish Public Services Ombudsman<sup>13</sup>.

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<sup>10</sup> CIRCULAR NO SWSG5/1996 of 15 March 1996  
<http://www.gov.scot/Resource/Doc/1035/0017124.pdf>

<sup>11</sup> Care Inspectorate website <http://www.careinspectorate.com/index.php/complaints>

<sup>12</sup> Children and Young People's Commissioner Scotland website <http://www.cypcs.org.uk/rights>

<sup>13</sup> Scottish Public Services Ombudsman website <http://www.spsso.org.uk>

## REPORTING ON DEATHS OF YOUNG PEOPLE IN CONTINUING CARE

118. Notifying the death of a person in Continuing Care to the Scottish Ministers and the Care Inspectorate is a statutory duty of local authorities in accordance with section 26A(10) of the 1995 Act as inserted by section 67 of the 2014 Act.
119. If a local authority becomes aware of the death of a young person in Continuing Care further advice is available from the Care Inspectorate, please see the website section on notifications and record keeping<sup>14</sup>. Notifications should be made to Scottish Ministers by email to: [looked\\_after\\_children@gov.scot](mailto:looked_after_children@gov.scot).

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<sup>14</sup> Care Inspectorate website, notifications and record keeping  
<http://www.careinspectorate.com/index.php/notifications#continuingcare>

## IN SUMMARY

The age at which looked after young people leave care in Scotland remains a key factor in ensuring a successful transition and achieving positive outcomes throughout life. Care leavers continue to become independent and are expected to look after themselves much sooner than their same-age peers. (Housing Options and Care Leavers, Improving Outcomes into Adulthood<sup>15</sup>, CELCIS July 2015).

Staying Put in nurturing positive relationships through a Continuing Care placement is a key factor in helping young people and local authorities achieve successful and sustained interdependence for young people ceasing to be looked after.

Continuing Care enables young people to retain a day-to-day relationship with their carer, and an on-going relationship with the local authority and other corporate parents (see Part 9 (Corporate Parenting) of the 2014 Act). In this sense, Continuing Care is about facilitating relationship-based practice with young people, and providing them with a continued feeling of belonging, permanence and stability to support and prepare them as they transition towards interdependency.

The Scottish Government is clear that a looked after young person should be allowed to remain in their care placement until the time is right for them to move on with a suitable care plan in place. Local authorities should work within the enabling spirit of legislation to provide caring environments for all looked after young people as they transition to inter-dependent living at a time and pace that suits them.

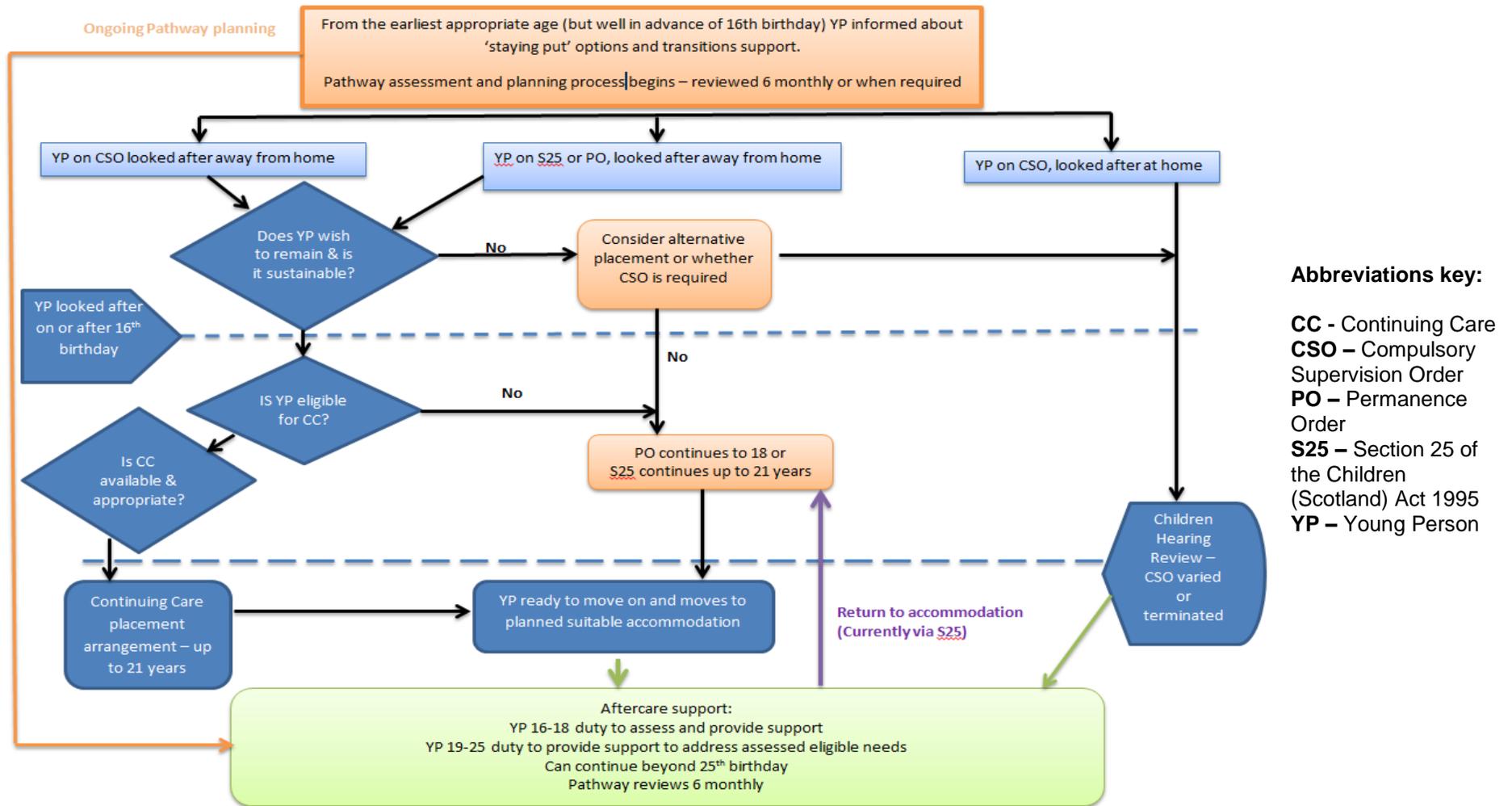
It is counterproductive to focus on what legislation enables a care leaver's needs to be met as legislation will not cover all eventualities. The priority must be that all looked after children will have a care plan that meets their individual circumstances and allows them to remain in their care placement if at all possible.

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<sup>15</sup> <https://www.celcis.org/knowledge-bank/search-bank/inform-housing-options-and-care-leavers/>

# THROUGH-CARE AND AFTERCARE PROCESS DIAGRAM

A more detailed process diagram is also available on the CELCIS website here: <https://www.celcis.org/knowledge-bank/search-bank/throughcare-and-aftercare-whole-systems-process-flowchart/>



## **APPENDIX A: LEGISLATIVE FRAMEWORK**

This guidance and accompanying Regulations should be read in conjunction with the following legislation:

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

The [Children and Young People \(Scotland\) Act 2014](#) is a significant piece of legislation, introducing major changes to planning, operation and delivery of children's services in Scotland. The Act is particularly important for looked after children and care leavers, putting 'corporate parenting' (Part 9) onto a statutory footing, extending 'aftercare' support to a wider population of care leavers (Part 10) and introducing a new provision of 'Continuing Care' for some care leavers (Part 11). The Act also requires all adoption agencies to use Scotland's Adoption Register (Part 14), and amends the Children (Scotland) Act 1995 to ensure assessments consider a child or young person's 'wellbeing' (section 95).

### **Children (Scotland) Act 1995**

The [Children \(Scotland\) Act 1995](#) centres on the needs of children and their families. It sets out the duties and powers available to public authorities to support children. The following sections relate to Throughcare and Aftercare and Continuing Care duties:

Under section 17 the local authority has a duty to provide advice and assistance with a view to preparing a child for when he or she is no longer looked after by a local authority.

Section 21 sets out details of co-operation between authorities and other bodies. Section 29 sets out the main local authority responsibilities to young people who leave care.

Under section 29(1) there is a duty to advise, guide and assist those less than nineteen years old unless the local authority is satisfied that the young person's welfare does not require it. Section 29(1) is amended by section 66(2) of the 2014 Act to make any young person at least age sixteen but not yet nineteen who ceases to be looked after by a local authority on or after their sixteenth birthday eligible for Aftercare services from their local authority.

- a) Under section 29(2), as amended by section 66(2) of the 2014 Act there is a duty to provide young people between nineteen and up to age twenty-six, regardless of their placement type while looked after, with the opportunity to apply to their local authority for Aftercare.
- b) Section 29(3) states that assistance may include assistance in kind or in cash.
- c) Section 29(5) currently provides that a local authority must, in relation to any person to whom they have a duty under section 29(1) or who makes an application under section 29(2), carry out an assessment of that person's needs. New subsection 5A provides that if, after carrying out that assessment, the local authority is satisfied that a person who applies to them under section 29(2) has eligible needs which cannot be met by other means, the local authority must provide them with such advice guidance and assistance as it considers necessary for the purposes of meeting those needs. A local authority may, but it is not legally required to, provide Aftercare to a care leaver beyond the age of twenty-six (new subsection (5B)).

Section 30 sets out when local authorities may give financial assistance towards the education or training expenses of those who have ceased to be looked after.

### **Regulation of Care (Scotland) Act 2001**

The [Regulation of Care \(Scotland\) Act 2001](#) modernises the regulation of care services and, at section 73, strengthens the provisions of section 29 of the Children (Scotland) Act 1995.

Section 73 (1) amends section 29 to include duties on local authorities to:

- Carry out an assessment of the needs of young people who have been looked after who they have a duty or power to advise, guide or assist under section 29;
- Establish a procedure for considering representations, including complaints, made to them about the discharge of their functions under section 29.

Section 73(2) gives Scottish Ministers a power to make regulations about:

The manner in which assistance is to be provided under section 29 to young people who have been looked after;

- Who is to be consulted in relation to an assessment of needs;
- The way an assessment is to be carried out, by whom and when;
- The considerations to which the local authority are to have regard in carrying out an assessment;
- The recording of the results of an assessment; and
- Procedures for considering representations including complaints.

### **Children (Leaving Care) Act 2000**

The [Children \(Leaving Care\) Act 2000](#) changed the system for providing services to young people leaving care in England and Wales. Its aim was to keep young people in care until they are prepared and ready to leave; to improve the assessment, preparation and planning for leaving care; to provide better personal support for young people after leaving care and to improve the financial arrangements for care leavers. Section 6 of the Children (Leaving Care) Act 2000, which deals with access to social security benefits for some young people leaving care, also applies to Scotland.

## **Looked After Children (Scotland) Regulations 2009 and Adoption and Children (Scotland) Act 2007**

The [Guidance on the Looked After Children \(Scotland\) Regulations 2009 and Adoption and Children \(Scotland\) Act 2007](#) replace the Arrangements to Look After Children (Scotland) Regulations 1996 and Fostering of Children (Scotland) Regulations 1996. They also affect parts of the Residential and Other Establishments (Scotland) Regulations 1996 where they apply to the placement of a child or young person in a residential establishment. They bring together regulation of the care planning services offered to looked after children and their families with the care provision required when children are separated from their birth parents. They also reflect more detailed and consistent requirements when children are looked after by kinship carers.

## **Social Work (Scotland) Act 1968**

The [Social Work \(Scotland\) Act 1968](#) sets out the legislative framework for raising complaints to the local authority about the service they have provided or how an appeal has been handled. Current Guidance and Directions on the 1968 Act procedure were laid out in Circular Number SWSG 5/1996 of 15 March 1996.

## **Children and Young People (Scotland) Act 2014: Statutory Guidance on Part 9: Corporate Parenting**

The [Children and Young People \(Scotland\) Act 2014: Statutory Guidance on Part 9: Corporate Parenting](#) provides corporate parents with information and advice about how they should fulfil the duties set out in the 2014 Act. These duties come into force on 1 April 2015. Subject to specific exemptions, all corporate parents must have regard to this guidance. Compliance will be monitored through reviews of corporate parenting reports (carried out by Scottish Ministers) and independent inspection.

The guidance sets out the parameters within which corporate parents should develop their own approaches, either individually or in partnership. Those approaches should also be shaped by the corporate parent's primary functions, and informed by the needs, views and experiences of looked after children and care leavers.

**Other legislation relevant to looked after children and care leavers in Scotland includes:**

- [Support and Assistance of Young People Leaving Care in Scotland Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities published in 2004](#)
- [Human Rights Act 1998](#)
- [Data Protection Act 1998](#)
- [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)
- [Local Government in Scotland Act 2003](#)
- [Protection of Vulnerable Groups \(Scotland\) Act 2007](#)
- [Equality Act 2010](#)
- [Social Care \(Self-Directed Support\) \(Scotland\) 2013](#)
- [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)



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