

Consultation on Draft Secondary Legislation for Parts 9, 10 and 11 of the Children and Young People (Scotland) Act 2014

**The Corporate Parenting (Specified Persons)
(Scotland) Order 2015**

**The Aftercare (Specified Persons and Eligible
Needs) (Scotland) Order 2015**

The Continuing Care (Scotland) Order 2015

Consultation on Draft Secondary Legislation for Parts 9, 10 and 11 of the Children and Young People (Scotland) Act 2014

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Executive Summary

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT

The Children and Young People (Scotland) Act 2014 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 strategy 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. 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 Act also establishes a new legal framework within which services are to work together in support of children, young people and families.

The 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, section 49).
- Corporate parenting duties for certain public bodies (Part 9).
- Extends eligibility for aftercare assistance up to the age of 25; new duty on local authorities to report on the death of a young person in receipt of aftercare services (Part 10).
- '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 (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).

Draft Ministerial Orders have been published to accompany Parts 9 (Corporate Parenting), 10 (Aftercare) and 11 (Continuing Care) of the Act. There will also be consultation on the draft guidance for each of these Parts of the Act. This consultation relates to the draft Orders and will run from 20 October until 29 December 2014.

Consultation Paper

The Corporate Parenting (Specified Persons) (Scotland) Order 2015

What the 2014 Act says

Section 56 states that any organisation listed in schedule 4 is a corporate parent, describes some specific exemptions from duties and enables Ministers to amend schedule 4.

Section 57 describes the children and young people to whom corporate parenting applies. These are (i) every child who is currently looked after by a local authority, (ii) every child or young person under 26 years of age and was, at the age of 16, but is no longer, looked after by the local authority. This includes all care settings and disabled children who are looked after. Section 57 also gives Ministers powers to specify in secondary legislation further descriptions of young people at least age 16 but under age 26 who were formerly but no longer looked after to whom corporate parenting will also apply. Such a further description is set out in the draft Corporate Parenting (Specified Persons) (Scotland) Order 2015.

Section 58 lists the responsibilities of corporate parents towards the eligible population of children and young people. These include assessing needs, promoting interests, and providing opportunities for young people and any other action required to improve the way that corporate parent exercises its functions. Section 59 places a duty on all corporate parents to prepare, publish and review a plan for how they will exercise their corporate parenting responsibilities. Sections 60 to 63 place duties on all corporate parents to collaborate with each other, prepare and publish reports, provide information to Scottish Ministers and follow guidance issued by Scottish Ministers. Section 64 allows Ministers to direct corporate parents on how they exercise their corporate parenting duties and, finally, Section 65 places a duty on Scottish Ministers to report to the Scottish Parliament at the end of each three year period on how they have exercised their corporate parenting responsibilities during that period.

What the draft Secondary Legislation says

Article 2 of the Order describes the additional group of young people, formerly but no longer looked after by a local authority, who will also be eligible for support from Corporate Parents under Part 9 of the 2014 Act. In line with stakeholder feedback during the Bill process, this group has been defined as young people between their 11th and 16th birthdays who were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years.

What this means when taken together

This means that all organisations currently defined in schedule 4 will have, as of 1st April 2015, a list of duties and responsibilities towards (i) every child who is looked after by a local authority, (ii) every child or young person under 26 years of age and was, at the age of 16, but is no longer, looked after by the local authority and (iii) care leavers at least age 16 but under the age of 26 who between their 11th and

16th birthdays were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years. Draft Guidance to inform all corporate parents of their legal responsibilities and National Practice Notes to support their compliance are being prepared in collaboration with the National Corporate Parenting Guidance Advisory Group, chaired by CELCIS. Local protocols will need to be developed locally to reflect the needs of looked after children and care leavers.

The Aftercare (Specified Persons and Eligible Needs) (Scotland) Order 2015

What the 2014 Act says

Provision of aftercare to young people is set out in section 29 of the Children (Scotland) Act 1995 (“the 1995 Act”) and financial assistance is described under section 30. Section 66 of the 2014 Act makes several amendments to these sections.

The 2014 Act changes the legal definition of a ‘care leaver’ in sections 29 and 30 of the 1995 Act to any young person who ceases to be looked after on or after their 16th birthday (the current definition restricts the category of ‘care leaver’ to young people who ceased to be looked after beyond their minimum school leaving age).

Section 66(2) of the 2014 Act amends section 29(1) of the 1995 Act to make any young person at least age 16 but not yet 19 who ceases to be looked after by a local authority on or after their 16th birthday eligible for aftercare services from their local authority. There is also a power added for Ministers to specify by order further descriptions of young persons who were formerly but no longer looked after who would in addition be eligible for aftercare services. It also amends section 29(2) to provide that all care leavers who are at least 19 but under the age of 26 (extended from 21), regardless of their placement type while looked after, with the opportunity to apply to their local authority for aftercare.

Aftercare is defined in the 1995 Act as ‘advice, guidance and assistance’ (section 29(1)). This can include, but is not restricted to, helping a young person to secure accommodation, education and employment opportunities, and financial support.

From April 2015 the local authority must undertake an assessment and, if the care leaver is assessed as having 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’. The amendment to section 29 of the 1995 Act made by section 66(2) also states that ‘eligible needs’ will be defined in secondary legislation.

Section 66(2) of the 2014 Act also amends section 29 of the 1995 Act to place a duty on local authorities to report the death of a care leaver in receipt of aftercare to Scottish Ministers and the Care Inspectorate.

In line with the provisions above, section 66(3) of the 2014 Act also amends section 30 of the 1995 Act extending the upper age (from 21 to 26) to which a local authority may give discretionary financial assistance towards the education or training expenses of young people who have ceased to be looked after. It also gives Ministers the power by order to specify further descriptions of young persons who were formerly but no longer looked after who would in addition be eligible for financial assistance under section 30.

Part 10 of the 2014 Act reflects the philosophy of care set out in the Scottish Government's Staying Put Scotland guidance of October 2013. This stressed the importance of positively delaying the age of leaving care, and corporate parents' duty to encourage, enable and empower young people to remain in safe, supported environments for as long they need to.

What the draft Secondary Legislation says

Article 2 of this Order describes the additional group of young people, formerly but no longer looked after by a local authority who, in addition to those defined in the 2014 Act will also be eligible for aftercare support and financial assistance under sections 29 and 30 of the 1995 Act. In line with stakeholder feedback during the Bill process – and the draft Corporate Parenting (Specified Persons) (Scotland) Order 2015 - this group has been defined as young people between their 11th and 16th birthdays who were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years.

Article 3 offers an overarching description of the types of care, attention and support which constitute “eligible needs”. To date these have proved very difficult to describe satisfactorily in draft secondary legislation so it is proposed that eligible needs be considered in collaboration with stakeholders and further described in the accompanying guidance.

What this means when taken together

This means that any young person who (i) ceases to be looked after by a local authority on or after their 16th birthday and (ii) those who between their 11th and 16th birthdays were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years, will be eligible for aftercare services potentially until they reach 26 years of age. It will be a duty of the local authority to provide aftercare services to such young persons who are at least 16 and not yet 19 (section 29(1)). Such young persons who are at least 19 but less than 26 years of age (extended from 21) may apply to the local authority to request that they provide them with aftercare support (section 29(2)).

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 26 (new subsection (5B)).

Notifying the death of a looked after child is a statutory duty of the local authority looking after that child under regulation 6 of the Looked After Children (Scotland) Regulations 2009. Notifying the death of a person being provided with aftercare under section 29 of the 1995 Act will be a statutory duty of the local authority under section 29(10) of the 1995 Act when section 66 of the 2014 Act comes into force. This legislative change will also be reflected in the National Guidance for Child Protection Committees for Conducting a Significant Case Review.

The Continuing Care (Scotland) Order 2015

What the 2014 Act says

Section 67 of the 2014 Act inserts a new section 26A into the 1995 Act 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 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.

What the draft Secondary Legislation says

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 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 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 is in the best welfare interests 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 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 will be set out in more detail in the draft Guidance on Part 11 of the Act.

What this means when taken together

This means that young people will be supported through a more graduated transition out of care. This will help to normalise the experience, by allowing strong and positive relationships between young person and carer to be maintained into adulthood. A young person will have to cease to be looked after to be eligible for continuing care, but in keeping with the aims of supporting a graduated transition towards independence, the day-to-day experience of those in continuing care ought to reflect closely what was in place while they were looked after.

The right to continuing care will apply to all young people who leave foster care, kinship care or residential care in or after April 2015 and who were born after 1 April 1999. To meet this, local authorities will have a duty to provide care leavers with a continuation of the kinds of support they received prior to their ceasing to be looked after (including an entitlement to stay in the same care setting where it is mutually agreeable). This will require detailed discussion, planning and collaboration by all relevant parties to agree a level of support that meets the welfare needs of the young person and is supported by the carer. If the care leaver is in a care placement where the carer has indicated that they are unable or unwilling to continue to provide the placement the local authority will be expected to uphold the overall aim of the policy and find alternative accommodation for the young person, equivalent to their last care placement and appropriate to their needs.

Consideration must also be given to relevant approval, registration and inspection procedures and will be discussed in more detail during consultation on the accompanying guidance. Cognisance must also be taken of other relevant Parts of the 2014 Act, as well as the Foster Care Review and other related work currently on-going.

In line with discussions during the Bill development process, eligibility for continuing care will initially only apply to a single age cohort. This will facilitate more realistic, sustainable service provision and extending the upper age limit annually will ensure this initial cohort continue to be eligible as they increase in age until the duty to provide continuing care extends to all care leavers between 16 and 21 years of age.

Within that timeframe, the local authority's duty to provide continuing care lasts until the young person leaves the accommodation of their own volition, the accommodation ceases to be available or the local authority decides that continuing to provide the placement would significantly adversely affect the welfare of the young person.

For whatever reason it ceases, once the continuing care support comes to an end the local authority is still under a duty to assess the young person for aftercare support and, if the young person is deemed to have eligible needs, the local authority is under a duty to provide those services up to and including the age of 25. A local authority may, but it is not legally required to, provide aftercare to a care leaver beyond the age of 26 years old.

Finally, notifying the death of a person being provided with continuing care will be a statutory duty of the local authority under new section 26A(10) of the 1995 Act when section 67 of the 2014 Act comes into force. This legislative change will also be reflected in the National Guidance for Child Protection Committees for Conducting a Significant Case Review.

Responding to this consultation

We are inviting written responses to this consultation by 29 December 2014. Please send your responses with the completed Respondent Information Form to: [Looked After Children @scotland.gsi.gov.uk](mailto:Looked_After_Children@scotland.gsi.gov.uk)

or

Carolyn Younie

Looked After Children Unit

Scottish Government

Victoria Quay

Edinburgh

EH6 6QQ

If you have any questions, contact Carolyn Younie on 0131 2447445 and carolyn.younie@scotland.gsi.gov.uk.

Handling your response

We need to know how to handle your response and in particular, whether you are happy for it to be made public. The attached Respondent Information Form will ensure that we treat your response appropriately. 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.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us achieve a final version of the Ministerial Orders, which will be laid before the Scottish Parliament in February before coming into force on 1 April 2015.

If you have given permission for your response to be made public and after we have checked that it contains no potentially defamatory material, your response will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages later in 2015. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

Draft Order laid before the Scottish Parliament under section 99(2) of the Children and Young People (Scotland) Act 2014 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

CHILDREN AND YOUNG PERSONS

**The Corporate Parenting (Specified Persons) (Scotland) Order
2015**

Made - - - - 2015

Coming into force - - 1st April 2015

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 57(2)(b) of the Children and Young People (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with section 99(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Corporate Parenting (Specified Persons) (Scotland) Order 2015 and comes into force on 1st April 2015.

Application of Part 9 (Corporate Parenting): specified persons

2. Persons who between their 11th and 16th birthdays were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years are specified for the purposes of section 57(2)(b) of the Children and Young People (Scotland) Act 2014(b).

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(a) 2014 asp 8.
(b) Section 57 of the Act makes provision as to the children and young people to whom Part 9 of the Act applies. By virtue of section 97(2) of the Act, references to a child being or becoming “looked after” are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995 (c.36).

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order specifies an additional description of persons formerly but no longer looked after by a local authority to whom Part 9 of the Children and Young People (Scotland) Act 2014 applies. Those persons are those who between their 11th and 16th birthdays were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years.

Part 9 of that Act makes provision about corporate parenting. By virtue of section 57(2)(a) of the 2014 Act the persons specified in article 2 must also be at least the age of 16 but under the age of 26 for Part 9 to apply to them.

Draft Order laid before the Scottish Parliament under sections 29(1A) and (9) and 30(2A) of the Children (Scotland) Act 1995 for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2015 No.

CHILDREN AND YOUNG PERSONS

**The Aftercare (Specified Persons and Eligible Needs) (Scotland)
Order 2015**

Made - - - - - *2015*

Coming into force - - - - - *1st April 2015*

The Scottish Ministers make the following Order in exercise of the powers conferred on them by sections 29(1)(b) and (8) and 30(2)(b)(ii) of the Children (Scotland) Act 1995(a) and all other powers enabling them to do so.

In accordance with section 29(1A) and (9) and 30(2A) of that Act(b) a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Aftercare (Specified Persons and Eligible Needs) (Scotland) Order 2015 and comes into force on 1st April 2015.

(2) In this Order—

“the 1995 Act” means the Children (Scotland) Act 1995; and

[“wellbeing” of a person is to be construed in accordance with section 96(2) of the Children and Young People (Scotland) Act 2014].

Sections 29 and 30 of the 1995 Act: specified persons

2. Persons who between their eleventh and sixteenth birthdays were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years are specified for the purposes of sections 29(1)(b) (after-care) and 30(2)(b)(ii) (financial assistance towards expenses of education or training) of the 1995 Act(c).

(a) 1995 c.36. Sections 29(1)(b) and (8) and 30(2)(b)(ii) are inserted by section 66(2)(a) and (h) and (3)(a)(iii) of the Children and Young People (Scotland) Act 2014 (asp 8). Section 29 was previously amended by the Regulation of Care (Scotland) Act 2001 (asp 8), section 73(1).

(b) Sections 29(1A) and (9) and 30(2A) are inserted by section 66(2)(b) and (h) and (3)(a)(iii) of the Children and Young People (Scotland) Act 2014.

(c) Section 93(4)(b) of the 1995 Act provides that any reference in Part II of that Act to a child who is “looked after” by a local authority is to be construed in accordance with section 17(6) of that Act.

After-care: eligible needs

3. The following types of care, attention and support are specified for [the purposes of section 29(8) of the 1995 Act(a)]/[for the purposes of section 29(5A)(a) of the 1995 Act]—

- (a) financial support to meet essential accommodation and maintenance costs;
- (b) [[information, advice and support] in relation to accessing work and leisure opportunities;] and
- (c) [[insofar as not covered by (b),] advice [and support] [relating to the person's wellbeing]/[designed to promote, safeguard and support the person's [health and] wellbeing].

Name

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

(a) Section 29(8) provides a definition of “eligible needs” for the purposes of section 29(5A)(a), which is inserted by section 66(2)(f) of the Children and Young People (Scotland) Act 2014.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the provision of after-care to young people under section 29 of the Children (Scotland) Act 1995 (“the 1995 Act”) and in relation to financial assistance provided to them under section 30 of the 1995 Act. Section 66 of the Children and Young People (Scotland) Act 2014 amends both these sections and will come into force at the same time as this Order.

Article 2 specifies an additional description of person formerly but no longer looked after by a local authority who will be eligible for after-care support and financial assistance under sections 29 and 30 of the 1995 Act, if they also meet the other age criteria within those provisions. These are persons who between their eleventh and sixteenth birthdays were, but are no longer, looked after by a local authority for periods of time which, when aggregated, total not less than 2 years.

Article 3 specifies the types of care, attention and support which constitute “eligible needs” for the purposes of section 29(5A)(a) of the 1995 Act.

Draft Order laid before the Scottish Parliament under section 26A(11)(b) of the Children (Scotland) Act 1995 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

CHILDREN AND YOUNG PERSONS

The Continuing Care (Scotland) Order 2015

Made - - - - 2015

Coming into force - - 1st April 2015

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 26A(2)(b), (6), (9)(a) [and (11)(a)] of the Children (Scotland) Act 1995(a) and all other powers enabling them to do so.

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.

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Continuing Care (Scotland) Order 2015 and comes into force on 1st April 2015.

(2) In this Order—

“the 1995 Act” means the Children (Scotland) Act 1995; and

“welfare assessment” means an assessment carried out by a local authority in accordance with articles 6 and 7 of this Order.

Eligible person: specified age

2. The higher age specified(b) for the purposes of section 26A(2)(b) of the 1995 Act is seventeen years of age.

Duty to provide continuing care: specified period

3. The period specified for the purposes of 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 their twenty-first birthday.

(a) 1995 c.36. Section 26A was inserted by section 67 of the Children and Young People (Scotland) Act 2014 (asp 8).

(b) Section 26A(13) contains a definition of “specified” for the purposes of the section.

Assessment of the welfare of an eligible person before ceasing to be looked after

4. 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 the person in accordance with articles 6 and 7.

Assessment of the welfare of an eligible person receiving continuing care

5. 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 a local authority); and
- (b) by carrying out a welfare assessment of the person in accordance with articles 6 and 7.

Welfare assessment — general

6.—(1) The local authority shall prepare and publish a written statement detailing the manner in which the welfare of eligible persons is to be assessed.

(2) Nothing in this Order shall prevent the carrying out of any welfare assessment under this Order at the same time as there is being carried out any assessment or other consideration under any other enactment.

Welfare assessment — individual cases

7.—(1) Unless it is not reasonably practicable to do so, the local authority shall not complete a welfare assessment without the views of the eligible person having been obtained and the written record of the views being available.

(2) The local authority shall take into account the written record of the views of the eligible person, which shall be recorded in the welfare assessment.

(3) In carrying out a welfare assessment, the local authority shall include each of the matters referred to in the Schedule.

(4) The local authority shall ensure that a written record is maintained of the—

- (a) information obtained in the course of completing a welfare assessment;
- (b) deliberations at any meeting held in connection with any aspect of a welfare assessment; and
- (c) results of a welfare assessment.

(5) In carrying out a welfare assessment, the local authority may seek the views of—

- (a) the parents of the eligible person;
- (b) any person who is not a parent but has parental responsibilities for an eligible person;
- (c) any person who on a day to day basis cares for, or provides accommodation for, the eligible person;
- (d) the head teacher or principal of any school or college attended by the eligible person or the education authority for the area in which the eligible person lives;
- (e) any person providing health care or treatment to the eligible person;
- (f) any welfare co-ordinator appointed for the eligible person;

- (g) [any young person’s supporter appointed for the eligible person under regulation 5 of the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003(a)];
and
- (h) any other person whose views the local authority, or the eligible person, consider may be relevant,

and the local authority shall take into account any such views that have been obtained.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2003/608 as amended by

SCHEDULE

Regulation 7(3)

Matters to be included in the welfare assessment

1. The eligible person's emotional state, day to day activities, personal safety, influences on the eligible person and the eligible person's personal identity.
2. The eligible person's family relationships, their children, other caring responsibilities, life story, friends, and other significant people in their life.
3. The eligible person's general health (including any mental health needs), contact with health services, medical conditions and disabilities, activities that might affect the eligible person's health, and emotional and mental wellbeing.
4. The eligible person's future plans for study, training or work, schooling (including support needs), skills and experience, qualifications and certificates, and training and work.
5. The eligible person's accommodation arrangements, practical living skills, accommodation options for the future, and support required for living.
6. The eligible person's sources of income, outgoings, savings and debts, requirement for financial support, and budgeting skills.
7. The eligible person's knowledge of their rights and legal entitlements, involvements in legal proceedings, including criminal proceedings as a victim, witness, or alleged perpetrator.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes the provision in relation to the duty placed on local authorities by section 26A of the Children (Scotland) Act 1995 (“the 1995 Act”) to provide eligible persons with continuing care where they cease to be looked after by them. Section 26A was inserted by section 67 of the Children and Young People (Scotland) Act 2014 which will come into force at the same time as this Order.

Continuing care is defined in 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.

Article 2 specifies that the higher age limit for “eligible persons” for the purposes of section 26A(2)(b) of the 1995 Act is seventeen years of age. This means that an “eligible person” for the purposes of the duty to provide continuing care is a person who is at least sixteen years of age and who has not yet reached the age of seventeen.

Article 3 specifies that the period the expiry of which ends the local authority’s duty to provide continuing care in terms of 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 their twenty-first birthday.

Article 4 makes provision as to when and how a local authority is to consider whether section 26A(5)(c) of the 1995 Act is the case. The local authority shall carry out an assessment (“welfare assessment”) of the eligible person as soon as reasonably practicable before the person ceases to be looked after by them in accordance with articles 6 and 7.

Article 5 makes provision as to when and how a local authority is to consider whether section 26A(7)(c) of the 1995 Act is the case. The local authority shall carry out a welfare assessment of the person receiving continuing care at intervals not exceeding twelve months (the first interval starting from the date the person ceases to be looked after) in accordance with articles 6 and 7.

Article 6 makes general provision about welfare assessments.

Article 7 sets out the issues to be taken into account by a local authority in completing a welfare assessment, which includes the matters listed in the Schedule, and lists the range of persons whose views they may seek in that connection.

Respondent Information Form

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately. **If you are responding to more than one set of regulations at the same time, you only need to complete this form once.**

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) 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?

Please tick as appropriate

Yes

No

4. Additional information – I am responding as:

Please tick as appropriate

1. NHS Health Board	
2. Other NHS Organisation	
3. General Practitioner	
4. Local Authority	
5. Other statutory organisation	
6. Third sector care provider organisation	
7. Independent / private care provider organisation	
8. Representative organisation for professional group	
9. Representative organisation for staff group e.g. trade union	
10. Education / academic group	
11. Representative group for patients / care users	

12. Representative group for carers	
13. Patient / service user	
14. Carer	
15. Other – please specify	

ANNEX 5 – List of Email Consultees

All Scottish Local Authorities
All Scottish Health Boards
Aberlour Trust
Arc UK
Barnardo's Scotland
Bòrd na Gàidhlig
Capability Scotland
Care Inspectorate
CELCIS
Children 1st
Clan Childlaw
Colleges Scotland
CoSLA
Creative Scotland
The Fostering Network
Includem
Kinship Care West Dunbartonshire
Mental Welfare Commission
Scottish Children's Services Coalition
Scottish Commissioner for Children and Young People
Scottish Fire and Rescue
Scottish Housing Regulator
Scottish Legal Aid Board
Scottish Qualifications Authority
Scottish Social Services Council
Scottish Throughcare and Aftercare Forum
Skills Development Scotland
Social Work Scotland
SportScotland
Who Cares? Scotland



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