POLICY NOTE

THE CONTINUING CARE (SCOTLAND) AMENDMENT ORDER 2019

SSI 2019/XXX

The above instrument is made in exercise of the powers conferred by section 26A(2)(b) of the Children (Scotland) Act 1995. The instrument is subject to affirmative procedure.

Purpose of the instrument

This is the fourth and final in the planned series of annual amendments to the Continuing Care (Scotland) Order 2015, which will increase the higher age limit for eligible persons from twenty to twenty-one years of age as of 1 April 2019.

Policy Objectives

1. This instrument relates to the duty placed on local authorities by section 26A of the Children (Scotland) Act 1995 ("the 1995 Act") to provide continuing care (subject to certain exceptions in section 26A(5)) to eligible young people when they cease to be looked after by them (sections 26A(1) and (3)). 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 person by the authority immediately before the person ceased to be looked after.

2. This instrument amends article 2 of the Continuing Care (Scotland) Order 2015 (S.S.I. 2015/158) with the effect that the higher age limit for "eligible persons" specified for the purposes of section 26A(2)(b) of the 1995 Act is twenty-one years of age (increased from twenty). This means that an "eligible person" for the purposes of the duty on local authorities to provide continuing care under section 26A of the 1995 Act is a person who is at least sixteen years of age and who has not yet reached the age of twenty-one. This final increase is in line with discussions during the passage of the Children and Young People (Scotland) Bill to extend this higher age limit annually, by way of further amendments to the Continuing Care (Scotland) Order 2015, up to the age of twenty-one.

3. The policy objective behind this instrument and section 26A of the 1995 Act is to support young people 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. The provision of continuing care where an eligible young person ceases to be looked after by a local authority is in keeping with the aims of supporting a graduated transition towards independence.

4. This instrument also revokes the Continuing Care (Scotland) Amendment Order 2018 (S.S.I. 2018/96) which was the instrument which increased the higher age limit to twenty in April 2018.

Consultation

5. To comply with the requirements of section 26A(12) of the 1995 Act a public consultation on the draft instrument took place from 14 November to 12 December 2018. We actively target stakeholders involved in campaigning for Continuing Care and those responsible for the delivery of these provisions including Cosla, all Scottish local authorities, all Corporate Parents listed in schedule 4 of the Children and Young People (Scotland) Act 2014, the Centre for Excellence for Looked After Children in Scotland (CELCIS), and third sector children's organisations.

6. We received 26 responses to this consultation, of which all agreed with the intention of the instrument that; this continued extension of the higher age limit for eligible persons should be amended from twenty to twenty-one years of age as of 1 April 2019. Responses to this were provided from 4 individuals and 22 organisations including local authorities, national regulatory and administration bodies, professional associations, third sector organisations and the Centre for Excellence for Looked After Children in Scotland. Where we have been given permission to, we have published these responses on the Scottish Government website here: https://consult.gov.scot/children-and-families/continuing-care/

7. This feedback has been consistent with responses to the public consultation on pervious Amendment Orders, which have in the main been supportive of this annual extension of the higher age limit.

8. A number of additional comments have been made with regards to challenges with the policy implementation, and whilst we fully acknowledge and welcome this feedback, these do not affect the specific points of drafting or purpose of this Order for which there has been overwhelming support. Ministers are working to address the range of policy implementation issues, which will require on-going collaborative work to appropriately resolve the range of these challenges within the context of the care system as a whole.

9. As a result of the consultation we propose that no adjustments should be made to the draft instrument.

Impact Assessments

10. An equality impact assessment has not been completed on the policy objective as this is an extension of support currently available to looked after young persons.

Financial Effects

11. The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as, the Financial Memorandum detailed, the Scottish Government is to fully fund the additional costs of measures in the 2014 Act. The Financial Memorandum was developed in conjunction with key stakeholder bodies including COSLA. The Financial Memorandum is available on the Scottish Parliament website here: http://www.parliament.scot/parliamentarybusiness/Bills/62233.aspx

Scottish Government
Children and Families Directorate

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