POLICY NOTE

THE CONTINUING CARE (SCOTLAND) ORDER 2015

SSI 2015/xxx

The above instrument is made in exercise of the powers conferred by section 26A(2)(b), (6) and (9)(a) of the Children (Scotland) Act 1995. The instrument is subject to affirmative procedure.

Policy Objectives

This instrument makes further provision in relation 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 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.

Section 26A of the 1995 Act was inserted by section 67 of the Children and Young People (Scotland) Act 2014 ("the 2014 Act") and will come into force on 1st April 2015, by virtue of provision made in Children and Young People (Scotland) Act 2014 (Commencement No. 7) Order 2015, laid at the same time as this instrument.

This instrument, at article 2, specifies seventeen as the cut off age for the first cohort of young people who are eligible for continuing care. Read in conjunction with section 26A(2) of the 1995 Act, this means that an "eligible person" for the purposes of continuing care is at least sixteen years of age and has not yet reached the age of seventeen. In line with discussions during the Bill process when this policy was being developed this upper age limit will be extended annually, by way of amendment to this instrument, to ensure the upper age limit is raised annually up to the age of twenty-one.

Article 3 of the instrument specifies the period over which a local authority's duty to provide continuing care lasts as being the period from the date on which the eligible person ceases to be looked after by them until the date of that person's twenty-first birthday. The instrument also (at articles 4 to 7 and the schedule) makes provision as to when and how a local authority is to consider-

(a) whether providing an eligible person with continuing care in the first place would significantly adversely affect their welfare (section 26A(5)(c)) so that the duty to provide continuing care does not apply; and

(b) whether continuing to provide an eligible person with continuing care would significantly adversely affect their welfare (section 26A(7)(c)) so that the duty to provide continuing care ceases.

In relation to (a), in a similar way to "pathway assessments" under the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003, a local authority must carry out a welfare assessment in accordance with article 7 as soon as reasonably practicable before the young person ceases to be looked after by them.

In relation to (b), for those persons already in receipt of continuing care, a local authority must carry out a welfare assessment in accordance with article 7 at intervals not exceeding twelve months starting from the date the person ceases to be looked after.

Article 7 makes provision detailing how a local authority is to carry out welfare assessments. It sets out the matters to be considered or taken into account by a local authority in carrying out a welfare assessment in individual cases (including the matters listed in the Schedule), lists the range of persons whose views they may seek in that connection, details how the eligible young person is to be involved in the assessment process and also the written records that the local authority must keep in relation to an assessment. These are drafted to complement similar provisions in the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 in relation to the carrying out of "pathway assessments" for aftercare support, which local authorities are familiar with and have operated for some time. The provisions 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.

The policy objective behind this instrument and the provision made in section 26A of the 1995 Act in relation to continuing care is 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.

Consultation

To comply with the requirements of section 26A(12) of the 1995 Act a public consultation on the draft instrument took place from 21 October to 29 December 2014. This consultation covered the draft secondary legislation for Parts 9, 10 and 11 of the 2014 Act (this instrument relates to Part 11 of the Act). A full list of those consulted is included in Annex 5 to the consultation paper[1], however, it included COSLA, all Scottish local authorities and stakeholders from the sector such as CELCIS, Aberlour Trust, Barnardo's Scotland, Who Cares? Scotland and the Scottish Throughcare and Aftercare Forum

During the consultation a series of stakeholder engagement sessions were run covering the draft Orders and the accompanying draft guidance, which is currently still undergoing consideration by focus groups including a broad range of stakeholders from across the sector.

Sixteen responses were received to the consultation. As a result of those responses, in relation to this instrument, some adjustments were made to the drafting of article 7 to ensure that the eligible person is able to fully participate in welfare assessments relating to them and have their views taken into account. Some minor adjustments were also made to the matters to be considered in an assessment as listed in the Schedule.

1 Which can be found at - http://www.scotland.gov.uk/Resource/0046/00464718.pdf

Impact Assessments

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

The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as, in line with the Financial Memorandum, the Scottish Government will fully fund the additional costs of measures in the 2014 Act. The Financial Memorandum was developed in conjunction with key stakeholder bodies including COSLA.

Scottish Government
Children and Families Directorate
19 February 2015