



## **Continuing Care Coalition response from Aberlour, Barnardo's Scotland & Who Cares? Scotland**

**Response to Ministerial orders, secondary legislation and draft Scottish Statutory instruments concerning the implementation of the Children and Young People (Scotland) Act 2014**

- **The Continuing Care (Scotland) Order 2015**
- **The Aftercare (Specified Persons and Eligible Needs) (Scotland) Order 2015**
- **The Corporate Parenting (Specified persons) (Scotland) Order 2014**

### **The Continuing Care (Scotland) Order 2015**

#### **Introduction:**

This order will deliver one of the most important significant changes to existing practice in the entire Children and Young People (Scotland) Act as it offers looked after young people the right to remain in their care setting (if they are in kinship, foster or residential care) up to the age of 21 on their 16<sup>th</sup> birthday. The Scottish Parliament has held over 5 inquiries, since devolution, into the appalling life outcomes experienced by many care leavers and all have pointed to the fact that compelling young people to leave supportive care settings at ages as young as 16, when they and their peers should have been focussed on significant exams, was a key contributor to these outcomes. Additionally, the loss of relationship with their care provider or other important people upon leaving care at such a young age, has negatively impacted on the ability of many care leavers to progress positively into independent living. This change sets to redress that and therefore will prove transformational to the life outcomes of many and sets Scotland out as an international leader in support for young people who are looked after.

#### **Specific comments on the order:**

**Duty to provide continuing care: Specified period**

We warmly welcome the realisation of ministerial commitments to extend eligibility for continuing care to young people in kinship, foster and residential care placements up to the age of 21.

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

Despite our general welcome for the contents of the draft orders, this section causes us a great deal of concern. The amendments to the original 1995 Act contained section 67 (1) (5) of the Children and Young People Act stipulate in (c) that the duty on the Authority to provide care does not apply, if:

***The local authority considers that providing the care would significantly adversely affect the welfare of the person.***

We naturally support the continuing assessment of each young person's welfare. However, we are uncertain as to when there would ever be circumstances in which a young person who had chosen to remain in a care setting, would find their welfare at risk of significant adversity due to their remaining in that setting.

Local Authorities choose where to place young people when they come under supervision and (apart from those looked after at home) those care settings are both heavily regulated and subject to regular scrutiny and supervision. If an authority is content that a young person's welfare is not at risk of significant adversity for the term of a supervision order, it is unclear why such a serious risk would only become manifest when that young person had ceased to be looked after, but had chosen to remain in their care setting.

Our principle anxiety is that this exception on the duty to provide continuing care could be misinterpreted by local authorities, who for financial reasons may seek to end a care arrangement before a young person is 21.

This provision would see an annual welfare assessment of each young person in continuing care, where the Authority could decide that their duty to provide care no longer applied because of a potentially subjective decision about welfare. A yearly review of this kind, at which the young person was not allowed to be present, but which could lead to the termination of continuing care with no recourse to advocacy or appeal would cause significant anxiety to every young person to whom this applied.

### **Proposed alternative to the assessment of the welfare of an eligible person before ceasing to be looked after**

We do not oppose the regular review of a young person's continuing care placement. In fact regular review, involving the young person, at which their progress, views about transition and various needs are considered, would be a useful and welcome exercise. We believe however, that this should correlate with the wider provisions in the C&YP Act 2014, which seek to place the well-being of the young person at the centre of all decisions, support and

assistance which are taken and put in place in relation to their care. In addition, for young people in continuing care aged 16-18, who will almost certainly have a Child's Plan (under the terms of part 5 of the CYP Act), any assessment of the needs of the child should take place through the child's plan process.

It is our belief that a decision to withdraw a care placement on welfare grounds should only be undertaken by exception, when sufficient concerns and evidence about a significant adverse impact on welfare have been raised to merit it. As such we strongly believe that an annual welfare assessment of every child in continuing care is entirely unnecessary and would cause a high degree of anxiety to each young person given that the withdrawal of continuing care is a possible outcome of each assessment.

A regular review of all aspects of the wellbeing of a young person in continuing care could in exceptional circumstances trigger a welfare assessment if sufficient evidence in the normal course of the review of a young person's wellbeing suggested its requirement.

We therefore propose that the currently proposed Welfare Assessment process in the Ministerial Order is dealt with through the Child's Plan for young people aged under 18 and through a **Continuing Care Review** for young people age 18-21. We would recommend that this **Continuing Care Review** follows the process which was in place for the looked after child in relation to their Child's Plan and looked after child review processes. The purpose of these reviews is to take into account a range of information relating to the young person's well-being, welfare and realisation of their rights. We would recommend that this **Continuing Care Review** advises the local authority to continue with the Child's Plan process as would have been in place for the young person when they reached 16 years of age. It would be advisable that this **Continuing Care Review** process takes place at minimum of once per year, but that it encourages the young person, the carer or residential unit and the local authority to continuously and informally consider the well-being, welfare and realisation of rights of the young person throughout their continuing care placement.

Only where there is significant concern to the well-being, welfare and realisation of rights of the young person, would we advise that the **Welfare Assessment process** –articulated in the original draft of the Ministerial Order – be conducted, with some amendments suggested below.

We would contend that the **Continuing Care Review** must always take the views of the young person in the continuing care placement into account and that the duties on corporate parents in Part 9 of the Act to take the young person's views into account should augment this duty in the **Continuing Care Review** process.

It would be beneficial to the young person's transition from their continuing care placement to their Aftercare support, if the **Continuing Care Review** took into account the age of the young person in the continuing care placement. Therefore we would recommend that the

**Continuing Care Review** takes into account the Aftercare rights of the young person and as such this will need to be reflected in SSIs and ministerial orders around those commensurate parts of the Act.

### **Obtaining and taking into account the views of the ‘eligible person’**

Section 7 of this order defines how welfare assessments of individual cases should be conducted. It states that:

- (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 a 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.*

On consideration, this section would suggest that a decision as to whether a young person’s welfare might be adversely affected by them remaining in the care setting is entirely subjective on the part of that authority. To only consider the written views of a young person affords no opportunity for cross-examination or clarification as to the actual meaning of those views. It also suggests that these views will be taken into account during a discussion at which the eligible person is not present. Coupled with the fact that as it stands, this will take place at least every 12 months, this has the potential to cause significant regular anxiety for a young person waiting for the results of an assessment which could feasibly end in the termination of their care placement.

Such anxiety will be heightened because the welfare assessment process is also required despite the scenario where both the young person in continuing care and the care provider are happy to continue the placement. The assessment therefore represents a situation where the young person in continuing care may be forced by the Local Authority to leave the placement against their will.

### **Proposed alternative to obtaining and taking into account the views of the ‘eligible person’**

The **Continuing Care Review** process, as detailed above, should be the routine review process that takes place throughout the continuing care placement duration of the young person’s time in continuing care. A welfare assessment should only be triggered in exceptional circumstances, and should seek to substantially uphold or disprove the evidence which triggered the assessment.

It is therefore recommended, that a welfare assessment (where it is triggered) should not be undertaken ,or a final decision made, where the young person is not present or given adequate opportunity to express their views in person. We also contend that the young person should have access to the services of a trained independent advocate. An appeals

process should also be made available to the young person should the Authority withdraw continuing care on grounds of welfare.

#### **Schedule: Matters to be included in a Welfare assessment**

Whilst we have no objection to the list contained in this schedule, it omits consideration of a young person's attachment and relationships to the care setting they occupy and their care providers. Stability and attachment is hugely important to looked after children and young people, even once they cease to be looked after. Many young people who have been through the care system, potentially through a number of failed placements can experience attachment disorder and trauma. As such the relationships they may establish in a quality residential or foster care placement may be significantly important to their welfare.

The Schedule also underlines our substantive point that it is difficult to imagine any way in which choosing to remain in a particular care setting could have a significant, adverse effect on the welfare of that young person in regard to any of these areas. In fact the situation is likely to be quite the opposite, and a young person's welfare with regard to point 4 would be significantly enhanced by choosing to remain in the stability of the care setting in which they find themselves:

***4: The eligible person's future plans for study, training and work, Schooling (including support needs), skills and experience, qualifications and certificates , and training and work [sic]***

Successive inquiries have identified that one of the principal reasons young people who have been looked after, experience such poor educational attainment is that many have been forced to leave a care placement when they cease to be looked after. In the main this has been at age 16 or 17, exactly when they and their peers should be sitting significant exams. To leave care at this age could have a significant, adverse effect on their educational welfare.

#### **Proposed additions to - Schedule: Matters to be included in a Welfare assessment**

To overcome the lack of consideration in the Schedule of attachment / relationships to care providers and others around them in their continuing care placement, we would recommend that an additional clause be added to the Schedule as follows:

***8: The eligible person's feelings of attachment and relationships to care providers, other young people and the care setting in which they currently find themselves.***

### **THE CONTINUING CARE (SCOTLAND) ORDER 2015 – Annex A**

Alongside the three orders, the consultation letter sets out in Annex A, a narrative for each order setting out what the 2014 Act says, what the draft Secondary Legislation says and

what this means when taken together. While generally very helpful, we feel further clarification is required on the section in Annex A covering the Continuing Care order.

In the section in Annex A on the Continuing Care order headed “**What this means when taken together**”, the document states that:

*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).*

We welcome this, and welcome the clarification that came in discussion with the Scottish Government that ‘kinds of support’ mean that continuing care can relate to non-accommodation support. However, we are unclear about the situations where Continuing Care, rather than Aftercare, would be the appropriate vehicle for delivering non-accommodation support, and would welcome further clarification and illustration on this.

The section goes on to state:

*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.*

As we have previously argued, to avoid the creation of duplicate processes, such discussion would need to take place through the child’s plan and associated processes as set out in part 5 of the CYP Act.

The section goes on to state

*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 find alternative accommodation for the young person, equivalent to their last care placement and appropriate to their needs.*

While very much welcoming the sentiment, we are unclear what this would mean in practice. While Continuing Care was previously described as a ‘duty’, finding alternative accommodation in these situations is described as an ‘expectation’. It is not clear if the alternative accommodation would be protected in the same manners as other continuing care placements. We would very strongly argue that it should be, and any such alternative placement should also be allowed to continue until the young person in the placement reaches the age of 21 or wishes to leave (unless, of course, a significant adverse impact on the young person’s welfare is identified).

The final part of this section of annex A we would wish to highlight states that:

*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.*

We believe that if, as stated previously, “*The local authority will be expected to find alternative accommodation for the young person, equivalent to their last care placement and appropriate to their needs*” in situations where the young person turns 16, wishes to stay in continuing care, but is in a care placement where the carer has indicated that they are unable or unwilling to continue to provide the placement, there should be a similar expectation that where the accommodation ceases to be available during a period of continuing care the local authority will be expected to find alternative accommodation for the young person.

Situations where the accommodation ceases to be available may include the end of a local authority contract to provide the accommodation. It would be perverse if, in a situation where a care leaver wishes to stay in continuing care, a Local Authority did not provide alternative accommodation to allow the young person to stay in continuing care where the local authority had themselves chosen to make the accommodation unavailable.

## **The Aftercare (Specified Persons and Eligible Needs) (Scotland) Order 2015 and the draft Corporate Parenting (Specified Persons) (Scotland) Order 2015**

### **Introduction:**

In our briefing at stage 2 of the bill process for the Children and YoungP (Scotland) Act 2014, our three charities made the following case:

- *The eligibility criteria for aftercare need to be widened to also cover children who have spent several years in care, even if they are not in care at school leaving age (or 16/18<sup>th</sup> birthday). At the moment one young person can be in care for the first 15 years and 6 months of their life, but not have an entitlement to aftercare, while another young person can be in care for 3 months before school leaving age and be entitled, under the proposals in this Bill, to a decade of aftercare support. Being in care for a number of years should lead to an entitlement to aftercare. As a first step, if a child has spent at least two years in care by the age of 11, or has been in care for at least 13 weeks after that point, they should be eligible for assessment for aftercare. This should also be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.*

In response to our suggestion, the Scottish Government indicated that they hoped to bring changes along similar lines through secondary legislation.

We therefore warmly welcome the proposal in the **draft Aftercare (Specified Persons and Eligible Needs) (Scotland) Order 2015** that:

*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.*

And the parallel proposal in the draft **Corporate Parenting (Specified Persons) (Scotland) Order 2015** that:

*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.*

This is a very positive step forward. This will, we hope, lead to a transformation in the support young people receive when they leave care. It will lead to a significant increase in numbers of formerly looked after young people eligible for assessment of their aftercare needs and for support from corporate parents. The proposals will deliver greater certainty for looked after children on their future status and support as care leavers. Crucially, the proposals will cover **all** looked after children, including the 30% of children in care who are looked after at home and the 26% of children in care who are in kinship care arrangements. Where fully realised, the path a care leaver takes towards successful independent living, should be clearer. This is vital if Scotland's care leavers are to access and sustain the opportunities they desire in relation to education, employment, housing and health.

### **General comments on the order/s:**

Despite the current drafts not going as far as we had proposed in our briefing and campaigning material in Autumn 2014, we recognise the commitment shown by the Scottish Government and Ministers to address the issues we raised. The ability of Ministers to, in future, lower threshold over time through further orders mean these proposals are effectively the floor, not the ceiling of our collective ambition.

However, the widening of eligibility for corporate parenting support and eligibility for aftercare assessments means that appropriate funding needs to be allocated to ensure that these enhanced supports can actually be delivered. We fully recognise the financially challenging times for both Local Authorities and the Scottish Government, but believe that the predictions in the financial memorandum for the Act may need to be revised.

It is our view, that effective Aftercare services, support and assistance should act as an efficient 'hand-holder' to the care leaver to engage with and access universal services and ultimately to realise the rights they have address the needs they are presenting with. In addition, Aftercare services should provide appropriate additional levels of help to that provided by universal services. This should ensure that their rights as a care leaver are realised especially relating to the duties which corporate parents have towards these care leavers. We must note our areas of specific recognition for help which are paramount to the care leaver and the transition they make towards successful independent living as: access and sustainment to suitable accommodation; financial assistance to maintain housing and living costs and access to education, training and employment opportunities. Again, utilisation of positive relationships with professionals and others who were previously involved in their care journey should be encouraged throughout Aftercare.

Furthermore, the new criteria for eligibility will require new systems to allow bodies with corporate parenting responsibilities to ascertain whether young people are eligible for support by virtue of having been in care on their 16<sup>th</sup> birthday or for 24 months between 11 and 16. At the moment this tends to be the responsibility of individual local authorities, but it would be appropriate to have a central national point of contact for all those seeking this information to ensure ease of access, while maintaining appropriate data protection and confidentiality. It is also our understanding that it is not clear who would hold the data if eligibility had been acquired through being looked after for a total of 24 months by two or more local authorities. If a national point of contact is not felt to be appropriate, we would like to see clarity on what action would be taken to ensure that the status of young people requesting support can be swiftly and simply confirmed.

It is vital that young people eligible for Aftercare services are positively encouraged to identify with their care leaver status. We believe that it is the role of all corporate parents, third and voluntary sector bodies to continue to tackle the stigma associated with the 'care label' – so that all care leavers are able to positively identify with their former looked after status in a way that does not negatively affect how they are viewed by corporate parents or impedes on the services they are entitled to by virtue of their entitlement to Aftercare. For many care leavers, identifying as a former looked after child and as having an eligibility for Aftercare, may be difficult and we must ensure that corporate parents do all that they can to afford these care leavers their Aftercare rights – even where the care leaver does not easily identify as such. This may be particularly true of young people who were looked after at home, or looked after for periods of time that total 24 months rather than the whole period leading up to their single birthday. Corporate parents, and especially those who have direct relationships (both statutory and non-statutory) should collaboratively ensure that they are taking an 'early and often' approach to discussing the continuing care and aftercare rights with the looked after child – so that they are clear from as early on in their care journey as possible as to the benefits of such rights afforded in part 10 and 11 of the C&YP Act 2014. We would recommend that the upcoming guidance for Aftercare covers this –

and aligns itself to the Statutory Guidance for Corporate Parents too (as well as other relevant parts of the Act such as the Child's Plan).

### **Specific Comments on the Order/s:**

#### **After-care: eligible needs**

While broadly welcoming the proposals in this area, we would like to see the wording clarified to make the potential needs more understandable by all parties concerned.

#### **Clause 3 (a) currently covers:**

##### ***financial support to meet essential accommodation and maintenance costs***

While these are the most crucial needs for vulnerable formerly looked after young people, further clarification is required around what is covered by the term 'essential'.

Section F1 of Schedule V of the Scotland Act 1998 states that "***Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits***" are reserved to Westminster.

It would therefore be beyond the competence of Scottish Local Authorities to deliver General Welfare Benefits, or substitute their own funds where a benefit is withdrawn, such as through sanctioning. However Section F1 of Schedule V makes a specific exception for support under the terms of "***29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.***" Therefore this section of the order would potentially allow Scottish Local Authorities to deliver all kinds of financial support, even where the support was to deal with the withdrawal of benefits.

#### **Proposed alternative for Clause 3 (a):**

We believe that high-quality or suitable should be added, as well as living costs - so that the clause reads:

##### ***Financial support to meet essential, high-quality / suitable accommodation and living costs.***

This would allow the local authority to utilise clearly Section F1 of Schedule V of the Scotland Act 1998, sections 29 and 30.

The addition of high-quality or suitable is necessary to ensure that inconsistent and bad practice in relation to the placing of care leavers in inappropriate accommodation such as – temporary bed and breakfasts or hostels; accommodation in localities which they have identified as having negative associations with (prior to ceasing to be looked after) and with inappropriate shared accommodation tenants or shared accommodation providers.

**Clause 3 (b) covers:**

***information, advice and support in relation to accessing work and leisure opportunities.***

We believe that this is too narrow and potentially provides local authorities with a specific focus as to what type of information, advice and support a care leaver should have entitlement to via Aftercare.

**Proposed alternative for Clause 3 (b):**

We would like to see this broadened to cover information, advice and support in relation to accessing physical and mental health support, education opportunities, training and skills, transport, work, social and cultural activities. Therefore, Clause 3 (b) would be as follows:

***Information, advice and support in relation to accessing physical and mental health support, education opportunities, training and skills, transports, work, social and cultural activities.***

**Clause 3 (c) covers:**

***advice and support relating to the person's wellbeing/designed to promote, safeguard and support the person's health and wellbeing.***

We are concerned that the term "health and wellbeing" could cause confusion for Aftercare assessment processes, especially as the term "health and wellbeing" is used with a rather different meaning in the Curriculum for Excellence. Given that Clause 3 (b) could be broader as proposed above, it seems correct to ensure that Clause 3 (c) specifically gives regards to the rights of the care leaver in the Aftercare eligible needs processes.

**Proposed alternative for Clause 3 (c):**

We believe a more appropriate phrase might be "rights and wellbeing", which would link more closely with the rights aspects of the Children and Young People (Scotland) Act. Therefore Clause 3 (c) would be as follows:

***Advice and support relating to the person's rights and well-being.***

**Further supporting information**

Please refer to the research report 'Children and Young People (Scotland) Act 2014 – which was produced by Who Cares? Scotland in December 2014. This includes direct interviews with over 90 young people, who gave their specific reflections, based on their care journey,

as to how the Act should be interpreted by Corporate Parents if the provisions within it have to be fully realised. This helps to provides the young person's perspective as to why the specific comments relating to the Ministerial Orders on Continuing Care and Aftercare have been given. An electronic version of this is available via <http://www.whocaresscotland.org/professionals/publications-briefings-research/>

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