

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

### Parts 10 and 11 (Aftercare and Continuing Care)

May 2014

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This is the first in a new series of briefings from CELCIS that help to explain specific parts of the [Children and Young People \(Scotland\) Act 2014](#) (2014 Act). Each briefing will set out clearly the new rights and responsibilities of looked after children, care leavers and carers, and the new duties, powers and expectations placed on public bodies.

This series has been conceived and designed to support organisations and practitioners involved in implementing the provisions of the 2014 Act. In this way we hope to fully realise the potential of this legislation to significantly improve care experiences for children and young people. Please note that official guidance will be published by the Scottish Government in due course.

For commentary and analysis on the origins of the 2014 Act, the legislative process and accompanying debates, please see the Children and Young People (Scotland) Act section of the [CELCIS website](#).

### Parts 10 and 11: Aftercare and Continuing Care

This briefing examines the changes introduced to aftercare services by the 2014 Act. Taken together these changes constitute one of the most substantive reforms of the looked after children's sector seen in many years, increasing the population eligible for aftercare support and introducing a new obligation on local authorities to secure some care leavers in their looked after placement, or suitable alternative accommodation, up to their 21st birthday. The changes introduced by the Act reflect the principles of [Staying Put Scotland](#) (October 2013), guidance for local authorities and other corporate parents.

The structure of this briefing is as follows:

- Key Points
- Aftercare (*Including details on Commencement dates; Eligibility; Duties and Powers of the local authority; Orders from Scottish Ministers*)
- Continuing Care (*Including details on Commencement dates; Eligibility; Duties and Powers of the local authority; Orders from Scottish Ministers*)
- Frequently asked questions

## Key Points

- 'Aftercare' provisions of the 2014 Act (Part 10) come into force in April 2015.
- 'Continuing Care' provisions (Part 11) come into force in April 2015. They will not, however, apply to all care leavers. The right to 'Continuing Care' will only be available to new care leavers (those who leave care in or after April 2015) who were born after 1 April 1999 and whose last placement was 'away from home'.
- The 2014 Act changes the legal definition of a 'care leaver'. From April 2015 any young person who ceases to be looked after on or after their 16<sup>th</sup> birthday will be classified as a 'care leaver'. (The current definition restricts the category of 'care leaver' to young people who ceased to be looked after beyond their minimum school leaving age.)
- All looked after children can become 'care leavers', including young people who were classified as 'looked after at home' and in formal kinship care.
- The 2014 Act extends eligibility to aftercare services to care leavers aged 21 to 25.
- 'Continuing Care' is a legal term introduced by the 2014 Act. It describes a new duty on local authorities to provide care leavers whose final placement was 'away from home' with a continuation of the kinds of support they received prior to their ceasing to be looked after (including accommodation in a 'looked after' placement). The aim of the provisions is to provide these young people with a more graduated transition out of care.
- A young person will have to cease to be looked after to be eligible for 'continuing care', but the Scottish Government expects the day-to-day experience of those in Continuing Care to be little different than for those who are still formerly 'looked after'.
- A care leaver in receipt of 'Continuing Care' is not eligible for 'Aftercare', and once a care leaver has opted for Aftercare they cannot later choose Continuing Care. The latter is only available to eligible care leavers at the point at which they cease to be looked after.

- The 2014 Act establishes a new duty on local authorities to notify Scottish Ministers and the Care Inspectorate of the deaths of care leavers in receipt of aftercare or Continuing Care.
- Parts 10 and 11 of the 2014 Act reflect 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.

### Part 10: Aftercare

The 'aftercare' provisions of the 2014 Act come into force in April 2015. Aftercare is defined by the [Children \(Scotland\) Act 1995](#) 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.

#### Eligibility

Under the Children (Scotland) Act 1995 eligibility to aftercare services is restricted to young people who were looked after by a local authority on or after their minimum school leaving age. Although many local authorities apply broader eligibility criteria than this, a strict application of the law could mean that some 16 year old care leavers are ineligible for aftercare services. The 2014 Act amends the 1995 Act to remove the reference to "over school leaving age" and replaces it with "who is at least sixteen" (Section 60(2)). From April 2015, any young person who ceases to be looked after by a local authority on or after their 16<sup>th</sup> birthday will be eligible to aftercare services.

The 2014 Act also amends Section 29(2) of the 1995 Act to provide care leavers with the opportunity to receive aftercare up to (and including) the age of 25. From April 2015 care leavers between the ages of 19 and 25 will be eligible to request 'advice, guidance and assistance' from their local authority. (Under the 1995 Act the upper age limit to which care leavers could request aftercare support was 21.) This change will result in an expansion of the population eligible for aftercare support in two ways. First, young people aged between 19 and 21 who are currently in receipt of aftercare will be able to continue to receive support up to their 26<sup>th</sup> birthday. Second, care leavers between the ages of 21 and 25 will be able to re-apply for support. The Scottish Government estimates that in 2015-16 approximately 3,225 care leavers aged 19 - 25 will request aftercare support, of which 65% (2,096) are likely to be successful. If accurate this would mean a doubling of the over-19 population currently in receipt of aftercare in 2015-16.

Please note that eligibility to aftercare applies equally to all care leavers, regardless of their placement type while 'looked after' by the local authority. The Leaving Care (Scotland) Regulations 2003 recommend limiting '*regular financial support*' (in place of UK benefits) to under 18 year old care leavers who were 'looked after away from home' (Regulation 13), but the duty on local authorities to provide generic 'aftercare' support applies equally to all care leavers, including young people who were 'looked after home' or in formal kinship care.

### Duties and powers of local authorities

Scottish local authorities are under a duty to provide aftercare support to all eligible care leavers under 19 years of age, unless they are satisfied that the young person's welfare does not require it. (This 'duty to provide up to age of 19', set out in Section 29(1) of the 1995 Act, remains unchanged by the 2014 Act.)

The 2014 Act amends the 1995 Act to extend local authorities' duty to provide aftercare support to all eligible care leavers up to the age of 25 (Section 60(2a)). From April 2015 all care leavers aged 19 - 26 will be entitled to request assistance from their local authority. 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 [the local authority] considers necessary for the purposes of meeting those needs' (Section 60(2)). 'Eligible needs' will be defined by the Scottish Government through a Ministerial Order (regulations).

A local authority may, but it is not legally required to, provide aftercare to a care leaver beyond the age of 26.

The 2014 Act also amends Section 30 of the 1995 Act, which sets out when a local authority may give financial assistance towards the education or training expenses of young people who have ceased to be looked after. From April 2015 the upper age to which this financial support can be requested is 25 (up from the previous limit of 21, or the conclusion of the young person's course). This is a discretionary power, and local authorities are under no duty to provide this financial assistance.

The 2014 Act places a duty on local authorities to report the death of a care leaver in receipt of aftercare to Scottish Ministers and Social Care and Social Work Improvement Scotland (commonly known as the Care Inspectorate). A duty to report the death of looked after a child to the Scottish Government is already in place under the Looked After Children (Scotland) Regulations 2009 (Regulation 6).

### Ministerial Orders

Eligible needs will be specified in a Ministerial Order. The 2014 Act states that a person has eligible needs if they need care, attention or support of such type as Scottish Ministers may

specify in regulation. It is anticipated that 'eligible needs' will be defined as things essential to daily living which cannot be received from elsewhere (such as from the UK benefits system, University or employer). The Scottish Government's definition of 'eligible needs' will be subject to the 'affirmative procedure', which means that it must be approved by the Scottish Parliament before coming into force.

Scottish Ministers will also have the power to extend eligibility to aftercare to any other 'formerly but no longer looked after' person as they so define. As with defining 'eligible needs' this can only be done through an affirmative procedure of the Scottish Parliament.

## Part 11: Continuing Care

The 'Continuing Care' provisions of the 2014 Act come into force in April 2015. They will not, however, apply to all care leavers from this date. The right to 'Continuing Care' will only be available to new care leavers (those who leave care in or after April 2015) who were born on or after 1 April 1999, and whose last placement was 'away from home'.

'Continuing Care' is a new legal term established by the 2014 Act. It means the continued provision of the accommodation (placement) and other assistance that was being provided by the local authority immediately before the young person ceased to be looked after. Please note that this is not a new category of 'looked after'. Young people will have to formerly cease to be looked after (i.e. ending a supervision requirement or voluntary arrangement) to be eligible. However, this does not mean that potentially eligible young people need to come off Supervision Requirements (or end voluntary arrangements) earlier than planned. If a looked after young person was born on or after 1 April 1999, they become a 'care leaver' in or after April 2015, and their last placement was 'away from home', they will be eligible to 'Continuing Care' whenever they cease to be looked after.

The policy intention behind the 'Continuing Care' provisions is to provide care leavers with 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.

### Eligibility

In order to provide local authorities with adequate time to plan and prepare a range of suitable services, the Scottish Government will introduce 'Continuing Care' in a staged process. In the first year (2015-16) only 16 year old care leavers (who leave care in or after April 2015) will be eligible to a 'Continuing Care' arrangement. These care leavers will have been born in the 12 months from 1 April 1999 to 31 March 2000. In each of the next four years (2016-17 to 2019-20) the Scottish Government will extend the right to 'continuing care' to an older year group (17, 18, 19, etc.), allowing the 16 year olds who opted for 'Continuing Care' in 2015-16 to remain

their placements up until their 21<sup>st</sup> birthday. The extension of eligibility on a year by year basis also means that any eligible looked after young person (i.e. those born after 1 April 1999) who chooses to remain 'looked after' into their 17<sup>th</sup> or 18<sup>th</sup> year of age will, when the eventually cease to be looked after, still find themselves eligible.

The 'Continuing Care' provisions apply only to care leavers (as defined in Part 10: Aftercare) who were looked after away from home (including residential, foster care and formal kinship care). But the duty on local authorities to provide continuing care does not apply if:

- The care leaver was accommodated in secure care immediately before ceasing to be looked after.
- The care leaver was in a care placement (e.g. a foster care placement) where the carer has indicated that they are unable or unwilling to continue to provide the placement.
- The local authority considers that providing the care would significantly adversely affect the welfare of the person.

### Duties and powers of local authorities

Part 11 of the 2014 Act places a duty on Scottish local authorities to provide care leavers with the same accommodation and assistance as they were receiving immediately before they ceased to be looked after. The only exceptions from this duty are listed immediately above (in the bullet points).

Although not stated explicitly in the Act, guidance is expected to make clear that these exceptions do not equate to a removal of a local authority's duty to provide 'Continuing Care', only the duty to provide the young person with *exactly the same* accommodation they were in when leaving care. In such cases 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.

A 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.
- The local authority decides that continuing to provide the placement would significantly adversely affect the welfare of the person.

It is important to note that the 2014 Act does not give care leavers a 'right to return' to a continuing care placement. Once the young person chooses to move on, that brings to an end the local authority's duty to provide the accommodation element of 'Continuing Care'. 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 'right to return' to a looked after or continuing care placement has been proposed by the Scottish Government. An expert group is to be set up in 2014 to consider the proposal in detail.

The 2014 Act sets out the situations in which a local authority can consider the accommodation to have 'ceased to be available'. These are:

- The carer indicates that they are unable or unwilling to provide the placement.
- The local authority closes the residential unit in which the care leaver is placed.
- The arrangement between the local authority and the external provider of the residential care placement comes to an end.

As stated above, in cases where a 'Continuing Care' arrangement has come to an end through no choice of the young person, guidance is expected to make clear that the local authority should find alternative accommodation, suitable to the young person's needs.

In 2015-16 the duty to provide 'Continuing Care' placements will only extend to 16 year old care leavers. The duty will be extended to older cohorts (17, 18, etc.) in subsequent years.

Once a young person leaves their continuing care placement they will be entitled to request aftercare support, but a care leaver who chooses to receive aftercare (and therefore leaves their 'looked after' placement) cannot subsequently claim 'Continuing Care' support.

Although not stated in the Act, the establishment of a new 'care' category is likely to require changes in local authority information management systems and annual statistical reporting.

In parallel to the introduction of a duty on local authorities to report on deaths of care leavers receiving aftercare, the 2014 Act places a duty on local authorities to notify Scottish Ministers and the Care Inspectorate about the death of any young person in receipt of 'Continuing Care'.

## Ministerial Orders

The 2014 Act gives Scottish Government Ministers the power to detail (through regulation): (1) when or how a local authority is to consider whether the exemptions apply; (2) to remove or vary a situation in which the duty to provide continuing care does not apply and add; and (3) to remove or vary a situation in which the duty to provide continuing care ceases.

Any Ministerial Order must be approved through an affirmative procedure of the Scottish Parliament, and the 2014 Act also places a duty on the Scottish Government to consult with each local authority and 'such other persons as they consider appropriate'.

## Frequently Asked Questions

**Q. What rights do care leavers currently have (as of April 2014)?**

A. Under Section 29 of the Children (Scotland) Act 1995 every young person who ceases to be 'looked after' beyond their minimum school leaving age is entitled to a needs assessment from their local authority, with a view to determining what advice, assistance and support should be provided to them. This duty to assess and, if deemed eligible, provide support extends to all looked after children, including those looked after at home and in kinship care.

**Q. Why does the 2014 Act extend aftercare services to young people aged 21 - 25?**

A. The Scottish Government believes that the current upper age-limit for aftercare (set at 21 years old) is out of step with the lived experience of most young people in Scotland. Families continue to provide support to young people throughout their early adult lives, and care leavers should expect a similar level of support from their corporate parents. Moreover, care leavers often face very significant challenges in the years after they leave care. This extension of eligibility to young people aged 21 - 25 allows more young people to seek out support when they need it. For more details about the philosophy of care underpinning the 2014 Act's provisions, please see [Staying Put Scotland](#) (October 2013).

**Q. How will these changes be funded?**

A. To finance the Aftercare and 'Continuing Care' provisions of the 2014 Act, the Scottish Government will allocate an additional £5 million to Scottish local authorities in each of the next four financial years; totalling £20 million between 2015-16 and 2019-20. This will be disbursed to local authorities through the annual block grant. Individual local authority amounts are being discussed between COSLA and the Scottish Government.

It is important to note that the 'Continuing Care' provisions only apply to 16 year old care leavers in 2015-16. Over the following four years the Scottish Government will expand eligibility to cover (in turn) 17, 18, 19 and 20 year olds.

**Q. The 2014 Act refers to a care leaver with 'eligible needs'. What does this mean?**

A. The eligible needs of care leavers (in other words the characteristics which entitle them to aftercare support) will be defined by the Scottish Government in secondary legislation (regulations), to be published before April 2015. The Government has already stated that 'eligible needs' will refer to needs considered essential to daily living which cannot be met from other sources. The local authority assessment will seek to establish if the care leaver can access the necessary support from existing services (such as welfare benefits, their housing association, etc.). The local authority may fulfil their obligations to support the care leaver by helping them to access support through these sources (if that is sufficient) rather than providing the support directly. All local authorities will continue to be able to provide whatever support they see fit, to whomever they deem eligible, in line with their corporate parenting responsibilities.

**Q. Does support have to be cut off when a care leaver reaches the age of 26?**

A. No, the local authority may continue to provide support beyond the age of 26.

**Q. What is continuing care?**

A. 'Continuing Care' is a new legal term to describe care leavers who remain in their 'looked after' placement up to the age of 21. 'Continuing Care' is effectively a kind of 'Aftercare Plus', where the young person has ceased to be looked after but the local authority continues to provide them with a looked after care placement (and any necessary support) until their 21<sup>st</sup> birthday.

**Q. I'm working with a young person who is already 16 years old. Will he be eligible for continuing care when he ceases to be looked after?**

A. No. If a young person has reached their 16<sup>th</sup> birthday before April 2015 they will not be eligible to 'Continuing Care' support under the Act. The right to 'Continuing Care' will only be available to care leavers who were born after April 1999, who ceased to be looked after under the 2014 Act, and whose final placement was 'away from home'. However, local authorities and Corporate Parents are advised to refer to [Staying Put Scotland](#), cooperating to provide all care leavers with a graduated transition out of care.

**Q. I'm working with a young person in foster care who will turn 16 in May 2015. The current plan is for her to stay on a supervision requirement till she is 18. To access 'continuing care' support, will she need to cease to be looked after earlier than planned?**

A. No. From April 2015 any looked after young person born after April 1999 (and whose placement was 'away from home') will be eligible for continuing care if they cease to be 'looked after' on or after their 16<sup>th</sup> birthday.

**Q. What will the legal status of a young person who has stayed in their care placement under the continuing care provision?**

A. 'Continuing care' is a legal term. A young person will be deemed as being in receipt of continuing care under Section 67 of the Children and Young People (Scotland) Act which amends Section 26 of the Children (Scotland) Act, 1995. 'Continuing Care' will be available to care leavers on removal of a Supervision Requirement at a Children's Hearing between 16 and 18 years of age.

**Q. Are external (non-local authority provided) placements covered by the amendments which give looked after children the right to remain in their care setting?**

A. Yes. External placements are subject to the same legislation as other placements for young people in care. If the care placement still meets the needs of the young person that placement should be maintained. If the placement cannot be maintained due to any of the exemptions in the Children and Young People (Scotland) Act, or if in consultation with the young person it is deemed to be in their best interest to have an alternative placement, that support must be provided. All local authorities and other corporate parents are encouraged to

read [Staying Put Scotland](#), guidance published in October 2013, which sets the Scottish Government's expectations for how transitions out of care should be planned and managed.

**Q. Will enabling care leavers to stay in care until they are 21 simply move the current 'cliff edge' of leaving care from 16-18 years to 21 years?**

A. Along with changes in the Children and Young People (Scotland) Act enabling looked after children to benefit from continuing care up to 21, the Scottish Government has committed to provide throughcare and aftercare support for care leavers up to 26-years-old, enabling them to make a more gradual transition at a time and pace that suits their individual needs. This will reduce the likelihood of a new 'cliff edge'.

**Q. Will local authorities be given any support to implement the changes?**

A. Ministers have committed to extending measures to additional groups of formerly looked after young people and have acknowledged the need for flexibility and collaboration with the sector to develop these complex policies. The Scottish Government intends to set up an Expert Working Group comprised of sector representatives, service providers, young people, local authorities and other relevant stakeholders. Their task will be to assist the Scottish Government to look at issues around timing, eligibility, resourcing and infrastructure.

**Q. How will the Scottish Government take forward its commitment to allow care leavers to return to care up to the age of 21?**

A. The Expert Working Group noted above will also assist the Scottish Government to develop this policy. The Scottish Government is committed to supporting young people to make a successful transition to independent living when they are ready to do so and allowing them to return to their care placement in times of difficulty. It will be the responsibility of all corporate parents to make sure the right supports are in place.

**Q. Will a young person who remains in 'Continuing Care' be entitled to aftercare support?**

A. When a young person ceases to be looked after under Section 70 or Section 25 of the Children (Scotland) Act, 1995, they can either remain in continuing care under Section 67 of the Children and Young People (Scotland) Act or leave their current care placement and receive aftercare support. 'Continuing Care' and aftercare both provide young care leavers with support that meets their individual needs. A young person will be eligible for aftercare when they leave continuing care up to 26 years old.

**Q. Are there situations in which local authorities are exempt from providing 'Continuing Care' to a care leaver?**

A. The duty to provide 'Continuing Care' does not apply (Section 67(5)) if:

- the accommodation the young person was in when they ceased to be looked after was secure accommodation;
- their carer (e.g. a foster carer) has indicated that he/ she is unable or unwilling to continue providing that placement;

- the local authority considers that providing the care would significantly adversely affect the welfare of the young person.

It is important to note that these exemptions are not loopholes. When external factors outwith the young person's control make a continuing care placement unavailable (such as a foster carer stating he/ she is unable or unwilling to care for that young person) local authorities will be expected to discuss and agree alternative support measures which meet the young person's needs. Practice is expected to reflect the philosophy of care set out in [Staying Put Scotland](#) (October 2013).

**Q. When does the duty to provide 'Continuing Care' last until?**

A. The duty to provide 'Continuing Care' lasts until the young person is 21, or:

- 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 care would significantly adversely affect the welfare of the person.

These scenarios (set out the Section 67(7)) are not loopholes. If the accommodation ceases to be available through no choice of the young person, the local authority will still be expected to provide them with accommodation until they are 21.

**Q. I am particularly concerned about the exemption regarding foster carers 'unwilling or unable' to continue the placement. What happens in such a case?**

A. Where a young person's request for accommodation within a previous care placement (foster or residential care) cannot be met, the local authority is required to provide reasonable alternative accommodation if needed (e.g. providing supported lodgings in cases where a care leaver is not ready for full independence), and shall, if desired by the care leaver, provide regular supportive contact to the care leaver over an appropriate period of time. The exception referring to a care placement where the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement needs to be carefully considered. It is good practice for local authorities to engage with foster carers prior to the placement to ensure that the placement is not de-stabilised by any changes. Such placements must be planned and discussed, expectations (financial or otherwise) managed and carers should be encouraged, enabled and empowered to extend the placements wherever possible.

**Q. Will young people looked after at home be entitled to continuing care?**

A. No. A young person looked after at home will not qualify for continuing care. However they are eligible to aftercare services, and if a young person's circumstances had deteriorated to the extent that their welfare was being compromised the local authority has the power to accommodate that young person in whatever best meets their needs.

**Q. Will guidance be issued to local authorities on the new 'Continuing Care' proposals?**

A. Yes. Existing guidance will be revised and new guidance will be developed in collaboration with the looked after sector as part of the implementation process.

**Q. How will young people be informed about the changes in the law?**

A. At present third sector organisations (such as Who Cares Scotland) are developing materials to ensure that children and young people are aware of their new rights. As the [Staying Put Scotland](#) guidance makes clear, it is important that looked after young people are encouraged, enabled and empowered to remain in positive care placements until they are ready to move on. Local authorities and Scottish Ministers have a responsibility to inform children and young people of these changes in the law, and to involve them in decisions affecting their lives. The 2014 Act places further duties on local authorities to promote and safeguard children's rights.

**Q. Will young people be provided with independent advocacy?**

A. The 2014 Act makes no additional provision for independent advocacy. A number of organisations currently provide advice and support to looked after children and care leavers (including independent advocacy), but the 2014 Act does not guarantee them such services when they are being assessed for aftercare or continuing care.

The 2014 Act does extend the powers of Scotland's Children's Commissioner to investigate individual cases, where appropriate.

**Q. Is there a mechanism for settling disputes that may arise over access to aftercare services or continuing care support?**

A. The 2014 Act does not introduce a new mechanism for resolving disputes in respect to aftercare or continuing care. During the 2014 Act's passage through Parliament the Scottish Government argued that existing mechanisms would suffice. This means that a young person would first have to raise the issue with a more senior local authority officer for review/arbitration. If this does not resolve the issue, they could then use the local authority's in-house complaints process, assisted where relevant by a mentor, advocate or other relevant person.

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