
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 315

**CHILDREN AND YOUNG PERSONS
SOCIAL CARE**

**The Coronavirus Act 2020 (Suspension: Children and
Young Persons Social Care) (Scotland) Regulations 2021**

Made - - - - 13th September 2021
Laid before the Scottish
Parliament - - - - 15th September 2021
Coming into force - - 29th September 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 88(1) and (5) of the Coronavirus Act 2020⁽¹⁾ and all other powers enabling them to do so. The Scottish Ministers are satisfied that the conditions specified in section 88(11) of that Act are satisfied in relation to the provisions suspended by these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Coronavirus Act 2020 (Suspension: Children and Young Persons Social Care) (Scotland) Regulations 2021 and come into force on 29 September 2021.

(2) In these Regulations—

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽²⁾,

“young carer” has the meaning given by section 2 of the Carers (Scotland) Act 2016⁽³⁾,

“the 1968 Act” means the Social Work (Scotland) Act 1968⁽⁴⁾,

“the 1995 Act” means the Children (Scotland) Act 1995⁽⁵⁾,

“the 2013 Act” means the Social Care (Self-directed Support) (Scotland) Act 2013⁽⁶⁾,

“the 2016 Act” means the Carers (Scotland) Act 2016,

“the 2020 Act” means the Coronavirus Act 2020.

(1) 2020 c. 7.

(2) 1994 c. 39. Section 2 was amended by paragraph 232(1) of schedule 22 of the Environment Act 1996 (c. 25).

(3) 2016 asp 9.

(4) 1968 c. 49.

(5) 1995 c. 36.

(6) 2013 asp 1.

Suspension of modifications under the 2020 Act in relation to certain duties of local authorities

2. The following provisions of the 2020 Act (duty of local authority to assess needs: Scotland) are suspended—

- (a) section 16(3),
- (b) section 16(4)(c) and (d),
- (c) section 16(4)(e) in so far as it relates to a young carer⁽⁷⁾,
- (d) section 16(7) and (8), and
- (e) section 16(9).

Transitional provisions

3.—(1) A local authority which has—

- (a) relied on section 16(3) of the 2020 Act together with any of the following provisions of the 2020 Act—
 - (i) section 16(4)(c),
 - (ii) section 16(4)(d),
 - (iii) section 16(4)(e) (insofar as it relates to a young carer),
 in relation to a person, and
- (b) provided support to the person under section 24 of the 2016 Act (duty to provide support) pursuant to the reliance,

must continue to provide that support until one of the events mentioned in paragraph (2) occurs.

(2) The events referred to in paragraph (1) are—

- (a) the local authority has prepared a young carer statement under section 12 of the 2016 Act (duty to prepare young carer statement) in relation to the person and has identified the person's outcomes and needs under the Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018⁽⁸⁾, with regard to section 1 of the 2013 Act (general principles regarding provision of social care) insofar as it relates to Part 2 and Part 3 of the 2016 Act,
- (b) the person no longer has a requirement for the support,
- (c) the person has refused the offer of a young carer statement, or
- (d) the person's existing young carer statement has been reviewed in accordance with the Carers (Scotland) Act 2016 (review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018⁽⁹⁾.

(3) A local authority which has—

- (a) relied on section 16(7) of the 2020 Act in relation to a child, and
- (b) provided services to the child under section 22(1) of the 1995 Act (promotion of welfare of children in need), pursuant to the reliance,

must continue to provide those services until one of the events mentioned in paragraph (4) occurs.

(4) The events referred to in paragraph (3) are—

(7) Section 16(4)(e) was suspended by [S.S.I. 2020/377](#) in so far as it relates to an adult carer, along with the suspension of section 16(1), (2), (4)(a) and (b).

(8) [S.S.I. 2018/109](#).

(9) [S.S.I. 2018/33](#).

- (a) the local authority has fulfilled the duty under section 23(3) of the 1995 Act (duty to assess needs of child affected by disability) in relation to the child, having regard to section 1 of the 2013 Act (insofar as it relates to section 22 or 23 of the 1995 Act), or
 - (b) the child no longer has a requirement for those services.
- (5) A local authority which has—
- (a) relied on section 16(9) of the 2020 Act in relation to a person,
 - (b) pursuant to the reliance, provided advice, guidance or assistance to any person under any of the following provisions of the 1995 Act (after-care for a person who was looked after by the authority)—
 - (i) section 29(1), or
 - (ii) section 29(5A)(10),

must continue to provide that advice, guidance or assistance until one of the events mentioned in paragraph (6) occurs.

- (6) The events referred to in paragraph (5) are—
- (a) the local authority has fulfilled the duty under section 29(5) of the 1995 Act (duty to assess the needs of a person requiring after-care), or
 - (b) the person no longer has a requirement for such advice, guidance or assistance.

St Andrew's House,
Edinburgh
13th September 2021

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

(10) Section 29(1) was amended by, and section 29(5A) inserted by, section 66(2) of the Children and Young People (Scotland) Act 2014 (asp 8).

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations partially suspend on 29 September 2021 the operation of section 16 (duty of local authority to assess needs: Scotland) of the Coronavirus Act 2020 (“the 2020 Act”) insofar it relates to child social care and young carers. Certain provisions of section 16 have previously been suspended in relation to adult social care and adult carers by virtue of the Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020 ([S.S.I. 2020/377](#)). The partial suspension of section 16 of the 2020 Act means that those provisions no longer have effect in Scotland but are capable of being revived under section 88(3) of the 2020 Act.

Regulation 2 suspends the following provisions—

- section 16(3) and section 16(4)(c) and (d) (which permits a local authority to dispense with its duty to prepare a young carer statement under section 12 of the Carers (Scotland) Act 2016 (“the 2016 Act”), if it would be impractical or cause delay in the provision of support),
- section 16(3) and 16(4)(e) insofar as it relates to a young carer (which permits a local authority not to comply with section 1 of the Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”) insofar as it relates to Part 2 and Part 3 of the 2016 Act),
- section 16(7) and (8) (which permits a local authority not to comply with its duty to assess the needs of a child affected by disability under section 23(3) of the Children (Scotland) 1995 (“the 1995 Act”) and section 1 of the 2013 Act, insofar as it relates to section 22 and 23 of the 1995 Act, if it would be impractical or cause delay in the provision of support),
- section 16(9) (which permits a local authority not to comply with its duty to carry out an assessment under section 29(5) of the 1995 Act in relation to a young person formerly looked after by that authority who requires after-care support, if it would be impractical or cause delay in the provision of support).

Regulation 3 makes transitional provision as follows:

- Regulation 3(1) as read with regulation 3(2), provides for the transition where a local authority has relied on section 16(3) of the 2020 Act, together with either section 16(4)(a) or 16(4)(b) or, insofar as it applies to a young carer, section 16(4)(e), in relation to a person and provided support to that person. The local authority must continue to provide that support until it has prepared a young carer statement, the person no longer has a requirement for support, the person has refused the offer of a young carer statement or the person’s existing young carer statement has been reviewed under the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018.
- Regulation 3(3) as read with regulation 3(4), provides for the transition where a local authority has relied on section 16(7) of the 2020 Act in relation to a child, and provided services to that child under section 22(1) of the 1995 Act. The local authority must continue to provide those services until it has carried out an assessment under section 23(3) of the 1995 Act, having regard to section 1 of the 2013 Act, or the child no longer has a requirement for those services.
- Regulation 3(5) as read with regulation 3(6), provides for the transition where a local authority has relied on section 16(9) of the 2020 Act in relation to a young person, and provided advice, guidance or assistance to that person under section 29(1) or (5A) of the 1995 Act. The local authority must continue to provide such advice, guidance or assistance until it has carried out an assessment under section 29(5) of the 1995 Act or the young person no longer has a requirement for that advice, guidance or assistance.

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An Equality Impact Assessment has been produced for this instrument.