



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

CHAPTER I

SUPPORT FOR CHILDREN AND THEIR FAMILIES

Provision of services

[^{F1}26A Provision of continuing care: looked after children

- (1) This section applies where an eligible person ceases to be looked after by a local authority.
- (2) An “eligible person” is a person who—
 - (a) is at least sixteen years of age, and
 - (b) is not yet such higher age as may be specified.
- (3) Subject to subsection (5) below, the local authority must provide the person with continuing care.
- (4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.
- (5) The duty to provide continuing care does not apply if—
 - (a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,

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- (b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or
 - (c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.
- (6) A local authority's duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.
- (7) The duty to provide continuing care ceases if—
- (a) the person leaves the accommodation of the person's own volition,
 - (b) the accommodation ceases to be available, or
 - (c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.
- (8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—
- (a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
 - (b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
 - (c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.
- (9) The Scottish Ministers may by order—
- (a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,
 - (b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,
 - (c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
- (10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—
- (a) the Scottish Ministers, and
 - (b) Social Care and Social Work Improvement Scotland.
- (11) An order under this section—
- (a) may make different provision for different purposes,
 - (b) is subject to the affirmative procedure.
- (12) Before making an order under this section, the Scottish Ministers must consult—
- (a) each local authority, and
 - (b) such other persons as they consider appropriate.
- (13) In this section—
- “carer”, in relation to a care placement, means the family or persons with whom the placement is made,
 - “care placement” means a placement such as is mentioned in section 26(1) (a) of this Act,
 - “specified” means specified by order made the Scottish Ministers.]

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Textual Amendments

- F1** S. 26A inserted (1.8.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 67(1), 102(3)**; [S.S.I. 2014/131](#), art. 2(2)(3), sch.; [S.S.I. 2015/61](#), art. 2(1)(2), sch.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2010/875 reg. 16Sch. 2](#) (This amendment not applied to [legislation.gov.uk](#). These Regulations never came into effect, having been revoked before coming into force by [S.I. 2010/1906, reg. 2](#))
- Act power to modify conferred by [2010 asp 8, s. 190\(2A\)](#) (as substituted) by [2024 asp 5 s. 29\(2\)\(b\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(3A)(ba) inserted by [2009 c. 24 Sch. 6 para. 25](#)
- s. 4B inserted by [2020 asp 16 s. 28\(2\)](#)
- s. 6(1A)-(1D) inserted by [2020 asp 16 s. 1\(2\)\(b\)](#)
- s. 10(1A) inserted by [2024 asp 2 Sch. 1 para. 18\(b\)](#)
- s. 11(14) inserted by [2020 asp 16 s. 10\(2\)\(b\)](#)
- s. 11B11C inserted by [2020 asp 16 s. 8\(2\)](#)
- s. 11B(2) power to amend conferred by [2020 asp 16 s. 32](#)
- s. 11D inserted by [2020 asp 16 s. 17\(2\)](#)
- s. 11D(3) power to amend conferred by [2020 asp 16 s. 32](#)
- s. 11E inserted by [2020 asp 16 s. 18\(2\)](#)
- s. 11F inserted by [2020 asp 16 s. 20\(2\)](#)
- s. 11G inserted by [2020 asp 16 s. 22\(2\)](#)
- s. 11ZA11ZB inserted by [2020 asp 16 s. 1\(4\)](#)
- s. 11ZA(2A) inserted by [2020 asp 16 s. 30\(2\)](#)
- s. 11ZA(3)(f) inserted by [2020 asp 16 s. 16\(2\)](#)
- s. 16(1A) inserted by [2020 asp 16 s. 30\(3\)](#)
- s. 16(2)-(2B) substituted for s. 16(2) by [2020 asp 16 s. 1\(6\)](#)
- s. 17A inserted by [2024 asp 5 s. 24\(2\)](#)
- s. 33A inserted by [2024 asp 5 s. 30\(2\)](#)
- s. 100A inserted by [2020 asp 16 s. 21\(2\)](#)
- s. 101D inserted by [2020 asp 16 s. 11\(2\)](#)
- s. 101E inserted by [2020 asp 16 s. 12\(2\)](#)