

EXPLANATORY MEMORANDUM TO

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (CONSEQUENTIAL MODIFICATIONS) ORDER 2016

2016 No. 732

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order is made in consequence of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) which makes provision in relation to aspects of children’s services in Scotland. The purpose of this Order is to ensure that eligibility to DWP benefits, namely income-based jobseeker’s allowance, income support and housing benefit, reflects local authority responsibilities in Scotland to provide continuing care to an eligible young person after they cease to be “looked after” by them at the age of 16 or 17.
- 2.2 It also ensures that neither the young person nor the person who cares for the young person is financially disadvantaged by the provision of continuing care. It does this by disregarding from the calculation of benefit entitlement any payments made by a local authority to support the young person, being payments that are not covered by DWP income-support related payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments Committee

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2014 Act received Royal Assent on 27th March 2014. It makes provision in relation to various aspects of children’s and young persons’ services in Scotland. Section 67(1) of the 2014 Act inserted section 26A into the Children (Scotland) Act 1995; section 26A places a duty on a local authority, subject to certain exceptions in subsection (5), to provide continuing care to an eligible person where they cease to be “looked after” by them.
- 4.2 Section 26A(4) defines “continuing care” as meaning the same accommodation and other assistance as was being provided by the local authority immediately before the person ceased to be “looked after”. An “eligible person” is defined in Section 26A(2) as a person who is at least 16 years of age and is not yet such higher age as may be

specified. Article 2 of the Continuing Care (Scotland) Order 2015¹ currently specifies that higher age as 18. Section 26A(6) provides that local authority's duty to provide continuing care lasts, subject to certain exceptions in section 26A(7), until the expiry of such period as may be specified. Article 3 of the Continuing Care (Scotland) Order 2015 provides that the period specified for the purposes of section 26A(6) is the period from the date on which the eligible person ceases to be “looked after” until the date of that person’s 21st birthday.

- 4.3 The Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004 (the “2004 Regulations”), made under section 6(9) of the Children Leaving Care Act 2000 (“2000 Act”), excludes those under the age of 18 and to whom a local authority in Scotland is obliged to provide advice, guidance and assistance under section 29(1) of the Children (Scotland) Act 1995, from entitlement to certain social security benefits, namely income-based jobseeker’s allowance, income support and housing benefit. There are exceptions to this rule in relation to access to Income Support and Jobseeker’s Allowance for certain categories of people, such as lone parents.
- 4.4 In addition, on the basis that existing payments made with respect to a young person who has been “looked after” by a local authority will be for non-benefit related support (e.g. extraordinary travel costs, therapeutic support) secondary legislation provides that such payments are disregarded from the claimant’s benefit entitlement².

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales and Scotland.
- 5.2 The territorial application of this instrument is England and Wales and Scotland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

- 7.1 As is noted in paragraph 4, the 2014 Act makes legislative provision (through the insertion of section 26A into the Children (Scotland) Act 1995) that places a duty on local authorities to provide continuing care to young people who cease to be “looked after” by a local authority under other provisions in the Children (Scotland) Act 1995. Currently section 26A applies to young people aged 16 and 17 though, once a young person begins to receive continuing care, the care can continue until he or she reaches the age of 21. Such young people will typically be in residential care, foster care or kinship care. The policy intention is that continuing care should be provided in the same placement and with the same support as the young person received whilst being looked after under other provisions in the Children (Scotland) Act 1995. This means

¹ SSI 2015/158

² See references to payments made under section 29 of the Children (Scotland) Act 1995 in Schedules 9 and 10 to the Income Support (General) Regulations 1987; Schedules 7 and 8 of the Jobseeker’s Allowance Regulations 2006; Part 1 of Schedule 5 to the State Pension Credit Regulations 2002; Schedules 5 and 6 to the Housing Benefit Regulations 2006; Schedule 6 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006; and Schedules 8 and 9 to the Employment and Support Allowance Regulations 2008.

that a young person's daily experience, including of accommodation, should not change.

- 7.2 Given that this new category of care leaver will receive support from a local authority, in the same way as those who currently receive after-care under section 29 of the Children (Scotland) Act 1995, this Order amends the 2004 Regulations to provide that this category similarly should not be entitled to certain social security benefits, namely income-based jobseeker's allowance, income support and housing benefit while they are under the age of 18. The existing exceptions to this rule as described in paragraph 4.3 will apply to this category of people. This will avoid the making of duplicate payments by DWP and local authorities and will ensure consistency in regard to access to benefits for care leavers receiving support from their local authority.
- 7.3 The Order amends various benefit Regulations to ensure that neither the young person nor the carer should be financially disadvantaged by the provision of continuing care. The effect in practice is that any payments made under the new section 26A are to be disregarded in calculating entitlement to income-related benefits for the young person or carer.

Consolidation

- 7.4 This Order stands alone.

8. Consultation outcome

- 8.1 No formal consultation has taken place on the Order; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises. All provisions contained in this Order have the approval of the Department for Work and Pensions and the Scottish Government.
- 8.2 With regard to wider consultation on the 2014 Act, the Scottish Government ran its consultation, *A Scotland for Children: A Consultation on the Children and Young People Bill*, from 4th July 2012. An analysis of the 298 responses received showed general support for the introduction of the Bill and the full analysis can be viewed here: <http://www.scotland.gov.uk/Publications/2012/12/4986/1>.
- 8.3 On 22nd March 2013, the Scottish Government published its response to that consultation. The response can be viewed here: <http://www.scotland.gov.uk/Publications/2013/03/9148>.

9. Guidance

- 9.1 This Order stands alone, however DWP will issue guidance to update local authorities.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible.
- 10.3 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and, therefore, no monitoring or review of the effects of this Order are required.

13. Contact

13.1 Rachel Irvine at the Scotland Office (Telephone: 0207 270 6800 or email: Rachel.irvine@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.