



# **CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014:**

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## **Guidance on Part 10: Aftercare**



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## PREFACE

1. The primary legislation that this guidance refers to is the [Children \(Scotland\) Act 1995](#) (the 1995 Act) and the [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act). The legislation and accompanying Regulations clearly set out the principals and policy aims for Aftercare provision.
2. This guidance provides local authorities and their Community Planning Partners with information and advice about how they should fulfil their duties under section 29 (After-care) of the 1995 Act, and associated secondary legislation, as amended by Part 10 (Aftercare) of the 2014 Act. The revised duties and powers commenced on 1 April 2015.
3. This guidance supplements the [Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004. Relevant pieces of subordinate legislation are [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#) and also the [Aftercare \(Eligible Needs\) \(Scotland\) Order 2015](#). The 2014 Act and this guidance complement the existing Regulations and Guidance, which remain relevant. Where appropriate they are referenced clearly in this guidance.
4. To ensure full compliance with the legislation it is recommended that this guidance is read as a whole and alongside other guidance on relevant parts of the 2014 Act and other legislation.
5. In particular, this guidance should be read alongside other relevant guidance relating to the 2014 Act as each part is commenced. [Part 9 \(Corporate Parenting\) of the 2014 Act](#) has already been commenced and this guidance should be read in conjunction with that.

6. For a full explanation of the spirit and principles on which this guidance is based (and the Scottish Government's policy objectives) please refer to [Staying Put Scotland guidance](#) published in 2013, which emphasises the crucial importance of continuity of relationships and the expectation that all looked after children should routinely remain in their placement until at least the age of eighteen.
7. Other relevant legislative and policy guidance is listed at **Appendix A**. This guidance will be reviewed in due course, once all parts of the 2014 Act have been fully brought in to force.
8. This guidance reflects the policy aims of Scottish Ministers, and will be referenced by regulatory and other scrutiny bodies in the course of external inspection.
9. Moreover, this guidance has been developed in consultation with local authorities, care providers, third sector organisations and care leavers to support effective implementation of the changes to Aftercare services introduced by the 2014 Act.
10. This guidance is directed towards local authorities, other corporate parents and Community Planning Partners (CPPs) who will therefore wish to pay due regard to both the contents and underpinning spirit of this guidance.
11. This guidance highlights the issues which local authorities, through consultation events, considered it likely they would encounter and outlines a number of relevant potential scenarios. These are intended to be of use to frontline practitioners, providing an explanation of how the duties should be applied in day-to-day practice. It is, however, not intended to provide answers to every unique situation, and where necessary care leavers and local authorities should seek appropriate legal advice.

12. The aims of this guidance are:

- to reinforce the legal and ethical responsibilities of local authorities towards looked after young people and care leavers;
- to explain and re-emphasise local authorities' powers and duties in relation to the provision of Aftercare; and
- to provide a framework for enhanced and improved personal support (based on on-going personal contact) for Scotland's care leavers.

13. Looked after children, young people, care leavers, carers and families may also find this guidance a useful aid in identifying their entitlements and it may assist in future preparation of any supplementary information leaflets to accompany all parts of the 2014 Act.

## THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

14. The [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act) was passed by the Scottish Parliament on 19 February 2014, and received Royal Assent on 27 March 2014.
15. The legislation is a key part of the Scottish Government's ambition for making Scotland the best place in the world to grow up.
16. By facilitating a shift in public services towards the early years of a child's life, and towards early intervention whenever a family or young person needs help, the legislation encourages preventative measures, rather than reactive or crisis responses.
17. Underpinned by the Scottish Government's commitment to the [United Nations Convention on the Rights of the Child 1989 \(UNCRC\)](#) and the national children's services improvement programme [Getting it Right for Every Child \(GIRFEC\)](#) the 2014 Act also establishes a new legal framework within which services are expected to work together in support of children, young people and families.
18. The 2014 Act introduces a number of important changes for looked after children and care leavers in Scotland. In summary, these are:
  - 600 hours of free early learning and child care for all two year olds who are looked after or living with friends or relatives through a Kinship Care Order (Part 6, sections 47 and 48);
  - Corporate Parenting duties for certain individuals and organisations (Part 9);
  - Extended eligibility for Aftercare assistance until their twenty-sixth birthday and a new duty on local authorities to report on the death of a young person in receipt of Aftercare services (Part 10);

- Introduction of Continuing Care, providing certain care leavers with the opportunity to continue with the accommodation and assistance they were provided with immediately before they ceased to be looked after and a new duty on local authorities to report on the death of a young person in receipt of Continuing Care (Part 11);
- Support for children at risk of becoming looked after (Part 12);
- Assistance for applicants and holders of a Kinship Care Order (Part 13);
- Use of Scotland's Adoption Register made a duty on all adoption agencies (Part 14); and
- Assessment of Wellbeing (Part 18, section 96).

19. Guidance on all of these changes is being made available by the Scottish Government for each part of the 2014 Act. All guidance, when available, should to be considered together as a whole. This guidance relates specifically to Part 10 (Aftercare) of the 2014 Act.

## INTRODUCTION

20. Local authorities and other corporate parents have duties to prepare looked after young people for life after they cease to be looked after and to provide advice, guidance and assistance to eligible care leavers. The 2014 Act updates and expands the framework within which these services are to be delivered by extending eligibility for Aftercare services.
21. This supports the overall aim for young people to make successful transitions out of the looked after system, based on plans that reflect their individual needs and aspirations, backed up by consistent, personalised relationship-based support from local authorities and other corporate parents. Across Scotland, local authorities and their partners continue to work to realise this aim, however, research and official national statistics<sup>1</sup> highlight the considerable difficulties which continue to be faced by young people once they cease to be looked after.
22. Periods of homelessness, poverty, unemployment, involvement with the criminal justice system and poor mental health are a reality for many, as a result of [Adverse Childhood Experiences](#) (ACEs), effectively excluding them from opportunities to improve their wellbeing and realise their ambitions not just in early adulthood but across the whole life course.
23. Since commencement of the 1995 Act (establishing the framework of After-care services) the nature of transitions for the general population of teenagers in the UK has changed profoundly<sup>2</sup>. Young people remain in the family home longer, benefiting from the financial and emotional security this offers. Conversely, young people are engaging in notionally “adult” behaviours at an increasingly early age<sup>3</sup>. Such ‘partial transitions’ subvert traditional, linear views of the

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<sup>1</sup> Scottish Government statistics on Looked After Children in Scotland  
<http://www.gov.scot/Topics/Statistics/Browse/Children/Publications>

<sup>2</sup> Valentine, 2000; Bynner et al., 2002; Jones, 2002)

<sup>3</sup> James, 2010: 491

journey into adulthood, and throw into question ideas of 'independence' in young adulthood<sup>4</sup>.

24. The changes introduced by the 2014 Act, preceded by the [Staying Put Scotland guidance](#) published in 2013, have been developed in response to these realities experienced by the wider population. It is now accepted that most young people leaving care require support over an extended period, into adulthood, in order to manage the consequences of their pre-care and in-care experiences, particularly in the context of an increasingly challenging and competitive environment for young adults.
25. The [Scottish Care Leaver Covenant](#), a sector led initiative facilitated by the Centre for Excellence for Looked After Children in Scotland (CELCIS), clearly sets out both implementation challenges and potential responses to these challenges, and aims to support corporate parents to improve the lives of care leavers.
26. The [Housing Options Protocol for Care Leavers](#) also published in 2013 complements the Staying Put Scotland policy and offers practical examples of how corporate parents may address the issues of accommodation for those leaving care. Further information on the particular issue of accommodation options for care leavers is further set out in the CELCIS Inform Briefing: Housing Options and Care Leavers Improving Outcomes into Adulthood<sup>5</sup> published July 2015. This is summarised in **Appendix B**.
27. The 2014 Act extends care leavers' entitlement to advice, guidance and assistance, subject to an assessment, up to and including the age of twenty-five years old.

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<sup>4</sup> Valentine, 2000: 258

<sup>5</sup> CELCIS Inform Briefing: Housing Options and Care Leavers Improving Outcomes into Adulthood published in 2015 <https://www.celcis.org/knowledge-bank/search-bank/inform-housing-options-and-care-leavers/>

28. For most care leavers it will also be necessary to offer a more graduated transition out of care with continuity of relationships, and support and assistance provided at levels similar to when they were formally looked after for a continuing period. For this reason the 2014 Act introduces a new provision of Continuing Care. This provides eligible care leavers with the opportunity to remain in the same accommodation they were living in immediately before they ceased to be looked after, until their twenty-first birthday. Please refer to the guidance on Part 11 (Continuing Care) of the 2014 Act for full details on this entitlement.
29. Combined with the renewed focus on a young person's 'wellbeing' ([section 96](#) of the 2014 Act), these changes to Aftercare are designed to embed an approach which facilitates relationship-based practice, and puts the needs of the young person at the centre of planning and delivery.
30. All young people (aged sixteen or over) leaving care should encounter an implicit and explicit expectation from professionals that they have the right to support, including, where appropriate, the opportunity to remain in their existing care placement as part of a 'Continuing Care' arrangement.
31. A local authority's approach to providing advice and assistance to prepare young people for leaving care ('throughcare') and any advice, guidance and support when they cease to be looked after ('Aftercare'), should be orientated towards establishing interdependence for young people. Acknowledging that relationships are of crucial importance and that the transition into adulthood and associated decisions about allocation of resources should be at a pace suited to each young person's preparedness, not simply a matter of chronological age. Interdependence more accurately reflects the day to day reality of an extended range of healthy inter-personal relationships, social supports and networks.
32. Local authorities and other corporate parents will want to ensure that their systems, procedures, processes and practice supports the primary focus on relationships for the young person, both within their care experience and beyond. See [Staying Put Scotland guidance](#).

33. [Section 66](#) of the 2014 Act inserts a new subsection 29(10) into the 1995 Act placing a duty on local authorities to notify the Scottish Ministers and the Care Inspectorate of the death of a person being provided with advice, guidance or assistance by them under section 29 of the 1995 Act (i.e. Aftercare). This duty took effect from 1 April 2015.

## INTERPRETATION OF KEY TERMS

### Aftercare

34. The term 'Aftercare' refers to the advice, guidance and assistance provided to care leavers under section 29 of the 1995 Act. Section 29(1) and (2) of the 1995 Act (as amended by section 66 of the 2014 Act) specifies the descriptions of care leavers that are eligible or potentially eligible for Aftercare. Any young person who ceases to be looked after on or after their sixteenth birthday and is less than twenty-six years of age is eligible (between sixteen and nineteen) or potentially eligible (between nineteen and twenty-six) for Aftercare. Prior to the 2014 Act changes young people who ceased to be looked after beyond their minimum school leaving age and were less than twenty-one years of age were eligible or potentially eligible for Aftercare.
35. It is important to note that eligibility for Aftercare applies to all care leavers, regardless of their placement type while they were looked after.
36. For the avoidance of doubt, young people who were looked after at home are if they meet the criteria following a pathway assessment,<sup>6</sup> as eligible for Aftercare support as any other looked after child. Regulation 13 of [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) places restrictions on the manner in which financial assistance can be provided as Aftercare support. The type of advice and assistance required, and the manner in which it is provided will differ for individuals but the eligibility of all care leavers to receive advice and assistance is equal.

### Care Leaver

37. For the purposes of this guidance a 'care leaver' is a young person who meets the descriptions set out in section 29 and section 30 of the 1995 Act (as amended by section 66 of the 2014 Act).

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<sup>6</sup> Pathways Handbook published 2004: <http://www.gov.scot/Publications/2004/05/19357/37092>

38. From 1 April 2015 a care leaver is a young person who ceased to be looked after on, or at any time after, their sixteenth birthday. This replaces the previous care leaver definition of a young person who ceased to be looked after on or after their minimum school leaving.
39. Please note that care leavers under the previous definition will continue to be considered care leavers after 1 April 2015, and therefore remain covered by the duties set out in section 29 and section 30 of the 1995 Act (as amended by Part 10 (Aftercare) of the 2014 Act). This definition also applies to duties set out in Part 9 (Corporate Parenting) of the 2014 Act.

### **Carer**

40. The term 'carer' means the family or persons with whom the care placement is made.

### **Care Placement**

41. The term 'care placement' refers to a placement for a looked after child (as described in section 26(1) (a) of the 1995 Act) with a family, relative, or other suitable person or residential establishment.

### **Continuing Care**

42. The term 'Continuing Care' refers to a local authority's duty under section 26A of the 1995 Act to provide, subject to a Welfare Assessment, young people born after 1 April 1999 and who are at least aged sixteen but have not reached the higher age (as specified by Ministerial Orders) and whose final 'looked after' placement is in foster, kinship or residential care with the same accommodation and other assistance as was being provided by the local authority, at the time the young person ceases to be looked after.

43. The aim of Continuing Care is to provide young people with a more graduated transition out of care, reducing the risk of multiple simultaneous disruptions occurring in their lives while maintaining supportive relationships. It is a new term introduced by Part 11 of the 2014 Act. For more information, please refer to the [guidance on Part 11\(Continuing Care\) of the Children and Young People \(Scotland\) Act 2014](#).

### **Corporate Parent**

44. The definition of a 'corporate parent' is provided by section 56 of the Children and Young People (Scotland) Act 2014. An organisation or individual is a corporate parent if they are listed, or within a description listed in schedule 4<sup>7</sup> of the 2014 Act.

### **Corporate Parenting**

45. For the purposes of the [statutory guidance on Part 9 \(Corporate Parenting\) of the Children and Young People \(Scotland\) Act 2014](#), the term corporate parenting is defined as;

“An organisation's performance of actions necessary to uphold the rights and safeguard the wellbeing of a looked after child or care leaver, and through which physical, emotional, spiritual, social and educational development is promoted.”<sup>8</sup>

46. In respect to wellbeing, the term 'promoted' means 'actively encouraged or further developed'. The term 'safeguarded' means 'protected from harm or damage'. The term 'affected' means 'influenced, changed'.

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<sup>7</sup> Children and Young People (Scotland) Act 2014, schedule 4 corporate parents  
<http://www.legislation.gov.uk/asp/2014/8/schedule/4/enacted>

<sup>8</sup> Definition is adapted from Sonia Jackson's definition of 'parenting' presented in M. Davies (ed) (2000) The Blackwell Encyclopaedia of Social Work, Oxford, Blackwell, and cited in the Scottish Government (2008) [These Are Our Bairns: A Guide for Community Planning Partnerships on Being a Good Corporate Parent](#)

47. The necessary actions or duties of corporate parents are set out in Part 9, section 58 (Corporate Parenting responsibilities) of the 2014 Act.

### **Eligible need**

48. Eligible needs are defined in the [Aftercare \(Eligible Needs\) \(Scotland\) Order 2015](#) as:

- a) financial support to meet essential accommodation and maintenance costs, such as travel and other necessary living expenses;
- b) support, in the form of information or advice, to assist the person to access education, training, employment, leisure and skills-related opportunities; and
- c) insofar as not covered by sub-paragraph (b), support, in the form of information or advice, relating to the person's wellbeing.

49. Any assessment of a young person's wellbeing will include the SHANARRI indicators (as described in section 96 of the 2014 Act)
50. Eligible needs can be further described as needs which cannot be met through existing universal services and supports.

### **Looked After Child**

51. The definition of a 'looked after child' is set out in section 17(6) of the Children (Scotland) Act 1995 (the 1995 Act), as amended by the Adoption and Children (Scotland) Act 2007 (the 2007 Act) and Children's Hearings (Scotland) Act 2011 (the 2011 Act).
52. A child is 'looked after' by a local authority when he or she is:
- provided with accommodation by a local authority under section 25 of the 1995 Act;

- or subject to a compulsory supervision order or an interim compulsory supervision order made by a children 's hearing in respect of whom the local authority are the implementation authority (within the meaning of the 2011 Act); or
- living in Scotland and subject to an order in respect of whom a Scottish local authority has responsibilities, as a result of a transfer of an order under regulations made under section 33 of the 1995 Act or section 190 of the 2011 Act; or
- subject to a Permanence Order made after an application by the local authority under section 80 of the 2007 Act.

53. To assist in the provision of their care some children and young people with physical and/or mental disabilities are 'looked after' by local authorities (often under section 25 of the 1995 Act). These children and young people are legally 'looked after' and are, therefore, also eligible for Aftercare as set out in Part 10 of the 2014 Act.
54. A child who has been adopted, or a child who is living with friends or relatives and is subject to a Kinship Care Order under section 11 of the 1995 Act, is not considered formally 'looked after'.
55. The legal route by which a child became looked after has no relevance to their entitlement for Aftercare support. If a child is looked after, by any of the means set out above, the duties set out in section 29 and section 30 of the 1995 Act (as amended by the 2014 Act) apply.
56. Young people can be uncomfortable with the label 'looked after child', so the terms 'looked after young person' or 'looked after young people' are used in this guidance and refer to any individual falling into the 'looked after child' definition provided above.

## Throughcare

57. The term 'throughcare' refers to the advice and assistance provided to looked after children with a view to preparing them for when they are no longer looked after by a local authority. Local authorities are under a duty to provide such assistance to all looked after children under section 17(2) of the 1995 Act. For more guidance on throughcare, please refer to the [Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004.

## Wellbeing (as described in section 96 of the 2014 Act)

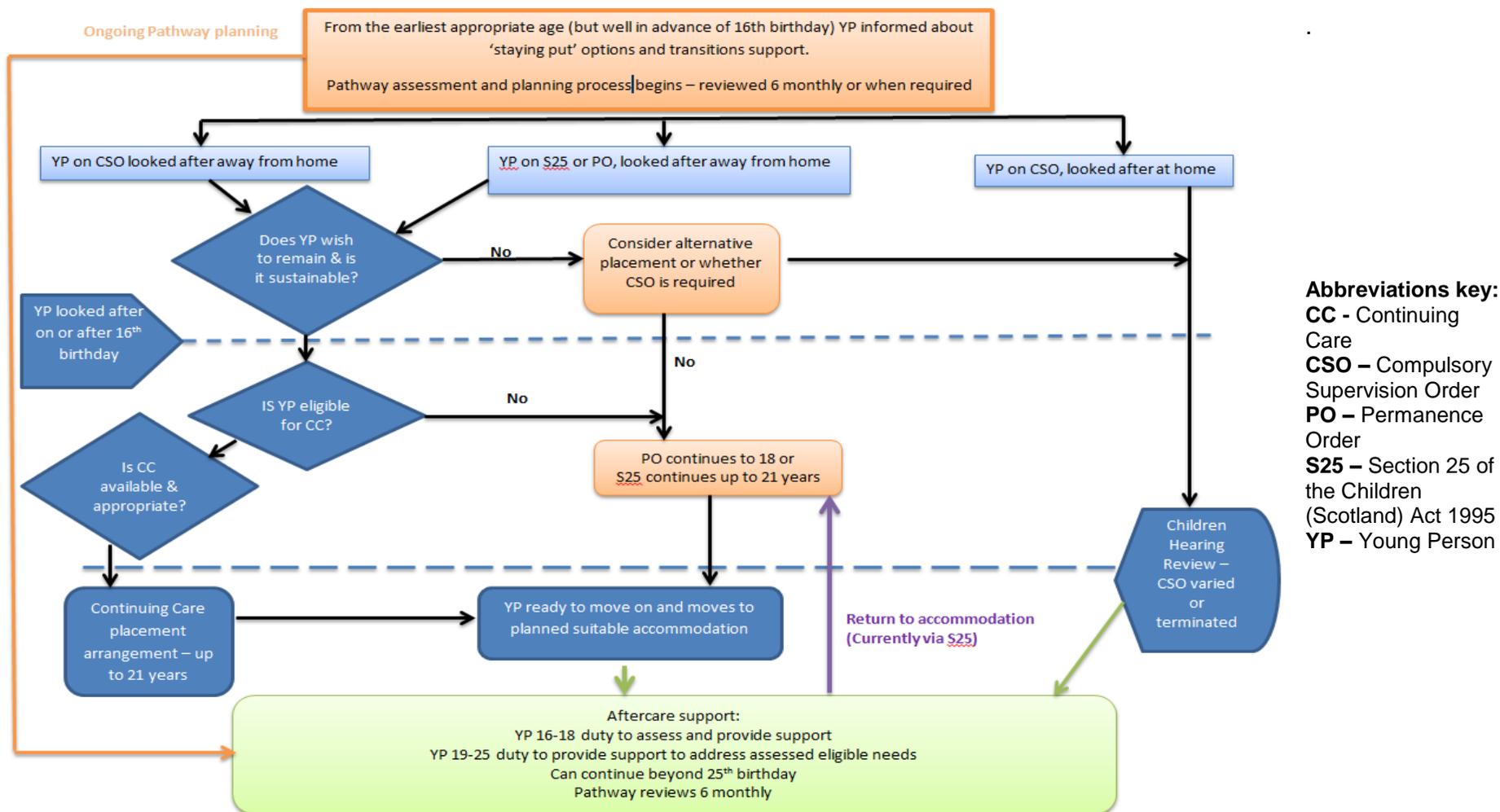
58. Section 96(2) of the 2014 Act describes wellbeing in terms of eight indicators. A person assessing a child or young person's wellbeing is to do so by reference to the extent to which the child or young person is or, as the case may be, would be:

- **Safe:** protected from abuse, neglect or harm.
- **Healthy:** having the best possible standards of physical and mental health, supported to make healthy and safe choices.
- **Achieving:** accomplishing goals and boosting skills, confidence and self-esteem.
- **Nurtured:** having a nurturing and stimulating place to live and grow.
- **Active:** having opportunities to take part in activities.
- **Respected:** being given a voice, being listened to, and being involved in the decisions which affect their wellbeing.
- **Responsible:** taking an active role within their home, school and community.
- **Included:** being a full member of the communities in which they live and learn, receiving help and guidance to overcome inequalities.

59. These eight wellbeing indicators are sometimes known collectively by the acronym 'SHANARRI'. While each indicator is separately defined, in practice they are connected and overlapping. Taken together the eight indicators offer a holistic view of each child or young person, identifying strengths as well as barriers to growth and development.

## THROUGH-CARE AND AFTERCARE PROCESS DIAGRAM

A more detailed process diagram is also available on the CELCIS website here: <https://www.celcis.org/knowledge-bank/search-bank/throughcare-and-aftercare-whole-systems-process-flowchart/>



## PREPARING A YOUNG PERSON FOR WHEN THEY CEASE TO BE LOOKED AFTER

60. In carrying out its duties under section 17(1)(a) of the 1995 Act to prepare for when a young person is no longer looked after, a local authority shall, for every looked after person in respect of whom it is the responsible authority:
- seek the views of the young person;
  - carry out a pathway assessment<sup>9</sup>, with a view to determining what advice, guidance and assistance it would be appropriate for the local authority to provide when the young person is no longer looked after;
  - if necessary or desirable to do so, prepare a pathway plan for the young person; and
  - if necessary or desirable to do so, appoint a pathway co-ordinator for the young person.
61. Informal preparations for when a young person is no longer looked after should begin much earlier than the formal pathways process. Throughout their childhood and adolescence, children and young people should be involved in age-appropriate opportunities to learn skills and personal responsibilities (i.e. cooking, financial education, time management). This preparation should also involve providing young people with information about their rights and entitlements once they cease to be looked after by a local authority.
62. These preparations and activities should not be linked to 'life after care' but more related to the natural journey of development and gaining of life skills that all young people experience. A local 'Staying Put Scotland'<sup>10</sup> approach will enable young people to enjoy a transition from care to adult interdependence that more closely resembles that which is experienced by other young people.

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<sup>9</sup> Pathways Handbook published in 2004 <http://www.gov.scot/Publications/2004/05/19357/37092>

<sup>10</sup> Staying Put Scotland guidance published 2013 <http://www.gov.scot/Publications/2013/10/7452>

63. End of care planning decisions should be based on meeting the needs of the individual, rather than age or legal status. These preparations should be considered within an organisation's collaborative Corporate Parenting activity. Please refer to the statutory guidance on [Part 9 \(Corporate Parenting\) of the 2014 Act](#).
64. Seeking the views of the young person is central to the process of providing Aftercare (section 29 of the 1995 Act, as amended) and fulfilling Corporate Parenting duties set out in Part 9 of the 2014 Act. It is crucial that the young person and, where appropriate, their family and carers, are closely involved in this process of preparing for a time when they will cease to be looked after.
65. Looked after young people come from a variety of backgrounds, and live in a range of different settings (i.e. with family, foster carers or in a residential setting). All these factors should be taken into consideration when providing opportunities to prepare young people for when they cease to be looked after.
66. To achieve this, local authorities will need to keep in regular routine contact with all looked after young people and care leavers for whom they are the 'responsible authority'. This includes those care leavers aged between twenty-one and twenty-five who will also be eligible to re-apply for an assessment for Aftercare support from their relevant local authority. Such contact may be direct (i.e. through a local authority employee) or indirect, through an organisation providing support and assistance to young people on behalf of the local authority.
67. However, where contact is indirect, the local authority should be satisfied that the young person is aware of their rights and entitlements, and that their views on Aftercare support are being sought and recorded.

68. The 2014 Act enhances the legislative framework on the formal assessment process, please refer to [The Support and Assistance of Young People Leaving Care in Scotland: Regulations and Guidance on services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004. [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) were amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#).

## ELIGIBILITY FOR AFTERCARE

69. A compulsorily supported young person is a young person to whom a local authority has a duty under section 29(1) of the 1995 Act to provide advice, guidance and assistance, that is a young person who has ceased to be looked after on or after their sixteenth birthday but who is under the age of nineteen.
70. A discretionarily supported person is a young person to whom a local authority has agreed, via a written assessment of need, to provide advice, guidance and assistance who is nineteen years of age or older but not yet twenty-six years of age.
71. Local authorities are under a duty to provide Aftercare support to all compulsorily supported persons for whom they are the relevant authority, unless they are satisfied that the young person's welfare does not require it.
72. Regulation 2(1) of the [2003 Regulations](#) (as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#)) defines a 'compulsorily supported person' as a 'young person to whom a local authority is obliged to provide advice, guidance and assistance' in terms of section 29(1) of the 1995 Act or, after a pathway assessment, in terms of section 29(5A)(a) of the 1995 Act' (i.e. where the person has 'eligible needs' that cannot be met other than by taking action under section 29(5A)).
73. In addition, a young person aged nineteen to twenty-five (i.e. until their twenty-sixth birthday) may apply to request Aftercare support from their relevant local authority (section 29(2) of the 1995 Act). On such an application the local authority is under a duty to assess the needs of the young person through a pathway assessment (section 29(5) of the 1995 Act).
74. If eligible needs are identified which cannot be met other than by taking action under section 29(5A) of the 1995 Act, then the local authority must meet this need and provide such advice, guidance and assistance as it considers necessary (section 29(5A)(a)).

75. Local authorities also have the power under section 29(5A)(b) of the 1995 Act, regardless of the outcomes of the pathway assessment, to provide Aftercare to those care leavers aged nineteen to their twenty-sixth birthday having regard to the person's welfare, and should always consider employing this power.
76. Under section 29(5B) of the 1995 Act local authorities can also use their discretion in deciding whether to support care leavers over the age of twenty-six. Where an eligible need is identified the local authority must develop and record a pathway plan which clearly identifies how this need will be met.
77. The amendments to Aftercare eligibility introduced by Part 10 of the 2014 Act mean that any looked after young person who ceases to be looked after on or after their sixteenth birthday is potentially eligible for Aftercare support until their twenty-sixth birthday.
78. If the young person is aged nineteen or older, their application for Aftercare support is subject to a pathway assessment, but those aged sixteen to eighteen must be provided with support unless an assessment has evidenced that their welfare does not require it.
79. In circumstances in which a care leaver is a compulsory supported person due to age and either a pathway assessment has not been carried out or a pathway assessment has demonstrated a need for support, the local authority must continue to make every effort to provide advice, guidance and support even when the young person continues not to engage with the service being provided.

## **Managing the expansion of eligibility**

80. The extension of eligibility to care leavers until their twenty-sixth birthday will represent a substantial increase in the numbers eligible for, and accessing, Aftercare services. From April 2015, all young people currently eligible for Aftercare services will be able to potentially continue to receive support up to their twenty-sixth birthday (previously only up to their twenty-first birthday). Care leavers aged between twenty-one and twenty-five will also be eligible to re-apply for assessment for support from their relevant local authority.
  
81. Local authorities should make reasonable attempts to inform those young people who are currently between twenty-one and twenty-six about their new entitlements. For example, by ensuring all corporate parents in their local authority area are aware of these new entitlements and how to signpost eligible young people. Local authorities may wish to consider setting up information or training sessions within local authorities and with other corporate parents. Information on websites accessed by young people may also be a useful vehicle for reaching newly eligible care leavers. Information and advice should also be provided to care leavers from kinship and 'at home' placements, outlining their entitlements.
  
82. Managing the expansion of eligibility to a wider population who can access Aftercare services will require to be considered by each local authority, and will make the need for collaborative work within and between agencies even more essential. Children's Services Planning will play a key role in ensuring this expansion is managed effectively.
  
83. Community Planning Partnerships (CPPs) also have a central role in improving the connection between national priorities and those at regional, local and neighbourhood levels. The expansion of Aftercare as described in Part 10 of the 2014 Act is a key national priority for the Scottish Government.

84. Collaboration between corporate parents is crucial to the effective implementation of Part 10 (Aftercare) of the 2014 Act. It is not expected that social work services will be able to manage this expansion alone. Within local authorities cooperation between departments will be as important as cooperation between corporate parents. Within an authority it is essential that housing, social work, education, adult and economic development services all work cooperatively, recognising that it is everybody's job to support care leavers into sustainable positive destinations as they move towards adulthood.
85. All corporate parents (as listed in schedule 4 of the 2014 Act) have a duty under section 60 of the 2014 Act to collaborate with each other when exercising their corporate parenting responsibilities where they consider doing so would safeguard or promote the wellbeing of those children and young people to whom Part 9 of the 2014 Act applies. Corporate Parenting in the 2014 Act is described as the formal and local partnership needed between all services responsible for the needs of looked after children, young people and care leavers.
86. The Centre for Excellence for Looked After Children in Scotland (CELCIS) is supporting organisations to prepare for meeting their duties under Part 9 and [Statutory Guidance on Part 9 \(Corporate Parenting\) of the Children and Young People \(Scotland\) Act 2014](#) is available. Further information on Corporate Parenting is also available on the CELCIS website<sup>11</sup>.
87. Who Cares? Scotland has also been commissioned by the Scottish Government to provide training and an online resource for Corporate Parents in Scotland to help all organisations understand and better meet their Corporate Parenting responsibilities. Information is available on the Who Cares? Scotland website<sup>12</sup>.

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<sup>11</sup> CELCIS Corporate Parenting website <https://www.celcis.org/knowledge-bank/spotlight/corporate-parenting/>

<sup>12</sup> Who Cares? Scotland Corporate Parenting website <https://www.whocarescotland.org/what-we-do/work-with-corporate-parents/>

88. We know that establishing and maintaining relationships with care leavers (particularly when they move away to another local authority area) can be challenging. Processes of preparation, assessment and review, which respect the young person's entitlements, will require both time and adequate resources and therefore planning is essential.
89. In the context of Corporate Parenting, it is recommended that where looked after children and young people have been placed into an area by another local authority, or a care leaver moves to a new area of their own volition, the 'placing or home' local authority should remain the child or young person's corporate parent. This is consistent with the principles and rules set out in [Looked After Children \(Scotland\) Regulations 2009](#) and [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#). In contrast, when a looked after child is placed or a care leaver moves into, a new area, the territorial health board for that area becomes the child or young person's corporate parent. This is consistent with guidance set out in [Chief Executive Letter 06: Establishing the Responsible Commissioner](#) issued in 2013.
90. Where relevant, Corporate Parenting plans and reports should make explicit reference to how Corporate Parenting duties are being fulfilled for children placed outside of administrative boundaries, and for care leavers who have moved away.
91. In view of the age range of young people eligible for Aftercare (from sixteen to twenty-sixth birthday), links between children's and adult services must be robust. Although the local authority as a whole is the corporate parent, we recognise that the implementation of Part 10 (Aftercare) of the 2014 Act will have a particularly significant impact on adult services. Local Authorities should consider developing and implementing formal agreements and protocols which will best ensure a seamless transition of support involving these services. Care leavers should not experience the withdrawal of a service or support because of organisational or systemic delineation between child and adult services, or between departments. This is central to corporate parents being

able to effectively fulfil their duties and responsibilities under Part 9 (Corporate Parenting) of the 2014 Act.

92. A Champions Board approach has in some areas proven helpful in ensuring that these links are robust and transparent. The Champions Board approach commits local Corporate Parenting partners (local authorities, health boards, higher and further education bodies, the third sector) or national policy-makers and service providers to involve care experienced young people directly in co-designing and coproducing services and supports so that, over time, they can more effectively meet the needs and aspirations of care leavers.
93. Collaborative partnerships are paramount to make sure we become effective and consistent corporate parents - working together and sharing relevant information which will enable care leavers to be the best they can be. The purpose of the 2014 Act is to ensure that the involvement of multiple partners and/or services appears totally integrated from the perspective of the recipient.

## ASSESSING THE NEEDS OF CARE LEAVERS

94. Section 29(5) of the 1995 Act (as inserted by section 73(1) of the Regulation of Care (Scotland) Act 2001) requires a local authority to carry out a needs assessment for every looked after young person over the age of sixteen, with a view to determining what advice, guidance and assistance the authority (and its Community Planning Partners) should provide once the young person ceases to be looked after.
  
95. In every case, the pathway assessment process for Aftercare services should reflect the principles in [Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004. The detail of the pathway assessment process is set out regulations 7 to 10 of [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) (as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#)). For those young persons who have been accommodated, the [Staying Put Scotland guidance](#) published in 2013 is also relevant.
  
96. The emphasis of the legislation, regulations and guidance is on ensuring that the young person is supported to develop in all aspects of their lives. This reflects the philosophy of care set out in the Scottish Government policies which stress the importance of positively delaying the age of leaving care. These policies also stress that, until a young person is ready to make the transition towards greater independence, the corporate parents' duty is to encourage, enable and empower young people to remain in safe, supported environments for as long they need to.

## **Assessment of ‘currently looked after young people’ and ‘compulsorily supported persons’**

97. [The Support and Assistance for Young People Leaving Care \(Scotland\) Regulations 2003](#) (2003 Regulations) state that a local authority must carry out a pathway assessment for all ‘currently looked after young people’ who are over the age of sixteen and every ‘compulsorily supported person’ (a care leaver who has not yet reached their nineteenth birthday).
98. The 2003 Regulations clearly set out the process which must be followed by a local authority. These require that the views of the young person are sought (pathway views) and that a plan is drawn up which states how the local authority plans to meet the needs (pathway plan).
99. Materials have been prepared to help local authorities carry out their assessment duty effectively. The [Pathway Handbook](#) available on the Scottish Government website is a useful tool when embarking on a pathway assessment; this guidance should be read alongside that. The [GIRFEC](#) principles should be at the core the pathway assessment.
100. The [SHANARRI wellbeing indicators](#) (as described in section 96 of the 2014 Act) are entirely complementary to the pathway headings and should be considered in the appropriate section of the pathway assessment. The outcome of the assessment will identify which needs, if any, can be met by either universal or other specialist services.

**Assessment of ‘discretionarily supported persons’ (care leavers aged nineteen to twenty-five inclusive)**

101. Section 29(5A) of the 1995 Act (inserted by section 66(2) of the 2014 Act) sets out that, after carrying out an assessment in pursuance of an application made by a care leaver who is at least nineteen but not yet twenty-six, the local authority:

- a) must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs; and
- b) may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare.

102. Eligible needs are defined in [The Aftercare \(Eligible Needs\) \(Scotland\) Order 2015](#) as:

- a) financial support to meet essential accommodation and maintenance costs, such as travel and other necessary living expenses;
- b) support, in the form of information or advice, to assist the person to access education, training, employment, leisure and skills-related opportunities; and
- c) insofar as not covered by sub-paragraph (b), support, in the form of information or advice, relating to the person’s wellbeing.

**Any assessment of a young persons wellbeing will include the SHANARRI indicators (as described in section 96 of the 2014 Act)**

103. Eligible needs can be further described as needs which cannot be met through existing universal services and supports. Once an assessment has been carried out by a local authority and an eligible need identified which cannot be met by universal services - such as Health, Housing, or the Department for

Work and Pensions (DWP) - the whole local authority, as a corporate parent, has a duty to work together to meet the eligible need.

104. An example of an 'eligible need' is housing costs associated with attending a college or university course. If these costs are not covered by the institution (as part of their package of support for care leavers) or relevant UK or Scottish benefits (such as Housing Benefit or the Care Leavers Vacation Grant), the young person's participation on the course is very likely to be put at risk. In this situation, the young person has an eligible need for support from their local authority. The local authority is then under a duty to meet this need, either through the provision of housing or the necessary financial support to meet essential accommodation and maintenance costs.
105. Corporate Parenting partnerships should also be borne in mind in this context, as for example, universities and colleges are increasingly offering practical support and advice with financial and accommodation issues, specifically for care leavers. Local authorities should work in collaboration with Higher and Further Education Institutions to highlight the needs of care leavers and help inform how other corporate parents might in partnership meet their duties under Part 9 (Corporate Parenting) of the 2014 Act.
106. Other assessments may not be as straightforward as there are a range of issues that can and do cause particular difficulty to care leavers, which reflect both their previous experiences and their very likely limited informal support networks.
138. Where a young person seeks assistance the local authority should carry out an assessment of need based on the eligible need definitions, incorporating the wellbeing indicators.
139. In some circumstances it may be that the local authority does not identify an eligible need i.e. one which cannot be met by universally available services. However, it is vital to ensure that no young person is left in a situation in which their basic needs of warmth and food cannot be timeously met and s/he is

therefore left at immediate risk. These most basic of needs should be met either via an eligible need or via section 29 of the 1995 Act other than in the most exceptional of circumstances. It is difficult to imagine a situation where a local authority would not wish to meet these most basic of needs by identifying an eligible need.

140. A local authority still has a duty to advise, guide and assist care leavers until their nineteenth birthday and a power to do so until their twenty-sixth birthday, irrespective of identifying an eligible need. These duties and powers should be properly exercised to mitigate a number of different situations including the example outlined above.
141. Not all eligible needs will require direct finances, indeed many will not. An illustration of this might be where a young person is beginning further or higher education or training and previous knowledge or current assessment indicates that they may feel socially isolated and struggle to attend. To meet the eligible need identified here an appropriate solution may be for a worker to accompany the young person for an agreed initial period of time until the young person is confident enough to continue unaccompanied.
142. As a good corporate parent the education/training facility itself will be expected to identify these situations and provide direct support to the young person, perhaps through student services.
143. Many of a young person's needs will be able to be met through contact with other corporate parents such as health, housing and education services. It is important that eligible needs are not only seen in the context of material or practical support, important though these are.
144. It is also important to recognise that any young person leaving care or having left care will have a legitimate need for on-going relationship based support, irrespective of whether an eligible need is found. Local authorities need to ensure that support does not become crisis led and instead encourage care

leavers to engage with all levels of help they can access through a suitable assessment process.

145. The crucial importance of relationship continuity should not be forgotten in the context of identifying eligible needs as they are likely to be key to successful transitions and in enabling care leavers to establishing themselves in the community.
146. The report 'Supporting positive relationships for children and young people who have experienced care'<sup>13</sup>, published in March 2015 by the Institute for Research and Innovation in Social Services (IRISS) also emphasised the importance of consistent relationships. Some key findings noted that:
- a) Before they come into care, children and young people's relationships are often fractured, chaotic, frightening, violent and abusive;
  - b) Being in care provides opportunities for children and young people to experience loving, secure, stable and safe relationships;
  - c) While in care, children value opportunities to build positive and meaningful relationships but experience difficulties in building and maintaining them;
  - d) Transitioning out of care is a challenging time and access to supportive relationships is critical for young people in helping them manage the demands of this experience;
  - e) Throughout the different stages of their care journey, access to positive and meaningful relationships is likely to lead to better long-term outcomes for children and young people;
  - f) Enabling and supporting high quality relationships between professionals and children and young people can be achieved but sometimes requires changes in services, teams and processes, as well as at the level of the individual professional.

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<sup>13</sup> IRISS Report 'Supporting positive relationships for children and young people who have experienced care' <http://www.iriss.org.uk/resources/supporting-positive-relationships-children-and-young-people-who-have-experience-care>

## **Assessing wellbeing**

147. Section 96 of 2014 Act places the definition of 'wellbeing' onto a statutory footing and compels certain public agencies to use this as the basis of their assessments of children and young people.
148. All assessments should embrace or identify key elements of the [SHANARRI wellbeing indicators](#).
149. As such, all assessments of care leavers should make reference to the eight wellbeing indicators. These are Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included (SHANARRI).

## **Involvement of the young person in the assessment**

150. The legislation governing Aftercare puts the involvement of the young person as one of its central principles. Local authorities must seek and take account of the views and wishes of the young person in assessing their needs, and in preparing the plan that comes out of the assessment.
151. If there are meetings, the authority should take steps to make sure that the young person can attend and take part, for example, paying travel and subsistence costs or providing an interpreter or advocate. The role of advocates can be a crucial one in helping young people attend and participate in meetings. The authority should also be aware that the timing of meetings could impact on a young person's availability or ability to attend. If the young person has any particular wellbeing needs because of additional support needs, the authority should make sure the assessment and other materials are in a format accessible to them.

152. However, it may be the case that a young person does not want to engage with the process at this current time, or has lost touch. In such cases it is important to remember that a young person may not wish to engage with the process in its entirety, but they may be interested in some aspects, or they may wish to engage fully at a later date.
153. Aftercare support should not be an 'all or nothing' service. Nor should initial disinterest, disinclination or disengagement on the part of the young person exclude them from support in the future. Local authorities should recognise that such behaviours are often a routine, and necessary, part of human development and be prepared to be flexible and responsive to the wishes of the young person as they develop.
154. Disputes which arise between a young person and the local authority need to be addressed appropriately. Dispute resolution strategies such as mediation may provide a solution. The young person, in all of the above processes, whether it be in the request for assistance, the assessment process itself or in challenging the outcomes of the assessment, should be provided with access to support in terms of advocacy. This could be through a Children's Rights Officer, advocacy service, mentor or other trusted appropriate adult identified by the young person.

## **AFTERCARE SUPPORT TO BE PROVIDED TO CARE LEAVERS**

155. Section 29 of the 1995 Act outlines the type of support to be provided to care leavers eligible for Aftercare. Section 29(1) stipulates that local authorities shall 'advise, guide and assist' eligible young people.
156. 'Assistance' under this section of the 1995 Act is further specified in section 29(3), where it states that, subject to section 73(2) of the Regulation of Care (Scotland) Act 2001 (the 2011 Act), the assistance offered by a local authority under this section 29(1), (5A) or (5B) may include assistance 'in kind or in cash'.
157. Section 73(1) of the 2001 Act amends section 29 of the 1995 Act to include duties on local authorities to:
- a) Carry out an assessment of the needs of young people who have been looked after who they have a duty or power to advise, guide or assist under section 29 (section 29(5));
  - b) Establish a procedure for considering representations, including complaints, made to them about the discharge of their functions under section 29 (section 29(6)).
158. Section 73(2) of the 2001 Act also gives Scottish Ministers a power to make Regulations about:
- a) The manner in which assistance is to be provided under section 29 to young people who have been looked after;
  - b) Who is to be consulted in relation to an assessment of needs;
  - c) The way an assessment is to be carried out, by whom and when;
  - d) The considerations to which the local authority are to have regard in carrying out an assessment;
  - e) The recording of the results of an assessment;
  - f) Procedures for considering representations including complaints.

159. That power was exercised in [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) (as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#)).
160. From 1 April 2015 all care leavers aged nineteen and up to twenty-six years of age 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 29(5A)(a) of the 1995 Act as inserted by 66(2) of the 2014 Act).

### **Financial support towards education and training**

161. The section 66(3) of the 2014 Act 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.
162. From April 2015 the upper age to which this financial support can be requested is up until they reach the age of twenty-six (extended from the previous limit of twenty-one). Closing the attainment gap is a key priority for the Scottish Government. Section 30 of the 1995 Act is a powerful tool in providing financial assistance and encouraging care leavers into further and higher education as well as training and employment. Section 30 payments should always be considered for care leavers irrespective of age and the type of care placement they have previously been provided with.

163. Section 30 of the 1995 Act (as amended by section 66 of the 2014 Act) sets out when local authorities may give financial assistance towards expenses of education or training to those who have left care:

- a) A local authority may make grants to young people in their area to enable them to meet expenses connected with relevant education or training. (If they are over sixteen but not yet twenty-six<sup>14</sup>, and were (on their sixteenth birthday<sup>15</sup> or at any subsequent time), but are no longer looked after by a local authority).
- b) A local authority may make contributions toward the living expenses (accommodation and maintenance) of a young person near to where they are employed, or seeking employment, or receiving education or training.

164. These changes allow for flexibility in a young person's route to adulthood. It allows for young people to engage with different options whilst recognising that looked after young people may particularly struggle at certain times during this transitional period as they grapple with new responsibilities and routines. The extension gives young people some space to discover the options that are most meaningful, relevant and rewarding for them. In practice, this should mean that young people are afforded the same opportunities as their non-looked after peers and, if necessary, to make repeated attempts to reach their full educational and employment potential.

165. An understanding of the sorts of issues faced by young people on their journey through education is crucial as there are many reasons why a looked after young person's educational experiences may not parallel those of their non-looked after peers.

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<sup>14</sup> Amended by the 2014 Act to age twenty-six

<sup>15</sup> The 2014 Act amends this replacing 'school age' with 'is at least sixteen years'

## Care leavers who move away (responsible authority)

166. Continuity of support is key to making a success of throughcare and aftercare services. The 2003 Regulations make it clear that the responsible authority is the local authority that is looking after, or last looked after, the young person, and is responsible for the payment of placement and/or support costs.
167. This is consistent with the [Looked After Children \(Scotland\) Regulations 2009](#) and the [Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#).
168. Where a young person is placed out with the responsible authority, for example, when looked after with relatives, the responsible authority should inform the host authority of their presence, this will facilitate both continuity of support and cooperative planning.
169. To ensure a young person continues to receive the same standard of care and service provision as they would have if they had remained in the care of the placing home local authority and its partners, corporate parents may wish to enter into agreements with the receiving local authority and health boards about the provision of services or support.
170. However, while responsibility for delivering service or support may be transferred to the host authority, the responsibility for securing and promoting the individual's wellbeing remains with the placing home authority.

## APPEALS, DISPUTES AND COMPLAINTS

171. The Regulation of Care (Scotland) 2001 section 73(1)(b) amends section 29 of the 1995 Act to include 29(6) which is a duty on local authorities to consider representations and complaints. Section 29(6) (as amended) reads:

“Each local authority shall establish a procedure for considering representations (including complaints) made to them by any person mentioned in subsection (1) or (2) above about the discharge of their functions under the provisions of subsections (1) to (5B) above.”

172. The material in [The Support and Assistance of Young People Leaving Care in Scotland: Regulations and Guidance on services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004 (the 2004 Guidance) outlines the process of appeals regarding Aftercare and is still relevant and the principles of the appeals process are stated quite clearly.

173. It is important that young people have swift access to an appeals system that is transparent and easy to understand.

174. The 2004 Guidance and [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) (as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#)) set out the procedures that must be followed by the responsible authority should they receive a representation from a young person appealing against their decisions on the manner or level of support to be provided, or a decision not to provide support to a prospective supported person.

175. The responsible authority should continue providing support to the young person while any appeals process is continuing.

176. The 2004 Guidance and the 2003 Regulations set out the complete appeals process including timeframes. They promote informal resolution within a specified period initially before more formal proceedings are instigated. These need to be actioned in a manner that is supportive of the young person and with the principles of the appeals process in mind.
177. If the dispute remains unresolved the young person might appeal the decision, if this is the concern, through the route described above, or complain using the route described below.
178. A young person has the right to complain. These complaints may be about, for example; where an assessment under the 2014 Act does not identify an eligible need; the local authority refusing to provide a service; the way that a decision was made about providing a service; problems which arise once a service has been provided; the standard of care provided, including a complaint about a particular member of staff; discrimination (which is illegal) that they feel they have experienced because of race, sex, sexual orientation or disability.
179. The local authority has a duty to ensure that a young person knows about the local authority complaints procedure and knows how to use it.
180. The young person should also be made aware of other bodies they can complain to, such as the Care Inspectorate<sup>16</sup> or the Children and Young People's Commissioner Scotland<sup>17</sup>.
181. The 2004 Guidance states:
- a) The process regarding complaints remains as described in The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003. The emphasis being on a swift and informal resolution of any issue. Any further representations should be made under the Social Work (Scotland) Act 1968.

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<sup>16</sup> Care Inspectorate website <http://www.careinspectorate.com/index.php/complaints>

<sup>17</sup> Children and Young People's Commissioner Scotland website <http://www.cypcs.org.uk/rights>

b) Finally if there is still no resolution then a request can be made for an independent Complaints Review Committee to consider it. Once this process has been completed the complaint can be raised with the Scottish Public Services Ombudsman<sup>18</sup>.

182. The young person also has the right to make a complaint to the local authority about the service they have received or how an appeal has been handled. Complaints should be made through the normal methods of complaint about social work service under the Social Work (Scotland) Act 1968 or any other appropriate complaints procedures. Current Guidance and Directions on the 1968 Act procedure were laid out in Circular Number SWSG 5/1996 of 15 March 1996<sup>19</sup>.

183. The procedure requires that the local authority instigate an informal problem solving stage where every attempt is made to resolve the complaint. If this is not successful, unresolved complaints will then be investigated by specially designated staff.

184. It is the duty of the local authority to ensure that young people have knowledge, access to and support to engage with, the appeals and complaints procedures. This will mean that information, in a format which young people can understand, needs to be available as does other such support, for example advocacy.

185. Looked after disabled young people need access to appeals and complaints also and this might require additional support from the local authority.

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<sup>18</sup> Scottish Public Services Ombudsman website <http://www.spsso.org.uk/>

<sup>19</sup> Circular Number SWSG 5/1996 of 15 March 1996  
<http://www.gov.scot/Resource/Doc/1035/0017124.pdf>

## REPORTING ON DEATHS OF CARE LEAVERS

186. Section 29(10) of the 1995 Act (as inserted by section 66(2) of the 2014 Act) places a duty on local authorities to notify the Scottish Ministers and the Care Inspectorate of the death of a care leaver being provided with advice, guidance or assistance by them.

187. This legislative change builds on existing duties to report the death of a looked after child and means that the death of a young person who is in receipt of Aftercare services should be notified to the Scottish Ministers and the Care Inspectorate. Notifications to Scottish Ministers should be made by email to: [looked\\_after\\_children@gov.scot](mailto:looked_after_children@gov.scot). Please refer to the Care Inspectorate website for information on notifications, record keeping and contact details<sup>20</sup>.

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<sup>20</sup> Care Inspectorate website information on notifications and record keeping  
<http://www.careinspectorate.com/index.php/notifications>

## **APPENDIX A: LEGISLATIVE FRAMEWORK**

This guidance should be read in conjunction with the following legislation and associated Regulations:

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

The [Children and Young People \(Scotland\) Act 2014](#) is a significant piece of legislation, introducing major changes to planning, operation and delivery of children's services in Scotland. The Act is particularly important for looked after children and care leavers, putting Corporate Parenting (Part 9) onto a statutory footing, extending Aftercare support to a wider population of care leavers (Part 10) and introducing a new provision of Continuing Care for some care leavers (Part 11). The Act also requires all adoption agencies to use Scotland's Adoption Register (Part 14), and amends the Children (Scotland) Act 1995 to ensure assessments consider a child or young person's 'wellbeing' (section 95).

### **Children (Scotland) Act 1995**

The [Children \(Scotland\) Act 1995](#) centres on the needs of children and their families. It sets out the duties and powers available to public authorities to support children. The following sections relate to (throughcare and) Aftercare and Continuing Care duties:

- Under section 17 the local authority has a duty to provide advice and assistance with a view to preparing a child for when he or she is no longer looked after by a local authority.
- Section 21 sets out details of co-operation between authorities and other bodies.
- New section 26A (inserted by section 67 of the 2014 Act) sets out the duty on local authorities to provide Continuing Care to certain eligible care leavers.
- Section 29 sets out the main local authority responsibilities to young people who leave care.

- Under section 29(1) there is a duty to advise, guide and assist those under nineteen unless the local authority is satisfied that the young person's welfare does not require it. Section 29(1) is amended by section 66(2) of the 2014 Act to make any young person at least age sixteen but not yet nineteen who ceases to be looked after by a local authority on or after their sixteenth birthday eligible for Aftercare services from their local authority.
  - Under section 29(2), as amended by section 66(2) of the 2014 Act there is a duty to provide young people between nineteen and twenty-six, regardless of their placement type while looked after, with the opportunity to apply to their local authority for Aftercare.
  - Section 29(3) states that assistance may include assistance in kind or in cash.
  - Section 29(5) currently provides that a local authority must, in relation to any person to whom they have a duty under section 29(1) or who makes an application under section 29(2), carry out an assessment of that person's needs. New subsection 5A provides that if, after carrying out that assessment, the local authority is satisfied that a person who applies to them under section 29(2) has eligible needs which cannot be met by other means, the local authority must provide them with such advice guidance and assistance as it considers necessary for the purposes of meeting those needs. A local authority may, but it is not legally required to, provide Aftercare to a care leaver beyond the age of twenty-six (new subsection 5B).
  - Section 30 sets out when local authorities may give financial assistance towards the education or training expenses of those who have ceased to be looked after.

## **Regulation of Care (Scotland) Act 2001**

The [Regulation of Care \(Scotland\) Act 2001](#) modernises the regulation of care services and, at section 73, strengthens the provisions of section 29 of the Children (Scotland) Act 1995.

Section 73(1) amends section 29 of the 1995 Act to include duties on local authorities to:

- Carry out an assessment of the needs of young people who have been looked after who they have a duty or power to advise, guide or assist under section 29;
- Establish a procedure for considering representations, including complaints, made to them about the discharge of their functions under section 29.

Section 73(2) gives Scottish Ministers a power to make regulations about:

- The manner in which assistance is to be provided under section 29 to young people who have been looked after;
- Who is to be consulted in relation to an assessment of needs;
- The way an assessment is to be carried out, by whom and when;
- The considerations to which the local authority are to have regard in carrying out an assessment;
- The recording of the results of an assessment; and
- Procedures for considering representations including complaints.

That power was exercised in [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) (as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#)).

## **Children (Leaving Care) Act 2000**

The [Children \(Leaving Care\) Act 2000](#) changed the system for providing services to young people leaving care in England and Wales. Its aim was to keep young people in care until they are prepared and ready to leave; to improve the assessment, preparation and planning for leaving care; to provide better personal support for young people after leaving care and to improve the financial arrangements for care leavers. Section 6 of the Children (Leaving Care) Act 2000, which deals with access to social security benefits for some young people leaving care, also applies to Scotland.

## **Looked After Children (Scotland) Regulations 2009 and Adoption and Children (Scotland) Act 2007**

The [Guidance on the Looked After Children \(Scotland\) Regulations 2009 and Adoption and Children \(Scotland\) Act 2007](#) provides the latest summary of the rules relating to looked after children and adoption. They bring together regulation of the care planning services offered to looked after children and their families with the care provision required when children are separated from their birth parents. They also reflect more detailed and consistent requirements when children are looked after by kinship carers.

## **Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities 2014.**

The [Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities](#) published in 2004, aims to reinforce the parenting responsibility of local authorities for young people who may have no other support at this difficult time of transition; to re-emphasise the local authorities' power and duty to continue to look after them; to ensure that they are prepared and ready for the time when they are no longer looked after; to improve the assessment, preparation and planning for that time; to provide better personal support, to strengthen the on-going contact between the local

authority and young people beyond the age of eighteen until at least twenty-one (and updated by the 2014 Act to at least twenty-six). The relevant subordinate legislation explained in the 2004 Guidance is [The Support and Assistance of Young People Leaving Care \(Scotland\) Regulations 2003](#) (as amended by [The Support and Assistance of Young People Leaving Care \(Scotland\) Amendment Regulations 2015](#)).

### **Social Work (Scotland) Act 1968**

The [Social Work \(Scotland\) Act 1968](#) sets out the legislative framework for raising complaints to the local authority about the service they have provided or how an appeal has been handled. Current Guidance and Directions on the Act procedure were laid out in Circular Number SWSG 5/1996<sup>21</sup> of 15 March 1996.

### **Children and Young People (Scotland) Act 2014: Statutory Guidance on Part 9: Corporate Parenting**

The [Children and Young People \(Scotland\) Act 2014: Statutory Guidance on Part 9: Corporate Parenting](#) provides corporate parents with information and advice about how they should fulfil the duties set out in the 2014 Act. These duties came into force on 1 April 2015. Subject to specific exemptions, all corporate parents must have regard to this guidance. Compliance will be monitored through reviews of corporate parenting reports (carried out by Scottish Ministers) and independent inspection.

The guidance sets out the parameters within which corporate parents should develop their own approaches, either individually or in partnership. Those approaches should also be shaped by the corporate parent's primary functions, and informed by the needs, views and experiences of looked after children and care leavers.

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<sup>21</sup> Circular Number SWSG 5/1996, Guidance and Directions on the operation of complaints procedures in respect of social work functions <http://www.gov.scot/Resource/Doc/1035/0017124.pdf>

**Other legislation relevant to looked after children and care leavers in Scotland includes:**

- [Human Rights Act 1998](#)
- [Data Protection Act 1998](#)
- [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)
- [Local Government in Scotland Act 2003](#)
- [Protection of Vulnerable Groups \(Scotland\) Act 2007](#)
- [Equality Act 2010](#)
- [Social Care \(Self-Directed Support\) \(Scotland\) 2013](#)
- [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)

## **APPENDIX B: SUMMARY AND UPDATE ON ACCOMMODATION**

The provision of safe, stable and sustainable accommodation can make a vital difference to a young person in making a transition to adult living. It is no longer acceptable to say that young people wish or choose to move on at sixteen or seventeen and that they 'vote with their feet'.

Young people should be encouraged enabled and empowered to remain in their care setting until the time is right for them to take the next step towards interdependent living.

The Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities published in 2004 sets out the requirements when providing services for young people leaving care. However, it is clear that the age at which young people leave care is a key factor in ensuring a successful transition.

In Scotland the age at which young people leave care remains stubbornly low, between sixteen and eighteen years of age against the average age for leaving home in Scotland, which is around twenty-six.

The Staying Put Scotland Guidance and Housing Options Protocol for Care Leavers, both published in October 2013, offer practical examples of how corporate parents may address these issues. These examples are drawn from existing good practice, which already exists within some local authorities and local housing partnerships tried to address both these issues.

However consistent implementation both in terms of practice and available resources remains a key challenge to ensuring that all care leavers are afforded access to a range of and housing options and person-centred supports.

An Inform Paper on Housing Options and Care Leavers<sup>22</sup> by CELCIS presents new evidence from a follow-up survey of the Housing Options Protocol.

Participants suggested that, in many areas, expectations that care leavers will move on from care when they are aged sixteen or seventeen years persist amongst workers and young people. These expectations are highly normative and thought to be a significant contributor to care leavers' moving on too early and before they are ready. Pressure to move young people on can influence workers who want to free up spaces for other children and young people in need of a placement.

In a number of areas, Children's Hearings were beginning to make recommendations for longer-term and continuing placements as young people approached care-leaving age, rather than suggesting that young people leave care.

Increased use of supported carers was another approach used to ensure care leavers either continued living with foster carers or had a placement with support prior to moving on to interdependent living. Secure, safe and stable accommodation is an essential building block for success and achievement, and has a direct impact on emotional health and wellbeing.

Information sharing across all relevant corporate parents is required to ensure that key partners are aware of emerging accommodation needs in advance, to enable plans to be put in place to address gaps in provision, and give care leavers meaningful choice.

Housing, including Housing Associations and children's services, need to identify issues with accommodation early on and have clear contingency arrangements. However the provision of suitable accommodation should also be accompanied by appropriate levels of person-centred support, bespoke to the individual needs of each care leaver.

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<sup>22</sup> CELCIS Inform Paper on Housing Options and Care Leavers  
[http://www.celcis.org/resources/entry/inform\\_housing\\_options\\_and\\_care\\_leavers](http://www.celcis.org/resources/entry/inform_housing_options_and_care_leavers)



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