

Who Cares? Scotland

Response to consultation on draft of The Continuing Care (Scotland) Amendment Order 2019

November 2018



Who Cares? Scotland [WC?S] is an independent advocacy and influencing organisation working with people who have experience of the care system. We provide direct advocacy to care experienced children and young people, as well as opportunities for local and national participation. WC?S aims to provide care experienced people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures and processes they are often subject to solely because of their care experience. At WC?S we ensure the voice of the care experienced population of Scotland informs everything we do as an organisation.

1. Do you agree with the intention of this draft order to further increase the higher age limit for persons eligible for continuing care from twenty to twenty-one years of age, with effect from 1 April 2019?

This will be the final such increase, which will ensure that the current cohort of young people (born on or after 1 April 1999) continue to be eligible as they increase in age to twenty-one and so that the duty to provide continuing care is extended in full, in line with the policy intention stated during the development of the Children and Young People (Scotland) Act 2014, to all eligible persons from sixteen to twenty-one years of age.

In line with our previous responses in relation to age increases for continuing care, Who Cares? Scotland agrees with the intention to increase the higher age limit for eligibility from 20 to 21 years of age from April 2019. This intention was clearly communicated by Scottish Government, and widely supported by others, throughout the consultation phase of Part 11 (continuing care) of the Children and Young People (Scotland) Act 2014. Increasing the higher age limit will help guarantee that this piece of legislation follows through on its original promise and will ensure that young people can remain in care until the age of 21.

However, we would like to make clear that the current implementation of continuing care legislation across Scotland is inconsistent and must be addressed with immediate effect. In our last two responses to the Scottish Government consultation on Continuing Care, we have consistently raised concerns around the poor practice which still exists.¹ We know that the right to remain in care until 21 is left unfulfilled for a large population of those in the care system. Through our advocacy work supporting young people currently trying to remain in their care placements with the same level of support and our care experienced members' lived experience of leaving care, we can identify that there has been a failure to fully realise the extended rights

¹ [Who Cares? Scotland. \(2017\). Response to Consultation on Draft of the Continuing Care \(Scotland\) Amendment Order](#); [Who Cares? Scotland. \(2017\). Response to Consultation on Draft of the Continuing Care \(Scotland\) Amendment Order 2018](#);

legislated for in Part 11 of the Children and Young People (Scotland) Act 2014 for *all* young people in care.

As this is the final increase of eligibility, the opportunity to scrutinise the continuing care legislation must be utilised to full effect. We would like to see Scottish Government critically discuss continuing care with both the sector and young people affected by inconsistent implementation, to create further conversation and awareness around this important issue. We would also like to create an opportunity to meet with your team to discuss this further in person, to work together on how to progress and resolve the issues which have arisen for the care experienced people we work with, throughout the implementation of continuing care across Scotland.

2. Do you have any other comments on this consultation on the Continuing Care (Scotland) Amendment Order 2019?

Who Cares? Scotland provides independent advocacy to care experienced young people across Scotland. Our independent advocacy relationships provide us with the mandate to inform children and young people of their rights and to empower them to self-advocate and communicate their views when necessary. We are also a membership organisation with over 2,000 care experienced members, many who drive and shape our influencing work. Our members and the young people our Advocacy and Participation Workers (APWs) support, inform us on a regular basis about difficulties with continuing care and the lack of support to leave care at a time, and in a way, which is right for them.

Data, research and anecdotal stories together, present evidence to suggest that many care leavers still face unacceptable outcomes.² This includes mortality rates (for those under the age of 26), higher numbers involved with the criminal justice system, prevalence of mental health issues and over-representation in the homelessness population. Those leaving care face significant challenges such as financial worries, a lack of support networks and stress over employment and education, which are underpinned by problems with unsuitable and unstable accommodation.³ Research clearly demonstrates that the transition period towards interdependence is when looked after young people and care leavers are at their most vulnerable.⁴ It is the time in which local authorities and their partner agencies, as corporate parents, can make a particularly valuable contribution to the future success of a care leaver's life.

Previous Evidence:

² Who Cares? Scotland. (2018). *Statistics*. Available: <https://www.whocaresscotland.org/who-we-are/media-centre/statistics/>. Last accessed 11th December 2018.

³ For further understanding of these issues, please see our website: <https://www.whocaresscotland.org/what-we-do/policy/>

⁴ [McGhee, K. \(2017\). Staying Put & Continuing Care: The Implementation Challenge. *Scottish Journal of Residential Child Care*. 16 \(2\), pp. 1-19.](#)

We have highlighted evidence directly from our advocacy workers in our last two responses to the consultations on the draft Continuing Care (Scotland) Amendment Orders, which shows a variety of issues in implementation of continuing care.⁵

Our APWs have witnessed:

- Young people in care being provided with inaccurate information regarding continuing care, and inflexible practices from local authorities.
- Lack of clarity from professionals around eligibility age (born on or after 1st April 1999).
- Lack of clarity from professionals around age that continuing care should end, with many unclear whether this should happen on the young person's 21st or 22nd birthday.
- Some professionals viewing 'supported accommodation' or hostels as appropriate alternative continuing care placements.
- Many young people who we have supported who are turning 18 whilst in foster placements, have experienced their foster carers being told by their local authority to reregister as supported carers. This will result in significant cuts to payments for the carer and runs counter to S26A(1)(4) of the 1995 Act, which states that continuing care means "the same accommodation and other assistance as was being provided immediately before the person ceased to be looked after". In some instances, this approach has resulted in the foster carer deciding not to continue providing the placement, and the young person being asked to leave.

New Evidence:

Since November 2017, when we submitted our last response highlighting poor practice of continuing care, the cases have only continued to grow, as have our concerns around the inconsistent implementation of this legislation.

We have also more recently become aware of many cases where the Care Experienced bursary, which was raised to £8,100 per year for students beginning further or higher education in 2018/19⁶, has impacted the support provided to young people living in continuing care placements.⁷ We have found that the continuing care legislation has collided with the policy intentions of the bursary to create unintended consequences for young people still in care over the age of 18.

Young people who are beginning their education in college or university and are in receipt of the bursary, but who are in continuing care placements, are experiencing a reduction in previous financial support given in their placements. There are now cases where they are being expected

⁵ [Who Cares? Scotland. \(2017\). Response to Consultation on Draft of the Continuing Care \(Scotland\) Amendment Order](#); [Who Cares? Scotland. \(2017\). Response to Consultation on Draft of the Continuing Care \(Scotland\) Amendment Order 2018](#);

⁶ Scottish Government. (2018). *More financial help for students*. Available: <https://news.gov.scot/news/more-financial-help-for-students>. Last accessed 11th December 2018.

⁷ STAF. (2018). *Policy and Practice: SAAS Care Experienced Bursary*. Available: <https://www.staf.scot/news/policy-and-practice-saas-care-experienced-bursary>. Last accessed 11th December 2018.

to utilise their bursary money for a wide range of costs, even in some cases being asked to pay 'digs' for their care placement, which can lead to the bursary's purposes to widen access and create an equal playing field with non-care experienced students to become jeopardised. The practice of how the bursary is being viewed by local authorities, when the young person is in continuing care, has also been varied and inconsistent, much like the practice of continuing care itself.

Some examples are listed below:

1. A young person in continuing care in a residential placement, started to receive the Care Experienced bursary due to starting at University. The young person was told that the residential home would no longer provide any kind of financial support and that they must buy everything themselves with the bursary. The local authority team told the young person that they would need to approach their team directly if they need any more financial support and not their residential house. Therefore, the support they were provided in their placement changed, once in continuing care.
2. A local authority housed a young person over the age of 16 in a private tenancy rather than allowing them to stay in a care placement until they turned 21. This decision was made without the young person being told explicitly or being able to express their views that they did want to stay in a care placement. In questioning this practice, the local authority saw the need to put new policies in place to ensure they could provide continuing care to those in their area.
3. A foster carer supporting a young person who is staying with them under continuing care provision, was told by their local authority that their supported carer allowance would be reduced. This was because the young person in their care was receiving the Care Experienced bursary. They were told they would need to top up their supported carer allowance by asking the young person to take money from their bursary payments. Therefore, the financial support provided by the local authority for the continuing care placement to remain resourced, was compromised.
4. In one local authority the throughcare team informed a young person turning 16, that they were not eligible for continuing care as they were in a kinship care placement, supported with a kinship allowance. The young person was informed that kinship care 'applications' for continuing care were not granted. The practice was that those in kinship care were having to actively 'apply' for their right to continuing care and were then being denied.

This evidence from our APWs shows that after three years of continuing care being implemented across Scotland, that it is not consistently working on the ground and in fact, many young people are experiencing further challenge with this legislation leading to unintended consequences.

Further to the evidence outlined above, we have two detailed case studies of young people that are entitled to continuing care and the issues they have faced trying to access this right. Not only is Part 11 (continuing care) not being upheld in these situations but the case studies also show how vital UNCRC rights are also being breached.

Case Study 1

A care experienced young person, below the age of 18, left care and moved into supported accommodation after living in a residential placement. They were eligible for continuing care, yet left care before they turned 18. This case study shows that the young person was not informed of their right to stay in care until they turned 21:

The young person was advised that they needed to think about their future plans. An 'independence plan' was created for them, which included learning various independence skills, e.g. cooking. At this time, the young person was still living in residential care and identified that they felt happy and settled within this placement. They had built positive, trusting relationships with the residential staff and expressed they felt safe living there. Prior to this, the young person had experienced a series of unsettled placements and identified that it was really important to them that they now had this secure base.

The young person was thriving within the residential placement and this was having a positive impact on other areas of their life – such as engaging with training courses and working towards securing full-time employment. They were working with an advocacy worker and had expressed to them that they didn't feel ready to move on from their current care placement. They worried about how they would cope financially and were concerned that their recent positive progress could be negatively impacted by leaving care.

The young person was encouraged by professionals to move to supported accommodation and initially felt this was a good idea. The young person is now living in supported accommodation and is finding it really difficult. They are struggling financially to keep up with costs of food, toiletries, gas/electricity. The young person has identified that if given the chance they would like to return to the children's home as they didn't understand what supported accommodation would be like and still needs the support of residential care.

In summary, the young person was entitled to remain living in residential care until they turned 21, yet was not made aware of this right by their local authority. Instead, they were actively encouraged to leave residential care and were aware that if they wanted to access continuing care, they would probably have needed to access legal support.

Case Study 2

A young person aged under 18 and living in residential care had been advised that they needed to move on to supported accommodation. Their workers had told them they were ready to make this transition because they were able to complete certain tasks independently such as cooking and washing their own clothes. The young person had accessed advocacy support in relation to this as they did not feel ready to leave care. They had identified that they would struggle emotionally if they were to live independently and also financially, as they were not currently earning. The young person felt that they still needed the support they received in residential care.

This young person was supported by an advocacy worker to communicate these views to their social worker. The social worker identified that, due to lack of resources, the only options were to move the young person into supported accommodation or to apply for their own tenancy.

The social worker felt that they would really struggle with the second option, and so was recommending that the young person moved into supported accommodation.

The advocacy worker made them aware of their rights in relation to continuing care. The young person decided that they needed support from a solicitor in order to remain living in their care placement until they turned 21. At a subsequent Children's Hearing, the young person's social worker recommended that the Compulsory Supervision Order be terminated and expressed the view that they were ready to leave care.

With the support of the solicitor, the young person expressed their views in relation to this and the panel were made aware of their rights in relation to continuing care. The panel made the decision that the young person should remain subject to a Compulsory Supervision Order, naming the children's house as their place of residence. The young person was happy with this outcome but was left feeling impacted by the process they had to experience to secure it. The young person continues to have concerns that they will need to leave care before they feel ready.

The United Nations Convention of the Rights of the Child:

We have recently worked alongside Together Scotland, to highlight how poor implementation of continuing care also violates key rights in the UNCRC. Listed below are key rights from the convention, which have been related to the case studies.

Article 3 - The best interests of the child must be a top priority in all decisions and actions that affect children.

In the second case study, decisions about the young person's situation have been driven by lack of resource within the local authority and other young people needing to be placed within the children's house. Decisions in both cases have not been made considering their best interests.

Article 6 - Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.

In the first case study, the young person is not having the chance to reach their full potential and is struggling to meet even their basic needs. In the second case study, if the young person is made to leave their residential care placement, they will struggle to meet their basic needs and to reach their full potential.

Article 12 - Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

In the first case study, the young person did not have the opportunity to explore and express their views meaningfully in the leaving care process due to lack of advocacy provision within their local authority.

Article 20 - If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes making sure the child is provided

with alternative care that is continuous and respects the child’s culture, language and religion.

In the first case study, the young person’s right to continuous alternative care has not been upheld. In the second case study, the young person’s right to continuous alternative care will not be upheld if they are made to leave their residential care placement.

Article 27 – Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.

In the first case study, the young person’s current living situation is not good enough to meet their physical and social needs and support their development. In the second case study, if the young person is made to leave their residential care placement, this right will not be upheld.

Article 31 - Every child has the right to relax, play and take part in a wide range of cultural and artistic activities.

In the first case study, the young person cannot afford to meet even their basic needs at the moment. This means that they are also unable to relax, play or take part in any cultural or artistic activities. In the second case study, if the young person is made to leave their residential care placement, they will struggle to meet their basic needs, meaning they would also be unable to relax, play or take part in any cultural or artistic activities.

What needs to change?

In the two detailed case studies, the local authority has identified to our advocacy workers that they are unable to fulfil the rights of young people to continuing care due to lack of resources. More must be done to support local authorities with addressing the resource implications of continuing care. Local authorities should be supported to ensure that they are actively encouraging young people to access their right to continuing care, unless this is genuinely not in the best interests of the young person.

In this response we have demonstrated how a lack of implementation of continuing care, not only fails to uphold the rights legislated for in the Children and Young People (Scotland) Act 2014 but also the rights outlined within the UNCRC. Additionally, the poor implementation of continuing care also shows how the principles of the Staying Put Guidance, created in 2013 by Scottish Government, have not yet been fully embedded.⁸ The guidance highlighted the following points:

- That we must provide care leavers with a graduated transition out of care.
- It recognises that requiring young people to leave supportive care settings as young as 16 has contributed to extremely poor outcomes for these young people.
- The loss of relationships with the care provider or other significant people upon leaving care has also had a negative impact on many care leavers to make a positive progression to independent living.

⁸ [The Scottish Government. \(2013\). Staying Put Scotland.](#)

- Importance of encouraging and enabling young people to remain in safe, supported environments and underlines the importance of strong and positive relationships, which need to be maintained into adulthood.
- Proactive planning is important to allow young people to properly plan for the future with confidence, based on good, ongoing relationships.

Five years since that guidance was published and three years since the implementation of the continuing care provisions in the Children and Young People (Scotland) Act began, the continuing care right, is still right. However, what is wrong are the inconsistencies in how the right is being accessed by young people across Scotland. We are increasingly concerned that our members are not able to benefit from their continuing care rights, because of these inconsistencies.

We know that rights also require resources and financial investment to be effective. We are worried that the combination of inconsistent practice and inadequate resource investment is having significant impact. We believe resolving this needs to be a priority, if the continuing care rights are to have the positive intended impact on the lives of the care experienced young people that they were established for.

If you wish to discuss the content of this response, please get in touch:

Lucy Hughes
Policy Officer
Who Cares? Scotland
lhughes@whocarescotland.org
0141 226 4441

Lynzy Hanvidge
Policy Ambassador
Who Cares? Scotland
lhanvidge@whocarescotland.org
0141 226 4441