



## **Response to Scottish Government consultation on the Continuing Care (Scotland) Amendment Order 2019**

We welcome the opportunity to submit our views in response to the Scottish Government's consultation on the Continuing Care (Scotland) Amendment Order 2019 (the Order). Continuing care, as established in [Part 11 of the Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act), provides the legal basis for eligible young people ceasing to be looked after to remain in the same accommodation and receive the same assistance from the local authority as they did immediately prior to ceasing to be looked after, up to the age of 21. Part 11 of the 2014 Act reflects the philosophy of care set out in 2013's [Staying Put Scotland guidance](#), which recognises the importance for future life chances of care experienced young people remaining in safe, supported environments until they are fully prepared for more independent living.

The Order will ensure that the current cohort of young people, born after 1<sup>st</sup> April 1999, continue to be eligible for continuing care as they increase in age to twenty one. As the final annual increase, the Order fully extends the duty to provide continuing care to all eligible sixteen to twenty one year olds, as per the intentions of the 2014 Act.

### **Q1 – 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?**

Yes. We fully support the intention of the Order, to ensure the legal mechanisms are in place to enable young people to remain in positive care settings for longer. The Order is necessary to legally allow the full implementation of Part 11 of the 2014 Act. However, due to a number of challenges, the Order alone is insufficient to ensure the full and consistent implementation of continuing care.

### **Q2 – Do you have any other comments on this consultation on the Continuing Care (Scotland) Amendment Order 2019?**

Whilst this progressive policy is intended to provide crucial opportunities for stability and security for care experienced young people as they approach adulthood, a number of interconnected challenges have affected the full and consistent implementation of continuing care since its initial enactment in 2015. Without resolution, these challenges will continue to undermine the original policy intentions and impact upon the outcomes of some of Scotland's most

vulnerable young people. We are acutely aware of these challenges through research<sup>1</sup>, through the work of our [Throughcare and Aftercare programme](#), and through extensive engagement with stakeholders across Scotland (including local authorities, care experienced young people, third sector children's organisations, independent and third sector residential and foster care providers, and others through the [Scottish Care Leaver's Covenant](#) Alliance group). The key issues are summarised below.

### **Understanding the uptake**

Although efforts have been made to ascertain the numbers of continuing care placements in Scotland, this currently remains unclear. Plans to include continuing care data in the Scottish Government's Children's Social Work Statistics publication in 2019 are welcome, this will inform our understanding of the uptake of this placement type across the country. Continuing care placements will be recorded in this publication as a 'destination after leaving care'. While we recognise the reasons for this categorisation (as a young person must cease to be looked after in order to access continuing care), it is problematic in terms of contributing to the construction of continuing care as a separate and distinct 'destination', rather than a 'staying put' option. The intention of continuing care, as specified in the [Guidance on Part 11: Continuing Care](#) (the Guidance) was to offer young people the "entitlement to remain in their care setting up to their twenty-first birthday".<sup>2</sup> However, the experience for young people of entering into continuing care arrangements can often be one of disruption and significant change to their placement setting. Every effort should be made to promote the actuality of continuing care as a continuation of an existing placement, rather than a separate destination.

Additionally, when considering uptake of continuing care, attention is required to the alternative ways in which a young person under the age of 18 can 'stay put' in their care placement beyond the age of 16. This includes via a Compulsory Supervision Order, or by voluntary agreement under Section 25 of the Children (Scotland) Act 1995. Not all 16 and 17 year olds who are eligible for continuing care will want or need to access this option until they are 18. They may well be 'staying put' under other entirely appropriate legal arrangements, and this should be considered in any analysis of continuing care uptake. This is recognised in the Guidance, which states that if it is in the best interests of a young person to remain looked after until they are eighteen years old, this should be the option taken.<sup>3</sup>

### **Inconsistent access**

Due to an apparent inconsistent understanding of Part 11 and accompanying guidance, its implementation is inconsistent. Interpretations and knowledge of the law and guidance differ nationally, and also within local areas and teams. This leads to inconsistency in young people's access to continuing care arrangements. While some young people may be accessing continuing care per the original policy intentions, some experience significant changes to their

placement, and others find the option is unavailable. We are particularly concerned about the disadvantage faced by young people who are looked after in external commissioned placements. These placements have higher cost implications for local authorities, and we are concerned that young people accessing them may be routinely denied the opportunity to 'Stay Put' because of financial pressures. Children in out of authority or commissioned placements are often those considered most disadvantaged and vulnerable to poorer transitions and outcomes, and could arguably benefit the most from continuing care. It is imperative that resourcing and arrangements for continuing care are considered within commissioning, and planned for from the outset of each individual placement.

## **Culture**

The Guidance expressly links continuing care to the Scottish Government objective to "address inequalities between looked after children and their non-looked after peers by providing a stable home and ensuring that young people are not discharged from care until they are prepared and ready to leave".<sup>4</sup> Despite this explicit policy intention, and those of a range of other policies and guidance which establish the need to enable and encourage young people to remain in their care settings until they are at least 18 ([Still a Bairn](#), 2002; [Sweet 16](#), 2008; [Staying Put Scotland](#), 2013), concerns remain that cultural barriers remain stubbornly in place. Legislation and policy provide an enabling context, but the culture and leadership within organisations play a vital part in its implementation.<sup>5</sup> Young people can be actively encouraged or face pressure to move on before they are ready, with care experiences being driven by chronological age triggers rather than individual developmental needs. We are aware of young people who have been advised they are 'outgrowing' their placement setting, and encouraged to move to semi-independent living options they are not ready for, rather than care placements developing to meet the evolving needs of older teenagers and young adults. A range of factors, including limited capacity within the system, finances, and limited understanding of the needs and rights of young people by decision makers, can interact with value judgements and lead to older young people being unable to remain in their placements in spite of their wellbeing needs. There is a need for continued, concerted learning and development with all stakeholders whose work interacts with decisions made around continuing care, to continue to tackle these cultural barriers.

## **Recognising young people's rights**

With variation in culture and practice, rather than a consistent position whereby young people are routinely expected and encouraged to remain in their care setting (with this being part of their care plan from an early stage) young people's rights and entitlements to continuing care are not being recognised as the default position. We are aware of situations where young people have been required to make a formal request for continuing care, rather than this being discussed and facilitated as part of their care planning. For 'staying put' to

become the 'new norm', action must be taken locally and nationally to ensure that continuing care is the default position for all young people, and as such, no young person should be required to request it in this way. In our engagement in supporting local authorities and other stakeholders with the implementation of Part 11, the differing (and sometimes limited) understanding of the law and policy at both practitioner and managerial levels is notable, and leads to young people not receiving information about their entitlements with consistency. The onus can be left on the young person to find out and advocate for their rights, which has led to a dedicated project being established by Clan Childlaw to enable young people to realise their rights to continuing care. The need for this project is clear, and evidences the extent of the issue.

### **Needs of carers**

Inconsistent levels of support for residential workers and foster carers are evident across local areas. This includes support with the knowledge, skills and confidence required in meeting the developing needs of older young people, areas in which some carers may have less experience. This can be emotionally challenging work for staff and carers as they support young adults navigate and make sense of evolving adult opportunities, roles and responsibilities. There is a clear need to address these issues to better encourage, enable and empower staff and carers.

Where a young person's placement alters from a foster care arrangement to continuing care provision, often this comes with a significant decrease in finances and supports for carers, which destabilises placements. Changes in financial and other supports often appear arbitrary and based on age thresholds which fail to recognise the increased costs of supporting young adults, and fails to consider any individual assessment of need and circumstances.

### **Strategic planning and scrutiny**

In addition to culture, leadership, and learning and development issues, barriers to the consistent implementation of continuing care include financial and funding challenges.<sup>6</sup> However, the longer term costs of failing to provide vulnerable young people with the stability and support they require will far outweigh the benefits of short term cost savings. There is a need for in-house service planning and external commissioning arrangements to take full account of the financial considerations of continuing care, to ensure these can be provided for. Furthermore, bureaucratic barriers such as age limits and service registration must be tackled. The Care Inspectorate may have an important role in terms of supporting improvements, promoting good practice and ensuring accountability. A focus on young people's transitions in the inspection of services may focus attention and support improvements in this crucial area.

### **Further work**

The challenges impeding the full and consistent implementation of continuing care are complex. In addition to the ideas above, further work to better

understand the often nuanced and inter-connected barriers to implementation, what creates these, and how they differ in local areas is required, in order to effectively address these challenges. CELCIS look forward to working with Scottish Government and partners across the sector to support the full and effective implementation of continuing care.

**Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.**

### **About CELCIS**

CELCIS is Scotland's centre for excellence for children's care and protection, based at the University of Strathclyde. We work to ensure the best international evidence is reflected in policy and practice, strengthening the skills and capacities of people who care for children and young people. CELCIS is part of the Institute for Inspiring Children's Futures, working together to build brighter futures for children in need of care and protection around the world.

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<sup>1</sup> McGhee, K. (2017) [Staying Put & Continuing Care: The Implementation Challenge](#), Scottish Journal of Residential Child Care, Vol 16, No.2

<sup>2</sup> Scottish Government (2016) [Children and Young People \(Scotland\) Act 2014. Guidance on Part 11: Continuing Care, Edinburgh](#): Scottish Government, para 12

<sup>3</sup> Scottish Government (2016) [Children and Young People \(Scotland\) Act 2014. Guidance on Part 11: Continuing Care, Edinburgh](#): Scottish Government, para 83

<sup>4</sup> Scottish Government (2016) [Children and Young People \(Scotland\) Act 2014. Guidance on Part 11: Continuing Care, Edinburgh](#): Scottish Government, para 13

<sup>5</sup> McGhee, K. (2017) [Staying Put & Continuing Care: The Implementation Challenge](#), Scottish Journal of Residential Child Care, Vol 16, No.2

<sup>6</sup> McGhee, K. (2017) [Staying Put & Continuing Care: The Implementation Challenge](#), Scottish Journal of Residential Child Care, Vol 16, No.2