



SCOTTISH EXECUTIVE

# ***SUPPORTING YOUNG PEOPLE LEAVING CARE IN SCOTLAND***

**CONSULTATION ON REGULATIONS AND GUIDANCE TO  
IMPROVE SERVICES FOR YOUNG PEOPLE CEASING TO BE  
LOOKED AFTER BY LOCAL AUTHORITIES**

## **Introduction**

This consultation paper invites comments on the draft Support and Assistance of Young People Leaving Care (Scotland) Regulations 2004 and accompanying guidance.

These documents will implement changes to the provision of services for young people preparing to leave and those who have left local authority care in Scotland from 1 April 2004. This is an opportunity for those with an interest in the area to contribute to the development of both the guidance and new Regulations.

Research has shown that the outcomes for young people leaving care are poor and that more needs to be done to provide support during this critical time. For example of the 16 and 17 year olds leaving care for the year 2001-2002 six out of ten did not achieve any qualifications. In addition the average age for leaving care is 16/17 years old compared to an average of 22 years old for other young people starting to live independently. Young people need to be assisted in realising their aspirations and should have the same life chances as their peers who have not been in the care system. Ministers have committed to closing the opportunity gap for young people leaving care. They want to ensure that young people have the skills and support to achieve their potential and work in partnership with service providers to reach this aim. The Partnership Agreement builds on these earlier commitments by prioritising the improvement and development of services provided for those leaving care to allow them to make a successful move to adult living.

## **Background**

In September 1999, the Scottish Executive consulted on proposals to enhance services for those leaving care by creating a “one stop shop” for advice, guidance and assistance for young people leaving care. Young people aged 16 and 17 years who had been looked after away from home would have their needs assessed and supported by local authorities. They would generally no longer be entitled to claim Income Support, Housing Benefit or Job Seekers Allowance, and some Department of Work and Pensions (DWP, formerly DSS) resources would be transferred to local authorities.

Measures to strengthen existing duties on Scottish local authorities to provide a service, including a needs assessment, to all young people leaving care were included in the Regulation of Care (Scotland) Act 2001, and the related provisions to allow benefit entitlement to be removed from some of these young people were included in the Children (Leaving Care) Act 2000, a Westminster statute.

A Working Group was set up, chaired by officials from the Scottish Executive and including representatives from the Association of Directors of Social Work, the Convention of Scottish Local Authorities, the Scottish Council for Single Homeless, the Scottish Throughcare and Aftercare Forum (STAAF), Careers Scotland, and Who Cares? Scotland. The Group looked at the services that were provided for young people and the outcomes for those making the transition to adult living. Their findings led them to focus on the key aspects which are likely to result in a move to independence being successful and sustainable: suitable housing and support; education, employment and training; access to health services; and appropriate income support. In August 2002 the Executive published the report of the Working Group

<http://www.scotland.gov.uk/library5/education/tcac-00.asp>), which made a number of recommendations that are reflected in these drafts.

## **The Regulations**

The Regulations are made under the powers in Section 73(2) to make regulations about the provision of aftercare under section 29 of the Children (Scotland) Act 1995. They also provide for throughcare preparation for leaving care under section 17 of that Act.

The regulations fall into three broad parts. First there is provision as to the assessments of a young person's need, either when they leave care over school age but under 19, or if they apply for support after the age of 19 or if they are being prepared for leaving care but are still formally looked after.

The second part concerns the manner in which support can be provided under section 29. The main effect of these provisions is to describe when local authorities should provide regular cash support to young people leaving care, which is normally limited to those who have been looked after away from home, and have been in care for thirteen weeks or more since the age of fourteen. These provisions mirror when this support is available in England and Wales, and the type of young person who will no longer be able to claim social security benefits from 1 April 2004 under regulations being made at Westminster. This section also describes for the first time the sort of accommodation that local authorities should provide for these young people.

The third section describes in detail a complaints system which has been designed to provide both informal resolution of complaints locally and a formal appeal mechanism that meets the requirements of the ECHR for an impartial tribunal. This is an important part of the new system, as young people must have confidence that any complaints will be listened to.

## **The Guidance**

The guidance follows the structure of the regulations and provides a commentary on its provisions as well as some practical examples of good practice. It also emphasises the central role of young people in the process and the importance of preparing young people for leaving care rather than relying on a needs assessment after they have left.

## **Consultation Issues**

We would welcome comment in detail on any of the issues covered in this document.

In particular, you are asked to consider:

**Does the guidance provide the right level of detail?**

**Is there any aspect of the Regulations that would be better in guidance or vice versa?**

**Are the timescales laid down for various steps appropriate? For example should the timescale for reviewing the Pathway Plan be in line with other LAC reviews? It would also be useful to know whether you think the timescales relating to the right to make**

**representations and complaints are achievable while still meeting the need for young people to receive swift access to an appeal procedure.**

**Are there any other examples of good practice which it would be useful to include?**

**Is the terminology, especially the phrases “Life Coach” and “Pathway Plan”, appropriate and helpful? What terms would you recommend in their place. “Compulsory supported person”, “currently supported person” and “discretionary supported person” are terms which reflect the Children (Scotland) Act 1995 but you may consider that they could be more appropriately worded – if so we would welcome your suggestions.**

**How do these proposals sit with the support and assistance currently provided to looked after young people with disabilities? Does the guidance need to refer specifically to this group of young people?**

Comments should be made to:

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The closing date for comments is **31 October 2003**.

**DRAFT REGULATIONS  
AND GUIDANCE**

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**REGULATIONS**

# **SUPPORTING YOUNG PEOPLE LEAVING CARE**

## **GUIDANCE ON THE SUPPORT AND ASSISTANCE OF YOUNG PEOPLE LEAVING CARE (SCOTLAND) REGULATIONS 2004**

### **CHAPTER I - INTRODUCTION**

This guidance is designed to help local authorities provide integrated services for young people leaving care. Local authorities have a duty to provide young people with both throughcare - preparing the young person for the time when he or she will cease to be looked after - and aftercare - the provision of advice, guidance and assistance after a young person has ceased to be looked after. It is of vital importance that young people are properly prepared for this crucial part of growing up and are given access to full support afterwards. These young people taking this step will do so from a variety of backgrounds and circumstances, at various ages and with various levels of support available to them from family and friends. They will include some of the most vulnerable young people involved in the care system, who may have had little or no contact with their birth family and a large number of placements when in care. It is crucial that the local authority successfully fulfils its role as corporate parent to these young people to enable them to make a successful transition to independent adult living. The following guidance should be used to provide a flexible service to meet such a wide ranges of needs.

## **CHAPTER II - BACKGROUND**

There are around 11,000 children and young people looked after by local authorities in Scotland, of whom about 1,500 are over 16 years old. These young people need support to make a successful transition from the care system to independent adult living, and local authorities have a duty to provide this service. But the outcomes for young people who have been in care – for example in terms of educational achievement and homelessness - indicate that many have not in the past received the necessary help.

Young people leaving care also tend to be younger than their peers when they move to independent living. The average age for leaving care is 16/17 years old compared to an average of 22 years old for other young people starting to live independently.

There has therefore been an emphasis on improving and joining up the services available to these young people, accompanied by legislative changes to strengthen the contact between the local authority and young people, reinforcing the authority's parenting responsibility for young people who may have no other support at this difficult time of transition.

In 2002 the Executive published the report of the Throughcare and Aftercare Working Group, which brought together a cross-section of the statutory and voluntary sector to advise the Executive on these issues. The Group made a number of recommendations which are reflected in this guidance and the associated regulations.

Among the enhanced duties being put on local authorities in the legislative changes is a duty to carry out an assessment of the needs of these young people. Materials have been prepared to help local authorities carry out this duty effectively and these have also been published. This guidance should be read alongside those materials.



## **CHAPTER III - LEGISLATIVE FRAMEWORK**

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

### ***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 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 29 of the Act sets out the main local authority responsibilities to young people who leave care after school leaving age.
  - Under Section 29(1) there is a duty to advise, guide and assist those under 19 unless the local authority is satisfied that the young person's welfare does not require it.
  - Under Section 29(2) there is a power to provide advice, guidance and assistance to young people between 19 and 21 who apply to the local authority, unless the authority is satisfied that the young person's welfare does not require it.
  - Section 29(3) states assistance may include assistance in kind or in cash.
- Section 30 sets out when local authorities may give financial assistance towards expenses of education or training to those who have left care

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

The Act modernises the regulation of care services and at Section 73 strengthens the provisions provided under Section 29 of the Children (Scotland) Act 1995.

Section 73 (1) amends section 29 to include duties on local authorities to:

- Carry out an assessment of the needs of careleavers 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 to careleavers under section 29;
- 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;
- Procedures for considering representations including complaints

### ***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 delay young people's discharge from care until they are prepared and ready to leave; to improve the assessment, preparation and planning for leave 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 Act, which deals with access to social security benefits for some young people leaving care, also applies to Scotland.

## **CHAPTER IV - INVOLVEMENT OF YOUNG PEOPLE**

The needs of the young people are central to the new duty on local authorities to carry out a needs assessment. It is therefore crucial that the young person is closely involved in the process from the start. It is also essential that the local authority remains in contact with the young person to offer the necessary support. Close involvement of the young person will reinforce this relationship from the start.

The regulations put the involvement of the young person as one of their central principles.

Local authorities must seek and take account of the views and wishes of the young person in assessing their needs and preparing the plan that comes out of the assessment (the Pathway Plan - see Chapter VII below). If there are meetings the authority should take steps to make sure that the young person can attend and take part, for example by paying travel and subsistence costs or providing an interpreter. If the young person has any particular needs because of impairment, the authority should make sure meetings and information is accessible to them.

The authority should also provide copies of all relevant documents to young people as soon as possible in a form they can understand. These will include a copy of the needs assessment, the Pathway plan and information on the complaints and appeals procedure (see Chapter XI below).

Young people are also put at the heart of the assessment process in the material developed to aid local authorities in their new duties. The material has been developed to be comprehensible and easy to use.

## CHAPTER V - CATEGORIES OF YOUNG PEOPLE TO BE SUPPORTED

Under Section 29 of the Children (Scotland) Act 1995 there is a statutory duty for local authorities to carry out an assessment of the needs of **all** young people over school age leaving their care. It is not expected that all such young people will need the full range of services. In particular, the provision of regular cash support should be limited to those who have been looked after away from home for over three months (see Chapter IX below). However each young person should have their circumstances considered before any decision is made and the outcome of that decision should be recorded in writing.

In the Regulations the following terms are used to describe the different categories of looked after young people who are to be supported under these arrangements:

Under section 17 (2) of the Children (Scotland) Act 1995 local authorities have a duty to provide advice and assistance with a view to preparing a young person for when they are no longer looked after by the local authority. A young person who is over school leaving age but less than eighteen years of age and who is being looked after by a local authority is referred to as a “**currently looked after person**”

A young person who the local authority has a duty to provide to provide support and assistance under section 29 (1) of the Children (Scotland) Act 1995 - that is one who has left care over school leaving age but who is under 19 years of age - is referred to as a “**compulsory supported person**”

A young person who has made an application to a local authority for assistance in terms of section 29 (2) of the Children (Scotland) Act 1995 - that is a young person who left care over school leaving age and is now nineteen or twenty years old - is referred to as a “**prospective supported person**”

A young person who a local authority has agreed to provide support and assistance to in terms of section 29 (2) of the Children (Scotland) Act 1995 - that is a prospective supported person the authority has agreed to support - is referred to as a “**discretionary supported person**”

The authority has a duty to perform a needs assessment on all **currently looked after**, **compulsory** and **prospective supported** persons. It also has a duty to provide a pathway plan and appoint a life coach for all **compulsory** and **discretionary supported persons**, and may provide a pathway plan and a life coach for currently looked after persons.

### RESPONSIBLE LOCAL AUTHORITY

The regulations make clear that the responsible local authority is the authority that is looking after, or last looked after, the young person.

## CHAPTER VI - NEEDS ASSESSMENT

Amendments to section 29 of the Children (Scotland) Act 1995 require the authority to carry out a needs assessment for each young person who has left care after school leaving age with a view to determining what advice, assistance and support the authority should provide. In addition, the regulations require the local authority to carry out a needs assessment for aftercare services on young people who are over school leaving age but are still in care.

Local Authorities must develop a robust and transparent framework which both addresses the needs of the young person leaving care and their continued need for support thereafter. The local authority should consider and agree with young people how their support is to be delivered. The needs assessment will then be the basis for preparing the Pathway Plan.

Each local authority must prepare a written statement setting out in general terms how the needs of compulsory supported persons and discretionary supported persons are to be assessed. This should give details of the authority's approach to carrying out needs assessment, for example what material the authority uses, whether the assessment will be done by a dedicated throughcare and aftercare team, and what meetings the young person will be expected to attend. The statement should include useful contacts within the authority and in other agencies, such as local Careers Scotland offices.

For each individual case, the authority must specify–

- Who will be responsible for co-ordinating and taking forward the assessment;
- The timetable for the assessment; who is to be consulted for the assessment;
- How the outcome of the assessment is to be recorded; and
- What the young person can do if they are unhappy with any part of the process or the outcome of the assessment.

The authority must make sure that the young person and those people whom it consults as part of the assessment process have a copy of the statement.

The responsible authority must complete the needs assessment within three months of a young person's becoming a compulsory or prospective supported person whether they do so on turning sixteen or later. When it puts together the timetable for a young person's assessment the authority should bear in mind any considerations such as forthcoming exams, and take all reasonable steps to avoid disrupting the young person's preparation for them.

Only in exceptional circumstances should a young person not have their needs assessment and pathway plan completed before they leave care. It is expected that all young people will have had their needs assessed before they leave care and a plan in place as to their future. If an authority knows that a young person whom it is looking after is about to become a compulsory supported person on at the age of sixteen (that is it is planned that the young person will cease to be looked after on or soon after their sixteenth birthday), they can undertake any preparatory work ahead of that date but the assessment cannot be finalised until the young person is over school leaving age. In other cases where the young person is still in care the authority will want to balance the need for planning to meet the young person's needs when they do leave care with the risk of disrupting their care placement by raising expectations that they will be leaving care soon. Generally a needs assessment can be done and a pathway plan prepared for a currently looked after person without them needing

to leave care, so authorities need not delay the process because of the risk to the current placement.

The responsible authority must keep a written record of the information obtained during an assessment, of the deliberations of any meeting held in connection with any aspect of an assessment; and the outcome of the assessment.

The regulations specify the essential issues which the authority should address during an assessment. These are:

- The young person's health and development
- Needs for education, training or employment
- Needs for care and support
- accommodation needs
- Financial needs
- The extent to which they possess the practical and other skills necessary for independent living
- The support available from family and other relationships

The authority may consult a number of other people in carrying out the assessment as well as the young person themselves. These could include parents, or anyone with parental responsibility, any person who cares for them on a day to day basis, a representative of the school or college (such as a class teacher or someone chosen by the young person), an independent visitor if they have one, the GP or other appropriate health professional, the life coach, and anyone else whom the responsible authority or the young person considers relevant. For example, the young person might already have access to an adviser from Careers Scotland. If the young person has any particular needs relating to communication or cognitive impairment it will be important that at least one person involved in the needs assessment has a clear understanding of how they express their wishes and feelings. The views of these people can be essential in giving a full picture of the young person's needs in the areas detailed in the regulations.

The young person themselves should play the central role in the assessment process. When deciding who needs to be involved in the assessment, the responsible authority should take into account the wishes of the young person.

The responsible authority can request assistance to carry out duties specified in the assessment framework from other local authorities.

## CHAPTER VII - PATHWAY PLAN

The Pathway Plan is an opportunity to explore with the young person their wishes and aspirations for the future and how they can be assisted in meeting them. The young person should be encouraged and guided to articulate what they want from their future. As with all young people these can change and any discussion should look at alternative or related options.

A pathway plan must be completed for each compulsory supported young person within 14 days of completing the needs assessment. For a prospective supported young person, applying for assistance under section 29(2), the local authority should decide whether to provide support to the prospective supported person within 7 days of completing the needs assessment. The authority should notify the prospective supported young person of their decision within 7 days of reaching their decision.

The Plan must cover at least the following topics, ;

- The outcome of the needs assessment.
- A statement of the wishes and aspirations of the young person.
- The nature and level of contact of personal support to be provided, and by whom, to the young person.
- A programme to develop the practical and other skills necessary for the young person to live independently.
- A detailed plan for the education or training of the young person, including how the responsible authority will assist the young person in relation to employment or other provisional activity or occupation.
- The financial support to be provided to the young person, in particular where it is to be provided to meet his accommodation and maintenance needs.
- The health needs, including any mental health needs, over the young person, and how they are to be met.
- The support to be provided to enable the young person to develop and sustain appropriate family and social relationships.
- Details of the accommodation the young person has to occupy.

For each of these topics the plan must set out how the responsible authority plans to meet the needs identified through the assessment, and the timetable for actions required to do so. The plan should identify when other agencies will contribute to the targets set, whether within the authority like the housing department, or outwith it, like a training college or Careers Scotland.

It is important to recognise that a young person may not always be successful the first time that they attempt adult living and may need help more than once. Some young people will need more support than others and the Pathway Plan should reflect this.

The Plan must be recorded in writing. The responsible authority must keep a copy and must provide one for the young person in a form which is accessible to them. The authority should consider whether anyone else should have a copy of all or part of the plan. Normally any other agencies that are identified as helping to meet the targets should be informed of their proposed role. The authority should seek and take account of the young person's views about who should have a copy of their Plan.

## **REVIEW OF THE PATHWAY PLAN**

It is important to recognise young people's expectations and circumstances can change quickly. The Plan will therefore be a living document which recognises this and can be amended accordingly. The responsible authority shall arrange a review if the young person asks for one; if the life coach asks for one; or at least every six months. This will ensure that Plans remain current and relevant for the young person. It will also provide an opportunity to make sure that any partners in delivery have met, or are meeting their agreements.

The purpose of regular review is to check that the goals and milestones are still right for the young person and are still being met, or to set new targets if the young person has achieved those previously identified. It will make sure that levels of support are adequate and are being delivered according to plan. It will take account of any unexpected developments and will revise the Plan accordingly.

It will be important to seek and take account of the views of the same people as were involved in the assessment. This means that those involved in the review should normally be the life coach, the case holder, the social worker and the young person. It may also be appropriate for other people also to attend if, for example, they are contributing to one of the elements of the Pathway Plan or if they played an important role at the needs assessment. Barriers to communication should be tackled in the same way as when constructing the Pathway Plan.

It is vital that the young person is involved in the Review. If a young person needs to travel for this purpose reasonable travel and subsistence costs should be covered. If the young person cannot or will not discuss face to face, the responsible authority should try to find an acceptable alternative to reviewing the Plan with them, such as by e-mail or telephone. If none of this is possible the Plan can be reviewed without the young person's help, but this should be very much the exception.

The results of the review must be recorded in writing. The responsible authority and the young person should each have a copy. Other copies should be available as set out for the Plan itself.



## CHAPTER VIII - LIFE COACH

The Pathway Plan recognises the need for young people to have someone to champion their needs and provide them with help and guidance. A life coach should be someone the young person feels comfortable talking to and who has the necessary expertise to undertake such a role. The responsible authority must therefore arrange for each compulsory supported young person and each discretionary supported person to have a life coach.

The local authority should identify a range of possible coaches which is sufficiently wide to provide young people with a real choice, taking account of gender and ethnic origin. The young person's wishes as to who undertakes the life coach role should be considered seriously and accommodated as far as possible. However the local authority must be satisfied in every case that the person is suitable for this role and has the ability and will be available to carry out these functions :

- Provide advice and support;
- Participate in the young person's assessment and preparation of the Pathway Plan;
- Participate in reviews of Pathway Plans;
- Liaise with the responsible authority in the implementation of the Plan;
- co-ordinate the provision of services for the young person and assist the young person in making use of these services;
- keep informed of the progress and well being of the young person; and
- keep a written record of all contact with the young person.

Life coaches will generally require high levels of knowledge and skill to enable them to work effectively with the young person. Given the close contact the life coach will have with the young person it is imperative that appointment processes include a police check.

It is the responsibility of local authorities to appoint and train people whom they consider to be suitable as life coaches. However, there is no prescribed professional or occupational qualification for the post of life coach and a wide range of people who have had contact with the young person could be appropriate, for example residential unit workers, former foster parents, Careers Scotland advisers, workers in the voluntary sector or a teacher or college lecturer. In the case of professionals outwith social work, it will be important to establish whether the individual would be available from their normal duties to carry out this role effectively. Other people will have to be provided with the appropriate knowledge and skills to enable them to give the young person the best possible support.

## **CHAPTER IX - MANNER IN WHICH ASSISTANCE IS TO BE PROVIDED**

The authority should make clear in the Pathway Plan what assistance will be given to the young person, who will provide it and when it will be provided. They should be made aware of the appeals procedure should they wish to challenge any decision at any stage.

Learning to manage money and a budget is an important step on the road to independent living. Young people should be encouraged at early age to open a bank account and learn to manage money. The Pathway Plan should have identified any needs in this area. Any financial assistance should be paid through bank accounts except in exceptional circumstances.

All young people should receive a package of support which meets their basic requirements. This will be based on individual circumstances and needs identified in the needs assessment.

Given the different components that will make up such a package this could be cash and/or payment in kind. However, regular cash support to replace DWP benefits should normally only be given to sixteen and seventeen year olds who have been looked after away from home for over three months since the age of 14. It is this category that have had their entitlement to DWP benefits withdrawn under the Children (Leaving Care) Act 2000. These young people should receive at least the equivalent of the DWP benefits available to 16 and 17 year olds at any particular time. . This information is available to local authorities from the DWP.

In assessing the need for regular cash support capital and income should be treated according to the DWP regulation on Income Support (capital up to £3,000 is disregarded and capital of £8,000 or more gets no assistance). Any such funds should be recorded in the young person's assessment.

If a young person has received Criminal Injury Compensation this should be disregarded when calculating cash assistance. However the local authority should ensure that anyone with such funds has access to independent financial advice.

In addition to regular cash support the local authority may under certain circumstances consider that a cash payment to their young people would be appropriate. For example a young person may need suitable clothes for an interview and the authority would wish to assist with such a purchase. Regular cash support may also be made available to other young people in exceptional circumstances, for example they cannot live at the family home because of concerns about their safety.

## **CHAPTER X - ACCOMMODATION**

The provision of suitable accommodation can make an enormous difference to a young person in making a successful transition to adult living. The Pathway Plan will have set out what kind of accommodation best meets the needs of the young person and how this is to be obtained.

Where the responsible authority has assisted a compulsory or a discretionary supported person by providing them with or supporting them in accommodation the authority must ensure that any such accommodation is suitable. This means that a young person's particular health issues should be taken into account when considering whether accommodation meets a young person's needs. Consideration should also be given to where the accommodation is located. For example it may be important for a young person to be close to support networks or to have easy transport links to their place of study or employment. These issues should be explored in the Pathway Plan and the young person's wishes taken into account.

If the accommodation provider will come into direct contact with the young person references should be taken up and appropriate checks carried out.

It is known that one of the main worries for young people in further or higher education is their accommodation arrangements during vacations. Local authorities will therefore need to ensure they are aware of the accommodation terms and make arrangements to cover any vacation gap.

Local authorities should bear in mind the provisions of section 30 of the Children (Scotland) Act 1995 which allows an authority to provide financial assistance towards expenses of education or training.

The Homelessness etc. (Scotland) Act 2003 has amended section 25 of the Housing (Scotland) Act 1987. This amendment means that persons aged 16 or 17 assessed as homeless are now included in the statutory definition of applicants to be considered as having a priority need for accommodation. In addition, anyone assessed as homeless who is aged 18 to 20 who was looked after by a local authority when they ceased to be of school age or at any subsequent time will also be considered to be in priority need.

Looked After Children received assistance with housing support services to 1 April 2003 under the arrangements for Transitional Housing Benefit. New arrangements for housing support services were introduced on 1 April 2004 under the Supporting People initiative and local authorities have power to pay grant for these services under the Housing Scotland Act 2001 (Housing Support Services) Regulations 2002 introduced under conditions of grant.

## **CHAPTER XI - RIGHT TO MAKE REPRESENTATIONS AND COMPLAINTS**

It is important that young people have swift access to an appeals system that is transparent and easy to understand. The Regulations set out the procedures that must be followed by the responsible authority should they receive a representation from a complainant. They lay out the time periods for notification at each stage that must be adhered to by local authorities. The responsible authority should continue providing support to the young person while any appeals process is on-going.

Young people should have access to independent advocacy services to assist them when making a case and to help them see their case through to completion.

If the young person has any particular needs related to impairment, the responsible authority should make sure meetings and information are accessible to them.

The responsible authority should make every effort to ensure that the young person can attend any meetings should they wish to do so, for example by paying travel and subsistence costs.

The authority should appoint a nominated officer to co-ordinate the authority's complaints and representations procedures.

The emphasis in all cases should be to ensure that the complaint is resolved informally as quickly as possible. The authority should seek to discuss the complaint with the young person, take account of their point of view, and any submission made on the young person's behalf by an advocacy service at this point, and to accommodate the representations made.

If the complaint cannot be resolved informally within 14 days the nominated officer should be informed and the authority should appoint an independent person to consider the representation with the authority and any actions the authority wishes to take. The authority should have its answer to the complaint within 28 days of the informal procedure failing to bring a resolution.

The young person has a right of appeal to a panel, which will consider the representation along with any further written or oral submissions on behalf of the young person or the authority. The panel should consist of at least three people, one of them independent, and any authority officers should not have been previously involved in the case. The panel must meet within 28 days of the young person appealing and must give its decision, with its reasons, 24 hours after meeting.

## REGULATIONS

### SCOTTISH STATUTORY INSTRUMENTS

2004 No.

### CHILDREN AND YOUNG PERSONS

The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2004

<i>Made</i>	2004
<i>Laid before the Scottish Parliament</i>	2004
<i>Coming into force</i>	1st April 2004

The Scottish Ministers, in exercise of the powers conferred by sections 73(2)(a), (c), (d), 73(3) and 78(1) of the Regulation of Care (Scotland) Act 2001<sup>(1)</sup> and section 17(1) of the Children (Scotland) Act 1995<sup>(2)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Support and Assistance of Children and Young People Leaving Care (Scotland) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations extend to Scotland only.

#### **Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires:—

“complainant” means any person specified in subsection (1) or (2) of section 29 of the 1995 Act who has made a representation;

“compulsory supported person” means a young person to whom a local authority is obliged to provide support and assistance in terms of section 29(1) of the 1995 Act;

“currently looked after person” means a person who is over school age, but is less than eighteen, years of age and who is being looked after by a local authority;

“discretionary supported person” means a young person to whom a local authority has agreed to provide support and assistance in terms of section 29(2) of the 1995 Act;

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<sup>(1)</sup> 2001 asp 8.

<sup>(2)</sup> 1995 Chapter 36.

“independent person” means in relation to representations made to a local authority, a person who is neither a member nor an officer of that authority;

“life coach” means a person appointed by the responsible authority in terms of Regulation 5;

“local authority” means a Council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(3)</sup>;

“looked after” has the meaning given to it in section 17(6) of the 1995 Act;

“needs assessment” means an assessment carried out under section 29(5)(a) of the 1995 Act;

“panel” means a panel of three persons;

“parent” has the meaning given to it in section 15(1) of the 1995 Act;

“parental responsibility” has the meaning given to it in section 1(3) of the 1995 Act;

“parental rights” has the meaning given to it in section 2(4) of the 1995 Act;

“pathway plan” means a plan setting out in writing details of the advice, support and assistance that a local authority intends to provide to a young person pursuant to its duties under section 29(1) or 29(2) of the 1995 Act;

“prospective supported person” means a young person who has made an application to a local authority for assistance in terms of section 29(2) of the 1995 Act which has yet to be determined;

“representations” means any representations referred to in section 29(5) of the 1995 Act;

“responsible authority” means—

- (a) in relation to a currently looked after person, the local authority looking after that person; and
- (b) in relation to a compulsory supported or a discretionary supported person, the local authority which last looked after the person,

“the 1995 Act” means the Children (Scotland) Act 1995.

### **Involvement of the young person**

**3.—(1)** When carrying out a needs assessment and when preparing or reviewing a pathway plan, the responsible authority shall, unless it is not reasonably practicable to do so—

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<sup>(3)</sup> 1994 Chapter 39.

- (a) seek and have regard to the views of the young person to whom it relates; and
  - (b) take all reasonable steps to enable the young person to attend and participate in any meetings at which the case of the young person is to be considered.
- (2) The responsible authority shall, without delay, provide the young person with copies (where appropriate) of–
- (a) the results of the needs assessment;
  - (b) the pathway plan;
  - (c) each review of that young person’s pathway plan; and
  - (d) an explanation of the procedure for making representations under Regulations 13 to 20;

and shall ensure that the contents of each document are explained to the young person in accordance with that individual’s level of understanding unless it is not reasonably practicable to do so.

**Needs assessment – general**

**4.—**(1) The responsible authority shall prepare a written statement describing the manner in which the needs of currently looked after persons, compulsory supported persons and prospective supported persons will be assessed.

(2) The written statement shall include, in relation to the young person whose needs are to be assessed, information about–

- (a) the person responsible for the conduct of and co-ordination of the assessment;
- (b) the timetable for the assessment;
- (c) who is to be consulted for the purposes of the assessment;
- (d) the arrangements for recording the outcome of the assessment.

(3) The responsible authority shall make a copy of the written statement available to the young person in question and, so far as it is reasonably practicable to do so, to the persons specified in regulation 6 (5) below.

(4) Nothing in these Regulations shall prevent the carrying out of any assessment or review under these Regulations at the same time as any assessment review or consideration under any other enactment.

**Life coaches**

**5.—(1)** A local authority shall arrange for each compulsory supported person and each discretionary supported person, in respect of whom it is the responsible authority, to have a life coach.

(2) A life coach shall be a person who is, in the opinion of the responsible authority, suitable and capable of performing the functions specified in regulation 5(5) below.

(3) A life coach shall be an individual person and may or may not be an officer and employee of the responsible authority.

(4) Before appointing a life coach, the responsible authority shall seek and take into account the views of the young person as regards that appointment.

(5) A life coach shall have the following functions in relation to a compulsory supported person or a discretionary supported person—

- (a) to provide advice (including practical advice) and support;
- (b) where applicable, to participate when the young person's assessment and the preparation of the relevant pathway plan;
- (c) to participate in reviews of the pathway plans;
- (d) to liaise with the responsible authority in the implementation of the pathway plan;
- (e) to co-ordinate the provision of services and to take reasonable steps to ensure that the young person makes use of such services;
- (f) to keep informed about the progress and well being of the young person; and
- (g) to keep a written record of all contacts with the young person.

### **Preparation for Leaving Care**

**6.—(1)** In carrying out its duties under section 17(1)(a) of the 1995 Act to prepare a currently looked after person for when that young person is no longer looked after, local authorities shall, in relation to each currently looked after person in respect of whom they are the relevant local authority—

- (a) carry out a needs assessment with a view to determining what advice, support and assistance it would be appropriate for the authority to provide to the young person to prepare them;
- (b) if the responsible authority considers it necessary or desirable to do so, prepare a pathway plan for that young person; and
- (c) if the relevant authority considers it necessary or desirable to do so, appoint a life coach to that young person.



## Needs Assessment – Individual Cases

7.—(1) When carrying out its duties under section 29(5) of the 1995 Act (assessment of needs), the responsible authority shall assess the needs of each compulsory supported person and each prospective supported person who does not already have a pathway plan in accordance with these Regulations.

- (2) The assessment of needs shall be complete—
  - (a) in the case of a compulsory supported person, not more than three months after the date on which that person becomes a compulsory supported person and
  - (b) in the case of a prospective supported person, not more than three months after the date on which that person makes an application for assistance under section 29(2) of the 1995 Act.
- (3) Each responsible authority shall ensure that a written record is kept of—
  - (a) the information obtained in the course of a needs assessment;
  - (b) the deliberations at any meeting held in connection with any aspect of a needs assessment; and
  - (c) the results of a needs assessment.
- (4) In carrying out a needs assessment, the responsible authority shall take account of the following considerations:—
  - (a) the young person’s health and development;
  - (b) the young person’s need for education, training or employment;
  - (c) the young person’s needs for care and support;
  - (d) the young person’s need for accommodation;
  - (e) the young person’s financial needs;
  - (f) the extent to which the young person possesses the practical and other skills necessary for independent living; and
  - (g) the support available to the young person from members of the young person’s family and other persons;
- (5) The responsible authority may seek the views of—
  - (a) the parents of the young person;

- (b) any person who is not a parent but has parental responsibility for a compulsory supported person;
- (c) any person who on a day to day basis cares for, or provides accommodation for, the young person;
- (d) any school or college attended by the young person or the education authority for the area in which the young person lives;
- (e) any person providing health care or treatment to the young person;
- (f) any life coach appointed for the or young person in terms of regulation 5; and
- (g) any other person whose views the responsible authority, or the young person, consider may be relevant.

and the responsible authority shall take into account any such views that have been sought.

### **Pathway plans**

**8.—(1)** Within 14 days after completion of a needs assessment for a compulsory supported person, the responsible authority shall prepare a pathway plan for the young person in question.

(2) Within 7 days after completion of a needs assessment for a prospective supported person, the responsible authority shall, after taking the needs assessment into account, decide whether to grant the prospective supported person's application for assistance in terms of section 29(2) of the 1995 Act. The responsible authority shall notify the decision to the prospective supported person within 7 days of the decision being reached.

(3) Within 14 days after the grant of an application for assistance under section 29(2) of the 1995 Act, the responsible authority shall prepare a pathway plan for the discretionary supported person in question.

(4) A pathway plan shall include the matters set out in the Schedule to these Regulations.

(5) A pathway plan shall, in relation to each of the matters referred to in the Schedule, as set out—

- (a) the manner in which the responsible authority proposes to meet the needs of the young person; and
- (b) the date by which, and by whom, any action required to implement any aspect of the pathway plan will be carried out.

(6) The pathway plan shall be recorded in writing.

## **Review of pathway plans**

**9.—(1)** The responsible authority shall review the pathway plan of each compulsory supported person and each discretionary supported person in accordance with this regulation.

(2) The responsible authority shall arrange a review—

- (a) if requested to do so by the young person in question;
- (b) if it, or the life coach considers a review necessary; and
- (c) in any other case, at intervals of not more than 6 months.

(3) In carrying out a review, the responsible authority shall, to the extent it considers it appropriate to do so, seek and take account of the views of the persons mentioned in regulation 6(5).

(4) The responsible authority conducting a review must consider whether, in relation to each of the matters set out in the Schedule, any change to the pathway plan is necessary.

(5) The results of the review must be recorded in writing.

## **Manner in which Assistance is Provided**

**10.—(1)** Save in exceptional circumstances and subject to paragraph (4), the responsible authority shall only provide regular support in cash to a compulsory supported person less than eighteen years of age looked after and accommodated for a period of or periods totalling 13 weeks since the age of 14.

(2) The responsible authority must be satisfied that the value of any assistance given to a compulsory supported person (be it in cash or in kind or a combination of both) is of a total value that is at least equivalent to the value of social security benefits that the young person would otherwise have been entitled to from time to time, but for the operation of the regulations made, or to be made, pursuant to section 6(4) of the Children (Leaving Care) Act 2000<sup>(4)</sup>.

(3) If a local authority considers that the welfare of a compulsory supported person or a discretionary supported person requires it, it shall provide such assistance (whether in cash or in kind) as appears necessary in the circumstances to the young person until such time as the young person's needs assessment and (where appropriate) pathway plan have been completed. Such support may also be provided until any complaint or appeal initiated under regulations 13 to 19 has been determined in accordance with those provisions.

(4) For the purposes of paragraph (1), a young person shall be deemed not to have accommodated for the required period of 13 weeks if that young person has been looked after in circumstances where—

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<sup>(4)</sup> 200 c.35.

- (a) the local authority arranged to place the young person in a pre-planned series of short-term placements, more of which individually exceeds 4 weeks (even though they may amount in all to a period of 13 weeks or more); and
  - (b) at the end of each such placement the young person returns to the care of the young person's family.
- (5) In this regulation–
- (a) “social security benefits” means income support, income-based job seeker's allowance and housing benefit as such benefits may be varied, amended or replaced from time to time;
  - (b) *“family” includes any person who has parental responsibility for the young person and any person with whom the young person was living prior to being looked after by a local authority, but does not include a local authority; and*
  - (c) “accommodated” means provided with accommodation by a local authority pursuant to its duties under section 25 of the 1995 Act or in compliance with a direction made in a supervision requirement under section 73(3) of that Act; but it does not include circumstances where the young person has been placed with that young person's family either under arrangements made under section 26(2)(c) of the 1995 Act or in compliance with a direction made in a supervision requirement.

### **Accommodation**

**11.—(1)** The responsible authority may assist a compulsory supported person or a discretionary supported person by providing that young person with, or supporting that young person in, suitable accommodation.

(2) In this regulation (employment, education and training), “suitable accommodation” means accommodation–

- (a) which, so far as is reasonably practicable, is suitable for the young person in question in light of that young person's needs, including health needs and any needs arising from any disability;
- (b) in respect of which the responsible authority has satisfied itself as to the character and suitability of the Landlord or other provider; and
- (c) in respect of which the responsible authority has, so far as is reasonably practicable, taken into account the young person's–
  - (i) wishes and feelings; and
  - (ii) education, training or employment needs.

(3) Where the responsible authority is satisfied that a compulsory supported person or a discretionary supported person who is in full time further or higher education needs

accommodation during a vacation because that young person's term time accommodation is not available then, it shall give assistance to that young person by—

- (a) providing the young person with suitable accommodation during the vacation; or
- (b) paying that young person enough to enable him or her to secure such accommodation themselves.

### **Retention and confidentiality of records**

**12.—**(1) All records relating to needs assessments, pathway plans and reviews of pathway plans shall be retained by the responsible authority until the 75th anniversary of the date of birth of the young person to whom it relates or of a period of 25 years beginning with the date of death of the young person.

(2) The requirement in paragraph (1) may be complied with by retaining the original written records or copies of them, or by keeping all or part of the information contained in them in some other accessible form such as computer records.

(3) The records mentioned in paragraph (1) must be kept securely and may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under, or by virtue of, a statute under which access to such records is authorised; or
- (b) any court order authorising access to such records.

### **Right to make representations and complain – general**

**13.—**(1) Each local authority shall appoint one of their officers to assist the authority in the co-ordination of all aspects of their consideration of representations (“the nominated officer”).

(2) Each local authority shall ensure that everyone involved in the handling of any representation, including independent persons, is familiar with the procedure set out in these Regulations.

### **Representations**

**14.—**(1) Representations may be made either orally or in writing.

(2) Where a representation is made orally, the local authority shall immediately record the representation in writing and send the written record to the complainant, who shall be given the opportunity to comment on the record.

(3) The local authority shall consider any comments made by the complainant under paragraph (2) and shall make any amendments to the record which it considers to be necessary.

(4) For the purposes of the following provisions of these Regulations, the written record referred to in paragraph (3) shall be deemed to be the representation.

(5) The representation may be withdrawn at any stage by the complainant.

### **Informal resolution of representations and complaints**

**15.** Where a local authority receives a representation from a complainant, it shall—

- (a) provide the nominated officer with a written summary of the representation;
- (b) endeavour to reach a settlement to the satisfaction of the complainant within 14 days; and
- (c) if at the end of 14 days no such resolution has been achieved, notify the nominated officer.

### **Formal resolution of representations and complaints**

**16.—(1)** Where the complainant is not satisfied with the outcome of the procedure set out in regulation 15, the local authority shall:

- (a) send to the complainant an explanation of the procedure set out in these Regulations, and other assistance and guidance on the use of the procedure, or give advice on where the complainant may obtain it;
- (b) appoint an independent person to take part in the consideration of the representation.

(2) The local authority shall consider the representation with the independent person and formulate a response within 28 days of the notification to the nominated officer under regulations 15(c).

(3) The independent person shall take part in any discussions which are held by the local authority about the action (if any) to be taken in relation to the complainant in the light of its response to the representation.

### **Notification of decision and right of appeal**

**17.—(1)** The local authority shall give notice within the period specified in regulation 16(2) to—

- (a) the complainant;
- (b) the independent person;
- (c) the nominated officer;
- (d) the life coach (if one has been appointed); and

- (e) any other person whom the local authority considers has an interest in the case,

of its response to the representation under regulation 16(2), any action under regulation 16(3) and complainant's right to appeal to a panel under paragraph (2).

(2) The complainant may give notice in writing to the local authority within 28 days of the date on which notice is given under paragraph (1) that the complainant is dissatisfied with its response to the representation or the action to be taken and wishes to appeal to a panel ("notice of appeal").

### **Appeal panels – members and procedure**

**18.—**(1) If the local authority is given notice of appeal under regulation 17(2), a panel shall be appointed by the local authority to consider the representation and the appeal.

(2) A panel appointed under paragraph (1) shall—

- (a) include at least one independent person;
- (b) not include any officers or members of the local authority who participated in the procedure under regulation 15 or 16.

(3) The panel shall meet within 28 days of the receipt by the local authority of the complainant's notice of appeal.

(4) At that meeting the panel shall consider—

- (a) any oral or written submissions that the complainant and the local authority wish to make; and
- (b) any oral or written submission which the independent person appointed under regulation 16 wishes to make (if that independent person is different from the independent person on the panel);
- (c) any oral or written submission from the life coach (if appointed) or the nominated officer.

(5) The complainant and the complainant's life coach shall be invited to attend the meeting of the panel. The complainant may be accompanied throughout the meeting by another person of the complainant's choice and may nominate that other person to speak on the complainant's behalf.

### **Appeal panels - decisions**

**19.—**(1) The panel shall decide on their recommendation and record it with their reasons in writing within 24 hours of the end of the meeting held under regulation 18. In reaching its decision, the panel shall take into account any submissions made under regulations 18(4) above.

- (2) The panel shall give notice of their recommendation to—
  - (a) the complainant;
  - (b) the local authority;
  - (c) the independent person appointed under regulation 16 if different from the independent person on the panel;
  - (d) the life coach (if appointed);
  - (e) the nominated officer, and
  - (f) any other person whom the local authority considers has an interest in the case.

(3) The local authority shall, together with the independent person (or persons) appointed to the panel under regulation 18(2)(a)), consider what action, if any, should be taken in relation to the complainant in light of the representation and the independent person or persons shall take part in any discussion about such action. In reaching its decision, the local authority shall take into account the recommendations of the panel.

(4) The local authority shall give notice in writing to the persons mentioned in paragraph (2)(a), (b), (d), (e) and (f) of its decision under paragraph (3) and stating its reasons for that decision within 24 hours of that decision.

### **Transitional provisions**

**20.—(1)** Notwithstanding the terms of regulation 7(2), a local authority shall complete a needs assessment in respect of any young person who is, on the date that these regulations come into force, currently entitled to assistance in terms of section 29(1) of the 1995 Act within twelve months of the date on these regulations come into force.

Signed on behalf of the Scottish Ministers

[ \_\_\_\_\_ ],  
[ \_\_\_\_\_ ]  
[Date]



## SCHEDULE

**Matters to be dealt with within the pathway plan and review of pathway plan**

1. The outcome of the needs assessment.
2. A statement of the wishes and aspirations of the young person.
3. The nature and level of contact of personal support to be provided, and by whom, to the young person.
4. A programme to develop the practical and other skills necessary for the young person to live independently.
5. A detailed plan for the education or training of the young person, including how the responsible authority will assist the young person in relation to employment or other provisional activity or occupation.
6. The financial support to be provided to the young person, in particular where it is to be provided to meet his accommodation and maintenance needs.
7. The health needs, including any mental health needs, over the young person, and how they are to be met.
8. The support to be provided to enable the young person to develop and sustain appropriate family and social relationships.
9. Details of the accommodation the young person has to occupy.

**EXPLANATORY NOTE**

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