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# Support for Looked After Children in Scotland

## 1 Introduction

This paper has been prepared at the request of the Committee for Employment and Learning. It provides a broad overview of recent measures to improve the quality and extent of care for 'looked after children' in Scotland.

The paper also includes a brief description of the support available to children and young people living in care in Scotland. It focuses specifically on the changes introduced by the *Children and Young People (Scotland) Act 2014*. These include placing 'corporate parenting' on a statutory basis, changing the legal definition of 'care leaver' and extending support for 'looked after children' up to and including 25 years old.

## 2 Definition of “Looked After Children”

In Scotland, local authorities have a responsibility to provide support to certain vulnerable young people, known as ‘looked after children’. The term ‘looked after children’ refers to children in the care of their local authority.<sup>1</sup>

It is important to note that the definition of ‘looked after children’ varies across the countries within the UK. In Scotland, children looked after at home are included in the definition and statistics, whereas they are usually excluded in the England and Wales statistics.

The statutory definition of a ‘looked after child’ is set out in Section 17(6) of the *Children (Scotland) Act 1995*, as amended by the *Adoption and Children (Scotland) Act 2007* and the *Children’s Hearings (Scotland) Act 2011*, and includes those children and young people who are:<sup>2</sup>

- Provided with accommodation under Section 25 of the *Children (Scotland) Act 1995*;
- Subject to a compulsory supervision order or an interim compulsory supervision order made by a Children’s Hearing in respect of whom the local authority are the implementation authority;
- Subject to an order, authorisation or warrant in respect of whom a Scottish local authority has responsibilities under Section 33(1) or Chapter 2, 3, or 4 of Part II of the *Children (Scotland) Act 1995*; or
- Subject to a Permanence Order made after an application by the local authority under Section 80 of the *Adoption and Children (Scotland) Act 2007*.

## 3 Support Options Available to Looked After Children

Children who are looked after by local authorities in Scotland can be accommodated in a community placement or a residential placement.

Community placements include:

- At home with parents;<sup>3</sup>
- With family or friends (kinship care);
- Foster carers; or
- Prospective adopters.

In 2014, 14,110 looked after children and young people were accommodated in community settings.<sup>4</sup>

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<sup>1</sup> The Scottish Government, About looked after children and young people, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/about>

<sup>2</sup> *Children (Scotland) Act 1995* Section 17(6) <http://www.legislation.gov.uk/ukpga/1995/36/section/17>

<sup>3</sup> In this case, the child or young person is subject to a Supervision Requirement with no condition of residence through the Children’s Hearing system. The child or young person continues to live in their normal place of residence. *Children’s Hearings (Scotland) Act 2011* Sections 144 to 148 <http://www.legislation.gov.uk/asp/2011/1/part/14/crossheading/implementation-of-compulsory-supervision-order>

Residential accommodation includes:

- Local authority homes;
- Voluntary homes;
- Residential schools; and
- Secure accommodation.

Between 01 August 2013 and 31 July 2014, 1,470 children were looked after in residential placements.<sup>5</sup> The latest figures show that of the 15,580 children in care, the majority are in foster care and kinship care, with only 9.4 per cent in residential care.<sup>6</sup>

Support for young people in care is discussed in more detail below under the following headings.

- Adoption;
- Kinship Care;
- Foster Care;
- Residential Child Care; and
- Looked After Children at Home.

### 3.1 Adoption

This is a legal process which replaces a child's birth parents with new adoptive parents.

For people seeking to adopt a child they must first contact a registered adoption agency and subsequently undergo an extensive assessment which includes medical, police and financial checks.<sup>7</sup>

Once this process is completed successfully, the application is forwarded to an adoption panel which makes a recommendation to the adoption agency.

This process can take a number of months and once the placement is made it is monitored by adoption agency staff.

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<sup>4</sup> It should be noted that in the most recent statistical publication on looked after children in Scotland, 2014 figures represent the data collected during the period from 01 August 2013 to 31 July 2014. The majority of looked after children in community placements were in kinship care (4,181) and foster care (5,533), with 4,144 at home with parents and 201 with prospective adopters. Scottish Government *Children's Social Work Statistics 2013-2014* (2015) p.7  
<http://www.gov.scot/Resource/0047/00474429.pdf>

<sup>5</sup> Scottish Government *Children's Social Work Statistics 2013-2014* (2015) p.7  
<http://www.gov.scot/Resource/0047/00474429.pdf>

<sup>6</sup> In 2010, children in residential care accounted for 9.3 per cent of all looked after children. This figure was 9 per cent in 2011, 8.8 per cent in 2012 and rose slightly to 9.1 per cent in 2012. Scottish Government *Children's Social Work Statistics 2013-2014* (2015) p.7 <http://www.gov.scot/Resource/0047/00474429.pdf>

<sup>7</sup> The Scottish Government, Domestic Adoption, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/adoption/domesticadoption>

### 3.2 Kinship Care

If a child is unable to be looked after by their birth parents it is possible under the *Looked After Children (Scotland) Regulations 2009* to be looked after by kinship carers.

These are defined as:<sup>8</sup>

*A person who is related to the child (through blood, marriage or civil partnership) or a person with whom the child has a pre-existing relationship.*

### 3.3 Foster Care

Foster care provides a temporary arrangement under which children can be placed in a safe and secure environment in either a short term or long term basis.<sup>9</sup>

As stated in the guidance on the looked after children regulations, fostering is:<sup>10</sup>

*The primary means of care for children under 12 who are placed away from home; and also provides care for children under 12 who have either remained long-term in foster care or for whom it is the first choice when separation from their parents and kinship network is necessary.*

### 3.4 Residential Child Care

Residential care homes:<sup>11</sup>

*Offer young people (usually of secondary school age) a safe place to live away from their families. Residents live alongside a number of other young people in the home, cared for by staff who do not live on site.*

Care homes provide accommodation, support and occasionally education. They can be run by local authorities, with a number of voluntary and independent care homes also in operation across Scotland.

As stated by the Scottish Government:

*Most young people who live in a residential establishment will have been assessed as needing to be cared for away from home by the local authority. Young people are placed in residential care on the recommendation of a Children's Hearing Panel, or on an emergency (short-term) basis to guarantee their safety.*

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<sup>8</sup> The Scottish Government, Kinship Care, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/kinship>

<sup>9</sup> The Scottish Government, Foster Care, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/fostercare>

<sup>10</sup> The Scottish Government, Guidance on Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007

<sup>11</sup> The Scottish Government, Residential Child Care, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/residentialcare>

### 3.5 Looked After Children at Home

A child or young person can become looked after at home when they have been through the Children's Hearings system and are subject to a Supervision Requirement (regular contact with social services) with no condition of residence. The child then continues to live in their regular place of residence (i.e. the family home).<sup>12</sup>

## 4 Statutory Duties

When a child or young person is categorised as 'looked after' in Scotland, the relevant local authority assumes duties and responsibilities to safeguard and promote their welfare and wellbeing.

A wide range of legislation, regulation and guidance provides the framework within which these actions take place, including:

- *Children (Scotland) Act 1995*; and
- *Looked After Children (Scotland) Regulations 2009*

The *Children (Scotland) Act 1995* (as amended by subsequent legislation) provides the legal framework for 'looked after children' and 'care leavers' in Scotland.<sup>13</sup> It sets out the duties, powers and responsibilities of local authorities in relation to looked after children and young people and care leavers.<sup>14</sup>

The accompanying guidance, *Children (Scotland) Act 1995 Regulations and Guidance Volume 2: Children Looked After by Local Authorities*, provides a detailed and comprehensive overview on how local authorities and other public bodies should meet these requirements.<sup>15</sup>

The *Looked After Children (Scotland) Regulations 2009* prescribe a child or young person's journey into care and through care, differentiated by the placement type (i.e. 'at home', kinship, residential, etc.).<sup>16</sup>

These Regulations require all looked after children to have a 'child's plan' and for children to be actively involved (depending on their age and maturity) in the development and monitoring of that plan. They also set out a range of responsibilities and duties of both the local authority and the carer to meet the needs of the looked after child.

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<sup>12</sup> The Scottish Government, Looked After Children at Home, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/about>

<sup>13</sup> *Children (Scotland) Act 1995* <http://www.legislation.gov.uk/ukpga/1995/36/contents>

<sup>14</sup> *Children (Scotland) Act 1995* Chapter 1 <http://www.legislation.gov.uk/ukpga/1995/36/part/II/chapter/1>

<sup>15</sup> The Scottish Office *The Children (Scotland) Act 1995: Regulations and Guidance: Volume 2: Children Looked After by Local Authorities* (1997) <http://www.gov.scot/resource/doc/26350/0023698.pdf>

<sup>16</sup> *Looked After Children (Scotland) Regulations 2009* <http://www.legislation.gov.uk/ssi/2009/210/contents/made>

Detailed guidance on these processes was published in June 2010 in *Guidance on the Looked After Children (Scotland) Regulations 2009 and Adoption and Children (Scotland) Act 2007*.<sup>17</sup>

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

The *Children and Young People (Scotland) Act 2014* introduced major changes to the planning, operation and delivery of children's services in Scotland. The Act is particularly important for looked after children and care leavers, as it:

- Puts corporate parenting (discussed in more detail below) on a statutory footing and extends the concept across the public sector;<sup>18</sup>
- Extends support to young people leaving care for longer (up to and including the age of 25);<sup>19</sup> and
- Introduces a new provision of 'continuing care' for some care leavers.<sup>20</sup>

### 5.1 Corporate Parenting

The *Children and Young People (Scotland) Act 2014* formalised the role of the corporate parent in Scotland by placing the concept and policy of corporate parenting on a statutory basis.<sup>21</sup>

Previous government guidance defined corporate parenting as:<sup>22</sup>

*The formal and local partnerships needed between all local authority departments and services, and associated agencies, who are responsible for working together to meet the needs of looked after children and young people.*

The draft statutory guidance on corporate parenting, published in December 2014, provided a revised definition that places far less emphasis on interagency cooperation:<sup>23</sup>

<sup>17</sup> *Guidance on the Looked After Children (Scotland) Regulations 2009 and Adoption and Children (Scotland) Act 2007* (2010) <http://www.gov.scot/Resource/Doc/313591/0099439.pdf>

<sup>18</sup> *Children and Young People (Scotland) Act 2014* Part 9 <http://www.legislation.gov.uk/asp/2014/8/part/9/enacted>

<sup>19</sup> *Children and Young People (Scotland) Act 2014* Part 10 <http://www.legislation.gov.uk/asp/2014/8/part/10/enacted>

<sup>20</sup> *Children and Young People (Scotland) Act 2014* Part 11 <http://www.legislation.gov.uk/asp/2014/8/part/11/enacted>

<sup>21</sup> The 'corporate parent' provisions came into force in Scotland on 01 April 2015. Scottish Government *Consultation on Draft Statutory Guidance on Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014* (2014) p.1 <http://www.gov.scot/Resource/0046/00466889.pdf>

<sup>22</sup> Scottish Executive *Looked After Children and Young People: We Can and Must Do Better* (2007) p.3 <http://www.gov.scot/Resource/Doc/162790/0044282.pdf>; Scottish Government *These Are Our Bairns: a Guide for Community Planning Partnerships on Being a Good Corporate Parent* (2008) p.3 <http://www.gov.scot/Resource/Doc/236882/0064989.pdf>

<sup>23</sup> Scottish Government *Consultation on Draft Statutory Guidance on Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014* (2014) p.7 <http://www.gov.scot/Resource/0046/00466889.pdf>  
The importance of co-operation and collaboration is set out in Section 60 of the *Children and Young People (Scotland) Act 2014*. *Children and Young People (Scotland) Act 2014* Section 60 <http://www.legislation.gov.uk/asp/2014/8/section/60>

*An organisation's performance of actions necessary to promote and support the wellbeing or [sic] a looked after child or care leaver, including their physical, emotional, spiritual, social and cognitive development.*

Under the 2014 Act, 'corporate parenting responsibilities' apply to all looked after children and 'care leavers', including those in foster care, residential care, secure care, looked after at home and in formal kinship care.

The Act establishes a framework of duties and responsibilities for relevant public bodies, requiring them to be systematic and proactive in their efforts to meet the needs of looked after children and care leavers.<sup>24</sup> The principal responsibilities of corporate parents towards children and young people are:<sup>25</sup>

- To be alert to matters which, or which might, adversely affect the wellbeing of looked after children and care leavers;
- To assess the needs of those children and young people for services and support it provides;
- To promote the interests of those children and young people;
- To seek to provide looked after children and care leavers with opportunities to participate in activities designed to promote their wellbeing;
- To take action to help looked after children and care leavers; and
- To take any other action it considers appropriate for the purpose of improving the way in which it exercises its functions in relation to looked after children and care leavers.

The Act also introduces new reporting and accountability structures,<sup>26</sup> with national progress on improving outcomes reported to the Scottish Parliament every three years.<sup>27</sup>

Statutory guidance on the Act was published for consultation in late 2014.<sup>28</sup> The final guidance (yet to be published) will be accompanied by a series of 'Corporate Parenting National Practice Notes', designed to support individual or groups of corporate parents to understand their legal responsibilities and to learn from existing good practice.<sup>29</sup>

<sup>24</sup> The 2014 Act also provides clarity around the list of corporate parents and has significantly extended the number of public bodies subject to 'corporate parent' duties. *Children and Young People (Scotland) Act 2014* Schedule 4 <http://www.legislation.gov.uk/asp/2014/8/schedule/4/enacted>

<sup>25</sup> *Children and Young People (Scotland) Act 2014* Section 58 <http://www.legislation.gov.uk/asp/2014/8/section/58/enacted>

<sup>26</sup> *Children and Young People (Scotland) Act 2014* Section 61 <http://www.legislation.gov.uk/asp/2014/8/section/61/enacted>

<sup>27</sup> *Children and Young People (Scotland) Act 2014* Section 65 <http://www.legislation.gov.uk/asp/2014/8/section/65/enacted>

<sup>28</sup> The consultation period ended on 15 March 2015. Scottish Government *Consultation on Draft Statutory Guidance on Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014* (2014) <http://www.gov.scot/Resource/0046/00466889.pdf>

<sup>29</sup> Scottish Government *Consultation on Draft Statutory Guidance on Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014* (2014) p.1 <http://www.gov.scot/Resource/0046/00466889.pdf>

## 5.2 Continuing Care and Aftercare

Taken together, Parts 10 and 11 of the *Children and Young People (Scotland) Act 2014* constitute a significant reform in the looked after children's sector. They represent an extension of the financial, practical and emotional assistance available to care leavers up to the age of 26 (should they wish to receive this support).

It is also important to note that this legislation changes the legal definition of a 'care leaver'.

From 01 April 2015 any young person who ceases to be looked after on or after their 16<sup>th</sup> birthday will be classified as a 'care leaver'.<sup>30</sup> All looked after children can become 'care leavers', including young people who were classified as 'looked after at home' and those in formal kinship care.<sup>31</sup>

Part 10 of the Act increases the care leaver population eligible for 'Aftercare'<sup>32</sup>, as it places a duty on local authorities to assess a care-leaver's request for assistance and support up to and including the age of 25 (under the *Children Scotland Act 1995* the upper age limit was 21).<sup>33</sup> The duty on local authorities to provide 'Aftercare' support applies equally to all care leavers, regardless of their placement type while 'looked after' by the local authority.

Under the Act, where requested by a care leaver aged up to 26 years of age, the local authority must undertake an assessment of whether they have 'eligible needs'.<sup>34</sup> If the young person is found to have such needs which cannot be met by other means, the local authority must provide them with:<sup>35</sup>

*Such advice guidance and assistance as it [the local authority] considers necessary for the purposes of meeting those needs.*

A local authority may, but it is not legally required to, provide 'Aftercare' to a care leaver beyond the age of 26.<sup>36</sup>

<sup>30</sup> *Children and Young People (Scotland) Act 2014* Section 66(2) <http://www.legislation.gov.uk/asp/2014/8/section/66/enacted>  
The previous definition restricted the category of 'care leaver' to young people who ceased to be looked after beyond their minimum school leaving age. As a result, some 16 year old care leavers were not eligible for aftercare support because they left care within certain months of the school year. *Children (Scotland) Act 1995* Section 29(1)

<sup>31</sup> CELCIS *Children and Young People (Scotland) Act 2014: Parts 10 and 11 (Aftercare and Continuing Care)* (2014) p.2  
[http://www.celcis.org/media/resources/publications/Inform\\_Children\\_Young\\_People\\_Act\\_Part\\_10-11.pdf](http://www.celcis.org/media/resources/publications/Inform_Children_Young_People_Act_Part_10-11.pdf)

<sup>32</sup> 'Aftercare' is defined by the *Children (Scotland) Act 1995* as 'advice, guidance and assistance'. *Children (Scotland) Act 1995* Section 29(1) <http://www.legislation.gov.uk/ukpga/1995/36/section/29>

<sup>33</sup> *Children and Young People (Scotland) Act 2014* Section 66(2) <http://www.legislation.gov.uk/asp/2014/8/section/66/enacted>

<sup>34</sup> 'Eligible needs' will be considered in collaboration with stakeholders and described in the forthcoming statutory guidance. *Consultation on Draft Secondary Legislation for Parts 9, 10 and 11 of the Children and Young People (Scotland) Act 2014: The Corporate Parenting (Specified Persons) (Scotland) Order 2015: The Aftercare (Specified Persons and Eligible Needs) (Scotland) Order 2015: The Continuing Care (Scotland) Order 2015* (2014) p.6  
<http://www.gov.scot/Resource/0046/00464718.pdf>

<sup>35</sup> *Children and Young People (Scotland) Act 2014* Section 66(2)(f) <http://www.legislation.gov.uk/asp/2014/8/section/66/enacted>

<sup>36</sup> CELCIS *Children and Young People (Scotland) Act 2014: Parts 10 and 11 (Aftercare and Continuing Care)* (2014) p.4  
[http://www.celcis.org/media/resources/publications/Inform\\_Children\\_Young\\_People\\_Act\\_Part\\_10-11.pdf](http://www.celcis.org/media/resources/publications/Inform_Children_Young_People_Act_Part_10-11.pdf)

It is important to note that care leavers will still have to request assistance and that local authorities will have discretion to determine what they deem necessary for the individual concerned.

Part 11 of the Act introduces a right to 'Continuing Care', a new legal term established by the 2014 Act. It describes a new duty on local authorities to provide care leavers whose final placement was 'away from home' with a continuation of the same accommodation and assistance as they were receiving immediately before they ceased to be looked after.<sup>37</sup>

On reaching 16 years of age, the Act provides young people in specific care placements (foster, residential and kinship) with the right to stay in that or a similar care placement until.<sup>38</sup>

- The person leaves the accommodation of the person's own volition;
- The accommodation ceases to be available; or
- The local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.

The aim of the provisions is to provide these young people with a more graduated transition out of care. This means that, as is the case with their non-looked-after peers, those not ready to leave home will be entitled to remain with their carers until age 21.

Ultimately, the success of these reforms will be dependent on the effective allocation of resources and the provision of suitable guidance on how these changes interact with current legislation and regulations.

In January 2014, the Scottish Government announced their commitment to allocate an additional £5 million to Scottish local authorities a year up to 2020 to implement the 'continuing care' and 'aftercare' provisions of the Act.<sup>39</sup> However, concerns have been expressed about whether the Government has underestimated the resources needed for effective implementation of these measures.<sup>40</sup> While these provisions came into force on 01 April 2015,<sup>41</sup> guidance has not yet been forthcoming.

<sup>37</sup> Children and Young People (Scotland) Act 2014 Part 11 <http://www.legislation.gov.uk/asp/2014/8/part/11/enacted>

<sup>38</sup> Children and Young People (Scotland) Act 2014 Section 67(7) <http://www.legislation.gov.uk/asp/2014/8/section/67/enacted>

<sup>39</sup> Scottish Government News Release: *Greater Rights for Young People in Care* (06 January 2014) <http://news.scotland.gov.uk/News/Greater-rights-for-young-people-in-care-818.aspx>

<sup>40</sup> CELCIS *Children and Young People (Scotland) Bill: CELCIS Briefing for Stage 3 Debate* (2014) p.5 [http://www.celcis.org/media/resources/publications/CELCIS\\_Briefing\\_Stage\\_3\\_Children\\_young\\_People\\_Bill.pdf](http://www.celcis.org/media/resources/publications/CELCIS_Briefing_Stage_3_Children_young_People_Bill.pdf); Scotland's Commissioner for Children & Young People *Response from Scotland's Commissioner for Children and Young People to the Scottish Government Consultation on Draft Secondary Legislation for Parts 9 (Corporate Parenting), 10 (Aftercare) and 11 (Continuing Care) of the Children and Young People (Scotland) Act 2014* (2014) p.2 <http://www.sccyp.org.uk/ufiles/Comments-on-secondary-legislation-for-parts-9,-10,-11.pdf>; Scottish Government *Analysis of Responses to the Children and Young People Bill Consultation* (2012) p.54 <http://www.gov.scot/Resource/0040/00409290.pdf>

<sup>41</sup> Scottish Government News Release: *Supporting Children in Care* (01 April 2015) <http://news.scotland.gov.uk/News/Supporting-children-in-care-1829.aspx>