



# Care leavers and benefits: giving good advice

Updated September 2017

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Child Poverty Action Group works on behalf of the one in five children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

We provide training, advice and information to make sure hard-up families get the financial support they need. We also carry out high profile legal work to establish and protect families' rights.

## Introduction

Many 16 and 17-year olds who have been 'looked after away from home' by the local authority cannot get income support, income-based jobseeker's allowance, housing benefit or universal credit. Instead, the local authority which last looked after them is responsible for providing financial and housing support. Local authorities often call this help 'after-care', 'after-care services' or 'leaving care services'. This leaflet explains the special benefit rules affecting some young care leavers. These special rules also impact on 16 and 17 year olds who are in 'continuing care' (see below).

## ***Continuing care***

*'Continuing Care' is a new approach introduced by the Children and Young People (Scotland) Act 2014. It describes a new duty on local authorities, effective from April 2015, to provide young people who are looked after and accommodated, and whose final placement is 'away from home', with the same accommodation and other assistance they received before they stopped being looked after. The aim of continuing care is to provide young people with the option of a more gradual and better supported transition out of care. The duty to provide continuing care is at section 26A of the Children (Scotland) Act 1995.*

## **Which benefits are affected?**

Income support, income-based jobseeker's allowance (JSA), housing benefit and universal credit are the benefits affected by these special rules. Other benefits like personal independence payment and employment and support allowance are not affected.

## **Income support, income-based JSA and housing benefit - which young people are affected?**

A young care leaver is affected by these special rules if **all** of the following apply:

- s/he is aged 16 or over and under 18; *and*
- s/he was **looked after and accommodated** (see below) by the local authority for at least **13 weeks** since the age of 14; *and*
- s/he was **looked after** by the local authority at her/his 16<sup>th</sup> birthday or after that date; *and*
- s/he is no longer looked after by the local authority; *and*
- s/he is not living with her/his **family** (see below), or s/he is living with her/his family and is receiving regular financial support from the local authority.

**Note: these special rules apply to a young person who is in continuing care providing all the bullet points above apply to her/him.<sup>1</sup>**

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<sup>1</sup> Regulation 2 of the Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004, as amended by SI 2016 No. 732

## Defining the terms

*Looked after means:*

- the local authority provides the child/young person with accommodation under section 25 Children (Scotland) Act 1995; *or*
- the child/young person is subject to a compulsory supervision order or interim compulsory supervision order under the Children's Hearings (Scotland) Act 2011; *or*
- the child/young person is the subject of a permanence order under Part 2 of the Adoption and Children (Scotland) Act 2007; *or*
- the child/young person has been transferred to Scotland from another part of the UK, and is subject to an order made under section 33 Children (Scotland) Act 1995.

*Looked after and accommodated* means provided with accommodation by the local authority under section 25 of the Children (Scotland) Act 1995 or that there is a supervision order, requiring the child/young person to live in a specified place, unless that specified place is with her/his own family.

The *13-week* period does not have to be a continuous period. When calculating the 13-week period, do not include any pre-planned short-term placements (such as respite) of four weeks or less if the young person returned to their family at the end of the placement.

*Family* includes anyone who has parental responsibility for the child/young person (except the local authority) and anyone with whom s/he was living before being looked after by the local authority. A young person is still defined as a care leaver (and, therefore, cannot claim income support, income-based JSA or housing benefit) if s/he lives with her/his family **and** the local authority provides regular financial support under section 29 of the Children (Scotland) Act 1995.

## The effect

Generally, if a young person aged 16 or 17 falls into the definition of a 'care leaver' as set out in the **Which young people are affected?** section above this means s/he cannot normally get income support, income-based JSA or housing benefit. Instead the local authority which last looked after her/him is responsible for providing financial support and accommodation. The local authority's duty to support care leavers is contained in section 29 of the Children (Scotland) Act 1995. The duty to support young people in continuing care is contained in section 26A of the Children (Scotland) Act 1995. If you

need more advice or information about the local authority's duties and responsibilities see below for details of organisations which can help.

## Exceptions

As with most rules, there are some exceptions.

### *Lone parents*

Even if a young person comes within the definition of care leaver set out in the **Which young people are affected?** section above s/he is not excluded from income support or income-based JSA if s/he is a lone parent. This includes 16 and 17 year olds who are in 'continuing care'. A care leaver in this situation would usually choose to claim income support, not JSA. S/he is still not able to claim housing benefit. The local authority will not give regular financial support, but should still provide or pay for accommodation.

### *Care leavers who are too unwell to work*

Care leavers, including 16/17 year olds in 'continuing care', who are too unwell to work may be able to claim employment and support allowance (ESA) – there are no special rules preventing this. However s/he will still not be able to claim housing benefit and the local authority should still provide or pay for accommodation.

## Examples

*Rob is aged 17. When he was 14 he started being looked after away from home. He lived with foster carers. This continued until a few months after his 16<sup>th</sup> birthday, when he stopped being 'looked after' and moved into supported accommodation run by a voluntary organisation. Rob is a care leaver who cannot get income support, income-based JSA or housing benefit.*

*Mel is aged 17. She was looked after away from home since the age of 12 until two months after her 16<sup>th</sup> birthday. She is in 'continuing care' and lives with the foster carers who have looked after her for several years. She is a lone parent with a baby. Although Mel is in a very similar situation to Rob, she is not excluded from getting income support or income-based JSA (providing she meets the usual conditions of entitlement). She can get income support as a lone parent. Like Rob, she cannot get housing benefit.*

## Universal credit and care leavers

A new benefit called universal credit has started to replace means-tested benefits and tax credits. Eventually the following benefits and tax credits will all be replaced by universal credit:

- income support
- income-based JSA
- income-related employment and support allowance
- housing benefit for most people
- working tax credit
- child tax credit

The universal credit rules for care leavers aged 16 and 17 are very similar to the special rules for income support, income-based JSA and housing benefit, except that young care leaver is still excluded from universal credit, even if s/he returns to live with her/his family, regardless of whether the local authority is supporting her/him. This means that care leavers, and those in continuing care, aged 16 and 17 are not generally able to claim universal credit. Instead the local authority is responsible for providing financial support and housing. There are exceptions for young care leavers (or in continuing care) who are parents or who are too unwell to work. They are able to claim universal credit in respect of living expenses but not in respect of rent.

For more information on universal credit and other welfare reforms see [www.cpag.org.uk](http://www.cpag.org.uk)

### **Advice and information on the local authority's responsibilities**

This factsheet focuses on the benefit system. If you need more advice or information on the local authority's duties and responsibilities regarding care leavers or continuing care, contact one of the following organisations:

**Staf** - Phone: 0141 465 7511 Email: [info@staf.scot](mailto:info@staf.scot)

Web: [www.staf.scot](http://www.staf.scot)

**Celcis** - Phone: 0141 444 8500 Email: [celcis@strath.ac.uk](mailto:celcis@strath.ac.uk)

Web: [www.celcis.org](http://www.celcis.org)

**Who Cares Scotland** - Phone: 0141 226 4441 Email: [hello@wcscot.org](mailto:hello@wcscot.org)

Web: [www.whocarescotland.org](http://www.whocarescotland.org)

## Further advice and information

### Child Poverty Action Group in Scotland

0141 552 0552 advice line for advisers on benefits and tax credits,  
Monday to Thursday 10am to 4pm, Friday 10am to 12 noon

Email: [advice@cpagscotland.org.uk](mailto:advice@cpagscotland.org.uk)

Website: [www.cpag.org.uk/scotland](http://www.cpag.org.uk/scotland)

For more detailed information about all of the issues covered please see CPAG's *Children's Handbook Scotland*, available free online at <http://www.onlinepublications.cpag.org.uk>

CPAG in Scotland's advice line is only for frontline workers in Scotland. If you are having problems with your own benefit or tax credits claim and need advice you should contact your citizen's advice bureau or other local welfare rights service.



Staf works with frontline workers, managers, leaders and influencers to improve the life chances and to create the best possible outcomes for young people leaving care in Scotland.

Contact details:

Edward House  
3<sup>rd</sup> Floor, 283 West Campbell Street  
Glasgow  
G2 4TT

Tel: 0141 465 7511

Email: [info@staf.scot](mailto:info@staf.scot)

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