

**THE CHILDREN (LEAVING CARE) SOCIAL
SECURITY BENEFITS (SCOTLAND)
REGULATIONS 2004**

BRIEFING PACK

Explanation of Provisions

CONTENTS PAGE

List of Potential Questions	pages 3-4
Answers 1-2.....	page 5
Answers 3-6.....	page 6
Answers 7-8.....	page 7
Answers 9-11.....	page 8
Answers 12-14.....	page 9
Answers 15-17.....	page 10
Answers 18-20.....	page 11
Answers 21-22.....	page 12
Answers 23-24.....	page 13
Answers 25-28.....	page 14
Answers 29-32.....	page 15
Answers 33-36.....	page 16
Answers 37-39.....	Page 17
Key Facts and Figures.....	Annex 1
History.....	Annex 1
Effect upon income-related benefits.....	Annex 1
Current Levels of Service in Scotland.....	Annex 2
Improving Services for Care Leavers.....	Annex 3
Effect of The Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004.....	Annex 4
Jobseeker's Allowance Eligibility Rules for 16/17 year olds	Annex 5
Income Support Eligibility Rules for 16/17 year olds.....	Annex 6
Children Leaving Care in Scotland.....	Annex 7

LIST OF POTENTIAL QUESTIONS	
1	Why have these arrangements been introduced in Scotland now?
2	What were the reasons for the delay in Scotland?
3	Are LAs in Scotland geared up for the changes?
4	What guidance has been issued to Local Authorities in Scotland?
5	How will the changes be monitored?
6	How many care leavers in Scotland are affected?
7	What are the advantages for care leavers in the new system?
8	Are there any differences in the definition of relevant care leavers in Scotland to those in England and Wales?
9	How do children in care feel about the changes?
10	Have local authorities raised any concerns about the new arrangements?
11	Have any particular problems been identified with the introduction of the new arrangements for supporting care leavers in England and Wales?
12	Have the changes in England and Wales been a success?
13	Have care leavers in England and Wales had any problems in getting money from LAs?
14	Have LAs had any problems in meeting their responsibilities to care leavers?
15	Was the funding to LAs in England and Wales sufficient?
16	Have DWP staff reported any problems recognising care leavers?
17	Who pays unaccompanied asylum seekers?
18	Do similar arrangements apply in Northern Ireland?
19	Will a care leaver in Scotland be financially worse off when they do not have access to income-related benefits?
20	Will a care leaver in Scotland be financially better off when they do not have access to income-related benefits?
21	When will they be paid other than in cash?
22	Why do care leavers who are lone parents or who are sick or disabled still have access to the benefits system?
23	Will care leavers still have access to benefits that are not defined as an exception in section 6 of the Children Leaving Care Act?
24	Will care leavers qualify for Social Fund payments?

LIST OF POTENTIAL QUESTIONS (CONT)	
25	Will care leavers qualify for Cold Weather Payments?
26	What will happen to care leavers who left care before 1 st April 2004 and are currently receiving an income-related benefit?
27	Why does the benefit system not generally provide support for those aged 16/17?
28	Will care leavers have access to the benefits system when they reach the age of 18?
29	Will care leavers receive free prescriptions, dental and optical treatment?
30	Will care leavers have access to new deals
31	Will financial support be provided to relevant care leavers who are living with their family?
32	Will care leavers who are being supported by local authorities register for jobs and training with the Careers Service/Connexions in the same way as other 16/17 year-olds who claim benefit?
33	What training allowances will they receive?
34	How would a relevant care leaver who should be supported by a local authority be identified if they tried to make a claim for benefit?
35	Will there be cross-border arrangements between England, Wales and Scotland?
36	What will happen to existing English and Welsh care leavers who are residing in Scotland and receiving an income-related benefit?
37	What amounts are being transferred to the Scottish Executive to support the new scheme?
38	How was the amount of the funding transfer worked out?
39	Has an amount been included to cover Social Fund payments that would have been paid to care leavers if they continued to receive benefits?

Children (Leaving Care) in Scotland Questions and Answers

Scotland

Q1. *Why have these arrangements been introduced in Scotland now?*

- A. New support arrangements for care leavers were introduced in England and Wales in October 2001 following the introduction of the Children (Leaving Care) Act in 2000. The Scottish Executive are now in a position to introduce legislation effective from 1st April 2004 that brings the local authorities responsibilities in line with those in England and Wales.

Q2. *What were the reasons for the delay in Scotland?*

- A. The care system in Scotland is a matter for the Scottish Executive and the Executive decided that it required more time to consider the implications and prepare local authorities to take on additional responsibilities. Regulations excluding Scottish care leavers were therefore not made immediately and income-related benefits continued to be available to care leavers in Scotland.

Q3. Are LAs in Scotland geared up for the changes?

- A. Yes. Central to the legislative changes there is a duty upon local authorities to carry out an assessment of the needs of Scottish care leavers. The Scottish Executive has produced detailed guidance and materials to help Scottish local authorities carry out their duties effectively and this will be published under the title "Pathways". Seminars have been held quarterly for officers within local authorities who have been charged with implementing the new duties to share information and best practice. Training providers have been contracted to deliver training for local authorities during January and February.

Q4. What guidance has been issued to Local Authorities in Scotland?

- A. Guidance on the relevant regulations in Scotland will be issued for implementation in April 2004. This will cover the need for assessment of needs and financial and other support.

Q5. How will the changes be monitored?

- A. Performance indicators have been incorporated in the annual return of children's statistics to allow service development and delivery to be monitored. These statistics were collected for the first time to March 2003 and will develop over time. They cover care leavers with care plans, employment, education and training and periods of homelessness.

Q6. How many care leavers in Scotland are affected?

- A. Approximately 600 care leavers in Scotland will be affected by the withdrawal of benefit annually. Around 1,200 careleavers will be included in the other changes including the assessment of need. This is based upon figures for 2002/03. The figure in England and Wales in 2001 was estimated to be 4,900 of which about 4,500 would in future receive financial support by their local authority.

Q7. What are the advantages for care leavers in the new system?

- A. The main advantage is that young people leaving care are not isolated as they enter adulthood and participate socially and economically as citizens. The objective being that young people who are in care when they are 16 will either be studying, training or working when they reach age 19, Social Work Departments in Scotland will also ensure that care leavers are living in suitable accommodation and keep in touch with young people who were in care up to at least the age of 19.

Q8. Are there any differences in the definition of relevant care leavers in Scotland to those in England and Wales?

- A. Yes, there are some minor differences. In England and Wales the period of care must include at least one day after the child's 16th birthday. This is not a requirement for Scotland because section 29(1) of the Children (Scotland) Act gives local authorities responsibility for those who leave care "over school age". Although the school leaving age is 16, this definition can include 15 year-olds depending on when birthdays fall and the end of the school term/year. The arrangements in Scotland are therefore slightly wider than the provision in England and Wales and will include some who left care before age 16.

Additionally, in England and Wales, who return to live with their families cease to be the local authorities responsibility after 6 months at home. They then become eligible for benefits in the limited circumstances where these are available to 16/17 year olds living at home.

In Scotland the Scottish Executive decided upon a slightly different approach so that responsibility will not transfer back to the benefit system for care leavers living at home. Instead they will continue to be eligible for financial support from the local authority if they would otherwise have been entitled to benefits.

Q9. *How do children in care feel about the changes?*

- A. Young people were consulted to produce a document “In their Own Words”. A number of points came out from the consultation, namely the importance of the support offered by family, residential staff and foster carers; the importance of clear and sufficient information prior to leaving care; and they preferred throughcare and aftercare contact with people they knew and trusted. Young people have also been consulted about the assessment materials.

Q10. *Have local authorities raised any concerns about the new arrangements?*

- A. Local authorities will have to make decisions on the level of financial support to be given and the how these will be affected by other sources of income. They will also have to put in place systems to assess the needs of young people, and to keep up with how these are being met. They also had concerns about the financial implications of these changes. Funding of £10 million over this and the next two years has now been put in place.

England and Wales

Q11. *Have any particular problems been identified with the introduction of the new arrangements for supporting care leavers in England and Wales?*

- A. No, there were no problems identified with the introduction of the new arrangements for supporting care leavers in England and Wales.

Q12. Have the changes in England and Wales been a success?

- A. Yes. Care leavers are able to access more personalised services set out in a Pathway Plan based on a thorough individual assessment of need. The majority of care leavers are supported in suitable accommodation and remain in touch with their responsible local authority. The Pathway Plan includes arrangements for education, training and employment.

Q13. Have care leavers in England and Wales had any problems in getting money from LAs?

- A. No, care leavers in England and Wales have not experienced any problems in getting money from LAs the provisions for financial support for 16/17 year olds have generally worked well and enabled local arrangements for financial support to be more sensitive to individual circumstances.

Q14. Have LAs had any problems in meeting their responsibilities to care leavers?

- A. No there have been no problems. As a result of the Children (Leaving Care) Act in England young people remain in care far longer and when they do leave care Councils are staying in touch with these young people. In addition there has been an expansion in the number of accommodation schemes for vulnerable young people.

Financial support for 16/17 year-olds has generally been delivered consistently, and there has also been some improvement in the numbers of care leavers in education, training and employment at age 19, though this has not been as significant as had been hoped. The reason being that the arrangements introduced by the Children (Leaving Care) Act cannot completely compensate for the impact of young people's earlier experiences.

Q15. Was the funding to LAs in England and Wales sufficient?

- A. Yes, the costing methodology was agreed between the Department of Health and Treasury. It has since been established by DWP analysts that the forecast information used to calculate the funding was correct.

Q16. Have DWP staff reported any problems recognising care leavers?

- A. No, DWP staff have not reported any problems recognising care leavers. For income support care leavers must satisfy the criteria for claiming, that is they must either be a lone parent, or sick or disabled. For income-based jobseeker's allowance each 16/17 year-old is interviewed by a personal adviser before payment is considered, at which point their status is established.

Q17. Who pays former unaccompanied asylum seekers who were looked after by LAs?

- A. Local authorities may provide support to former unaccompanied asylum seeker children, depending on the basis under which they were previously supported by local authorities and whether they were formally in care. Where they do not qualify for support by local authorities they will have the same access to the benefit system as other asylum seekers and other 16/17 year-olds.

Northern Ireland

Q18. Do similar arrangements apply in Northern Ireland?

- A. No, not at the moment. The Provisions of the Children (leaving Care) Act (Northern Ireland) 2002 will come into affect in from October 2004

Effect on Care Leavers

Q19. Will a care leaver in Scotland be financially worse off when they do not have access to income related benefits?

- A. No. One of the aims of the Children (Leaving Care) Act 2000 is to improve the financial arrangements for care leavers. The responsible local authority shall provide assistance to a young person, which is at least the equivalent to the value of social security benefits that the young person would otherwise have been entitled to. The amount and form of financial assistance, however, will be agreed between the young person and her/his Personal Adviser and set out in the Pathway Plan. It may be in cash, or in any other form that is thought to be most appropriate.

Q20. Will a care leaver in Scotland be financially better off when they do not have access to income related benefits?

- A. Care Leavers will be provided with assistance that the relevant authority considers necessary to their particular circumstances, including the provision of suitable accommodation. This will be at least equivalent to the value of social security benefits that the young person would have otherwise have been entitled to. However, the amounts will be agreed between the young person and her/his Personal Advisor and set out in the Pathway Plan. It may be in cash, or in any other form, which is thought to be most appropriate.

Q21. When will they be paid other than in cash?

- A. These circumstances would be explored in the Pathway Plan and agreed with the young person but it may include when a young person is at a chaotic and vulnerable point in their lives. It may be felt by the local authority and the young person that the best way forward for a period would be to pay money direct to the supported lodging provider to allow other issues to be worked through.

Q22. Why do care leavers who are lone parents or who are sick or disabled still have access to the benefits system?

- A. Care leavers in these groups are not excluded from receiving benefit by section 6 of the Children Leaving Care Act. This recognises that exceptions were made for care leavers who were lone parents, sick or disabled. These care leavers remain eligible for Income Support and income-based Jobseeker's Allowance, but not Housing Benefit because local authorities have a specific responsibility for care leavers accommodation needs.

The same exceptions apply to Scottish care leavers. The Regulations provide for them by excluding these groups from the definition of care leavers who are ineligible for Income Support and income-based Jobseeker's Allowance.

The groups are specified in Regulation 2(3)(b) by reference to provisions in the Income Support Regulations for lone parents, including foster parents, people who satisfy the Incapacity Benefit test of incapacity, or are appealing a decision that they don't satisfy it; blind people; disabled people with reduced capacity to work; disabled students and deaf students. Lone parents and certain disabled young people can get Income Support whilst still at school.

The exceptions are made because of the special needs and because other 16 and 17 year-olds are able to qualify in some circumstances, even if living with their parents.

Q23. Will care leavers still have access to benefits that are not defined as an exception in section 6 of the Children Leaving Care Act?

- A. Care Leavers would still be able to access contributory benefits such as contribution-based Jobseeker's Allowance. But in order to qualify they would have to have paid national insurance contributions in one of the two tax years before their claim for benefit. It is therefore unlikely that most 16/17 year olds would be able to satisfy the qualifying conditions.

Q24. Will care leavers qualify for Social Fund payments?

- A. No. In order for care leavers to qualify for Social Fund payments they must be in receipt of a qualifying benefit with the exception of Crisis Loans. As care leavers will be financially supported by local authorities they will not be in receipt of a qualifying benefit.

The qualifying benefits for Sure Start Maternity Grant, and Funeral Payments are Income Support, income-based Jobseeker's Allowance, Pension Credit, Working Tax Credit with a disability element, or Child Tax Credit at a rate higher than the family element. For Funeral Payments, Housing Benefit and Council Tax Benefit are also qualifying benefits.

The qualifying benefits for Budgeting Loans or Community Care Grants are Income Support, income-based Jobseeker's Allowance and Pension Credit. Receipt of benefit is not a condition of being awarded a Crisis Loan

Q25. Will care leavers qualify for Cold Weather Payments?

- A. No. In order to qualify for a Cold Weather Payment the care leaver would have to be in receipt of either Income Support or income based Jobseeker's Allowance with a disability or pensioner premium or have a child under the age of 5. As care leavers will be financially supported by local authorities they will not be in receipt of a qualifying benefit.

Q26. What will happen to care leavers who left care before 1st April 2004 and are currently receiving an income-related benefit?

- A. Care leavers in these circumstances will continue to receive income-related benefits. Only new care leavers from 1st April will be affected.

Q27. Why does the benefit system not generally provide support for those aged 16/17?

- A. The intention is to encourage young people of this age to be either in education, training or in work rather than be dependent on the benefits system. However, help is available to those in the most vulnerable groups such as disabled persons or lone parents and those who would otherwise suffer severe hardship.

Q28. Will care leavers have access to the benefits system when they reach the age of 18?

- A. Yes, they will be able to claim under the normal rules of entitlement.

Q29. Will care leavers receive free prescriptions, dental and optical treatment?

- A. Yes, they will be able to claim free prescriptions dental and optical treatment on low-income grounds.

Q30. Will care leavers have access to New Deals?

- A. There are no New Deals for 16/17 year-olds. New Deal for young people is for the age group 18-24. However, when care leavers reach the age of 18 they are eligible for New Deal for Young People from day 1 and do not have to serve the normal qualifying period of 6 months on benefit.

Q31. Will financial support be provided to relevant care leavers who are living with their family?

- A. Generally, local authorities will not provide financial support in these circumstances, in the same way that benefit is not generally provided to 16/17 year-olds within the benefits system. However, local authorities will provide financial support even where care leavers are living with their family if they fall within the exception category for income-related benefits

Q32. Will care leavers who are being supported by Local Authorities register for jobs and training with the Careers Service/Connexions in the same way as other 16/17 yr olds who claim benefit?

- A. Local authorities recognise that continuing education, training and employment can help young people to establish themselves as successful and independent adults. Consequently, they will be working closely with individual care leavers in conjunction with Careers Scotland to assist care leavers in making choices for education and training.

Q33. What training allowances will they receive?

- A. Scottish care leavers will be given the same training allowances as other 16/17 year-olds who are found training courses through the normal careers services.

Q34. How would a relevant care leaver who should be supported by a local authority be identified if they tried to make a claim for benefit?

- A. Every 16/17 year old who claims income-based Jobseeker's Allowance will be seen by a personal advisor who would decide if they have an entitlement to benefit. In these circumstances, the care leaver would be referred back to their responsible local authority

Cross-Border Arrangements

Q35. Will there be cross-border arrangements between England, Wales and Scotland?

- A. Yes. From 1st April 2004 local authorities will continue to be responsible for care leavers even when they move to another area or cross a border.

Q36. What will happen to existing English and Welsh care leavers who are residing in Scotland and receiving an income related benefit?

- A. Since the introduction of the new arrangements in England and Wales in October 2001, any English or Welsh care leavers who reside in Scotland, continue to have access to the benefits system. For existing care leavers who receive benefit this arrangement will continue. However, separate regulations are currently being prepared to remove entitlement to benefits from those who leave care on or after 1st April 2004 and who move to Scotland.

Funding Arrangements

Q37. What amounts are being transferred to the Scottish Executive to support the new scheme?

- A. The amounts are £1.1 million in 2004/5, £3.0 million in 2005/6, and £3.2 million in 2006/7

Q38. How was the amount of the funding transfer worked out?

- A. Applying the same methodology used for England and Wales DWP analysts calculated that the transfer to Scotland should be £1.1m in 2004/5, £3.0m in 2005/6 and £3.2m in 2006/7. These figures were based upon data provided by the Scottish Executive as to the numbers of care leavers in Scotland. As with England and Wales the figures reflect the estimated reduction in DWP AME Expenditure on income-related benefits.

Q39. Has an amount been included to cover Social Fund payments that would have been paid to care leavers if they had continued to receive benefits?

- A. No, the Scottish Executive agreed not to pursue a transfer of funds in respect of Social Fund, as did the Department of Health for England and Wales. As the Social Fund is a discretionary scheme 16/17 year-old care leavers would not have automatically received either a community care grant or budgeting loan, because Social Fund payments are made according to need and priority of application. Therefore any reduction in the Social Fund budget could have affected the ability of DWP to deal with other priority cases

Key Facts and Figures

- The Scottish Executive has introduced legislation effective from 1st April 2004, which improves the support given to children living in and leaving care Local Authority (LA) care from 1st April 2004. The purpose of which is to bring LA responsibilities broadly in line with similar changes that have already been introduced in England and Wales from 1st October 2001.
- The aim is to improve the life chances of young people living in and leaving LA care by giving care leavers the same sort of support that young people can normally expect from their parents in making the transition to independence.
- The legislation covers children living in and leaving LA care from school age and beyond. It gives LAs new and stronger duties to provide young people with help on leaving care, up to the age of 19 with powers to provide help up to the age of 21.
- The key features include:
 - The preparation of a needs assessment by the LA. Every eligible young person in care will have, on reaching school age, a comprehensive Pathway Plan mapping out a clear route to independence ensuring health and education needs are met and ensuring they have suitable accommodation and ongoing contact with the LA until the age of 19.
 - A financial regime for care leavers to end the confusing present system and ensure they have comprehensive financial support.
 - Continuing assistance for care leavers aged 19-21 especially with education and employment. Assistance with education or training continues to the end of the agreed programme, even if it takes someone past the age of 21.
- Based upon figures for 2002/03 approximately 1,200 care-leavers in Scotland will have a needs assessment carried out by their LA. Of those approximately 600 will be financially

supported by LAs and therefore excluded from receiving Income Support, income-based Jobseeker's Allowance and Housing Benefit.

History

- June 1999 a consultation document "*Me, Survive Out There?*" detailed the Government's proposals for care leavers. Based upon that consultation document The Children (Leaving Care) Act 2000 received Royal assent in November 2000.
- The principle aim of the Act was to improve the life chance of young people living in and leaving local authority care and placed new and stronger duties on local authorities to continue to both care for and support young people who leave care by devising with each young person, a comprehensive pathway plan mapping out their road to independence and providing support and assistance to meet the needs identified in that plan, until they reach at least the age of 19.
- Prior to this change young people living independently after leaving care were one of the main categories of 16/17 year-olds who were eligible for benefit (not generally available to this age group) (See Annexes 5 & 6). As a consequence of section 6 of the Act, the Social Security IRB regulations for England and Wales were changed and entitlement to these benefits was removed for those now supported under the arrangements made in the Act, with exceptions for certain sick and disabled young people and lone parents for IS and JSA(IB) (See Annex 7)
- In Scotland the Scottish Executive decided that it required more time to consider the implications and prepare LAs to take on additional responsibilities. Regulations excluding Scottish care leavers were therefore not made immediately and income-related benefits continued to be available to care leavers in Scotland.

Effect upon Income Related Benefits

- Income Support, income-based Jobseeker's Allowance and Housing Benefit will be withdrawn for young people in Scotland who are now supported under the arrangements made in the Children (Leaving Care) Act until the age of 18.
- There are certain exceptions for certain sick and disabled young persons and lone parents in respect of IS and JSA(IB) (see Annex 7). These exceptions do not extend to HB.

CURRENT LEVELS OF SERVICE IN SCOTLAND

In 2002 the Scottish Executive published, “*Still a Bairn? Throughcare and Aftercare Services in Scotland*”, a report by the University of York that was part of the Children (Scotland) Act 1995 Research Programme. Its aim was to monitor the implementation of the Act and to evaluate its operation and impact. Some of the main findings were:

- Most authorities (77%) offered a planned throughcare programme but less than half (39%) of young people in the survey had received one. Also, 40% had not had a formal leaving care review.
- The survey provided evidence of significant variation in throughcare and aftercare arrangements across Scotland. Many authorities lacked appropriate policies and procedures, although many were carrying out developments to extend and improve services.
- It was apparent that many authorities lacked adequate data collection and processing systems for monitoring and evaluation and for identifying the number of young people eligible for services.
- There was a strong commitment amongst authorities to taking account of the views of young people.
- Most authorities provided a range of appropriate accommodation options.
- 40% of the young people in the survey reported having experienced homelessness since leaving care.
- Young people looked after on a home supervision requirement and those returning home were not assessed as eligible for throughcare and /or aftercare services by a number of authorities.
- Almost two-thirds of young people in the survey had no standard grade qualifications and most had experiences of

truancy (83%) and exclusion (71%). A quarter of support workers were unaware of the educational attainment of the young person with whom they were working.

- Almost three-quarters of young people left care at 15 (21%) or 16 (51.9%) years of age.

Improving Services for Care Leavers

Key Messages

- Care Leavers ought to be able to expect support from their “parent” – the local authority that is similar to that which young people can normally expect from their parents. The Children (Leaving Care) Act 2000, which commenced in October 2001, is intended to make this happen.
- Since the Act, there has been a measurable improvement in outcomes for care leavers. This work must continue. We recognise that challenges remain in improving the performance of some Councils and in ensuring that all local agencies (e.g. Connexions, Housing Providers, Supporting People Partnerships, Schools and Colleges) contribute to the support of young people leaving care.

Background

- **To assess and meet needs of young people leaving care and to keep in touch with care leavers.**
- **The “Responsible Authority” to provide Young Person’s advisers and Pathway Plans:** The Pathway Plan will map out a route to independence for these young people including consideration of when they might be ready to leave care. The YPA co-ordinates the services set out in this Plan.
- **New Financial regime:** Like parents, Councils are responsible for assessing and meeting the financial needs of 16/17 year-old care leavers.
- **Care Leavers aged 18-21:** The responsible authority must keep in touch with care leavers until they are at least 21, or later if they are still being helped with education or training.

Monitoring the Act

- A PSA Target has been set for local authorities to work towards ensuring that by 19 their care leavers remain in education, training and employment. LAs are monitored too on whether they are remaining “in touch” with care leavers and whether they are provided with suitable accommodation. General improvements in the quality of care will also improve outcome for care leavers – e.g. supporting looked after children in school will improve their prospects at 19+.

Facts and Figures – Achievements of the Act

- The trend to prematurely discharge young people from care around the age of 16 has generally been reversed.
- Councils now remain “in touch “ with 75% of care leavers. (30 Councils are in touch with 90%+). 63% of the “in touch” group are in suitable accommodation.
- Government’s target is that the level of training, education and employment amongst care leavers should be at least 75% of the level amongst all young people of the same age in their area by the end of 2003/04. The current figure is 53%. Trends therefore are positive but more work will be necessary in order to attain the target by April 2004.

Challenges

- Variable LA performance – with considerable divergence between the excellent and the poorest performers. The development of the necessary inter-agency partnerships remains challenging in some Councils.
- General scarcity of accommodation (e.g. rural areas and in affluent inner cities).
- Reintroducing the most vulnerable young people to education and supporting young people in further and higher education.
- Delivering care-leaving services to the most vulnerable groups such as disabled young people who entered England seeking asylum.

Future Action

- Use RDW Leaving Care Networks and LA performance assessment to share good practice and raise the standards of the rest to those of the excellent.
- Use the opportunities provided by the bringing together of children's functions in SFES to promote effective partnerships at local and regional level.
- Explore how local Supporting People strategies can be more effectively integrated to increase the stock of supported accommodation for young people.
- Specific action to raise the profile of entitlement to leaving care services for disabled young people, whose needs may be currently overlooked by mainstream services.

The Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004

The Regulations will be made under powers conferred on the Secretary of State by section 6(4), (6) and (7) of the Children (Leaving Care) Act 2000 ("the Act"). Section 6(9) of the Act requires that each House of Parliament approve a draft of the Regulations.

The Regulations provide the circumstances in which persons who leave care in Scotland on or after 1st April 2004 are to be excluded from entitlement to Income Support, income-based Jobseeker's Allowance and Housing Benefit under section 6(1) of the Act.

The categories of care leaver to whom section 6(1) applies in England and Wales are provided by the Act itself (section 6(2)(a) and (b)) with exceptions (for lone parents and those with disabilities) set out in the Children (Leaving Care) Social Security Benefit Regulations 2001 (SI 2001/3074) in accordance with section 6(3). The exclusion has applied in England and Wales since 1st October 2001.

Regulation 2 prescribes two descriptions of person to whom section 6(1) of the Act applies by virtue of section 6(2)(c). In accordance with section 6(4) in Scotland these are persons whose circumstances correspond (whether or not exactly) to those of care leavers in England and Wales (i.e. the eligible and relevant children mentioned in section 6(2)) and who are already excluded from relevant benefits.

Regulation 2(1)(a) and (2) prescribe the first description of persons who are excluded from benefits. The description corresponds to the category of person to whom local authorities in Scotland are obliged to provide regular financial support under regulation 13 of the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (SI 2003/608) which are made by the Scottish Ministers. This covers 16/17 year-old care leavers who on or after 1st April 2004 were previously looked after and accommodated by Scottish local authorities, other than in the parental home, since the age of 14 for a period or periods totalling 13 weeks. Such care leavers are not entitled to the

relevant benefits unless they fall within the second description at regulation 2(1)(b) and (3).

Regulation 2(1)(b) and (3) prescribes the second description of person who is to be excluded from Housing Benefit only. This corresponds to the description of person at regulation 2(1)(a) and (2) but who is also a lone parent or is sick or disabled.

Regulation 2(4) defines expressions used in regulation 2 and ties in to the terms of regulation 13 of the 2003 Regulations made by the Scottish Ministers.

Eligibility Rules for 16/17 year olds

Jobseeker's Allowance (JSA)

JSA is a benefit for people who are available for and actively seeking employment.

There are two types of JSA – contribution-based and income-based. If 16/17 year-olds have paid sufficient national insurance contributions in the right tax years to get contribution-based JSA they can get it but usually they won't have.

In practice the issue is whether or not 16/17 year olds can get income-based JSA (JSA(IB)). Normally they can't because the Jobseeker's Act 1995 (section 4 (1)(f)) specifies a lower age limit of 18 except:

- In prescribed circumstances; or
- Where the Secretary of State makes a severe hardship direction.

Care leavers were one of the groups the JSA(IB) rules were designed to cover. In England and Wales relevant care leavers whose needs are met by the LA under the Children Leaving Care Act are now generally excluded from JSA(IB) - See Annex 7 for exceptions.

Prescribed Circumstances

One set of prescribed circumstances is linked to the rules for extending Child Benefit (CHB) if a young person is unemployed after leaving school. During the period when CHB could be payable if they lived with their parents (roughly the next school term and holiday) a young person can get JSA(IB) if:

- forced to live away from their parents or another person acting in place of their parents; or
- has no parent or person acting in place of parents;
- or married and certain conditions apply to the partner

Otherwise JSA(IB) is limited to even narrower groups:

- stopped living in LA care and forced to live away from their parents or another person acting in place of their parents (maximum 8 weeks);
- released from custody (maximum 8 weeks);
- couples with children;
- would be entitled to claim IS (see Annex 6)
- joining the Armed Forces within 8 weeks;
- temporarily laid off work (maximum 13 weeks);
- temporarily unable to register with the Careers Service.

The 8 weeks limit in several circumstances ties in with the guarantee of work-based training for young a person, which carries an allowance.

Severe Hardship

If young people are not covered by prescribed conditions they can only receive JSA if the Secretary of State (SofS) makes a severe hardship directions. Where the SofS, or a designated officer acting on his behalf, decides a young person would otherwise suffer severe hardship, a direction can be made allowing JSA to be paid for a limited period (usually 8 weeks to tie in with the guarantee of work based training). If a young person has not found suitable training education or employment within this period a new direction may be given. So in some cases young people remain on JSA for longer than 8 weeks.

Whether JSA is granted to a young person under a severe hardship direction is not determined by any one factor. A whole range of circumstances may be considered in each individual case. These may include such factors as the young person's health and vulnerability; whether there is a threat of homelessness; the availability of casual work; and whether the person has any friends or relatives who could put him/her up or other wise offer assistance. The financial commitments of the young person may also be considered. These examples are no exhaustive

Income Support (IS)

IS is available to young people aged 16 or over if:

- they are either not required to be available for work or are unable to take up a Youth training course; and
- they fall into a prescribed category.

Generally they must also:

- have left school (“relevant education”); and
- in England and Wales not be a relevant care leaver whose needs are met by the LA under the Children Leaving Care Act.

Prescribed categories – for 16/17 year-olds who have ceased relevant education are the same as for over 18s. Basically people with obstacles to employment, who are not expected to be available for work. Includes:

- lone parents;
- single looking after foster children;
- incapable of work due to sickness or disability (or appealing against a decision that they are not incapable);
- disabled students;
- registered blind;
- carers;
- temporarily looking after another person;
- pregnant and within 11 weeks of their expected date of confinement and up to 15 weeks after; or incapable of work because of pregnancy;
- refugees learning English;
- persons from abroad who satisfy the conditions for an urgent case payment;
- a member of a couple looking after a child while the partner is temporarily abroad;
- required to attend court;
- in receipt of certain training allowances (Youth Training and Modern Apprenticeships).

In relevant Education

A young person in relevant education (i.e. non-advanced education) cannot get IS unless they are:

- a parent; or
- severely disabled; or
- orphaned; or
- living away from parents or anyone acting in place of parents in certain circumstances.

Children Leaving Care in Scotland

- Care-leavers to be excluded for the IRBs are those:
 - Aged less than 18 years and who at the time they left school or at any subsequent time were looked after by a LA; and
 - Since reaching the age of 14 have been looked after and accommodated by a LA for a period of or periods totalling 13 weeks or more; and
 - Who ceased to be looked after by a LA on or after 1st April 2004; and
 - Are not living with their family; or
 - Are living with their family and receiving regular financial assistance from a LA.
- Care leavers who satisfy the other entitlement conditions (e.g. capital rules) can get IS if they are:
 - lone parents;
 - single looking after foster children;
 - incapable of work due to sickness or disability (or appealing against a decision that they are not incapable);
 - disabled students;
 - deaf students;
 - registered blind
- Care leavers who are eligible for IS are not excluded from JSA(IB) if they choose to make themselves available for employment. But they cannot get JSA(IB) in any other circumstances.
- There is no entitlement to any form of HB for compulsory supported care-leavers.