

Legislative Provisions for Aftercare in Northern Ireland and Scotland

Susan Carey BL, Anne-Marie O'Sullivan BL & Lucy McRoberts BL

Focusing on:

- The legal definition and aims/objectives of aftercare;
- Whether there is a legal entitlement to aftercare;
- The various steps involved in the provision of aftercare;
- A brief critique of the legislation;
- The position in Ireland with regard to the provision of aftercare.

What do we mean by aftercare?

- Scotland defines aftercare as ‘advice, guidance and assistance’.
- No legal definition in Northern Ireland
- The aim of aftercare: to reinforce the parenting responsibility of the state for young people who may have no other support at this difficult time of transition and to ensure that young people do not leave care until they are ready to do so.

Relevant Legislation

Northern Ireland

- Northern Ireland Children Order 1995
- Children (Leaving Care) Act (NI) 2002
- The Children (Leaving Care) Regulations (NI) 2005
- Leaving and After Care: Guidance and Regulations

Scotland

- The Children Scotland Act 1995
- The Regulation of Care (Scotland) Act 2001
- The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003
- Supporting Young People Leaving Care in Scotland: Regulations and Guidance

Legal Entitlement to Aftercare?

- No automatic right to aftercare
- Must be 'looked after' for at least 13 weeks since the age of 14

In addition...

Northern Ireland

- Eligibility is determined by membership of certain categories:
 - "Eligible child"
 - "Relevant child"
 - "Former relevant child"
 - "Persons qualifying for advice and assistance"

Scotland

- Eligibility is based on age and the opinion of the local authority
- Level of aftercare also depends on categories:
 - "Currently looked after person"
 - "Compulsorily supported person"
 - "Discretionarily supported person"
 - "Perspective supported person"

Involvement of Young Person

- Central in the carrying out of the pathway assessment, plan and review
- Use of mandatory language stating that:
The authority SHALL, unless it is not reasonably practicable to do so, seek and have regard to the views of the young person
- Attendance and participation in meetings

Needs Assessment

Scotland

Mandatory for:

- those over school age and under 18 who are currently looked after
- those to whom the authority has a duty to provide aftercare
- those to whom the authority has agreed to provide aftercare following an application by them.

Northern Ireland

- Must take place within 3 months of a child becoming 16 whether they are in care (eligible child) or have left care (relevant child)

Legislation outlines:

- who is to conduct the assessment, the timetable and the matters to be taken into account when carrying out the assessment

Pathway Plan and Review

- Use of mandatory language – clear procedures
- Must be holistic – examine young person's:
 - emotional state,
 - family relationships,
 - details of accommodation,
 - training, education, employment plans,
 - financial needs
 - and health needs of the young person.
- Compulsory for certain categories

Support Personnel

Northern Ireland

'Personal Advisor' - provides support to the young person, participates in the assessment, plan and review, co-ordinates the provision of services and keeps informed about the young person's wellbeing

Scotland

'Pathway Coordinator' – similar to NI Personal Advisor; acts on behalf of the local authority

'Young Person's Supporter' – nominated by the young person – someone they know and trust

Accommodation and Financial Support

- Duty on the authority to provide assistance with suitable accommodation where necessary
- Authority must provide assistance in order to meet the young person's needs in relation to:
 - education,
 - training,
 - or employmentas provided for in their pathway plan
- Responsibility of Social Welfare to provide financial supports on reaching 18 years but opportunity to go back to the authority for further assistance

Inter-agency cooperation

- Where it appears to the authority that another body could help in the exercise of their functions they can request the help of that other body who are then required to comply with the request
- Must be compatible with their own duties
- Reinforces holistic approach to provision of aftercare

Critique of Legislation

- Many aspects highly commendable
- Categories of eligibility – some young people may fall through the cracks
- Large discretion of the authorities in the provision of supports
- Different categories difficult to follow

Position in Ireland

- Section 45 of the Child Care Act 1991 as amended – use of word ‘may’
- HSE Leaving and Aftercare Services
National Policy and Procedure Document
- No legal entitlement to aftercare