



# **CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014:**

**National Guidance on Part 13:  
Support for Kinship Care**



## Contents

<b>INTRODUCTION</b> .....	1
<b>DEFINITIONS</b> .....	5
<b>PART ONE: KINSHIP CARE ORDERS AND THE LEGAL FRAMEWORK</b> .....	7
<b>Children (Scotland) Act 1995</b> .....	7
<b>Adoption and Children (Scotland) Act 2007</b> .....	7
<b>Children’s Hearings (Scotland) Act 2011</b> .....	8
<b>Children and Young People (Scotland) Act 2014</b> .....	8
<b>Part 13 of the 2014 Act and the Kinship Care Assistance (Scotland) Order 2016</b> .....	10
<b>Kinship care orders</b> .....	11
<b>PART TWO: SUPPORT FOR KINSHIP CARE AND KINSHIP CARE ASSISTANCE</b> .....	15
<b>Eligibility for kinship care assistance</b> .....	15
<b>Assessing whether or not a child is at risk of becoming looked after</b> .....	16
<b>Types of kinship care assistance prescribed by the 2016 Order</b> .....	17
<i>Provision of advice and information for eligible children</i> .....	20
<i>Provision of a financial allowance</i> .....	21
<i>Assistance with the financial cost of an Order</i> .....	23
<b>Application for kinship care assistance</b> .....	24
<b>Notification of a decision on kinship care assistance</b> .....	24
<b>Publication of information on kinship care assistance</b> .....	25
<b>APPENDIX A: BACKGROUND</b> .....	27
<b>APPENDIX B: THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014</b> .....	31
<b>APPENDIX C: THE KINSHIP CARE ASSISTANCE (SCOTLAND) ORDER 2016</b> .....	34
<b>APPENDIX D: USING THE GIRFEC NATIONAL PRACTICE MODEL</b> .....	37
<b>APPENDIX E: CALCULATION OF FINANCIAL ALLOWANCES</b> .....	40
<b>APPENDIX F: WIDER SOURCES OF SUPPORT</b> .....	43
<b>APPENDIX G: FURTHER INFORMATION</b> .....	47

## INTRODUCTION

1. The Scottish Government, in collaboration with the Centre for Excellence for Looked after Children in Scotland (CELCIS), have developed this National Guidance to support the implementation of Part 13: Support for Kinship Care as set out in the [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act) and the [Kinship Care Assistance \(Scotland\) Order 2016](#) (the 2016 Order). The 2014 Act specifies the types of court order that will be recognised as a Kinship Care Order (KCO) for the purpose of receiving kinship care assistance. It also sets out the duties of local authorities to make arrangements to ensure that assistance is made available to kinship carers of eligible children who are applying for or are holders of a kinship care order, eligible children who are subjects, or have been subjects, of such an order, guardians of eligible children appointed by virtue of section 7 of the Children (Scotland) Act 1995 (the 1995 Act) and eligible children with a guardian appointed under section 7 of the 1995 Act. The 2016 Order specifies that a local authority must provide kinship care assistance in such a way as to safeguard, support and promote the wellbeing of an eligible child and describes the types of kinship care assistance that are to be made available to different groups of people.
2. This non-statutory guidance applies to those persons entitled to kinship care assistance as specified above. This guidance is not applicable for looked after children (unless kinship carers are applying for a kinship care order). For looked after children, please refer to [Part V: Kinship Care of the Looked after Children \(Scotland\) Regulations 2009](#) and associated guidance.
3. We want Scotland to be the best place for all of our children to grow up. The Scottish Government is committed to [Getting it Right for Every Child](#) (GIRFEC) a national improvement programme which provides a foundation for working with all children and families. This approach aims to achieve secure, nurturing, positive childhoods, from which all children and young people can develop into successful learners, confident individuals, responsible citizens and effective

contributors. This is underpinned by a strong commitment to the [United Nations Convention on the Rights of the Child \(UNCRC\) 1989](#).

4. Across Scotland there are many children who may live with family and friends at some point during their childhoods. This may be due to parental imprisonment, parental drug and alcohol problems, parental mental health issues, bereavement, parental illness, parental absence, as well as neglect and abuse. During these times, grandparents, aunts, uncles, older siblings and others can provide the love, nurture and stability that children need. This may be for a short period of time. For some families, it may become a more permanent arrangement if the child cannot return to the care of their parent.
5. Wherever possible children should have the opportunity to grow up where they feel they belong, where they are safe and secure, and where they have dependable, enduring relationships with the adults who care for them. Such circumstances allow children to develop healthy attachments where they have the best chance to be confident, resilient, healthy and happy individuals. Permanence can be viewed as having three components, emotional permanence (e.g. positive attachments), physical permanence (e.g. stability) and legal permanence. Brought together this means children can have stable, securing and nurturing relationships that continue into adulthood.
6. There has been a significant increase in the numbers of looked after children in kinship care placements over the last ten years. In 2014/15, there were 4,158 looked after children living with friends and family; this represented just over a quarter (27%) of all looked after children in Scotland.<sup>1</sup> This may reflect a strong Scottish Government policy objective to identify family and friends as a 'first option' for a placement when a child can no longer live with their parents. When a looked after child lives in a kinship placement this is sometimes referred to as a 'formal' kinship care arrangement.

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<sup>1</sup> Scottish Government (2016) [Children's Social Work Statistics](#), Edinburgh: Scottish Government.

7. Analysis of 2001 Census data found 1.3% of the under 18 child population in Scotland lived with kin. This equates to approximately 15,433 children.<sup>2</sup> Using the Census 2011 statistics and the Children's Social Work Statistics Scotland 2011-12, we can estimate that in 2011 there were up to 11,000 children and young people, aged 0-17 years who were not looked after and living with friends and family. This is sometimes referred to as an informal kinship care arrangement because the child is not formally looked after.
8. For the majority of these children, this is a private family arrangement where there is no court order and/or statutory involvement of child welfare agencies. There are some children in informal kinship care who are not looked after but have a court order which provides them with legal security ensuring a more stable home environment. For those children, orders may have been made by the courts under the 1995 Act, which will set out conditions of residence for the child and may transfer some or all of the parental rights and responsibilities. These types of formal orders are classified as "kinship care orders" for the purpose of the 2014 Act, as set out at section 72(1). The 2014 Act introduces a duty on local authorities to provide assistance to people with such a kinship care order or people who are seeking such a kinship care order and to eligible children who are the subject of one of these orders.
9. The 2014 Act specifically recognises the role of legal guardians who care for children and the potential requirement of kinship care assistance for guardians and those eligible children in their care. Under section 11 of the 1995 Act, the court can specify which parental responsibilities are imposed and which parental rights are conferred on the guardian. The 2014 Act provides that an order under section 11 of the 1995 Act is to be considered a kinship care order, and also that a person who has been appointed as a guardian under section 7 of the 1995 Act in relation to an eligible child is to qualify for kinship care assistance. Kinship care assistance is also to be made available to the eligible child who has a guardian.

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<sup>2</sup> Nandy, S, Selwyn, J, Farmer, E and Vaisey, P (2011) [\*Spotlight on kinship care: Using Census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century\*](#), Bristol: University of Bristol.

10. This guidance will explain the provisions of kinship care orders and kinship care assistance as enacted in the [2014 Act](#) and the [2016 Order](#). The purpose of the Act as a whole is explained, and definitions are provided for terms frequently used in this guidance. The guidance is divided into two sections: Part one explains the legal parameters of the kinship care order. Part two describes the relevant kinship care assistance including information and advice, the provision of financial support and assistance with the financial cost of the 2016 Order. Appendices are provided for those with a wider interest in this area. Appendix A expands on kinship care policy developments in Scotland. Appendix B is [Part 13 of Children and Young People \(Scotland\) Act 2014](#) and Appendix C is the [Kinship Care Assistance \(Scotland\) Order 2016](#) (the 2016 Order). Appendix D contains information about the GIRFEC National Practice Model, for use in considering the wellbeing of a child. Appendix E provides information on the calculation of financial allowances. Appendix F provides information on wider support that may be appropriate to support children and families. Appendix G contains a list of useful organisations and further information.
11. Practitioners will also need to be aware of other parts of the 2014 Act, most notably Part 1 (Rights of Children), Part 3 (Children's Services Planning), [Part 4 \(Provision of Named Persons\)](#), [Part 5 \(Child's Plan\)](#), [Part 18 \(Section 96: Assessment of wellbeing\)](#) and Part 12: Relevant services for children at risk of becoming looked after, etc. Other relevant legislative and policy guidance is listed in Appendix A.

## **DEFINITIONS**

### **Child**

12. The term 'child' or 'children' refers to persons who have not yet attained the age of 18 years as stated in section 97(1) of the 2014 Act.

### **Eligible child**

13. There are 2 categories of child who fall within the definition of an "eligible child". The first category is 'a child who the local authority considers to be at risk of becoming looked after' (section 71(5)(a) of the 2014 Act). The local authority must determine whether or not a child is at risk of becoming looked after.

14. In determining whether a child is at risk of becoming looked after, a local authority must consider whether the child's wellbeing is being, or is at risk of being, adversely affected by any matter, such that the child is at risk of becoming looked after (article 6 of the 2016 Order).

15. The second category of child who falls within the definition of an "eligible child" is a child who was previously looked after (article 5 of the 2016 Order).

### **Guardian**

16. A person may be appointed as a guardian of a child under section 7 or section 11 of the 1995 Act. Under section 7, a child's parent may appoint a person to be a guardian for a child in the event of a parent's death. Under section 11, a court may also appoint a guardian in a wider range of circumstances; for example, these orders are commonly used when a parent is in prison, experiences illness or is absent. The court can specify which parental responsibilities are imposed and which parental rights are conferred on the guardian.

## **Looked after child**

17. The definition of a 'looked after child' is set out in Section 17(6) of the 1995 Act, as amended by the 2007 Act and the 2011 Act. A child is 'looked after' by a local authority when he or she is:

- provided with accommodation by a local authority under section 25 of 1995 Act; or
- 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 (within the meaning of the 2011 Act); or
- living in Scotland and subject to an order in respect of whom a Scottish local authority has responsibilities, as a result of a transfer of an order made outwith Scotland under regulations made under section 33 of the 1995 Act or section 190 of the 2011 Act; or
- subject to a Permanence Order made after an application by the local authority under section 80 of the 2007 Act.

## **Looked after away from home**

18. Looked after away from home refers to children who are looked after by a local authority and placed in accommodation, other than with their parent/s. This is also sometimes described as 'looked after and accommodated'. This includes looked after children who are in foster care, residential care, residential schools, secure care and kinship care. This can also include looked after children placed with prospective adopters.



## **PART ONE: KINSHIP CARE ORDERS AND THE LEGAL FRAMEWORK**

### **Children (Scotland) Act 1995**

19. The [Children \(Scotland\) Act 1995](#) (the 1995 Act) provides a major part of the legal framework for child welfare and protection in Scotland. The Act is based on three broad principles:

- a) The child's views should be taken into account in decisions that affect their lives;
- b) The welfare of the child is the paramount consideration;
- c) No court or hearing should make an order, unless the court or hearing considers that to do so would be better for the child than making no order at all (known as the 'no order' principle).

20. One of the main aims of the 1995 Act was to enshrine parental responsibilities towards children, as well as parental rights. The Act also provided an early intervention approach with a provision of local authority duties for children 'in need' (section 22).

### **Adoption and Children (Scotland) Act 2007**

21. The [Adoption and Children \(Scotland\) Act 2007](#) (the 2007 Act) modernised the system of adoption in Scotland and introduced Permanence Orders as an additional option alongside adoption to provide long-term security for children who could not live with their families. Permanence Orders provide for the local authority to be responsible for regulating the child's residence and to provide guidance to that child. All other parental responsibilities and rights can be removed from one or both parents and placed with foster carers, prospective adopters or the local authority, or shared between some or all of these parties. A Permanence Order is designed to be tailored to fit the individual needs of a child.

## **Children's Hearings (Scotland) Act 2011**

22. The [Children's Hearings \(Scotland\) Act 2011 \(the 2011 Act\)](#) sets out fundamental structural changes to the Children's Hearings System in Scotland. These include the creation of a National Convener and a national body, Children's Hearings Scotland (CHS), to support this role. The Act also updated some procedural issues; for example, the Act introduced pre-hearing panels, revised Grounds for referral and extended the definition of relevant persons for the purposes of the Act. The Act also contains other provisions, including procedure relating to child protection orders, child assessment orders and other types of emergency child protection procedures.

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

23. The [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act) was passed by the Scottish Parliament on 19 February 2014, and received Royal Assent on 27 March 2014. The legislation is a key part of the Scottish Government's strategy for making Scotland the best place in the world for children to grow up. By facilitating a shift in public services towards the early years of a child's life, and towards early engagement and intervention whenever a family or young person needs help, the legislation encourages preventative measures, rather than crisis responses. Underpinned by the Scottish Government's commitment to the [United Nations Convention on the Rights of the Child 1989](#) (UNCRC), and the national children's services improvement programme, [Getting it Right for Every Child](#) (GIRFEC), the Act also establishes a new legal framework within which services are to work together in support of children, young people and families.

24. Composed of 18 distinct Parts, the 2014 Act makes important changes to the development of services for children and their families. In summary, the Act:

- Places new duties on Scottish Ministers and public bodies in respect of giving further effect to requirements of the UNCRC. (Part 1)

- Strengthens the powers of the Commissioner for Children and Young People in Scotland to enable investigations to be conducted in relation to matters concerning individual children and young people. (Part 2)
- Establishes a structure for the 'integrated' planning and delivery of all children's services in a local authority area. (Part 3)
- Provides for children and young people (up to their 18th birthday and beyond, if still at school), to have a Named Person who is a single point of contact with responsibility for promoting, supporting and safeguarding the child's wellbeing. (Part 4)
- Ensures that there is a single planning framework (the Child's Plan) for children who have wellbeing needs which require targeted intervention. (Part 5)
- Increases the amount and flexibility of early learning and childcare available to all 3 and 4 year olds, and to vulnerable 2 year olds. (Part 6)
- Introduces a coordinated approach to consultation and planning on all early learning and childcare, day care and out of school care provided by local authorities. (Part 6, Part 7 and Part 8)
- Places corporate parenting duties on a range of publicly funded organisations in respect of looked after children and care leavers, increasing the breadth and depth of support available to those groups of children and young people. (Part 9)
- Extends eligibility to aftercare assistance up to an individual's 26<sup>th</sup> birthday. (Part 10)
- Introduces 'continuing care', through which eligible care leavers will have the opportunity to continue with the accommodation and assistance they were provided with before they ceased to be looked after. (Part 11)
- Increases the support available in respect of children at risk of becoming looked after. (Part 12)
- Specifies the types of court order that will be recognised as a Kinship Care Order (KCO) for the purpose of receiving kinship care assistance and sets out the duties of local authorities to make arrangements to ensure that assistance is made available to kinship carers who are

seeking, have obtained or are holders of a kinship care order and to children and young people who are subjects of such an Order. (Part 13)

- Places Scotland's National Adoption Register on a statutory footing. (Part 14)
- Strengthens existing legislation on school closures. (Part 15)
- Makes changes to the children's hearings system. (Part 16)
- Provides for free school meals to be made available to certain pupils, creates a new right to appeal a local authority decision to place a child in secure accommodation under section 44 of the Criminal Procedure (Scotland) Act 1995, amends the system of children's legal aid, extends licensing of child performances to children under 16 and provides that the wellbeing of a child should be considered in exercising certain functions of the 1995 Act. (Part 17)
- Establishes a holistic understanding of child wellbeing for the purposes of the 2014 Act. (Part 18)

### **Part 13 of the 2014 Act and the Kinship Care Assistance (Scotland) Order 2016**

25. Part 13 of the 2014 Act and the [Kinship Care Assistance \(Scotland\) Order 2016](#) (the 2016 Order) came into force on 1<sup>st</sup> April 2016. The 2016 Order (see Appendix B) supplements and supports the implementation of Part 13: Support for Kinship Care of the 2014 Act (see Appendix C).

26. Through the 2014 Act, the Scottish Parliament has placed a duty on local authorities to make arrangements to secure that kinship care assistance is made available to the following specific categories of people residing in that local authority area:

- An adult who is applying for a kinship care order in respect of an eligible child below the age of 16;
- An adult who is considering applying for a kinship care order in respect of an eligible child below the age of 16;
- An adult with a kinship care order in respect of an eligible child below the age of 16;

- An adult who is a guardian (not a parent) by virtue of an appointment under section 7 of the 1995 Act of an eligible child below the age of 16;
- A child below the age of 16 who is subject to a kinship care order who is deemed by the local authority to be an eligible child;
- A child who has reached the age of 16, who is an eligible child and was subject to a kinship care order immediately prior to their 16<sup>th</sup> birthday.
- An eligible child who has a guardian who was appointed under section 7 of the 1995 Act.

27. The Order makes provision in 7 main areas:

- The manner in which a local authority is to provide kinship care assistance;
- The types of kinship care assistance that local authorities are to make available to each specified person (see above for who is a specified person);
- An extension of the definition of an eligible child;
- Factors that must be considered in assessing whether a child is at risk of becoming looked after for the purposes of considering whether that child is an eligible child;
- A requirement that a person must apply to a local authority for certain types of kinship care assistance;
- The procedure that local authorities must follow when notifying a person who has applied for kinship care assistance;
- The information that local authorities must publish about kinship care assistance.

### **Kinship care orders**

28. Under section 72 (1) of the 2014 Act, a kinship care order means—

- (a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,
- (b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person, or

- (c) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.

29. A kinship care order can be a trigger for receipt of kinship care assistance. Being a guardian, or having a guardian, can be a trigger for receipt of kinship care assistance.

30. Under section 72(2) of the 2014 Act a qualifying person in relation to a kinship care order is a person who, at the time the order is made –

- a) Is related to the child;
  - i. This includes a person who is married to or in a civil partnership with a person who is related to the child.
  - ii. Related to the child by the half blood.
- b) Is a friend or acquaintance of a person related to the child; or
- c) Has some other relationship to, or connection with, the child as the Scottish Ministers may by order specify. Scottish Ministers have not, as yet, specified such a relationship or connection for the purpose of this section.

31. Under section 72(3), a parent of the child is not a qualifying person.

32. From April 2016, an order under section 11(1) of the [1995 Act](#) as specified in section 72(1)(a) and (c) of the 2014 Act, or a residence order as specified under section 72(1)(b) of the 2014 Act, is categorised as a kinship care order for the purpose of local authority arrangements for kinship care assistance. A kinship care order will decree the right of the applicant to have the child living with them or otherwise to regulate the child's residence.

33. A kinship care order may confer all or part of parental responsibilities and rights on the applicant. Parental responsibilities are to promote and safeguard the child's health, development and welfare, to provide direction and guidance to the child, and to act as the child's legal representative, together with the parental rights to control, direct or guide the child's upbringing, and to act as the legal representative as set out under section 1 & 2 of the [1995 Act](#).

34. The paramount consideration of the court in considering an application for a section 11 order is the welfare of the child throughout his or her childhood. The court will not make an order unless it would be better for the child than not making an order. This is well-established in Scots law and is known as the 'no order' principle.
35. In some cases, parents will retain some parental responsibilities and rights for their children. Local authorities should recognise the existence of certain legal rights of parents under Scots law, and, where appropriate, consider the implications for children living with kinship carers. Local authorities are recommended to provide information and advice on this area to those persons seeking, holding or subject to a kinship care order (see section in Part 2 on the provision of advice and information for kinship carers).
36. One of the main advantages of obtaining a kinship care order is achieving legal security ensuring a more stable home environment for a child. Depending on the section of the 1995 Act that the order is made under, it will set out conditions of residence for the child and may also transfer parental responsibilities and rights. This allows a kinship carer to make a range of decisions that any reasonable parent can take in relation to a child's day-to-day life. If parental rights are transferred, a kinship carer can, for example, provide consent for the child to undertake medical procedures (if they are too young to give informed consent themselves), obtain a passport and be responsible for the child's property (for example, financial assets/inheritance).
37. A child who is living with friends or relatives by means of a kinship care order is not formally 'looked after' by a local authority. This means that the legislation and regulations governing the care of looked after children are not applicable. A child subject to a kinship care order would not require the statutory intervention necessary for a looked after child and would not have to attend Children's Hearings (unless there are grounds or new grounds for referral). Where a child's wellbeing need has been identified it should be met through the provision of support generally available to all children. If a child required a targeted

intervention to meet their wellbeing need, a Child's Plan would be initiated and a Lead Professional identified.

38. Kinship care orders continue until a child reaches the age of sixteen, unless there is a new court action. In exceptional circumstances, a section 11 order can continue beyond the age of sixteen. In the majority of cases, a child has sufficient capacity to decide residence by the age of sixteen.



## **PART TWO: SUPPORT FOR KINSHIP CARE AND KINSHIP CARE ASSISTANCE**

### **Eligibility for kinship care assistance**

39. The 2014 Act sets out the parameters of kinship care assistance with the 2016 Order supplementing those provisions. A local authority must provide kinship care assistance in such a way as to safeguard, support and promote the wellbeing of an eligible child as stated in article 3 of the 2016 Order. Kinship care assistance is available for both adults and children who meet the eligibility criteria.

40. Under section 71 of the 2014 Act, a local authority must make arrangements to secure that kinship care assistance is made available for a person residing in its area who falls within the following categories of people:

- A person who is applying for a kinship care order in relation to an eligible child who is below the age of 16;
- A person who is considering applying for a kinship care order in relation to an eligible child who is below the age of 16;
- A person with a kinship care order in relation to an eligible child who is below the age of 16;
- A child subject to a kinship care order who is deemed by a local authority to be an eligible child;
- An eligible child who has reached the age of 16, who was subject to a kinship care order immediately prior to their 16<sup>th</sup> birthday;
- A person who is a guardian of an eligible child who is below the age of 16 by virtue of an appointment under section 7 of the 1995 Act;
- An eligible child who has a guardian appointed under section 7 of the 1995 Act.

41. Under section 71(5) of the 2014 Act, an eligible child is defined as 'a child who the local authority considers to be at risk of becoming looked after'. The local authority has a responsibility to determine whether or not a child is at risk of becoming looked after. This is an ongoing responsibility and is in line with their

existing responsibilities to all children in their area. Under article 5 of the 2016 Order, the definition of an eligible child is extended to include a child who was previously looked after.

### **Assessing whether or not a child is at risk of becoming looked after**

42. Local authorities will need to determine whether or not a child is an eligible child.

Local authorities will not always know when a child is the subject of a KCO, or has a guardian, so this process should commence when the child, kinship carer or guardian presents to, or otherwise comes to the attention of, the local authority social work service. It should be a relatively straightforward matter to establish whether or not a child has previously been looked after. However, establishing whether a child is at risk of becoming looked after is more difficult.

43. Article 6 of the 2016 Order states that in determining whether a child is at risk of becoming looked after a local authority must consider whether the child's wellbeing is being, or is at risk of being, adversely affected by any matter, such that the child is at risk of becoming looked after. GIRFEC provides a series of tools which can and should be used to assist any such consideration, and these are discussed in Appendix D.

44. The Scottish Government expects that for the purposes of Part 13 of the 2014 Act, and the 2016 Order, a child at risk of becoming looked after is generally one who cannot live with their parents and therefore would be at risk of becoming looked after away from home. In most cases we would expect that they would have been placed in kinship care or with a guardian by the local authority social work service. This is underpinned by the principle of a placement being in a child's best interests. A child can be considered to be placed by the local authority social work service when:

- a) Local authority social workers have assessed that the child's needs require them to be removed from the care of their parent(s); and
- b) It remains unsuitable for the child to return to the care of their parent(s);  
and

c) The kinship care placement or guardianship arrangement meets local authority requirements.

45. In relation to assessing whether the child's needs require them to be removed from the care of their parent(s), social workers should do this using an established integrated assessment.

46. Dependent on local structures, the placing of a child would generally be undertaken by a local authority social work service. There may be some emergency situations where a local authority social work service is notified after the child is placed in kinship care or with a guardian. In these cases, the local authority must determine whether or not they would reasonably have placed the child with the kinship carer or guardian if they had knowledge of the family circumstances at that time.

47. 'Unsuitable for the child to return to the care of their parent(s)' should be interpreted as the grounds for the child's removal from their parent(s) remain, or new ones have been discovered.

48. To ensure the placement meets local authority requirements, local authorities will need to ensure the wellbeing needs of a child placed with a kinship carer or guardian are met. As is current good practice, local authority and criminal record checks of the carer and any other adults residing in the household will be undertaken. Local authorities may wish to develop or adapt an assessment to be satisfied that the placement is appropriate.

### **Types of kinship care assistance prescribed by the 2016 Order**

49. The types of assistance which are categorised as kinship care assistance are set out in article 4 of the 2016 Order. It is this assistance which requires to be made available.

## *Provision of advice and information for kinship carers*

50. Research has highlighted the importance of information and advice on a range of issues for current or prospective kinship carers. For many kinship carers, the new caring role will be a time of incredible uncertainty and challenge in their lives. There will be a need for specific advice on legal and financial matters. Managing often difficult family relationships and supporting children who will often be upset and distressed will be very demanding. For many kinship carers, the financial pressures of this new caring role are an additional burden. Information should be provided in a timely and accessible manner. Information should be available in a range of languages and formats on request.

51. Under article 4(a) and (b) of the 2016 Order, where a person is considering applying for, or is applying for, a kinship care order in relation to an eligible child (below the age of 16), the type of assistance which is categorised as kinship care assistance is the provision of such information and advice as that person may reasonably require for the purpose of making a decision about that matter.

52. To assist a person in making a decision to apply for a kinship care order, it is reasonable to expect local authorities include information about:

- What is a kinship care order;
- What are benefits and limitations of a kinship care order;
- How to find and instruct a solicitor;
- How to apply for Legal Aid to finance an application for a kinship care order;
- How to apply to a local authority for support towards the financial costs of an Order;
- What happens at a hearing on a kinship care order application at the Sheriff Court;
- How the child's, their parents and their kinship carers views are taken into account by the court in connection with the application;
- What happens when a kinship care order is granted;
- What may happen when a kinship care order is not granted;

- Relevant complaint procedures (i.e. in relation to court procedure, local authority processes);
- Details of local and national advice and support networks.

53. It should be recognised that engaging in court proceedings is an emotional and challenging time for any family. For families with new kinship caring responsibilities, there are many pressures. Some kinship carers may face divided loyalties in taking court action involving a transfer of parental responsibilities and rights from parents (who are often their own children or younger siblings). Local authorities should recognise that families may require emotional and practical support when involved in this process. Persons seeking a kinship care order should have had the opportunity to discuss all the implications fully with someone with knowledge of kinship care. This may be with a local authority social worker. They can also signpost kinship carers to national and local support networks; for example, there is a specific value in local support groups providing peer support for kinship carers through the legal process.

54. Where a person already has a kinship care order or has been appointed a guardian of an eligible child under 16 years in terms of an appointment under section 7 of the 1995 Act, article 4(d) and (f) of the 2016 Order provide that the type of assistance which is categorised as kinship care assistance is the provision of such information and advice as that person may reasonably require in relation to the kinship care order. Kinship carers and guardians may require information and advice on a wide range of matters related to caring for children. Research has identified the following areas:

- Knowledge of child development and the impact of abuse and neglect on children;
- Managing relationships with parents and contact;
- Supporting relationships with siblings and the wider family;
- Supporting children and young people who are displaying emotional and behavioural difficulties;
- Support in how to talk with children about why they are cared for by kinship carers or guardians; for example, due to bereavement, parental

mental health issues, parental imprisonment, parental drug and alcohol use, parental learning disabilities and a wide range of other reasons;

- Concerns about who cares for children in the future;
- Concern about their wider caring responsibilities.

55. There is a valuable role for third sector organisations and local support groups in providing information and advice to kinship carers and guardians. There can be a specific value in peer support models for kinship carers and guardians in reducing isolation and stigma. Local groups can provide a strong support network for kinship carers, guardians and children. It should be acknowledged that there may be specific needs for younger kinship carers and guardians, sole male kinship carers and guardians and others. Advice in person, telephone, written materials and online may be required.

#### *Provision of advice and information for eligible children*

56. In the case of an eligible child under the age of 16 who is the subject of a kinship care order, the type of assistance which is kinship care assistance is the provision of such advice and information as that child may reasonably require for the purpose of facilitating the placement under the kinship care order as provided in article 4(c) of the 2016 Order. In the case of an eligible child who was the subject of a kinship care order immediately before their 16<sup>th</sup> birthday, the type of assistance which is kinship care assistance is the provision of such advice and information as the child may reasonably require for the purpose of facilitating a transition following placement under a kinship care order as provided in article 4(e)(i) of the 2016 Order. This type of assistance may be provided up to the age of 18. This means eligible children should have access to information and advice when subject to a kinship care order and following a kinship care order.

57. The 2016 Order also states that the provision of such information and advice as a child may reasonably require for the purposes of facilitating a child's placement with a guardian who was appointed in respect of that child under section 7 of the 1995 Act, is kinship care assistance (article 4 (g)(i)).

58. Children may require information and advice on a wide range of matters relating to their kinship care order or guardianship. Research has identified the following areas:

- Understanding the reasons why they are cared for by their kinship carer or guardian;
- Supporting contact with parents and siblings;
- The need to reduce any stigma through having opportunities to meet other children and young people cared for by kinship carers or guardians;
- Having access to befriending and mentoring opportunities;
- Additional support at school may be required for children who have experienced disrupted education due to their earlier experiences;
- Knowledge of and access to advocacy services.

59. For some children who are the subject of a kinship care order, or who have a guardian, the experience of abuse and trauma in their earlier lives will require timely access to therapeutic support services. This wellbeing need is unlikely to be met through services which are generally available to children and would require a targeted intervention and a Child's Plan.

60. The level of information and advice that each child will reasonably require will differ from child to child. In providing advice and information, a local authority should take into consideration the age, maturity and communication needs of the child. Different methods of communication may be needed for each child, and particular attention should be given to ensuring all children have equal opportunities to access advice and information.

#### *Provision of a financial allowance*

61. Research has highlighted the significant financial impact on kinship carers in caring for children and the disproportionate number of kinship families who live in poverty across Scotland. It should be recognised that the financial pressures on families can place a strain on the long term stability of a placement. It should also

be recognised that the kinship carers' and guardians current financial circumstances will change due to their new caring responsibilities. For example, a kinship carer or guardian may no longer be able to work full-time and care for the children.

62. Child benefit and child tax credits are intended to cover the cost of accommodation and maintenance of a child, and kinship carers and guardians should be encouraged to ensure they are fully aware of the benefits which they are, or may become entitled to. However, there are additional costs associated with caring for a child in kinship care, such as (but not restricted to) increased travel costs related to family contact. A financial allowance is intended to help with these costs, and this is not a top up of benefits. It is intended to ensure that eligible children who are the subjects of a kinship care order or who have a guardian are not disadvantaged compared to their peers.

63. Under article 4(d)(ii) of the 2016 Order, kinship care assistance includes the provision of an allowance for a person in whose favour a kinship care order in relation to an eligible child (under the age of 16) subsists.

64. Under article 4(f)(ii) of the 2016 Order, kinship care assistance includes the provision of an allowance for a person who is not the parent of the child who is appointed under section 7 of the 1995 Act as a guardian for an eligible child (under the age of 16).

65. Under article 4(e) (ii) of the 2016 Order, where the local authority considers it appropriate, kinship care assistance includes the provision of an allowance where it considers appropriate, to a child who has attained the age of 16 where:

- a) Immediately before turning 16, the child was subject to a kinship care order, and,
- b) The child is an eligible child.

66. Under article 4(g) (ii) of the 2016 Order, where the local authority considers it appropriate, kinship care assistance includes the provision of an allowance in



relation to an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.

67. Advice and information on the calculation of financial allowances can be found in Appendix E.

#### *Assistance with the financial cost of an Order*

68. As set out in the 2016 Order article 4(b)(ii), kinship care assistance includes the provision of financial support towards the cost of applying for a kinship care order to a person who is applying for a kinship care order in relation to an eligible child under 16. All persons seeking a kinship care order should be encouraged to apply to the Scottish Legal Aid Board for legal aid to support the court action. Legal aid is not always available and the applicant may have to make a financial contribution towards the costs of their case. Once the Board has made a decision on whether a person is eligible and, if so, what level of support they will provide, the local authority should consider what support they will provide to help an eligible person meet any contribution to legal costs.

69. The application for civil legal aid is decided on two principles, merit (whether there is a legal basis for the case and whether it is reasonable to grant legal aid in the circumstances) and financial eligibility. Addressing the merit of an application would be relatively simple when the child is already residing with an adult who has no parental responsibilities or rights. It may be more complicated in assessing merit when the child is still residing with their parent/s.

70. The other criteria for assessing legal aid eligibility are the financial means of the applicant. A kinship carer would not qualify for legal aid if their disposable annual income (their income after taking off allowances for outgoings, people who are dependents and other essential expenses) is above £26,239 or their disposable capital is above £13,017 (from 6 April 2015)<sup>3</sup>. In applications that do qualify, an applicant may be asked to pay a contribution towards their legal aid bill.<sup>4</sup>

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<sup>3</sup> Scottish Legal Aid (2015) Advice and Assistance KeyCard 2015

<sup>4</sup> State Pension credits are not included in disposable income.

71. If an application for legal aid is unsuccessful the local authority will wish to take this into account when assessing how much they will contribute to legal costs. A local authority is not required to cover the full cost of an application for a kinship care order (although they may). However, they must provide financial support towards this cost as set out in article 4(b) of the 2016 Order. This is intended to bridge some of any gap in funding for the application. Local authorities will wish to consider the merits of each case before determining their financial contribution.

### **Application for kinship care assistance**

72. Kinship care assistance of the type described in article 4(a), (b)(i), (c), (d)(i), (e)(i), (f)(i) and (g)(i) – that is, information and advice – should be available to eligible children, kinship carers and guardians without any particular application procedure.

73. Article 7 of the 2016 Order states that a person who seeks kinship care assistance of a type described in article 4(b)(ii), (d)(ii), (e)(ii), (f)(ii) or (g)(ii) – that is, in the form of an allowance or financial support towards the cost of an application for a kinship care order - must apply to a local authority.

74. A local authority must publish information on the application process for kinship care assistance of this type as set out in article 9(1)(c) of the 2016 Order. It is not intended that this should be an onerous or lengthy process, and local authorities may design the application process to best fit their own needs.

### **Notification of a decision on kinship care assistance**

75. Article 8(1) of the 2016 Order states that a local authority must notify a person who applies for kinship care assistance in the form of financial support or an allowance as described in article 7 of its decision and the reasons for that decision as soon as reasonably practicable (it is recommended that this should normally be 4 weeks from the date of application to the local authority). Where

the applicant disagrees with the decision they should be provided with information about the local authority's complaints procedure.

76. Article (8)(2)(a) of the 2016 Order states that a local authority must notify a person who is eligible for kinship care assistance in the form of financial support or an allowance with details of the way the amount has been determined. Article (8)(2)(b) states that, where kinship care assistance is to be paid by instalments, the local authority must give notification of the amount of each instalment, the frequency of the payment, the period for which kinship care assistance is to be paid and the date of the first payment. Local authorities may make a decision to make a single payment of financial assistance. If so, article (8)(2)(c) states that they must give notification of the amount and the date the payment is to be made.

77. It is recommended that any entitlement to a financial allowance provided as kinship care assistance is reviewed annually by a local authority. Where there is a change of circumstance, it is recommended that a kinship carer notifies the local authority as soon as is reasonably practicable.

### **Publication of information on kinship care assistance**

78. Under article 9 of the 2016 Order, a local authority must publish information in relation to the provision of kinship care assistance in that local authority's area, including:

- a) the local authority's policy in relation to the provision of kinship care assistance;
- b) the local authority assessment criteria for a kinship care placement;
- c) the local authority's application process for kinship care assistance in relation to a financial allowance or financial support towards the cost of an application;
- d) the rate at which allowances are payable;
- e) any further information that the local authority considers relevant.

79. A local authority must keep published information under review and, where appropriate, publish revised information. The information should be provided in a timely and accessible manner. Information should be available in a range of languages and formats on request. It is recommended that local authorities should include information about their complaints procedures within their publication of information on kinship care assistance.

## APPENDIX A: BACKGROUND

1. Over the last ten years, the Scottish Government has developed [Getting it Right for Every Child](#) (GIRFEC) a national improvement programme which provides a foundation for working with all children and families. The Children and Young People (Scotland) Act 2014 places aspects of the GIRFEC approach on a statutory footing. This approach aims to achieve secure nurturing, positive childhoods, from which all children and young people can develop into successful learners, confident individuals, responsible citizens and effective contributors. This should be underpinned by the [United Nations Convention on the Rights of the Child \(UNCRC\) 1989](#). Under Part 1 of the 2014 Act, Scottish Ministers and public authorities have a duty to report on the actions they are taking to progress the UNCRC.

2. Following a national consultation on foster care and kinship care, the Scottish Government published [Getting it right for every child in kinship and foster care](#) in 2007. The two key goals identified in the report were: to deliver a child centred approach to kinship and foster care; and to support high quality kinship and foster care. The strategy was based on a guiding principle:

*Unless there are clear reasons why placement within the family would not be in the child's best interests, care within the wider family and community circle will be the first option for the child (2007:3).*

3. To progress this ambition, a programme was developed outlined in [Moving Forward in Kinship and Foster Care](#) co-ordinated by BAAF and The Fostering Network. One of the task groups addressed the assessment and training needs of kinship carers. This report covered the needs of looked after and non-looked after children in kinship care.

4. In 2007, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) reached a concordant stating that local authorities would make equivalent levels of payment available to looked after children placed in kinship and foster care placement. In the absence of a nationally agreed

calculation on the cost of caring for a looked after child most local authorities adopted the Fostering Network's recommended allowance rates (or something close to) for their foster carers. This concordat was only partially successful; less than half of all Scottish local authorities provided parity between kinship carers and foster carers of looked after children.

5. There has been a significant increase in the numbers of children in a formal kinship care placement across Scotland. Over the last ten years, the proportion of looked after children in a kinship care placement has doubled (12% of looked after children in 2004 to 27% of looked after children in 2014). Just over a quarter of all looked after children (n=4158) were living with kinship carers in 2014/15.<sup>5</sup> This increase could partly be attributed to a policy shift in greater recognition of wider family as the 'first option' for a child if they could no longer live with their parent/s.
6. Some children may live with kinship carers after a period of being formally looked after in a range of settings. Children can be looked after for a short period of time. In 2014 -15, around 4300 children ceased to be looked after; whilst two thirds of the children returned to live with their parents, just over 17% went to live with relatives or friends.<sup>6</sup> These children are no longer looked after so would be in an 'informal' kinship care arrangement.
7. The [Guidance on the Looked After Children \(Scotland\) Regulations 2009 and Adoption and Children \(Scotland\) Act 2007](#) introduces a section on Kinship care (for looked after children) which covered regulations on assessment and approval of kinship carers; placement; agreements with kinship carers; notification; short-term placements; and record keeping. These regulations only relate to children who are 'looked after' thus are in a legal relationship with a local authority. However, the guidance recommends: Local authorities should have explicit information available about any support they may be able to offer kinship carers who are not covered by these regulations, including criteria for accessing such supports and how decisions are made in areas of discretion.

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<sup>5</sup> Scottish Government (2016) [Children's Social Work Statistics](#), Edinburgh: Scottish Government.

<sup>6</sup> Ibid.

8. The [Children and Young People \(Scotland\) Act 2014](#) introduces the provision of a kinship care order and sets out the duties of local authorities to provide assistance to eligible kinship carers who are seeking, have obtained or are holders of a kinship care order and to children and young people who are subjects of such an Order. A local authority must provide kinship care assistance in such a way as to safeguard, support and promote the wellbeing of an eligible child. This non-statutory guidance has been developed to support the implementation of Part 13 of the 2014 Act.
  
9. In her Programme for Government (2015), the First Minister Nicola Sturgeon MSP announced additional funding to ensure eligible kinship carers received improved allowances to provide parity with foster carers in their local authority. The Minister for Children and Families announced £10.1 million funding had been agreed with COSLA.
  
10. In 2015, the Scottish Government set out its vision for looked after children and young people. The [Getting it Right for Looked after Children and Young People Strategy](#) aims to improve outcomes for looked after children through three priority areas of work: early engagement, early permanence and improving the quality of care. The strategy focuses on:
  - a) Building on the assets within families and communities to prevent children from becoming looked after where possible;
  - b) High quality support and assessment for families;
  - c) Delivering permanence without drift and delay - while taking account of the needs, rights and views of the child;
  - d) High quality care and support for those children who need to be looked after, including those who are looked after at home;
  - e) A planned and supported transition to interdependent living which meets the needs of each child and young person.

11. Relevant legislation:

- d) [Social Work \(Scotland\) Act 1968](#)
- e) [Children \(Scotland\) Act 1995](#)
- f) [Human Rights Act 1998](#)
- g) [Data Protection Act 1998](#)
- h) [Children \(Leaving Care\) Act 2000](#)
- i) [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)
- j) [Local Government in Scotland Act 2003](#)
- k) [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#)
- l) [Protection of Vulnerable Groups \(Scotland\) Act 2007](#)
- m) [Adoption and Children \(Scotland\) Act 2007](#)
- n) [Equality Act 2010](#)
- o) [Children's Hearings \(Scotland\) Act 2011](#)
- p) [Social Care \(Self-Directed Support\) \(Scotland\) 2013](#)
- q) [Children and Young People \(Scotland\) Act 2014](#)
- r) [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)
- s) [Carers \(Scotland\) Act 2016](#)



## **APPENDIX B: THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014**

### **PART 13**

#### **SUPPORT FOR KINSHIP CARE**

##### **71 Assistance in relation to kinship care orders**

- (1) A local authority must make arrangements to secure that kinship care assistance is made available for a person residing in its area who falls within subsection (3).
- (2) “Kinship care assistance” is assistance of such description as the Scottish Ministers may by order specify.
- (3) A person falls within this subsection if the person is—
  - (a) a person who is applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years,
  - (b) an eligible child who has not attained the age of 16 years who is the subject of a kinship care order,
  - (c) a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists,
  - (d) a child who has attained the age of 16 years, where—
    - (i) immediately before doing so, the child was the subject of a kinship care order, and
    - (ii) the child is an eligible child,
  - (e) a person who is a guardian by virtue of an appointment under section 7 of the 1995 Act of an eligible child who has not attained the age of 16 years (but this is subject to subsection (4)),
  - (f) an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.
- (4) Subsection (3)(e) does not include a person who is also a parent of the child.
- (5) An “eligible child” is a child who the local authority considers—
  - (a) to be at risk of becoming looked after, or
  - (b) to fall within such other description as the Scottish Ministers may by order specify.

##### **72 Orders which are kinship care orders**

- (1) In section 71, “kinship care order” means—
  - (a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,
  - (b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person, or

- (c) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.
- (2) For the purposes of subsection (1), a “qualifying person” is a person who, at the time the order is made—
  - (a) is related to the child,
  - (b) is a friend or acquaintance of a person related to the child, or
  - (c) has such other relationship to, or connection with, the child as the Scottish Ministers may by order specify.
- (3) But a parent of a child is not a “qualifying person” for the purposes of subsection (1).
- (4) The references in subsection (2) to a person who is related to a child include a person who is—
  - (a) married to or in a civil partnership with a person who is related to the child,
  - (b) related to the child by the half blood.

**73 Kinship care assistance: further provision**

- (1) The assistance which may be specified as kinship care assistance includes—
  - (a) the provision of counselling, advice or information about any matter,
  - (b) the provision of financial support (or support in kind) of any description,
  - (c) the provision of any service provided by a local authority on a subsidised basis.
- (2) An order under section 71(1) may specify assistance by reference to assistance which a person was entitled to from, or being provided with by, a local authority immediately before becoming entitled to assistance under that section.
- (3) The Scottish Ministers may by order make provision about—
  - (a) when or how kinship care assistance is to be provided,
  - (b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 71(5),
  - (c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 71(5),
  - (d) such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.
- (4) An order under subsection (3)(d) may include provision about—
  - (a) circumstances in which a local authority may provide kinship care assistance subject to conditions (including conditions as to payment for the assistance or the repayment of financial support), and
  - (b) consequences of such conditions not being met (including the recovery of any financial support provided).

#### **74 Interpretation of Part 13**

In this Part—

“kinship care assistance” has the meaning given by section 71(2),

“parent” has the same meaning as it has in Part 1 of the 1995 Act.

## **APPENDIX C: THE KINSHIP CARE ASSISTANCE (SCOTLAND) ORDER 2016**

### **SCOTTISH STATUTORY INSTRUMENTS 2016 No. 153 CHILDREN AND YOUNG PERSONS**

#### **The Kinship Care Assistance (Scotland) Order 2016**

*Made - - - 15th March 2016  
Coming into force - - 1st April 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 71(2) and (5)(b) and 73(3) of the Children and Young People (Scotland) Act 2014(a), and all other powers enabling them to do so.

In accordance with section 99(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

#### **Citation and commencement**

1. This Order may be cited as the Kinship Care Assistance (Scotland) Order 2016 and comes into force on 1st April 2016.

#### **Interpretation**

2. In this Order “the Act” means the Children and Young People (Scotland) Act 2014.

#### **Manner of providing kinship care assistance**

3. A local authority must provide kinship care assistance in such a way as to safeguard, support and promote the wellbeing of an eligible child.

#### **Kinship care assistance**

4. For the purposes of section 71(2) of the Act, the following assistance is specified—

(a) in relation to a person falling within section 71(3)(a) of the Act where the person is considering applying for a kinship care order, the provision of such information and advice as that person may reasonably require for the purpose of making a decision about that matter;

- (b) in relation to a person falling within section 71(3)(a) of the Act where the person is applying for a kinship care order the provision of—
  - (i) such information and advice as that person may reasonably require for the purpose of the application; and
  - (ii) financial support towards the cost of the application;
- (c) in relation to a child falling within section 71(3)(b) of the Act, the provision of such information and advice as that child may reasonably require for the purpose of facilitating the placement under a kinship care order;
- (d) in relation to a person falling within section 71(3)(c) of the Act—
  - (i) the provision of such information and advice as that person may reasonably require in relation to a kinship care order; and
  - (ii) the provision of an allowance;
- (e) in relation to a child falling within section 71(3)(d) of the Act—
  - (i) the provision of such information and advice as that child may reasonably require for the purpose of facilitating a transition following a placement under a kinship care order; and
  - (ii) when the local authority considers it appropriate, the provision of an allowance;
- (f) in relation to a person falling within section 71(3)(e) of the Act—
  - (i) the provision of such information and advice as that person may reasonably require in relation to a kinship care order; and
  - (ii) the provision of an allowance;
- (g) in relation to a child falling within section 71(3)(f) of the Act—
  - (i) the provision of such information and advice as that child may reasonably require for the purpose of facilitating that child’s placement with a guardian; and
  - (ii) when the local authority considers it appropriate the provision of an allowance.

**Extension of the definition of eligible child**

5. The description specified for the purpose of section 71(5)(b) of the Act is a child who was previously looked after.

**Factors to be taken into account in determining whether a child is at risk of becoming looked After**

6. For the purpose of considering whether a child is within section 71(5)(a) of the Act, a local authority must consider whether the child’s wellbeing is being, or is at risk of being, adversely affected by any matter, such that the child is at risk of becoming looked after.

## **Application for types of kinship care assistance**

7. A person who seeks kinship care assistance of a type described in article 4(b)(ii), (d)(ii), (e)(ii), f(ii) or g(ii) must apply to a local authority.

## **Notification of decision**

8.—(1) A local authority must notify a person who applies for kinship care assistance described in article 7 of that local authority's decision, and the reasons for that decision, as soon as reasonably practicable.

(2) Notice under paragraph (1) which relates to a payment must include, where applicable—

- (a) the method of determination of the amount;
- (b) where kinship care assistance is to be paid by instalments—
  - (i) the amount of each instalment;
  - (ii) the frequency of the payment;
  - (iii) the period for which kinship care assistance is to be paid; and
  - (iv) the date of the first payment;
- (c) where kinship care assistance is to be paid as a single payment, the amount and the date the payment is to be made.

## **Publication of information about kinship care assistance**

9.—(1) A local authority must publish information in relation to the provision of kinship care assistance in that local authority's area, including—

- (a) the local authority's policy in relation to provision of kinship care assistance;
- (b) the local authority assessment criteria for a kinship care placement;
- (c) the local authority's application process for kinship care assistance of a type defined in article 4(b)(ii), (d)(ii), (e)(ii), (f)(ii) or (g)(ii);
- (d) the rate at which allowances are payable;
- (e) any further information that the local authority considers relevant.

(2) A local authority must—

- (a) keep published information under review; and
- (b) where appropriate, publish revised information.

## APPENDIX D: USING THE GIRFEC NATIONAL PRACTICE MODEL

1. The local authority must assess whether a child is at risk of becoming looked after to determine if the child is an eligible child for kinship care assistance. A Lead Professional role is most likely to be undertaken by a child and family social worker in a local authority when there is a risk a child may become looked after.
2. It is proposed that this assessment should be framed using the [Getting it Right for Every Child National Practice Model](#) with its Wellbeing Wheel, the My World Triangle and the Resilience Matrix (see Figure one).
3. Section 96(2) of the 2014 Act describes the term wellbeing in terms of eight wellbeing indicators which provide a holistic view of each child or young person, identifying strengths as well as barriers to growth and development. A person assessing a child or young person's wellbeing is to consider the extent to which the child or young person is:
  - **Safe:** protected from abuse, neglect or harm.
  - **Healthy:** having the best possible standards of physical and mental health, support to make healthy and safe choices.
  - **Achieving:** accomplishing goals and boosting skills, confidence and self-esteem.
  - **Nurtured:** having a nurturing and stimulating place to live and grow.
  - **Active:** having opportunities to take part in activities.
  - **Respected:** being given a voice, being listened to, and being involved in the decisions which affect their wellbeing.
  - **Responsible:** taking an active role within their home, school and community.
  - **Included:** being a full member of the communities in which they live and learn, receiving help and guidance to overcome inequalities.

## National practice model

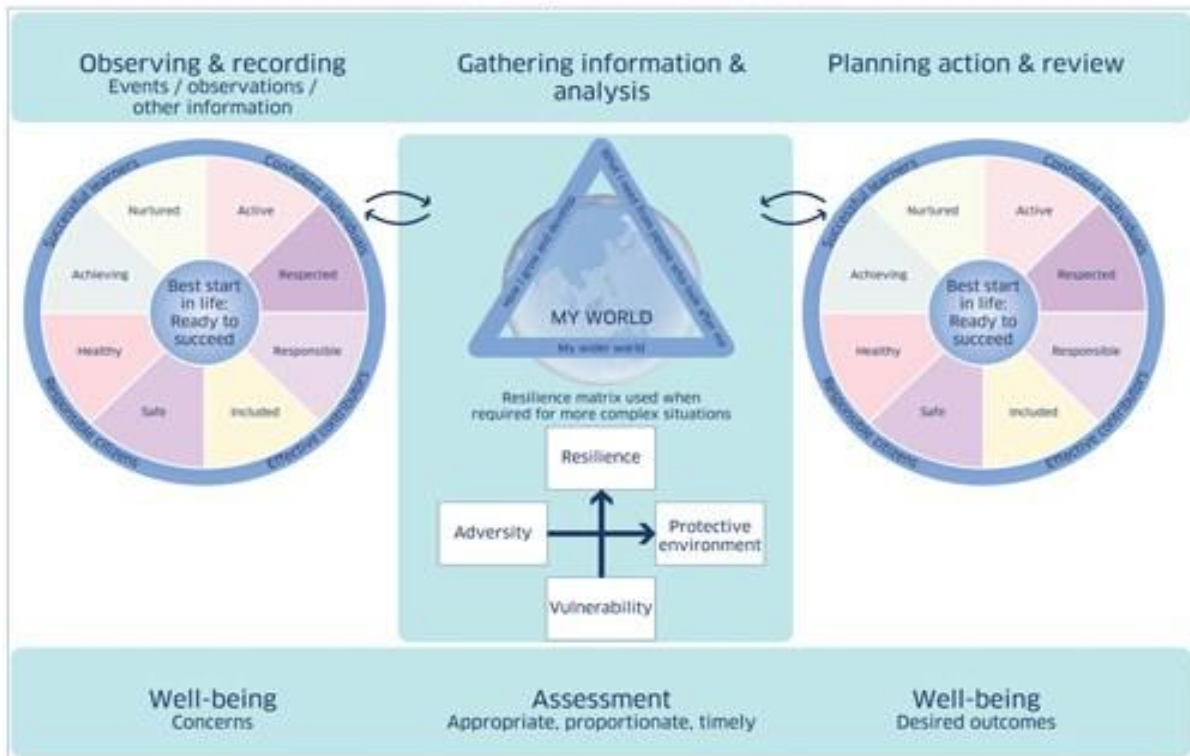


Figure One: GIRFEC National Practice Model

4. The [Resilience matrix](#) is an essential tool in assessing whether or a child is at risk of becoming looked after. This is a skilled task as every child's situation is unique and the risk and protective factors for each family need to be carefully considered. Knowledge of child development, understanding the impact of trauma on children and practice-knowledge in managing risk within families are requirements to ensure robust decision making is undertaken by children and family social workers. For disabled children, it may be more appropriate for a health professional to coordinate this assessment.
5. The [My World Triangle](#) provides a holistic understanding of the child's developmental needs and how these can be met. This provides an opportunity to consider what the child needs from their primary carers. This assessment should facilitate the identification of what additional support children and kinship carers may need to ensure the child's wellbeing needs are met. This should form the basis of the Child's Plan.



6. The [National Risk Framework to Support the Assessment of Children and Young People](#) (2012) provides an assessment model where there may be safeguarding concerns. A child's safety in the care of parents can be a primary concern when kinship care is being considered. This holistic approach builds on the GIRFEC National Practice Model for practitioners to approach the task of risk identification, assessment, analysis and management with more confidence and competence. This may be useful to local authorities in developing more specific assessment criteria if required.
  
7. Where there is a need for one or more targeted interventions to meet the wellbeing needs of a child (and hence there is a requirement for a Child's Plan), the managing authority will identify a Lead Professional to ensure that the Child's Plan is managed in accordance with section 39 of the 2014 Act and the Child's Plan (Scotland) Order 2016.

## APPENDIX E: CALCULATION OF FINANCIAL ALLOWANCES

1. In 2015 the Scottish Government, in negotiation with Convention of Scottish Local Authorities (COSLA), announced additional funding to ensure eligible kinship carers received parity of allowances with foster carers in their local authority area. It should be noted that fees for foster carers are a separate issue and are not included in this agreement. This agreed parity includes:
  - a) All kinship carers who are caring for a looked after child.
  - b) Eligible kinship carers where the child is subject to a kinship care order **and**
    - i. The child was previously looked after; or
    - ii. The child was placed with the involvement of the local authority; or
    - iii. The child is at risk of becoming looked after.
2. The group described under a) already have the statutory right to an allowance under Regulation 33 of the Looked After Children (Scotland) Regulations 2009. The 2014 Act and the 2016 Order set out eligibility criteria and the duty to pay an allowance to the group described at b) (above). As discussed in Part 2 of the guidance, a child placed by the local authority is by definition a child who is at risk of becoming looked after because that child can no longer remain in the care of their parent(s).
3. There is no nationally agreed set of allowances for foster care and kinship care in Scotland. In 2016, the Scottish Government will convene a review group to consider a National Allowance Rate which would establish parity across local authorities. This guidance does not prescribe a minimum allowance rate.
4. For those eligible kinship carers, local authorities will need to ensure parity of allowances for children cared for by kinship carers and foster carers. Kinship carers who have a child placed on a kinship care order are likely to be eligible for child related benefits and tax credits. A local authority will wish to ensure that all kinship carers are fully aware of their eligibility for child-related benefits and tax credits and should fully support kinship carers to access all relevant benefits for the children in their care. Child tax credit is a means-tested state benefit payable

for children under the age of 16. Young people up to the age of 20 can also receive child tax credit if they are in approved education or training. Foster carers are not eligible for child tax credit or child benefit. Local authorities will wish to take these child-related benefits received into account when calculating the allowance to be paid to an eligible kinship carer, to ensure that there is no double funding.

5. The complexity of the UK benefits system and the roll-out of the social security provision of Universal Credit will require the specialist advice of Welfare Rights Officers. The introduction of Universal Credit is likely to increase the complexity for local authorities calculating allowances as there will no longer be a succinct breakdown of child tax credit. There are also national organisations, such as Citizens Advice Scotland and Child Poverty Action Group who can provide specialised advice and support on these matters (see Appendix F).
6. Some children will be eligible for additional child tax credit if they are in receipt of Disability Living Allowance and/or are severely sight impaired or blind. The Scottish Government considers that the disability element of child tax credit is additional to the standard rate of child tax credit and as such should not be deducted when local authorities are calculating allowances. This additional child tax credit represents the additional cost of caring for a disabled child.
7. In some circumstances, carers may be eligible for a Guardian's allowance. This UK benefit is for children where one or both parents have died. It may also be sought where a parent has died and another parent is untraceable, imprisoned or detained in hospital (see for [HMRC](#) for more details on eligibility). The current weekly rate is £16.55. This benefit is not means tested and will not impact on any other benefits. This allowance should not be deducted from any allowance paid under the 2016 Order.
8. As part of a financial assessment, local authorities should consider whether families may require additional financial support for special events – such as children's birthdays and religious celebrations. For example, some Scottish local authorities provide foster carers with an additional four week allowance to cover

the cost of birthdays, holidays and religious festivals. Similar schemes could be developed for eligible children cared for under kinship care orders as appropriate.

9. Local authorities who wish to consider means testing as part of a financial assessment, should seek their own legal advice on the interpretation of the 2014 Act and 2016 Order. The Scottish Government, however, expects that kinship carers and guardians on welfare benefits should not be means tested.
10. Local authorities should provide financial allowances to eligible kinship carers via a timely method that meets the families' needs. In the majority of cases, this will be a monthly payment into a bank account. Where local authorities need to make a single payment, they must provide details of the amount and the date on which the payment will be made as stated in section 8(2)(c) of the 2016 Order.
11. Eligible kinship carers are entitled to allowances for the child from the date when a kinship care order is granted by the court and the local authority has been satisfied of their eligibility in terms of being at risk of becoming looked after or being previously looked after (see previous sections on assessment of eligibility).
12. The Scottish Government announced enhanced allowances could be payable from 1<sup>st</sup> October 2015. If, at that date, a local authority was aware of a section 11 order (deemed a kinship care order from April 2016), and satisfied that the child was an eligible child, then entitlement to an increased allowance should be backdated to 1<sup>st</sup> October 2015. If a kinship carer or a guardian presents to a local authority with a kinship care order that the local authority were not aware of, then eligibility to allowances should be from the point that the local authority is satisfied of eligibility, and not backdated.

## **APPENDIX F: WIDER SOURCES OF SUPPORT**

1. Apart from through Part 13 of the 2014 Act and the 2016 Order, kinship carers may be able to access assistance from other sources. Some of these are listed below.

### **Part 12: Relevant services for children at risk of becoming looked after**

2. The provision of services for children who are at risk of becoming looked after by a local authority is set out in Part 12: Services in relation to children at risk of becoming looked after of the 2014 Act. A local authority must make arrangements to secure relevant services are made available, if this would benefit the child's wellbeing. The relevant services are defined in the associated order (which is due to come into force on 31 August 2016) as family group decision making services and support services in relation to parenting. These services are for children who are at risk of becoming looked after (as well as pregnant women who the authority considers is going to give birth to a child who will be at risk of becoming looked after) and their families. They can also include any persons who have parental responsibilities and rights for the child or any persons with whom the child has been living, including kinship carers who hold kinship care orders in relation to an eligible child.

### **Carers (Scotland) Act 2016**

3. The Carers (Scotland) Bill was passed unanimously by the Parliament on 4th February 2016. It will be commenced in 2017-18 (subject to Royal Assent). The Act will better support both adult and young carers on a more consistent basis. The Act's provisions will further strengthen and enhance the rights of carers.
4. The Act places a duty on local authorities to provide support to carers, based on the carer's identified needs which meet the local eligibility criteria. There will be a specific Adult Carer Support Plan and Young Carer Statement to identify carers needs and each local authority area will be required to have its own information and advice service for carers which must provide information and advice on,

amongst other things, emergency and future care planning, advocacy and carers' rights.

5. The Act as currently drafted means that if the child requires care which is over and above that would be required by virtue of their age then the person can be regarded a "carer". Kinship carers may fall under the term 'carer' and therefore be eligible for support.

### **Support for a child in need**

6. A local authority is not under a duty to provide kinship care assistance beyond what is provided for in the 2016 Order. However, under the Children (Scotland) Act 1995, local authorities have a duty to support a child assessed as being 'in need'. This provision may be useful for one off or extraordinary costs not covered by the allowance, or for support to kinship carers who do not meet eligibility criteria. Support could be financial or in kind, and could include support when a child first comes to live with a kinship carer.
7. When children begin to be cared for by a kinship carer, many will require essential items such as clothes, shoes, furniture, bedding, toiletries and toys immediately. Family circumstances can vary considerably. Some children may make a gradual move to a kinship carer and already have some possessions; whereas others may move in an emergency and arrive with very little. Local authorities need to respond quickly to ensure the child's needs are met.
8. Some kinship carers who obtain a residence order for a child aged under one are able to claim a Sure Start Maternity Grant. This is a grant of £500 and is administered by the Department of Work and Pensions. To qualify for a Sure Start Maternity Grant, the kinship carer must be in receipt of a 'qualifying benefit'. These are:
  - Income support;
  - Income-based jobseeker's allowance;
  - Income-related employment and support allowance;

- State pension credit;
- Child tax credit paid at a rate higher than the family element;
- Working tax credit which includes the disability or severe disability element;
- Universal credit.

In addition, the claim for a maternity grant made within three months of the date the residence order was granted and must also be made before the child reaches her/his first birthday. A grant will not be made if the kinship carer has another dependent child aged under 16 in the household. However, a grant can still be paid to the kinship carer, even though another person has already been paid a Sure Start Maternity Grant in respect of the child. The grant does not affect any other benefits (see HMRC [for more information](#)).

9. Depending on local need, local authorities should consider having an 'essentials pack' of resources that are age specific for children. Kinship carer support groups may be able to provide advice on what items are required. In some circumstances there could be a local authority resource pool including cots, prams and other items.
10. It is important to recognise that children will have formed attachments to particular items, such as teddy bears and comfort blankets. All efforts should be made to ensure familiar items that comfort children travel with the child.
11. Information about national schemes, such as the Scottish Bookbug Trust, Play Talk Read and toy libraries should be promoted. This information and free resources could be included in an essentials pack. Information should be included about local free or subsidised play activities in the local area. There may be appropriate family support projects provided by third sector organisations. Also ensuring young people have access to a Young Scot card that provides discounts and reduced admission prices to leisure and cultural activities.

12. Specific items to consider for different age groups of children:
- a) Babies – Moses basket, cot, pram, car seat, formula milk/bottles/sterilising equipment, baby bath, bedding, baby clothes, blankets, toys.
  - b) Toddlers – Toys, buggies, car seats.
  - c) Primary school aged children – School related equipment, toys and games, participating in extra-curricular activities.
  - d) Secondary school aged children – school related equipment, participating in extra-curricular activities, technology and access to social activities.
  - e) Young people – Attending college and university with associated costs.
13. In some circumstances, a kinship carer may find the direct purchasing of items and/or support in purchasing items by a local authority would be of assistance. The caring role will be very demanding and the additional task of purchasing a wide range of items may be daunting and, in some cases, unfeasible.

### **Disabled children**

14. The financial provisions for disabled children in the UK welfare system are complex. It is recommended that welfare rights officers are involved in advising families who are caring for a disabled child who is subject to a kinship care order. Disability benefits successfully applied for should be considered in addition to kinship care financial assistance (when eligible). There are implications for what sources of funding for disabled children would be available and who has financial responsibility (local authorities, health boards or Department of Work and Pensions). Further details can be found in the [Child Poverty Action Group Children's Handbook for Scotland 2015/16](#).
15. There should be specific consideration of ensuring the needs of disabled children are met when cared for under a kinship care order. These may include physical adaptations required of a property and specialist equipment to assist daily living. It should also be considered that disabled children can be financially disadvantaged due to higher costs associated with leisure activities and appropriate toys and equipment.



## **APPENDIX G: FURTHER INFORMATION**

For further national information on kinship care, looked after children, care leavers, and children's rights, please review the resources listed below. This is a selection of relevant organisations and is not intended to be an exhaustive list. Local kinship care groups will also be a valuable resource and local authorities should be aware of those operating within their own areas.

### **Action for Sick Children Scotland**

Promotes and campaigns for the highest possible standards of healthcare for all our children and young people in our healthcare system which includes raising awareness of the health needs and rights of children and young people in and leaving care

Tel: 0131 553 6553

Web: [www.ascscotland.org.uk](http://www.ascscotland.org.uk)

### **Buttle UK**

A national charity which can provide small grants for critical household items to support kinship care families where children are not looked after by a local authority.

Tel: 01505 850437

Email: [scotland@buddleuk.org](mailto:scotland@buddleuk.org)

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

### **Carers Trust Scotland (formerly The Princess Royal Trust for Carers)**

A UK organisation providing information, advice, discussion and support for unpaid carers.

Tel: 0141 221 5066

Email: [infoscotland@carers.org](mailto:infoscotland@carers.org)

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

### **Children1st**

We help Scotland's families to put children first, with practical advice and with support in difficult times. The national service provides a helpline and email service, outreach, information workshops and advice and support to kinship care families. We also work with kinship carers and local kinship care groups to support them to influence policy and practice at a national and local level.

Kinship Care Helpline: 0800 028 2233

Email: [parentlinescotland@children1st.org.uk](mailto:parentlinescotland@children1st.org.uk)

Web: [www.children1st.org.uk](http://www.children1st.org.uk)

### **ChildLine Scotland**

ChildLine is a private and confidential service for children and young people up to the age of 19. You can contact a ChildLine counsellor about anything - no problem is too big or too small.

Tel: Call free: 0800 1111

Web: <http://www.childline.org.uk>

### **Commissioner for Children and Young People in Scotland**

The Children and Young People's Commissioner is a person. Their job is to help you understand your rights and to make sure those rights are respected.

Young person's freephone: 0800 019 1179

Tel: 0131 346 5350

Email: [inbox@cypcs.org.uk](mailto:inbox@cypcs.org.uk)

Web: <http://www.cypcs.org.uk/>

### **Citizens Advice Scotland Kinship Care Service**

Advisers at every Scottish Citizens Advice Bureau can provide detailed advice on kinship care and can access additional specialist advice for complex cases. The kinship care advice and information service also provides support and assistance to local authorities.

Confidential Kinship Care Helpline: 0808 800 0006

Web: <http://www.cas.org.uk/partnerships-services/cab-service-partners/kinship-care>

### **Clan Childlaw**

Clan childlaw provides children and young people throughout Scotland with free information about the law and their rights. We provide free legal advice and representation to children and young people. We provide training and information about the law to people who work with children and young people in Scotland.

FREEPHONE: 0808 129 0522

Text: 07527566682

Email: [info@clanchildlaw.org](mailto:info@clanchildlaw.org)

Web: <http://www.clanchildlaw.org>

### **Child Poverty Action Group (CPAG) in Scotland**

CPAG works to get a better life for low-income families in Scotland through campaigning and lobbying, and ensure they get the correct information through welfare rights work, [information](#), [training](#) and [advice line for advisers](#). CPAG produce an annual [Children's Handbook](#) and a series of factsheets on [Kinship care and benefits](#). They offer free, independent, expert, up-to-date advice and information to frontline advisers and support staff in Scotland on all aspects of the benefits and tax credits system.

Tel: 0141 552 0552 (Monday to Thursday, 10am - 4pm, Friday 10am - 12 noon)

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

Web: <http://www.cpag.org.uk/scotland>

## **Enquire**

This is a Scottish advice service for additional support for learning.

Tel: 0131 222 2425

Helpline: 0845 123 2303

Email: [info@enquire.org.uk](mailto:info@enquire.org.uk)

Web: [enquire.org.uk](http://enquire.org.uk)

## **Families Outside**

Families Outside is an independent charity which helps prisoners' families in Scotland through offering support and information.

Freephone: 0500 839383

Email: [support@familiesoutside.org.uk](mailto:support@familiesoutside.org.uk)

Web: <http://www.familiesoutside.org.uk>

## **Mentor**

Through research and working hands on with kinship families Mentor provides advice, information workshops, training and dedicated family support to carers and children while delivering training to professionals to raise awareness of kinship care. This includes a National Kinship Care Resource Guide detailing the rights, roles and responsibilities of kinship carers including details of all local kinship care support groups.

Email: [admin-scotland@mentoruk.org](mailto:admin-scotland@mentoruk.org)

Web: <http://mentoruk.org.uk/mentor-scotland/>

## **ParentLine Scotland**

The free confidential helpline and email service for anyone caring for a child to contact about any problem, big or small. ParentLine Scotland provides support to kinship carers as part of the national Kinship Care service.

The helpline is available 7 days a week;

Tel: 0800 028 2233

Email: [parentlinescotland@children1st.org.uk](mailto:parentlinescotland@children1st.org.uk)

Web: [www.parentlinescotland.org.uk](http://www.parentlinescotland.org.uk)

## **Scottish Kinship Care Alliance**

Scottish Kinship Carers Alliance is a campaigning body made up of Kinship Support groups from across Scotland. They are a grassroots organisation run by Kinship Carers, formed to campaign for basic rights and justice for the vulnerable children in their care.

Email: [scottishkinshipcarealliance@gmail.com](mailto:scottishkinshipcarealliance@gmail.com)

Web: <http://scottishkinshipalliance.com/>

**Scottish Child Law Centre**

An independent charity which promotes knowledge and use of Scots law and children's rights for the benefit of children and young people in Scotland.

Freephone for under 18s: 0800 328 8970

Tel: 0131 667 6333

Text: text 'SCLC' and your question to 80800

Email: [info@sclc.org.uk](mailto:info@sclc.org.uk)

Web: [www.sclc.org.uk](http://www.sclc.org.uk)

**Scottish Families Affected by Drugs**

A national charity that provides advice and information to families across Scotland who are affected by drug misuse.

Tel: 0141 221 0544

Helpline: 08080 10 10 11

Email: [info@sfad.org.uk](mailto:info@sfad.org.uk)

Web: [www.sfad.org.uk](http://www.sfad.org.uk)

**Who Cares? Scotland**

Who Cares Scotland is a voluntary organisation working with and for care experienced children and young people.

Tel: 0141 226 4441

Email: [hello@whocaresscotland.org](mailto:hello@whocaresscotland.org)

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

**Young Scot**

Offers information for 12-16 year olds; includes arts, jobs and careers, housing, sport and leisure.

Infoline: 0808 801 0338 (Mon to Fri 10am – 6pm)

Text: 'callback' to 07781 484 317

Email: [infoline@youngscot.org](mailto:infoline@youngscot.org)

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



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