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SPICe Briefing

Kinship Care

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Camilla Kidner

This briefing gives an introduction to kinship care policy in Scotland, regulations for assessment and the provision of allowances. It updates SPICe briefing [SB 08/03](#).



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EXECUTIVE SUMMARY

Kinship care is the care of children by their extended family or a close friend of the family. It includes children who are 'looked after' by the local authority and arrangements that are made privately between family members without local authority involvement.

The number of looked after children placed in kinship care has been increasing and they now make up a fifth of all looked after placements (over 3,000 children). This is likely to increase further as guidance now suggests that kinship care is considered as the first option for a placement for a looked after child. That said, most kinship care arrangements do not involve the local authority. A study of the 2001 census found over 15,000 children in Scotland being cared for by relatives. This, and other studies, have found that kinship carers tend to be on low incomes and live in deprived areas. Local authorities tend to place children with kinship carers for similar reasons as they place them with foster carers. This includes parental substance misuse, domestic violence, bereavement and illness. Where the local authority is not involved there is less known about the reasons children enter kinship care.

A strategy for foster and kinship care was published in 2007. At the same time, the concordat between the Scottish Government and COSLA specified that, by 2011, local authorities would provide an allowance for looked after children in kinship care on a par with the allowance provided for foster care. In addition, regulations in 2009 introduced new assessment requirements for kinship carers of looked after children and provided that local authorities "subject to such conditions as they consider necessary, pay such allowance as they see fit." Citizen's Advice Scotland received funding for 3 years from the Scottish Government primarily to provide advice about welfare benefits and local authority allowances. By the target date of April 2011, all local authorities provided an allowance to kinship carers of looked after children but the amounts and criteria applied varied considerably. In March 2011, the Scottish Government funded Children 1st to provide an advice service until 2014.

Notwithstanding these recent policy developments, a number of issues remain concerning support for kinship carers. These include:

- The interaction of the benefits system with local authority allowances
- Variation in practice between local authorities
- The differentiation between kinship carers of looked after and non-looked after children
- Identifying with more certainty the level of unmet need amongst kinship carers of non-looked after children
- The implementation of the Looked After Children (Scotland) Regulations 2009, including the assessment requirements, the lack of use of the new kinship care allowance and whether permanence orders could be used as an option for long term kinship care.

WHAT IS KINSHIP CARE?

A kinship carer is a relative or friend (generally a grandmother or sister) who takes over the care of a child when their parents cannot look after them. For the majority of children, there is no state involvement as the kinship care is a completely private arrangement made between members of an extended family. In some cases the carers apply to the court for an order giving them some parental rights and responsibilities (section 11 order). Other children in kinship care may be 'looked after' by the local authority and placed with relatives or friends. It is this second group which has been the focus of government policy and legislation and for whom regulations apply that require planning, assessment and the payment of allowances. Kinship carers may offer to look after a child or they may be asked to do so by social workers. Where there is a crisis situation, kinship carers may have very little time to prepare for caring for children. Kinship care has some similarities with fostering in that it offers an alternative to residential care for children who cannot live with their parents. However, a fundamental difference is that kinship carers are offering to look after a particular child rather than being willing to provide placements to any children requiring care. Sometimes the social work department is involved in making the placement but more often it is an arrangement made by the family themselves. They therefore provide something which is between the public intervention of local authority placements and private family care. Exactly where they are on this spectrum depends on the circumstances of the individual case. The degree of variation in such arrangements makes this a complex policy area.

GOVERNMENT POLICY

In 2007, the Scottish Government and COSLA issued a joint strategy, "Getting it Right for Children in Kinship and Foster Care". This followed discussions over a number of years including recommendations from the 2005 Adoption Policy Review Group and research on the nature and extent of kinship care of looked after children (Aldgate and Macintosh, 2006). Further details on this earlier work is available in SPICe briefing 08/03.

The 2007 strategy stated that kinship care should be the first choice for placements unless there were clear reasons why it would not be suitable. It also promoted the use of family group conferencing – where the wider family are involved in making decisions. It emphasised the need for planning and assessment where the local authority was involved in arranging the placement. While the degree of assessment required for formal kinship care was increased, the Government did not intend to impose a bureaucratic burden on the majority of informal kinship care arrangements:

Government in Scotland at national and local level does not intend to distort existing and future family relationships by any unnecessary interference in the majority of kinship care arrangements, i.e. those where the arrangements have been arrived at by the family themselves, with or without the use of Family Group Conferencing

For the majority of these children, any formal intervention by a local authority or any other relevant agency is neither required nor desirable and the arrangements in such cases could be seen as part of normal family and societal arrangements. It is possible however that many of these carers would find it helpful to know that information and advice is available if and when this might be necessary (para 26-27, Scottish Government and COSLA, 2007a)

The consequence of this distinction was that the new kinship care allowance applied only to kinship care of looked after children. The 2007 Concordat between local authorities and the

Scottish Government included a commitment that kinship carers of looked after children should, by 2011, be provided an allowance on a par with foster carers. Guidance on the 2009 regulations, issued in 2011, described this as being “an expectation that kinship carers should receive an equivalent amount to the allowances paid to foster carers but excluding any fee element” (Scottish Government, 2011a). However, the published 2007 Concordat only states: “providing allowances for kinship carers of “looked after children” to treat them on an equivalent basis to foster carers” (COSLA and Scottish Government, 2007b).

The Government funded Citizen’s Advice Scotland for three years to provide advice to kinship carers of looked after and non looked after children and to provide training and support to local authorities. In its first two years of operation it received 1,749 enquiries.¹

In 2008, the Government established a ‘reference group’ to further consider issues in foster and kinship care. Its report, Moving Forward in Kinship and Foster Care (Scottish Government, 2009) set out a ‘vision’ for kinship and foster care which included that:

“children should be supported to live with their extended family without the need for formal intervention, unless they need protection. Their kinship carers should be supported by adequate services and finances.”

The report dealt with both foster and kinship care, recommending that:

- While the systems for assessing and supporting kinship and foster carers are different, they both need skilled practitioners, robust systems and appropriate resources to achieve safe care for children

In relation to kinship care specifically, the report made recommendations relating to finance:

- Resources to meet the financial and support needs of kinship carers require to be increased to enhance opportunities for children in kinship care and to sustain complex placements.
- The eligibility of kinship carers for state benefits needs to be unravelled so that kinship carers can receive adequate universal benefits.

This report informed the development of regulations and guidance. The Looked After Children (Scotland) Regulations 2009 updated two sets of regulations from 1996 and set out the planning and assessment of all looked after children, including those placed in kinship care. It set out assessment arrangements for kinship carers of looked after children and extended the previous fostering allowance to include kinship carers of looked after children.

During this time, the Scottish Government worked with the UK Government to simplify the interaction of the benefits system with kinship care allowances. While there was some progress, there are still difficulties, in particular with eligibility for Child Benefit and Child Tax Credit.

In March 2011 the Government announced funding for Children 1st to provide advice and support to kinship carers (Scottish Government, 2011b). While the SNP manifesto in 2011 stated that they would “continue our activity to assist kinship carers.” it gave no specific policy commitments (SNP, 2011). However, it did say that they would review the Children (Scotland) Act 1995. Two provisions of particular relevance to kinship carers are s.22 which is one route for making payments to kinship carers and s.26 which provides that the local authority can place children with friends and family. However, the Government has stated that there are no plans to regulate further the provision of kinship or fostering allowances (Scottish Parliament, 2011a).

¹ Citizens’ Advice Scotland, personal communication.

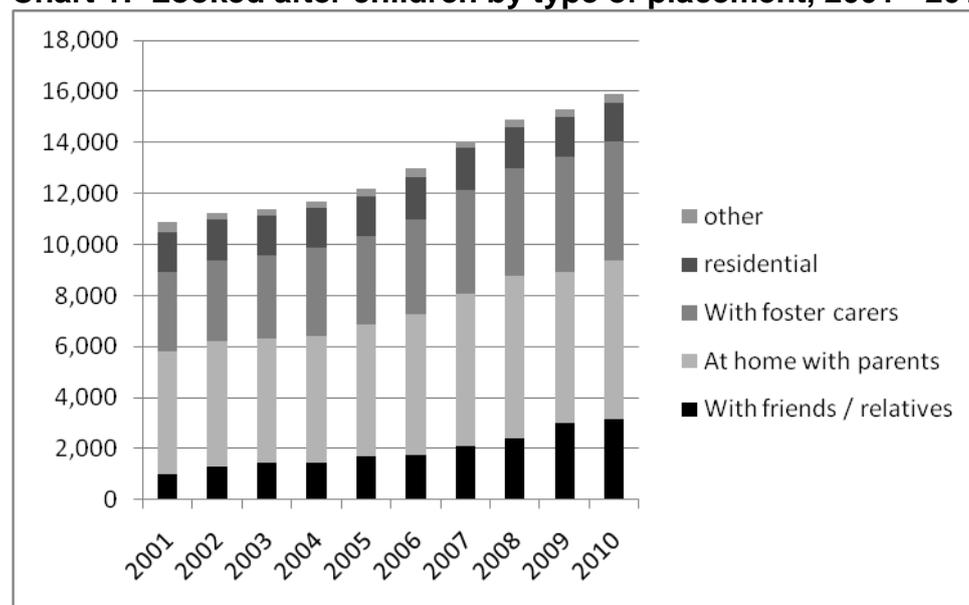
As a result of these policies, all local authorities now provide an allowance to kinship carers of looked after children and there has been an increase in the advice and support groups available. There is a number of support groups which are run by kinship carers themselves with little or no funding. SWIA found that many councils were focused on the financial implications of the Concordat agreement and “were not always taking the opportunity to develop a strategic approach to the role of kinship carers as one of a range of options for children and young people who cannot live at home” (SWIA, 2010).

NUMBERS AND CHARACTERISTICS OF KINSHIP CARERS

Over the last ten years it has become far more common for looked after children to be placed with friends or relatives. In 2001, around 1 in 10 looked after children were placed this way. By 2010, this had increased to 1 in 5. At the same time, the number of looked after children increased by 46% (from 10,899 to 15,892). Around half of this increase has been through friends and family care placements (from 980 to 3,172 children). There are now more children in kinship care than there are in residential care (1,480) and it is fast catching up with the number in foster care (4,697). The chart below shows the increase in the total number of looked after children and within this, the increase of children placed by the local authority with friends and relatives. This increased from 980 in 2001 to 3,172 in 2010.

The statistics don't tell us the reason for this increase in use of kinship care. It might be that there is a greater demand that cannot be met through foster care. On the other hand, it might be that similar numbers of kinship carers were looking after children before, but weren't official local authority placements. In other words, it is not clear whether the increase is really due to greater demand or a change in response to existing demand.

Chart 1: Looked after children by type of placement, 2001 - 2010



Source: table 2.2, Scottish Government 2011c.

Kinship and foster care tend to be used as placements for younger children rather than residential care. The table below shows that the median age for starting a placement is 5 years for kinship care and 3 years for foster care, whereas for residential care it is 14 years.

Table 1: median age (years) of children starting and ceasing to be ‘looked after’, 2010.

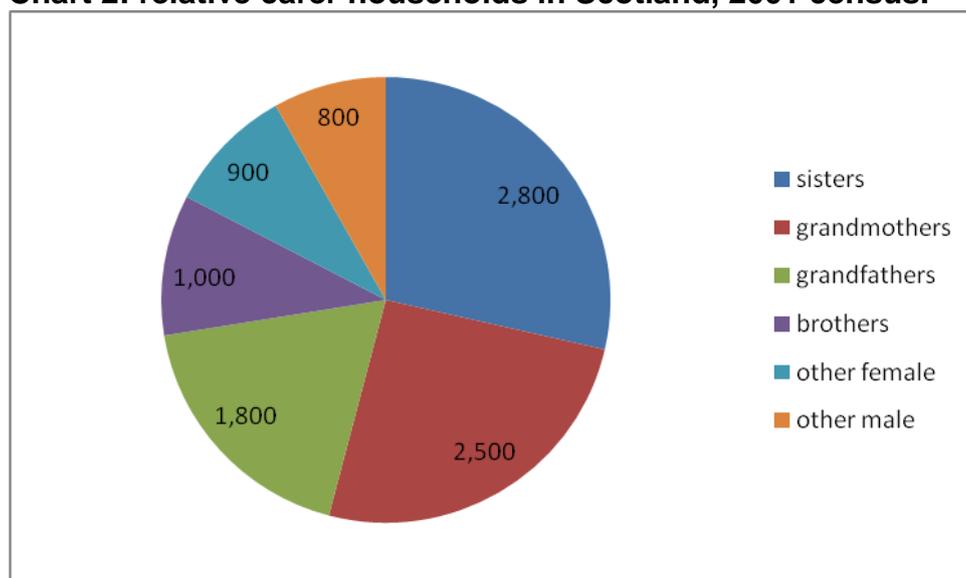
Placement type	First placement	Final placement
Family and friends	5.5	9.3
Foster care provided by LA	3.4 years	7.7
Foster care purchased by LA	6.0	14.7
Local authority home	14.2	16.6
All children	8.0	13.7

Source: Table 41. Scottish Government 2011c

It has long been suspected that ‘looked after’ children form only a small proportion of children in kinship care. This was confirmed recently by a study of the 2001 census records (Nandy and Selwyn, 2011). This estimates that there were 9,800 relative carers² in Scotland in 2001 looking after 15,400 children. It found that relative care was more common in disadvantaged areas. Forty five per cent of children in kinship care lived in the poorest 20% of areas. Relative carers tended to have a low income (27% on welfare benefits or unemployed) and grandmother carers in particular tended to have health problems (68% with limiting long term condition or disability).

In this study, most kinship carers were either older sisters (average age 32) or young grandmothers (average age 57). Other studies do not find the same high proportion of sibling carers. A study of 142 kinship care arrangements in England (Farmer, 2009), also found high levels of disadvantage in terms of over-crowding, low income and poor health. However, most of the carers in this study were grandparents (64 carers) and only 5 were siblings. In 2009, Citizen’s Advice Scotland (CAS) reported on the circumstances of kinship carers accessing their advice line. Like Farmer, they found that most carers were grandparents (Dryburgh, 2010). Only 3% were siblings. The reason for these differences is not clear but it may relate to the different sample sources. The CAS figures are based on those who accessed their support service. The Farmer study is derived from social work records. These are both quite different to using census data and may suggest that sibling kinship carers are far less likely to have social work involvement or access advice services.

Chart 2: relative carer households in Scotland, 2001 census.



Source: Nandy and Selwyn, 2011. N.B the census records the ‘household reference person’ which is the person with the highest income in the household. Therefore, although the chart shows 1,800 grandfather kinship carers, the majority of these will include grandmother kinship carers.

² Kinship care includes both friends and relatives, but this study only considered relatives.

REASONS FOR MOVING INTO KINSHIP CARE

Children move into kinship care for similar reasons that they move into any care placement. In the CAS study, the main factors were: addiction (36%), bereavement (24%), neglect (16%), prison (13%) family illness (5%) and violence (4%). Many kinship care arrangements result from two or more of these factors. In the Farmer study, almost three quarters of the children were on the Child Protection Register. Many of the adversities experienced by the children before their placement mirrored those in the CAS study. For example, many children had experienced neglect (68%), domestic violence (52%), parental mental health problems (44%), death of parent (13%), parental disability and serious illness (15%), parental alcohol and drug misuse (60%) or parents convicted of offences (42%). The Farmer study also noted other issues including suspected sexual abuse (24%), multiple separations from the main care giver (59%), physical abuse (35%) and parent with multiple sexual partners or involved in prostitution (32%). This pattern was very similar to the experiences of children placed in foster care.

A small study of 12 older children (between 11 and 17 years) in kinship care in North East Scotland (Burgess et al, 2010) found that 7 out of the 12 were on the Child Protection register and issues included separation and loss, the effects of living with substance misusing parents and for some, physical and emotional abuse.

It is clear, therefore, that children in kinship care who are known to the local authority have very high levels of need, similar to those placed in foster care.

PROBLEMS EXPERIENCED BY KINSHIP CARERS

Farmer's study of English care placements found striking similarities between kinship and foster care. There tended to be similar issues creating the need for the placement, similar levels of need and children tended to make similar levels of progress whilst there. The main difference was that kinship carers tended to persist with a difficult placement long after an unrelated foster carer would have given up. This meant that kinship carers tended to be under greater strain than foster carers (45% struggling to cope compared with 30% unrelated carers). This situation was exacerbated by Kinship Carers tending to be less well off in material terms than foster carer households. Despite this increased strain, Farmer found that kinship carers had less access to support services from the local authority. This included less provision of supervised contact, respite care and training as well as lower levels of allowances. This relates to England, but the CAS study, which relates to Scotland produced similar findings. CAS found that kinship carers had problems with:

- pressure on relationships
- giving up work
- arranging and paying for childcare
- child's poor health
- financial problems and
- need for respite care

CAS found little difference in the support needs of those caring for looked after children compared with those caring for non-looked after children. The situation with allowances is discussed at p.14.

LEGAL STATUS OF KINSHIP CARE

The level of support received by a carer will often depend on the legal status of the child – in particular whether or not they are ‘looked after’ under the Children (Scotland) Act 1995 (the 1995 Act). There are a number of different ways in which a child can be in kinship care:

- Placed by the local authority under s.25 and 26 of the 1995 Act, with the consent of the child’s parents.
- Placed by a Children’s Hearing under a supervision order which states where the child is to live. s.70 (1995 Act, about to be replaced by Children’s Hearings (Scotland) Act 2010)
- Placed by a local authority under a permanence order – a long term arrangement. s.80 Adoption and Children (Scotland) Act 2007
- By the carer obtaining a s.11 order from the court which states where the child is to live. This is a private law order under the 1995 Act and does not need to involve the local authority. However, the local authority may recommend that a carer take out such an order and some local authorities provide financial assistance to do so.³
- Under an informal agreement, with no court orders or local authority assessment or involvement.

Under the first three of these arrangements, the child is ‘looked after’ by the local authority and there are legal requirements regarding assessment, planning and payment of an allowance. These are described in the next section. Under the last two arrangements, the child is not ‘looked after’ and the local authority has more discretion about the support provided. Further details about how a child becomes ‘looked after’ are given in annex 1.

Making matters more complex is the fact that situations change for individual children and families. Children move in and out of local authority care and different types of placement. A child can be ‘looked after’ before, during or after any of these orders are in place. A child might become ‘looked after’ while they are already in a non-looked after kinship care arrangement. Or the child might be looked after and kinship care might be the preferred option for a permanent placement. This permanent placement could be on the basis of a residence order, permanence order or adoption. This illustrates the fluidity of some children’s situations and that it is often misleading to think of them as being in one fixed legal category.

LOOKED AFTER CHILDREN IN KINSHIP CARE

Local authorities have a duty to safeguard and promote the welfare of looked after children (s.17, 1995 Act). All ‘looked after’ children must have their needs assessed and must have a ‘child’s plan’. Kinship care should be the first option for looked after children, but other options include: foster care, staying at home with their parents, or residential care.

In 2009/10, 1,399 children were on supervision requirements and living with relatives and friends, and a further 810 were living with relatives or friends who were approved foster carers. This makes up the majority of the 3,172 looked after children in kinship care (SCRA 2010).

Whatever the legal route to becoming ‘looked after’, the assessment and planning requirements of the Looked After Children (Scotland) Regulations 2009 must be followed (the 2009 regulations). If the child becomes looked after through the Children’s Hearings system, the local authority must make a recommendation to the Hearing about where the child is to live (reg 7). One of the options is approved kinship care. Even if a child is in an informal kinship care

³ Citizens’ Advice Scotland, personal communication.

arrangement, which is then confirmed by a supervision requirement, the carer will have to be assessed under Part V of the regulations.

INITIAL ASSESSMENT AND PLANNING

The Burgess study of 12 young people found that the move to kinship care was very fluid. It evolved over time, so that it was difficult to pinpoint an exact starting date. The authors note that this flexibility is an advantage. However, when it comes to formal kinship care, there are time limits set in regulations for the assessment of a placement and the development of a plan. The 2009 regulations introduced a specific assessment for kinship carers. It also replaced the fostering allowance with a 'fostering and kinship care allowance.' Commenting on the situation between 2005 and 2009 (prior to the introduction of the new regulations) SWIA (2010) found that "Services were placing increasing numbers of children with kinship carers. This rapid increase was not always matched by clear policies and procedures."

The 2009 regulations require that when a child becomes looked after – without distinction as to the legal route – then they should be assessed, a plan should be developed and, after a few months, a plan for a permanent placement made. The local authority must assess:

- the child's short term and long term needs
- arrangements for when the child is no longer looked after and
- whether the child should be placed with kinship carers (reg 4)

An assessment should lead to a plan. Among other things, the child's plan must include:

- details of the services to be provided to meet the child's care, education and health needs (sch 1)
- the responsibilities of the local authority, the carers, the child and the parents
- the expected duration of the placement and arrangements for how it will be brought to an end, including return to the child's parents or other suitable person (sch 2)

The requirements for a formal kinship care placement under Part V of the 2009 regulations include that before making a placement the local authority must ensure that it is in the best interests of the child and that the carer is a suitable person to provide the placement. There must be a written agreement between the kinship carer and the local authority and the regulations specify what this agreement must cover. Some local authorities have dedicated kinship care panels. Guidance recommends that fostering panels are used to make kinship care placement decisions. The information considered is set out in Schedule 3 to the regulations and includes:

- standard of living, past and present employment
- criminal record disclosure checks.
- parenting capacity and motivation in seeking the placement

Following assessment, an agreement is drawn up between the kinship carers and the local authority (Schedules 4 and 5). This includes:

- arrangements for the payment of an allowance to the carers
- arrangements for contact with the child's parents
- agreements to co-operate with the local authority's arrangements
- support and training for the carers
- arrangements for review of the placement
- not to use corporal punishment

- to allow the child to be removed if the placement is terminated
- the procedure for the kinship carer to make representations to the local authority

The 2009 regulations set out different requirements for foster care (Part VII), kinship care (Part V) and for looked after children living at home with someone who has parental rights and responsibilities for them (Part IV). This again highlights that kinship care exists on a continuum between parental care and local authority care.

PLANNING FOR PERMANENCE

The 2009 regulations require that after six months, there should be discussions about permanence. A child might be able to return home, or it might be decided that this will not be possible. If long term kinship care is the desired option, then the child may remain looked after or may no longer need the extra support from the local authority that being 'looked after' suggests, and could live in kinship care under a residence order or proceedings started for adoption.

A review of social work inspections from 2005-09 found that permanency planning for children in kinship placements was less developed than for children in foster care (SWIA, 2010). This was prior to the coming into force of permanence orders and the 2009 regulations and related guidance.

Permanence Order

A permanence order is a new type of order introduced in 2009 under the Adoption and Children (Scotland) Act 2007. It is very flexible and is designed for where a child cannot be with his or her parents on a long term basis. It can be a prelude to adoption, but it can also be used as a long term placement. It appears that very few are being applied for, although numbers are increasing. Scottish Government statistics (2010) note that figures for 2009/10 "may include up to 5 initiations and up to 13 disposals for permanence orders which do not relate to authority to adopt." The statistics do not identify whether any of these relate to kinship care. There was an increase in 2010/11 when the statistics noted that there may have been 36 permanence orders without authority to adopt⁴ (Scottish Government 2011c).

A child with a permanence order remains 'looked after' by the local authority. The local authority takes on some of the parental responsibilities and rights, but these can also be shared with another person such as a kinship carer. Another option for permanence is for the carer to apply to the court for a residence order (see below).

There has been an increase in the proportion of children living with friends or relatives after leaving care. In 2001, 6% of children ceasing to be looked after that year went to live with friends or relatives (114 children). In 2010, the proportion was 12% (137 children). These children are no longer 'looked after', but they are still in kinship care (table 2.5, Scottish Government 2011d).

⁴ In the same year there were 455 adoption petitions and 220 permanence order applications with authority to adopt (Scottish Government 2011c).

CHILDREN NOT ‘LOOKED AFTER’ BY THE LOCAL AUTHORITY

The previous section discussed children placed in kinship care by the local authority. However a person may be a kinship carer because they have taken out a residence order, because they are the child’s guardian, because they have adopted the child or because the situation has just evolved and there is no court order giving the carer parental rights.

Guidance states that it is good practice for local authorities to monitor the support they provide to kinship carers of ‘non-looked after’ children (Scottish Government, 2011a).

“Good practice indicates that whether or not a child is looked after, if they are cared for within a kinship arrangement and the local authority continues to have some level of role or responsibility, then the carers need the opportunity at intervals to have an acknowledged space to reflect on the impact on themselves of caring for the child and to express any needs for support and advice.”

LEGAL STATUS OF ‘NON-LOOKED AFTER’ CHILDREN IN KINSHIP CARE

No court order

Where a situation has just developed over time and there is no formal recognition of it, a kinship carer does not have parental responsibilities and rights. However, they still have legal duties towards the child. Anyone with care and control of a person under 16 must; “do what is reasonable in all the circumstances to safeguard the child’s health, development and welfare”. In particular, a kinship carer in this situation can give consent to any surgical, medical or dental treatment or procedure where:

- the child is not able to give such consent on his own behalf; and
- it is not within the knowledge of the person that a parent of the child would refuse to give the consent in question (s.5, 1995 Act).

Residence orders

One way to get legal recognition of a kinship care situation is for the carer to apply for a residence order. Any person can apply to the court to make an order “in relation to parental responsibilities, parental rights, guardianship or the administration of a child’s property” (s.11, 1995 Act). The court has wide discretion to transfer or regulate any parental rights or responsibilities and it is guided by the principles of child welfare, the child’s views and that it is better to make ‘no order’ than to interfere unnecessarily in family life. Under s.11(2)(c) a court can regulate with whom the child will live. If there is a permanence order or a supervision order, then these take precedence over a s.11 order. For example, if a permanence order or a supervision order state that a child should live away from home, then a parent cannot apply to the court for a residence order to move the child back to live with them.

In 2009/10, 257 residence orders were granted in the sheriff court (Scottish Government 2010). Some of these may relate to kinship care, but the statistics do not give details of the pursuer.

Guardianship

A friend or relative can act as guardian to a child in the event of the death of the child's parents. This can either be set out in the parents' will or appointed by a court under section 11(2)(h) of the 1995 Act. This is therefore one form of kinship care.

Adoption

Adoption removes all parental responsibilities and rights from the parents and transfers them to the adoptive parent. There were 455 adoptions in 2010, 1.5% of them by grandparents and 4.8% by other relatives (not including step parent adoptions) (BAAF online).

LOCAL AUTHORITY DUTIES TO NON-LOOKED AFTER CHILDREN

If a child is not 'looked after', they may still be a 'child in need'. If a child is 'in need', the local authority has a duty to safeguard and promote their welfare by providing an appropriate range and level of services (s.22, 1995 Act). This may be services for a particular child and, in exceptional circumstances, can include cash payments. Therefore, even if a child no longer has 'looked after' status, the local authority may still have obligations to provide services and assistance. Where cash payments are made, they may be subject to conditions or require to be paid back.

Children 'in need' are those who need local authority services in order to achieve or maintain a reasonable standard of health or development. It also includes children who are disabled or who are affected by the disability of another person in their family (s.93, 1995 Act).

If a child is neither 'looked after' nor 'in need', then the local authority has a general duty to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area (s.12, 1968 Act).

LOCAL AUTHORITY PAYMENTS TO KINSHIP CARERS

Under the 2009 regulations, local authorities "shall" make payments to kinship carers of 'looked after' children "as they see fit" and may also make payments to other kinship carers under the 1995 Act and the Children Act 1975. There is no requirement for any particular amount of payment. There is great variation in local authority practice. The Scottish Government considers that: "local authorities are best placed to make decisions about the entitlement criteria for the payment of kinship care allowances and the level of the rate paid, taking account of the child's needs and the carers' overall financial circumstances" (Scottish Parliament 2011b).

CONCORDAT

The Concordat between the Scottish Government and COSLA, agreed in November 2007 stated that by 2011 local authorities would provide: "allowances for kinship carers of looked after children to treat them on an equivalent basis to foster carers." Foster carers receive an allowance, but the amount they are given is at the discretion of the local authority. (While the Fostering Network recommend the rates to be paid, local authorities do not have to comply with these).

CAS found that in April 2011, all local authorities were paying an allowance to kinship carers of looked after children but the amount varied, and was rarely the same as that paid to foster carers. Only four local authorities (out of 17 providing information) were making payments at the same rate as foster carers).

Payments to kinship carers averaged £100 per week, but varied from £30 to £196. At the same time the average payment to foster carers was £162 with a range of £110 to £280. The rate recommended by the fostering network is £173.

Table 2: Payments to kinship carers of looked after children, April 2011

	Number of LAs
< £50	5
£50-£75	6
£75 - £100	3
£100 +	16
No figure	2

Source: CAS, pers comm

KINSHIP CARE ALLOWANCE

Separately from the Concordat agreement, in September 2009, a new kinship care allowance was introduced by regulation 33 of the 2009 regulations. The Scottish Government view is that regulation 33 does not create a requirement for local authorities to pay an allowance.⁵ It provides that local authorities “shall, subject to such conditions as they consider necessary” pay an allowance “as they see fit” to foster carers and to kinship carers of looked after children who:

- are assessed and have an agreement under the 2009 regulations
- have a child placed with them under a supervision order, or
- have a child placed with them under a permanence order

Although it makes separate mention of supervision orders and permanence orders all kinship carers of looked after children have to be assessed under the 2009 regulations.

Eighteen months after its introduction, the CAS found that only 2 local authorities were using this regulation to make payments to kinship carers of looked after children. The rest used older legislation discussed below. Why so few? One possibility is the interpretation that this regulation disentitles carers to child benefit.

OTHER DISCRETIONARY PAYMENTS

Older legislation provides a broader discretion for local authorities to make payments to children in need or who are not living with their families and it is still these, rather than the specific allowance provided under the 2009 regulations that local authorities seem to be using for paying kinship carers.

- Section 50 Children Act 1975 enables local authorities to make payments for maintenance or accommodation for children not living with their families.
- Section 22 Children (Scotland) Act 1995 allows local authorities to make services available to ‘children in need’. These services “may include giving assistance in kind or, in exceptional circumstances, in cash.”

⁵ Scottish Government, personal communication.

CAS found that 19 local authorities were using s.50 of the 1975 Act to pay kinship carers of looked after children, eight were using s.22 of the 1995 Act and one was using s.26 of the 1995 Act despite the relevant part of that section having been repealed in 2009. Children do not have to be 'looked after' to receive these payments. CAS found that 12 local authorities were making payments at the same rate to carers of looked after and non-looked after children. Of these 12:

- nine paid to carers with a residence order, but of these three paid only if the child was previously 'looked after'
- three paid the same to all kinship carers – even if there was no court order

Amounts tended to be around £100 a week, but varied from £40 to £144. A further 3 local authorities made payments at a different rate depending on whether or not the child is looked after and a further 3 did not specify an amount.

CHILD BENEFIT AND CHILD TAX CREDIT

There is considerable confusion about the eligibility of 'looked after' children in kinship care for child benefit and child tax credit. Local authority payments are discussed above, but the Scottish Government considers that the main source of financial support should be the UK benefits system. "We believe kinship carers should be supported financially by the tax and benefit system first and foremost. We are committed to securing further changes from UK Government to make this happen and have been in regular dialogue with relevant departments"(Scottish Parliament 2011c).

CHILDREN NOT 'LOOKED AFTER'

Kinship carers of children who are not 'looked after' are entitled to both child benefit and child tax credit even if they are getting payments from the local authority for accommodation and maintenance. This is because the benefit regulations only refer to children 'placed in accommodation by the local authority.'

LOOKED AFTER CHILDREN

The problems of interpretation arise for carers of 'looked after' children. When a child is placed in kinship care by the local authority and that local authority makes a payment then the carers are treated by the benefits system as though they were foster carers. Foster carers are not entitled to either child benefit nor child tax credit. Instead, they get an allowance from the local authority. Parents are entitled to child benefit and child tax credit but do not get an allowance from the local authority. This is true even if their children are 'looked after' as a consequence of a supervision requirement, and are living at home. Kinship carers of looked after children who do not get an allowance from the local authority are entitled to Child Benefit and Child Tax Credit.

The basic policy issue is that benefit regulations treat kinship carers of looked after children as if they were foster carers. While this raises issues of principle about the nature of kinship care, it also raises the issue of whether the money to support kinship carers should come mainly from Scottish local authority or UK budgets. Kinship carers would need to receive an allowance of at least £50 a week just to make up for the loss of Child Tax Credit⁶ and a further £20 if they are

⁶ Someone with an income under £15,860 p.a can claim £50 per week per child plus £10 per week for 'family element'

also disentitled to Child Benefit. As table 2 above shows, there are 11 local authorities paying less than £75 a week. At this level, kinship carers are probably not seeing any real increase in their income. All that has happened is that the source of income has moved from the UK government to Scottish local authorities. It is only once the amount of the kinship care allowance rises above c.£70 a week, that the kinship carers actually see any benefit from it.

The Scottish Government position is that kinship carers ought to be entitled to both Child Benefit and Child Tax Credit regardless of any allowance received from the local authority. They are currently negotiating with the UK government to ensure that this position is reflected in the changes made through wider welfare reform.⁷

The legislation is complex and, in the absence of a test case or clarification from the UK government, interpretations vary.

Child Tax Credit

A person cannot claim Child Tax Credit if the child is “provided with, or placed in, accommodation” under Part II of the Children (Scotland) Act 1995 and they are receiving an allowance from public funds to cover accommodation or maintenance (reg 3 SI 2002/2007).

‘Provided with accommodation under Part II’ includes those placed ‘with friends and family’ under s.26 and those placed in kinship care under a supervision requirement (s.70). This suggests that any payment to kinship carers for accommodation and maintenance disentitles them from Child Tax Credit. However, CAS has found that some local authorities are stating that their kinship care payments are not for accommodation and maintenance and that this enables kinship carers to apply for Child Tax Credit. While section 50 of the 1975 Act specifically states that it is a payment for maintenance neither s.22 nor regulation 33 specifically state that this is their purpose. In practice, some kinship carers appear to have been successful in getting Child Tax Credit.⁸

Child Benefit

The interpretation of the child benefit rules is more complicated. CAS is of the opinion that kinship carers of looked after children are entitled to child benefit. There has been no clarification of the issue from the UK government, although there are some examples of HMRC refusing to pay child benefit for those paid under regulation 33 of the 2009 regulations but to continue to pay it for those paid an allowance under s.22 or s.50.⁹

The basic rule is that a person cannot claim child benefit if the child is placed with them by the local authority and they are receiving a payment for the child’s maintenance and accommodation from the local authority (reg 18 SI 2006/223 read with s1 SSBCA). There are exceptions, but these are complex. The Child Poverty Action Group interpret the regulations as follows:

“If you are caring for a ‘looked after’ child and you are receiving payments from the local authority for accommodation and/or maintenance, you should be entitled to child benefit (reg 16(1)). The exception to this is if the local authority is making payments to you under Regulation 33 Looked After Children (Scotland) Regulations 2009 or s110 Adoption and Children (Scotland) Act 2007. In this situation, it is likely that HM Revenue and Customs

⁷ Scottish Government, personal communication.

⁸ Citizens’ Advice Scotland, personal communication.

⁹ *ibid*

(the Revenue) will decide that you are not entitled to child benefit (reg 16(3))". (CPAG 2011)

Although, as the above illustrates, the technical interpretation of the regulations is complex and not settled, there is a clear underlying policy issue. In what (if any) situations should kinship carers be treated as analogous to foster carers whose payment from the local authority is treated as replacing certain welfare benefits for the children in their care?

ADVICE AND SUPPORT SERVICES FOR KINSHIP CARERS

The Scottish Government provided funding to Citizens Advice Scotland for three years until September 2011 (recently continued to March 2012) to provide an advice line and specialised kinship care advice in its local branches. The Kinship Care Advice and Information Service provided:

- advice for kinship carers through their local Citizens Advice Bureaux and a helpline
- advice to local authorities on a range of issues, including the impact of allowances on kinship carers
- information to advisers and policy makers through briefings and reference materials
- opportunities for national and local stakeholders to come together to share information and effective practice

In March 2011, the Scottish Government committed to fund Children 1st to provide advice and support services to kinship carers. This funding consists of around £75,000 in 2010/11 and around £245,000 per year for the next three financial years (Scottish Government 2011b). The new service will include:

- helpline via ParentLine 0808 800 2222
- training for kinship carers
- work to help existing local family support groups or address gaps in local support,
- national forum for kinship carers
- family group conferencing
- training on the working of the children's hearings system and implications for families

A UK charity, 'Mentor UK' has produced a resource pack for kinship care, stemming from an EU funded project looking at kinship care in several countries (Mentor UK online). They have also produced a resource pack for kinship carers in Scotland which is now in its second edition (Mentor UK 2011).

In addition, local authorities have put in place their own arrangements for support and advice and there are also support groups and campaigning groups. Children 1st are collecting a list of these and some are listed in the Mentor UK resource pack.

ANNEX 1: BECOMING 'LOOKED AFTER'

Voluntary measures.	Accommodated under Children (Scotland) Act 1995, s.25 and placed with 'friends and family' under s.26
<p>A local authority must provide accommodation if no-one has parental responsibility for a child, if they are lost or abandoned or the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care." If there is someone with parental rights who is able to provide accommodation, then the local authority must have their consent before 'accommodating' the child. A local authority also has power to accommodate a child if 'to do so would safeguard or promote his welfare' but they cannot do so without parental consent (s.25, 1995 Act).</p>	
Emergency measures	Children (Scotland) Act 1995 Due to be replaced by Children's Hearings (Scotland) Act 2010
<p>In an emergency, a Child Protection Order can be obtained from the court. This can authorise the removal of the child to 'a place of safety' pending investigations. During this time the child is 'looked after' by the local authority. This is a short term measures, and a children's hearing must be held after a week. In 2009/10 there were 938 'place of safety' orders made (Scottish Government, 2010).</p>	
Compulsory measures	Children (Scotland) Act 1995 s.70. Due to be replaced by Children's Hearings (Scotland) Act 2010
<p>If a child is referred to a children's hearing, the hearing has to decide whether compulsory measures of supervision are required. It may take a number of panel meetings before a decision is reached. If necessary, the Hearing can issue various warrants and orders in order to ensure the child attends a hearing, or resides in a certain place or has a medical assessment. If a child is subject to these orders he or she is 'looked after'. All these orders are temporary measures, pending a decision on whether a supervision requirement is needed.</p> <p>A supervision requirement is very flexible. It must state where a child is to live, but can have any other condition attached. It must be reviewed at least every year. Although it is not intended as a long term measure, the SCRA found (2011 report) that 15% of children on a supervision requirement had been on them for five years or more.</p> <p>The legislation was updated by the Children's Hearings (Scotland) Act 2010 but the basic outline of provisions has not changed and the Act is not yet in force.</p>	

ANNEX 2: LEGISLATION RELATING TO KINSHIP CARE PAYMENTS

Scottish Legislation enabling local authority payments

Children Act 1975

50. Payments towards maintenance of children.

Without prejudice to any existing powers and duties to make payments in respect of the maintenance of children, where [a child under the age of [eighteen] is residing with and being cared for (other than as a foster child) by a person other than a parent of the child, a council constituted under section 2 of the Local Government (Scotland) Act 1994]¹ may make to that person payments for or towards the maintenance of the child.

Children (Scotland) Act 1995

22.— Promotion of welfare of children in need.

(1) A local authority shall—

- (a) safeguard and promote the welfare of children in their area who are in need; and
- (b) so far as is consistent with that duty, promote the upbringing of such children by their families, by providing a range and level of services appropriate to the children's needs.

(2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child's religious persuasion, racial origin and cultural and linguistic background.

(3) Without prejudice to the generality of subsection (1) above—

(a) a service may be provided under that subsection—

- (i) for a particular child;
- (ii) if provided with a view to safeguarding or promoting his welfare, for his family;
- or
- (iii) if provided with such a view, for any other member of his family; and

(b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash

Looked After Children (Scotland) Regulations 2009

Fostering and kinship care allowances

33.—(1) A local authority shall, subject to such conditions as they consider necessary, pay such allowance, as they see fit to—

(a) a foster carer or a kinship carer with whom a child has been placed in accordance with these Regulations;

(b) where a child is required by virtue of section 70(3)(a) of the 1993 Act to reside with a person other than their parent, the person with whom the child is directed to reside; and

(c) any person in whom parental responsibilities and parental rights are vested by virtue of the making of a permanence order with whom a child who is the subject of that order is residing.

(2) Any allowance payable in terms of paragraph (1) may—

(a) be—

- (i) a fixed allowance applicable in the case of all children for whom the local authority have responsibility by virtue of section 17 of the 1995 Act;
- (ii) a rate applicable to certain categories of case; or
- (iii) amounts relevant to the individual needs of a particular child; and

(b) take into account the needs and circumstances of the person with whom the child is placed.

UK BENEFITS LEGISLATION: setting out where receiving local authority payments disentitles a person to child benefit and child tax credit.

Social security contributions and benefits act 1992, ch 4.

Schedule 9, para 1(c).

Except where regulations otherwise provide, no person shall be entitled to child benefit in respect of a child or qualifying young person for any week if in that week the child or qualifying young person

[...] (c) is in the care of a local authority in such circumstances as may be prescribed.

Child Benefit regulations 2006/223

18. Child or qualifying young person in care

For the purposes of paragraph 1(c) of Schedule 9 to SSCBA and paragraph 1(c) of Schedule 9 to SSCB(NI)A (child or qualifying young person in care in such circumstances as may be prescribed), the prescribed circumstances are that—

- (a) the child or qualifying young person is provided with, or placed in, accommodation under Part 3 of the 1989 Act, under Part 2 of the 1995 Act or under Part 4 of the 1995 Order and the cost of that child or qualifying young person's accommodation or maintenance is borne wholly or partly out of local authority funds, authority funds or any other public funds, and
- (b) the child or qualifying young person is not in residential accommodation in the circumstances prescribed in regulation 9.

Child Benefit regulations 2006 2006/223:

regulation 16

(1) Paragraph 1 of Schedule 9 to SSCBA [...] do[es] not apply to disentitle a person to child benefit in respect of a child or qualifying young person for any week

- (a) unless that week is the 9th or a subsequent week in a series of consecutive weeks in which either of those paragraphs has applied to that child or qualifying young person; or
- (b) notwithstanding paragraph (a), if—
 - (i) that week is one in which falls the first day in a period of seven consecutive days in which the child or qualifying young person lives with that person for at least a part of the first day and throughout the following six days;
 - (ii) that week is one in which falls the first day in a period of seven consecutive days throughout which the child or qualifying young person lives with that person, being a period of seven consecutive days which immediately follows either a similar period of seven consecutive days or the period of seven consecutive days referred to in head (i) above;
 - (iii) that week is one in which falls the day, or the first day in a period of less than seven consecutive days, throughout which the child or qualifying young person lives with that person, being a day or days which immediately follow the period of seven consecutive days referred to in head (i) above or a period of seven consecutive days referred to in head (ii), or
 - (iv) as at that week that person establishes that he is a person with whom the child or qualifying young person ordinarily lives throughout at least one day in each week.

This paragraph is subject to the following qualifications.

(2) For the purposes of paragraph (1), a person shall not be regarded as having a child or qualifying young person living with him throughout any day or week unless he actually has that child or qualifying young person living with him throughout that day or week.

(3) Paragraph (1) does not apply for any day in any week to a person (“the carer”) with whom a child or qualifying young person—

(a) is placed by a local authority in Great Britain in the carer's home in accordance with the provisions of—

[...]

(ii) the Arrangements to Look After Children (Scotland) Regulations 1996,

[...]

(iv) the Fostering of Children (Scotland) Regulations 1996,

and that authority is making a payment, in respect of either the child or qualifying young person's accommodation or maintenance or both, under section 23 of the 1989 Act or under section 26 of the 1995 Act to the carer;

Child Tax Credit Regulations 2002, rule 4, reg 3

3.— Circumstances in which a person is or is not responsible for a child or qualifying young person

(1) For the purposes of child tax credit the circumstances in which a person is or is not responsible for a child or qualifying young person shall be determined in accordance with the following Rules.

[...]

A child or qualifying young person shall be treated as not being the responsibility of any person during any period in which any of the following Cases applies.

Case A

The child or qualifying young person is provided with, or placed in, accommodation under Part III of the Children Act 1989, Part II of the Children (Scotland) Act 1995 or Part IV of the Children (Northern Ireland) Order 1995, and the cost of that child's or qualifying young person's accommodation or maintenance is borne wholly or partly—

(i) out of local authority funds under section 23 of the Children Act 1989 or section 26 of the Children (Scotland) Act 1995,

(ii) in Northern Ireland, by an authority, within the meaning in Article 2, and under Article 27, of that Order, or

(iii) out of other public funds.

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