



Kinship Care Protocol - Scotland

SUPPORTING KINSHIP ARRANGEMENTS INVOLVING MULTIPLE AUTHORITIES

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1. Introduction:

The landscape of kinship care can be complex for both kinship carers, and those who support carers and children placed in kinship care arrangements. This is particularly the case where there is local authority involvement with the child placed, and the kinship carers reside in a different local authority area to the child's home area. Local authorities were keen to facilitate clarity for carers and staff, and avoid disputes and initiated the discussions, which led ultimately to this protocol.

The Protocol is based on the principles of Getting it Right for Every Child embedded in our legislation, and that the welfare of the child is paramount. The guidance covers the management of kinship care where multiple local authorities are involved. It does not extend into matters such as the age of the child at which support for kinship carers stops, the nature of support provided or rates of financial support.

The Protocol guidance was developed collaboratively with input from CoSLA, SOLAR, Social Work Scotland and Chief Social Work Officers Group, and is endorsed by the National Kinship Care Collaborative. While this Protocol seeks specifically to clarify cross authority responsibilities governing the support provided where a Kinship Care Order in place, for ease it also extends to situations where a child is looked after.

2. Guiding Principles

2.1 The welfare of the child is always paramount

- So far as is consistent with the duty to safeguard and promote welfare as paramount, local authorities should promote the upbringing of children by their families. (Children (Scotland) Act 1995 s22)
- The immediate, urgent needs of a child should be met by the local authority in which the individual is physically present at the time when the need for support arises, unless another local authority already involved has confirmed it is taking the necessary urgent action. Questions about which local authority is legally responsible for a child should not result in delays in meeting immediate, urgent need. (Children (Scotland) Act 1995; Looked After Children (Scotland) Regulations 2009)
- Permanence: where a placement is meeting the needs of the child the best way to support that placement should be the key driver for decisions by the local authorities. This should include discussions with the carer about the best legal route to achieve greater stability for any child placed with kinship carers. (Guidance on Looked After Children (Scot) Regulations 2009)

2.2 Reciprocity and co-operation

In line with GIRFEC, UNCRC and the child's wellbeing, it is in the interests of everyone that kinship placements are secure, stable and nurturing for the child. With that aim, all authorities are expected to communicate properly and co-operate fully to ensure appropriate care packages are in place. In every case the affected local authorities should determine appropriate arrangements between them, through a process of engagement, planning and formal agreement. Whilst seeking cross border co-operation and reciprocity, local authorities must adhere to the legal framework laid down for cooperation (s 21 Children (Scotland) Act 1995) delivery of support to kinship carers.

2.3 Review of support

All kinship care arrangements for looked after children must be subject to regular review, in line with the 1995 Act. Support provided under the 2014 Act should be responsive to need and proportionate but does not require regular statutory review.

3. Definitions

The definition of a looked after child is laid 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 out with 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.

Note: *a child may be looked after by one authority and then the implementation authority changes e.g. aftercare responsibilities do not belong to the first local authority with whom the child was looked after but to the last.*

Kinship care support for eligible carers is specified in the Kinship Care Assistance (Scotland) Order 2016 and includes:

- the provision of financial support to make an application for a Kinship Care Order;
- the provision of information and advice;
- the provision of a kinship allowance."

4. Formal Kinship Care (child is looked after)

Arrangement	Local Authority responsible for allocating SW and conducting assessment	Provision of support to the child	Provision of support to the kinship carer (including financial support)	Basis
Placed out of authority with kinship carers, subject to a Compulsory Supervision Order (CSO) with a condition of residence	The placing authority (i.e. the 'implementation authority' for the CSO / ICSO)	The placing authority – <i>unless explicitly agreed with receiving authority</i>	The placing authority – <i>unless explicitly agreed with receiving authority</i>	Children's Hearing (Scotland) Act 2011 Children (Scotland) Act 1995, Section 17(6) and Section 25 Looked After Children (Scotland) Regulations 2009
CSO 'implementation authority' is changed by Children's Hearing or Court	The new implementation authority for the CSO	The new implementation authority for the CSO - <i>unless explicitly agreed with another authority</i>	The new implementation authority for the CSO - <i>unless explicitly agreed with another authority</i>	Children's Hearing (Scotland) Act 2011 Children (Scotland) Act 1995, Section 17(6)
<i>Note: The legal responsibility for provision will always lie with the implementation authority irrespective of agreements reached, i.e. even where there is an agreement reached between authorities, the local authority accountable for any failure in provision ultimately remains the implementation authority.</i>				
Placed out of authority with kinship carers on a 'voluntary' basis	The placing authority – <i>unless explicitly</i>	The placing authority – <i>unless explicitly</i>	The placing authority – <i>unless explicitly agreed with receiving authority</i>	Children (Scotland) Act 1995, Section 17(6) and Section 25

Arrangement	Local Authority responsible for allocating SW and conducting assessment	Provision of support to the child	Provision of support to the kinship carer (including financial support)	Basis
under Section 25 of 1995 Act.	<i>agreed with receiving authority</i>	<i>agreed with receiving authority</i>		Looked After Children (Scotland) Regulations 2009
Placed with kinship carers on a ‘voluntary’ basis under Section 25 of 1995 Act, and then carers move to another local authority.	The placing authority – <i>unless explicitly agreed with receiving authority;</i>	The placing authority – <i>unless explicitly agreed with receiving authority</i>	The placing authority – <i>unless explicitly agreed with receiving authority</i>	Children (Scotland) Act 1995, Section 17(6) Looked After Children (Scotland) Regulations 2009
Placed with kinship carers out of authority or who move out of authority where a Permanence Order is in force	Placing authority who holds Parental Rights and Responsibilities in respect of the child	Placing authority who holds Parental Rights and Responsibilities in respect of the child	Placing authority who holds Parental Rights and Responsibilities in respect of the child	
Kinship carers of a looked after child, residing out with placing local authority, apply for a Kinship Care Order.	The placing authority – <i>unless explicitly agreed with the local authority in which the carers reside.</i>	The placing authority – <i>unless explicitly agreed with the local authority in which the carers reside.</i>	The placing authority – <i>unless explicitly agreed with the local authority in which the carers reside.</i>	Children (Scotland) Act 1995, Section 17(6) Looked After Children (Scotland) Regulations 2009
<i>Note:</i>				

Arrangement	Local Authority responsible for allocating SW and conducting assessment	Provision of support to the child	Provision of support to the kinship carer (including financial support)	Basis
<ul style="list-style-type: none"> Where child is 'currently looked after', they do not come under the definition of an eligible child for the purposes of the 2014 Act. Responsibility will lie as per previous categories, with care needed to take account of where there is an implementation authority i.e. where there is a CSO, responsibility lies with the implementation authority unless explicitly agreed by receiving authority. This type of assistance - whether, as part of the support a local authority provides for looked after children, they choose to fund a s 11 order - is discretionary rather than mandatory. It is only a direct duty to do so where the child is "eligible" in term of the 2014 Act. 				

5. Child and / or carer eligible for Kinship Care Assistance (under Part 13 of the 2014 Act)

Arrangement	Local Authority responsible for allocating SW and conducting assessment	Provision of support to the child	Provision of support to the kinship carer (incl. financial support)	Basis
Eligible Kinship Carers of a child who is not currently looked after, residing in a different local authority to the child's parents, apply for a Kinship Care Order.	The local authority in which the carers reside, unless explicitly agreed with another authority	The local authority in which the carers reside, unless explicitly agreed with another authority	The local authority in which the carers reside, unless explicitly agreed with another authority	Children and Young People (Scotland) Act 2014, Part 13
Eligible Kinship Carer of a child who was looked after immediately prior to the granting of the Kinship Care Order, residing in a different local authority to the child's	The local authority in which the carers reside, unless explicitly agreed with another authority. Good practice would indicate that the local	The local authority in which the carers reside, unless explicitly agreed with another authority	The local authority in which the carers reside, unless explicitly agreed with another authority. Good practice would indicate that responsibility	Children and Young People (Scotland) Act 2014, Part 13

parents, (including where the kinship carers move to another local authority after support has commenced.)	authority who were responsible for the child as a looked after child should undertake this assessment where a KCO has just been granted.		for ongoing payment of an allowance should be retained by the local authority who were responsible for the child as a looked after child i.e. the 'placing authority', with other aspects of support being provided by the local authority in whose area the carers reside	
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Note:

- *This section is not about looked after children. The basis of local authority involvement is the limited parameters of the 2014 Act, s71. Kinship carers caring for an eligible child are entitled to apply to the local authority within which they reside, as per section 71 of the 2014 Act. Support to child under 2014 Act is provision of advice and information only unless child is over 16.*
- *Eligible carer and child are defined in Children and Young People (Scotland) Act 2014, Part 13, as is the responsibility of the local authority where the carers reside.*
- *If the carers move, the Children and Young People (Scotland) Act 2014 indicates the responsibility moves with the carers. Good practice would indicate that responsibility for ongoing payment of an allowance should be retained by the local authority who were responsible for the child as a looked after child i.e. the 'placing authority', with other aspects of support being provided by the local authority in whose area the carers reside. This mirrors the division of support functions for other permanence situation such as adoption allowances and support.*

6. Private arrangements

Arrangement	Local Authority responsible for	Provision of support to the child	Provision of support to the kinship carer (incl. financial support)	Basis
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	allocating SW and conducting assessment			
Wellbeing concerns raised about a child in private kinship arrangement (child is not looked after, nor on subject to a KCO) where parents reside in another local authority.	The local authority in which the carers reside.	The local authority in which carers reside.	The local authority in which carers reside.	Children (Scotland) Act 1995, Section 22 Children's Hearings (Scotland) Act 2011 may become relevant
<p><i>Note:</i> Section 22 applies to children in the local authority area. Where the child is at the time of the support need arising is where responsibility lies.</p>				