

KINSHIP CARE

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This briefing sets out what is meant by kinship care, the relevant legal framework and policies intended to support kinship carers.

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KEY POINTS

- The Scottish Government published a strategy for kinship and foster care in December 2007.
- Kinship care is the care of children by their extended family or a close friend of the family. It includes children who are formally looked after by the local authority and arrangements that are made privately between family members without local authority involvement.
- There is a great variety of practice in different local authorities with regard to kinship care.
- The Scottish Government intend to bring forward regulations which will require local authorities to pay an allowance to kinship carers of looked after children. The provision of these allowances forms one of the policy commitments in the concordat between COSLA and the Scottish Government.
- The number of kinship care placements for looked after children is increasing.

INTRODUCTION

There has been growing policy interest in kinship care over recent years. At a parliamentary level the main focus has been on the issue of allowances and there have been a number of petitions, parliamentary questions and debates covering this and other issues¹ Most recently, the Scottish Government has published a strategy for fostering and kinship care (kinship care strategy) (Scottish Government, 2007a) together with draft regulations (Scottish Government, 2007b).

A kinship carer is a relative or friend (often a grandparent or aunt) who takes over the care of a child when the parents cannot look after them. The legal status of kinship care becomes complicated because the level of state involvement varies according to the child's situation. This means that the state has varying legal duties towards children in kinship care. This is described in more detail on p. 5. For the majority of children, there is no state involvement as the kinship care is a completely private arrangement within an extended family. At the other extreme a child may be 'looked after' by the local authority² and placed by them with relatives or friends.

This briefing considers the definition and role of kinship care, numbers of kinship carers and main policy developments over recent years. It then considers in more detail the issues of allowances, assessment and family group conferencing.

¹ For example [PE 1085](#) lodged 30 October 2007 on behalf of YANA, calling for the Scottish Parliament to urge the Scottish Executive to provide total recognition for kinship carers (Petition PE 1085, 2007). There have been at least 12 written questions on the subject (five of which were in 2007). There was a [members' business debate](#) on motion S2M-792, in the name of John Swinburne, on recognition of kinship care on 22 January 2004 (Scottish Parliament, 2004). The issue was considered by the education committee in 2006 (Scottish Parliament Education Committee, 2006) and the parliament debated the kinship care strategy on 5 December (Scottish Parliament, 2007a).

² A 'looked after' child is under the care and supervision of the local authority. They might be in foster care, residential care or at home with their parents but under a supervision order from a children's hearing. They may also be placed by the local authority with relatives – i.e kinship care.

DEFINITION AND LEGAL STATUS OF KINSHIP CARE

It has been said of kinship care that:

“this is a complex area of law and regulations which provides a challenge for local authorities in standardising a procedural response” (Aldgate and McIntosh, 2006).

In general terms, a broad definition of kinship care covers many types of care by relatives or friends. The adoption policy review group (APRG)³ took this broad approach when it described kinship care as follows:

“This term is used for a wide range of arrangements where children are cared for by relatives for considerable periods, if not permanently. While many of these situations are covered by the looked after system, the majority are thought to be informal family arrangements with little or no involvement with social work departments or other support services.”

However, most policy intervention focuses on that sub-group of kinship carers who care for children ‘looked after’ by the local authority. The kinship and foster care strategy uses the following definition:

“a relative or close friend who cares for a child or young person where:

- the local authority places the child or young person with the relative; or
- an order by the court or children’s hearing requires the child or young person to live with them” (Scottish Government, 2007a)

There is no statutory definition of kinship care. However, draft regulations propose to define a ‘relative carer’. This will apply to that sub-group of kinship carers involved with the local authority. ‘Relative carer’ would be defined as someone approved for that purpose by the local authority (Scottish Government, 2007b).

Children can end up in kinship care for many reasons. Research by Aldgate and McIntosh (2006) looked at a group of 30 children in 24 kinship care families. All the children were ‘looked after’ and so were part of the more formal kinship care group. The researchers found that kinship placements tended to be long term and that most carers were in their fifties. The various ways in which the children moved into kinship care were:

- carers take emergency action and then inform the social work department
- social workers contact the carer and ask them to take the child
- placements are arranged by agreement between the child, the carer, the parents and sometimes the social worker

As suggested by the above definitions, the legal status of children and carers in kinship care can vary.

³ the APRG was established in May 2001 to consider adoption law and practice. Their stage II report, published in 2005 also considered the issues of foster and kinship care (APRG, 2005). See page 11 for their recommendations on kinship care.

Looked After children

- under a supervision requirement from a Children’s Hearing under s.70 of the Children (Scotland) Act 1995 (the 1995 Act). In this case, the children will be ‘looked after.’
- accommodated under s.25 of the 1995 Act. In this case, the children will be ‘looked after and accommodated’.
- placed by the local authority which has taken parental responsibility for them under s.86 of the 1995 Act. (This has been repealed by the Adoption and Children (Scotland) Act 2007, (the 2007 Act) although the repeal is not yet in force).

Children who are not ‘Looked After’

- subject to a parental responsibilities order under s.11 of the Children (Scotland) Act 1995. The kinship carer may have sought this order from the court. In itself, this does not give the child ‘looked after’ status.
- informal kinship care with no court orders or involvement of the local authority.

In addition, the 2007 Act provides at s.80 for “permanence orders.” These are to be introduced by January 2009 (Scottish Government, 2007a). Kinship care placements could be made through permanence orders although this legislation is not yet in force. Children would remain looked after under a permanence order.

More detail on each of the various court orders mentioned is given below:

s.25 accommodated by the local authority

One reason for a child being ‘accommodated’ under s.25 of the Children (Scotland) Act 1995 act is when the person who has been caring for a child is prevented from providing them with suitable accommodation and care. Options for accommodation include: a family (i.e foster carers), a relative or any other suitable person and the local authority can provide payments for this. If the placement lasts for more than six weeks the carer must be approved as a foster carer.

s.70 supervision order

A child can be referred to a Children’s Hearing when compulsory measures of supervision may be necessary. This can occur in a number of circumstances including, “when he or she is likely to suffer unnecessarily or be impaired seriously in his health or development due to a lack of parental care” (s.52, 1995 Act). A Children’s Hearing can recommend that a child is placed under a ‘supervision requirement’. This states where a child is to stay and may attach other conditions. A child under a supervision requirement can be at home with his or her parents, placed with foster carers, placed in residential care or placed with friends and relatives. Under s.71, if a child is with parents, friends or relatives then the local authority has a duty to check whether any conditions imposed by the supervision requirement are being fulfilled (s. 76). Under s.73 no child should be under a supervision requirement longer than necessary. Currently, if the carer is a relative or friend no assessment is required.

s.86 Parental responsibilities order

This gives the local authority parental responsibilities for a child. This will be repealed when the Adoption and Children (Scotland) Act 2007 (asp 4) comes into force (Schedule 3, para 1. Date of repeal yet to be announced).

s.11 Parental responsibilities order

A court can give a person some or all parental responsibilities and rights in relation to a child. This includes arrangements for residence and contact. This also allows for guardians to be appointed. Anyone with an interest in the child can apply for a parental responsibilities order. Being subject to a section 11 order does not make a child ‘looked after’.

No court orders

If a child is living with a relative and there are no particular court orders in place, then they will still have legal responsibilities towards that child. A person, other than a foster carer, may acquire an obligation to financially maintain a child if they accept the child into their family. (Family Law (Scotland) Act 1985, section 1(1)(d)) Any person over 16 years of age who has charge of, or control over, a child under sixteen years is required to do what is reasonable in the circumstances to safeguard and promote a child's health, development and welfare (McRae, 2006).

Forthcoming orders

s.80 permanence order

A permanence order is a new type of court order which will regulate the exercise of parental responsibilities and parental rights in respect of children who cannot reside with their parents but where contact or shared exercise of parental responsibilities and parental rights is or may be appropriate. A permanence order may remove some or all parental responsibilities and parental rights and grant them to other persons specified in the order (Scottish Parliament, 2007b). Children subject to a permanence order are 'looked after' under the 1995 Act (s.17 1995 Act as amended by Schedule 2 of the 2007 Act)

Reg 26 approved relative carer

Regulations issued for consultation in December 2007 will enable local authorities to assess carers which will entitle them to financial and other support (Scottish Government, 2007b).

The welfare of children is primarily the concern of those with parental responsibilities for them. In most cases this is the parent(s). Some kinship carers may have taken on parental responsibilities from the child's parent(s) and this does not give the local authority any particular role. However, where a child in kinship care is also 'looked after' by the local authority, then the local authority has particular duties towards them. The paramount concern of the local authority in this case is the welfare of a child looked after by them. Their main duty is to safeguard and promote the child's welfare. This includes listening to the views of the child, providing advice and assistance for the time when the child will no longer be 'looked after', and (subject to the general need to safeguard their welfare) promoting contact between the child and any person who has parental responsibilities for them.⁴

A child who is not 'looked after' may, depending on circumstances, be a 'child in need.' (A child in need includes someone who needs care and attention because they are unlikely to achieve or maintain a reasonable standard of health or development without the provision of local authority services). A local authority must also safeguard and promote the welfare of children who are 'in need,' by providing an appropriate range and level of services for them and by promoting the upbringing of them by their parents.⁵

As the above illustrates, the local authority will have different duties towards a child in kinship care, depending on whether they are 'looked after', 'in need' or in neither of these categories.

NUMBERS OF KINSHIP CARERS

It is not known how many kinship carers there are in total. The only numbers known with any certainty are the 2094 children who are 'looked after' and living with friends or relatives. There are also children who are living with friends or relatives with no contact with the local authority, and some who are known to social work and in kinship care but not formally 'looked after' by the

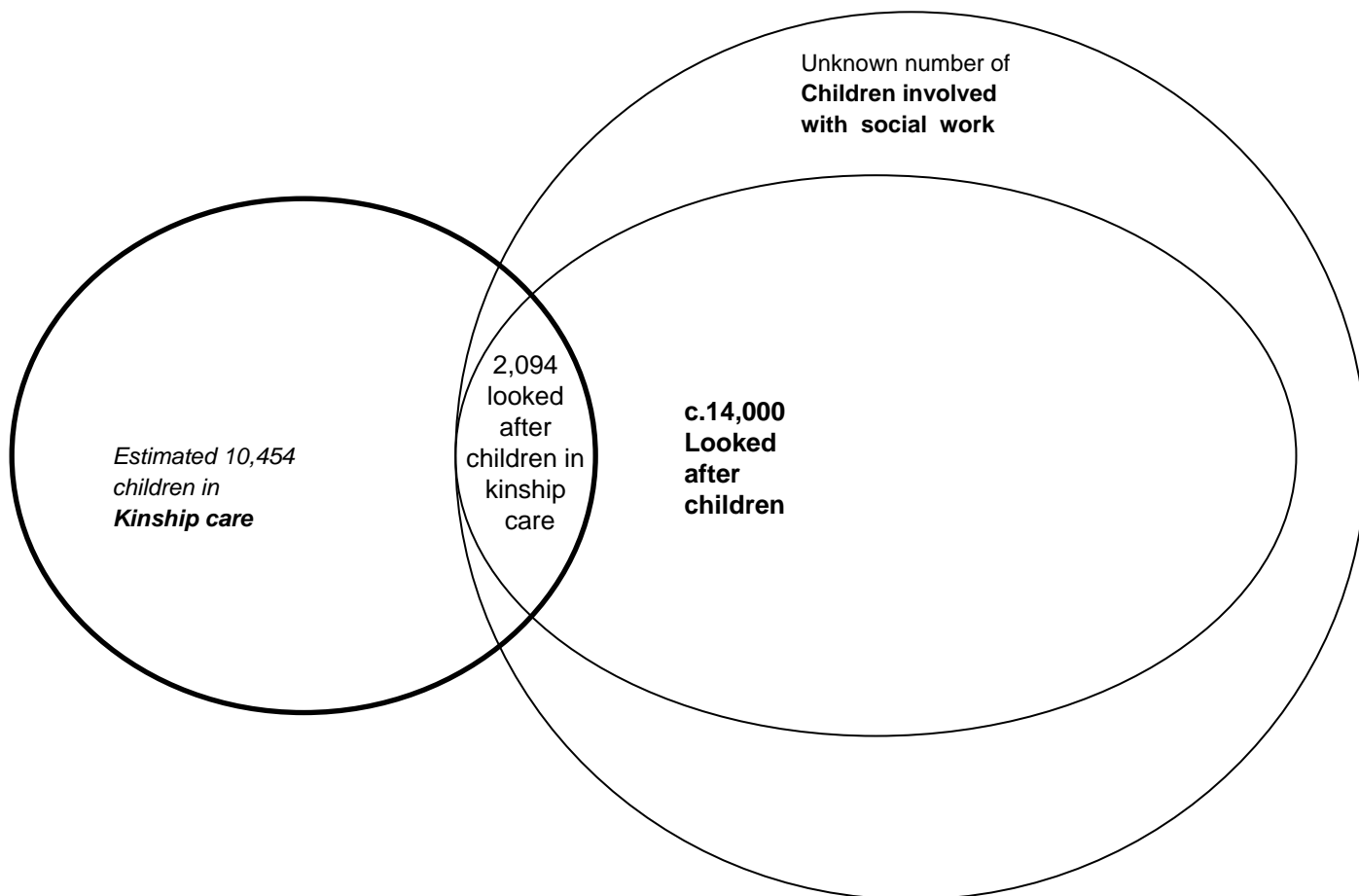
⁴ s.17 Children (Scotland) Act 1995.

⁵ s 22 and s.93(4) Children (Scotland) Act 1995.

local authority. The number of children 'in need' who are in kinship care is also unknown. In 2003, extrapolating from information in the Scottish Household Survey, it was estimated that 10,454 children, unknown to local authorities, were living with family or friends, many of them in kinship care arrangements.

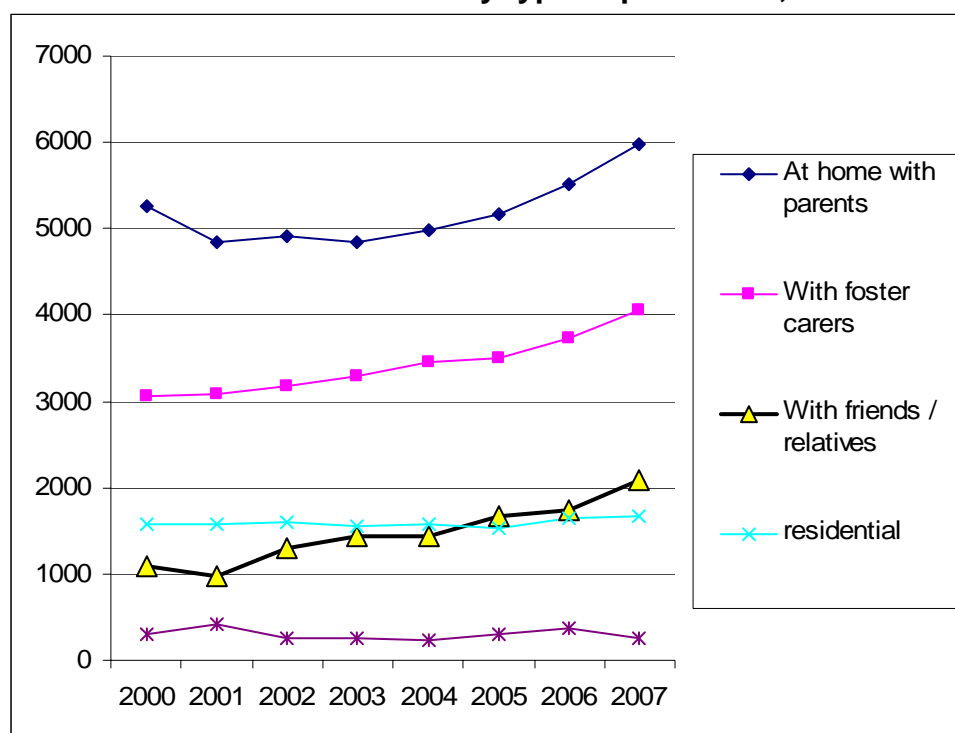
The proportion of looked after children with friends and relatives has increased from 10% in 2000 to 15% in 2007. Over the last three years, there have been more placements with friends and relatives than there are children in residential care (Scottish Government, 2007c).

The diagram below shows the overlap between 'looked after' children and kinship care.



Tables 1 and 2 below compare the trends in type of placement of looked after children over the past seven years. The total number of looked after children has risen from 11,309 to 14,060 between 2000 and 2007, and the pattern of placements has changed. There has been an increase in the numbers of placements in the community while the number of placements in residential care has remained broadly static. Compared to 2000, there is now a larger proportion of looked after children with friends and relatives and in foster care but a lower proportion at home with parents or in residential care. However, the largest single group of 'looked after' children remains those who are at home under a supervision order (Scottish Government, 2007c).

Table 1: Numbers of looked after children by type of placement, 2000-2007



Source: Scottish Government, 2007c Table 2.3.

Table 2: Proportion of children in different types of placement. 2000 and 2007.

Proportions	2000	2007
at home with parents	47%	43%
foster care	27%	29%
friends/relatives	10%	15%
residential	14%	12%
Other	3%	2%

Source: Scottish Government, 2007c Table 2.3. Does not sum to 100% due to rounding.

DIFFERENCES BETWEEN FOSTER CARE AND KINSHIP CARE

Kinship care is different to foster care in that carers wish to look after a specific child or children rather than being willing to take in any children through arrangements with a fostering agency. In kinship care, carers may start caring for a child without any involvement of social work, although some may involve social work later. Even where the child is placed in kinship care by social work the type of assessment required is much less than under foster care (see below p. 16). Compared to foster care, the role of the social worker in kinship care is more peripheral because the carer is part of the family (Aldgate and McIntosh, 2006) and will already know the children and their situation - often in more detail than the social work department does.

Becoming a foster carer on the other hand involves application to a fostering agency (often the local authority) a rigorous assessment process and the role of the social worker and foster care panel is central in deciding which children are placed with which families. Knowledge of family history is provided entirely by the fostering agency.

There is also private fostering where parents make arrangements with people who are not close relatives to care for their children. Although parents must report this to the local authority (who must inspect and monitor the accommodation and other aspects of the arrangements) there is no requirement for assessment. Very few private fostering arrangements are known to local authorities⁶ and the Scottish Government is intending to raise parents' awareness of their legal obligation to inform the local authority. It is an issue to be addressed by the Care Commission in their next round of inspections (Scottish Government, 2007a).

ADVANTAGES AND DISADVANTAGES OF KINSHIP CARE

Kinship care is one option for care - whether it is the best option depends on the specific circumstances of each child. Whatever arrangements are made it is the child's best interests which should be central rather than a preference for any particular form of care. Subject to this, there is also the principle of the 1995 Act that children should be with the family where possible. The Scottish Government strategy recommends that kinship care should be explored as a first option (Scottish Government, 2007a).

The literature in favour of kinship care suggests that "at its best, kinship care can remove children from adversity while minimising disruption because:

- it provides children with stability
- it provides children with warm and loving relationships
- it reinforces continuities for children in their families and communities
- it reinforces children's sense of identity and self-esteem
- it allows for the preservation of links with parents' (Aldgate and McIntosh, 2006)

Disadvantages of kinship care include financial hardship and ill-health of carers, less thorough assessment and lack of support from child welfare services. Relationships between carers, children and parents can be problematic (Aldgate and McIntosh, 2006).

While kinship care may often be the best option, it is important to remember that this will not necessarily always be the case. For example, Freeman and Ingham (2006) have raised the issue of when family care is neither possible nor desirable. They warn of the danger of conducting assessments in a routine manner "based on the assumption that children will inevitably benefit from the proximity of family links". They highlight that child sexual abuse can be undertaken through a network of family members but that tracing these links through complex families can be difficult and can require detailed research through different local authority records. Their case studies of inter-generational family abuse networks underscore the dangers of making assumptions about the best form of care without undertaking a proper assessment. This is not to say that kinship care is not often the best option – rather that it is still necessary to do a proper assessment based on the welfare of the child rather than a preference for a particular form of care.

Broad (2006) looked at views on kinship care among fifty young people in England aged 14 to 21 years, the views of their social workers and carers. Young people's views were mostly positive – the main advantage of kinship care was, for them, a settled, safe situation, contact with family and having a sense of identity about family and culture.

⁶ The Scottish Executive consultation noted that only 25 such arrangements were known. Close relative is defined in the Foster Children (Private Fostering) (Scotland) regulations 1985 as a grandparent, brother, sister, uncle or aunt by full or half blood or by affinity (Scottish Executive, 2006a).

“My Gran, she’s 100%, she’s been our rock and kept the whole family together, if it wasn’t for her we would probably all be separated and not grown up with each other and not as close as we are. I wouldn’t be the stable person I am today if it wasn’t for my Gran.” (Broad, 2006 p. 18)

The main disadvantage for the young people was a lack of independence.

“I’m not going to sit in all day and watch Eastenders, I’m going to go out with my friends and enjoy myself. I don’t stay out every night, I stay out about three times a month and when I’ve got money to get a cab I come home...I’m always saying to my Nan ‘teenagers drink.’ “ (Broad, 2006 p. 22).

Kinship carers and social workers highlighted other disadvantages.

“kinship carers spoke at length about the cost of bringing up a child, the lack of sufficient, or in most cases, any ongoing, financial support from the authorities. [...] Financial tensions fuelled intra or inter family tensions.” (Broad, 2006 p. 22)

Social workers considered that difficulties range from the practical (e.g suitable accommodation) to the emotion and physical capacity of carers.

“I’ve got grandparents who are looking after three grandchildren and doing so has caused them to become quite resentful towards both their daughter and her husband. They feel lumbered and feel they shouldn’t be doing this, their daughter and her husband are just living their own lives. It doesn’t seem fair to them.” (Broad, 2006 p. 23).

The main difficulties raised by social workers were:

- unsuitable accommodation (e.g there may not be a spare bedroom)
- contact issues (social workers found it more difficult to regulate contact between family members than between foster carers and birth parents)
- parenting skills (some social workers found that the parents’ own upbringing (i.e by the now grandparents) did not suggest they would be suitable kinship carers)
- lack of proper planning for children and young people and a lack of resources.

Broad concludes that:

“The advantages and disadvantages of formal kinship care, as with other placements options, centre on the needs of a particular child, judgements about safety and family relationships and practical issues.” (Broad, 2006 p. 24)

POLICY DEVELOPMENT

The issue of kinship care has been promoted for a number of years by groups such as the Fostering Network (TFN) as well as kinship carers themselves. For example, in 2003, a joint working group from the Association of the Directors of Social Work and TFN highlighted the variation in local authority practice, the complex legal situation and outlined a number of practice issues including the need for assessment and support (TFN and ADSW, 2006). Policy recommendations were also made by others including the adoption policy review group and by Aldgate and McIntosh (2006) in their research discussed above. The Executive published a strategy for consultation (Scottish Executive 2006a) and the Scottish Government published a finalised strategy the following year (Scottish Government, 2007a).

THE ADOPTION REVIEW GROUP

The Adoption Review Group considered the issue of kinship care and identified the issues in their 2005 report as being:

- the growth and extent of kinship care across Scotland
- the support needs of kinship care
- the underlying assumptions and value base of kinship care
- the need for a consistent realistic level of support from social work and other agencies in kinship care arrangements
- the need for an agreed, consistent level of financial support for kinship carers across Scotland
- the underlying status of and proposed developments for kinship care

The group recommended that the issues surrounding kinship care should be examined following research being carried out by the Scottish Executive. That research was published in 2006 as “Looking After the Family” (Aldgate and McIntosh, 2006).

RESEARCH: “LOOKING AFTER THE FAMILY”

In this research kinship carers asked for:

- adequate financial support
- acknowledgement of their role
- having access to the same services as foster carers
- improved information and transparent criteria for services

Aldgate and McIntosh recommended:

- a separate category of children ‘looked after’ through kinship care
- more consistent financial support at a UK and Scottish level
 - improving links with the UK benefits’ system. The researchers recommended that the merits of a UK ‘kinship carers benefit’ should be explored.
 - allowances should be paid to kinship carers of ‘looked after’ children on a par with foster carers. There is an argument that there should be equity because both groups are ‘looked after’ children.
- developing a model of social work support for kinship care in which family-led decision making such as family group conferences were standard
- improved planning. Both children and carers should be involved in discussions which lead to transparent, clear plans for children which should include contact arrangements. The research had found that there was little evidence that care plans were used effectively.

OTHER PROPOSALS

The issue of kinship care was discussed during the parliamentary passage of the Adoption and Children (Scotland) Act 2007. As a result of a stage 2 amendment the Act allows for a “carers’ allowance” to be introduced, which could be used to fund kinship care allowances.

In 2005, the Social Work Inspection Agency recommended that all carers providing placements for looked after children should be approved by the local authority. This was based on their investigation of child abuse in Eilean Siar (SWIA, 2005. See further below p. 17)

KINSHIP AND FOSTER CARE STRATEGY

Following the above developments, the Scottish Executive published a strategy for consultation (2006a). This work was completed by the new Scottish Government, with the publication of the final strategy (2007a) and draft regulations (2007b) in December 2007. These strategies include proposals for both fostering and kinship care, but it is only the kinship care elements that are discussed below.

Scottish Executive Proposals

The Scottish Executive consulted on a strategy between December 2006 and February 2007, and the new Scottish Government published an analysis of the response in July 2007. On financial support, the Executive acknowledged the complexity of the current situation and pointed to the provision in the then Adoption and Children (Scotland) Bill which could be used to provide an allowance. In response to Aldgate's recommendation, the Executive did not propose introducing a new legal definition of kinship care because the 1995 Act already states that children should be placed where their best interests require. The consultation also asked whether there was a need for mandatory training for kinship carers and raised the issue of their contribution to prevention and early intervention work. The Executive also responded to recommendations of the adoption policy review group in its proposed changes to the fostering regulations (Scottish Executive, 2006a).

Scottish Government Strategy

Key principles in the kinship care and fostering strategy include that the needs of the child must be paramount and the child's preferences taken into account (this reflects the current duties of local authorities under the 1995 Act as well as key principles of the UN Convention on the Rights of the Child). The strategy recognises that many kinship care placements are entirely private affairs in stating that there should be no unnecessary interference with the majority of arrangements ie those arrived at by the family themselves. Where the local authority is involved, a key principle is that 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 (Scottish Government, 2007a). Making family and friends the first option reinforces the need for proper assessment and planning for looked after children. The previous Executive's consultation on kinship care acknowledges the scale of the task required:

“there is near universal agreement that if the placement is right first time, then this provides the best guarantee [that the child] will develop confidently and securely [...] fundamental, innovative change and service redesign is required to achieve this.”
(Scottish Executive, 2006a)

Part of getting the placement 'right first time' relates to the process of decision making. The strategy recommends that family group conferencing (FGC) could routinely be considered when kinship care arrangement is an option. (See below p. 19).

One of the policies to be met through the concordat between COSLA and the Scottish Government is providing allowances to kinship carers of looked after children (Scottish Government and COSLA, 2007). The draft regulations propose that allowances are paid in the same way as they are to foster carers. That is, payment is based on local authority approval. Local authority approval will entitle a kinship carer to an agreement with the local authority about the type of support they are to provide (Scottish Government, 2007b). For example, the strategy recommends that fostering agencies consider providing kinship carers with short breaks from caring (Scottish Government, 2007a).

Provision for informal carers

Kinship carers who are not involved with the local authority will be able to access advice and information services. The strategy states that from April 2008 Citizens Advice Scotland (CAS) will be funded to provide advice to kinship carers. CAS has already produced a summary of the social security benefits to which kinship carers may be entitled (Evans, B. 2007).

Reference Group

A reference group is established under the strategy, with membership from the British Association of Adoption and Fostering (BAAF) and The Fostering Network (TFN) which will report to Ministers and COSLA by August 2008. In relation to kinship carers this group will:

- take forward training and development. The Scottish Government had provided £6.2m one-off funding in 2007 to provide £1000 for training and development for each foster and kinship care and other projects to support implementation of aspects of the strategy. The kinship care strategy stated that many local authorities “struggled to find appropriate and accessible training opportunities for many, although not all, kinship carers”.
- consider improvements needed to ensure efficient, child centred, decisions for looked after children
- develop assessment guidelines for kinship carers of looked after children
- consider existing models of good practice for kinship carers of looked after and non-looked after children, and if necessary prepare guidance.
- consider improvements to organisational arrangements within local authorities – with a focus on a child’s plan

Policy Links

The kinship care strategy is developed within the context of a range of related policy for children’s services and social work. In particular, Getting it Right for Every Child as developed by the previous Scottish Executive focused on the need to improve planning for children both at the individual and strategic levels. The key principle was to ensure that every child got the help they need when they need it. Services needed to be better integrated to avoid unnecessary and repetitive assessments and to ensure that a full picture of a child’s situation was understood. There were proposals to improve consistency in assessment and planning (Scottish Executive, 2005). The development of assessment and planning for children in kinship care needs to be consistent with this wider policy. The strategy also refers to the early years strategy which is under development.

In addition, We Can and Must Do Better was a strategy of the previous Scottish Executive intended to improve outcomes for all looked after children – including those in kinship care (Scottish Executive, 2007). Other relevant developments include the introduction of permanence orders under the 2007 Act (see p. 6), improvements to social work under the Changing Lives programme (Scottish Executive, 2006b) and improvements to the disclosure system under the Protection of Vulnerable Groups (Scotland) Act 2007 asp 14.

The following sections look in more detail at the issues of allowances, assessment and family group conferencing.

ALLOWANCES

A key issue raised in relation to kinship care has been that of allowances. While foster carers can receive allowances, the provision for kinship carers is extremely varied⁷. Aldgate found variation according to the legal status of the child and also between local authorities.

Local authorities can make payments in the following circumstances:

- to children accommodated under s.25 of the 1995 Act. Payments can be made under s.26 of that Act.
- in exceptional circumstances cash payments can be made to children “in need” under s.22 of the 1995 Act.
- where a child under 18 is being cared for by someone other than their parents payments can be made under s.50 of the Children Act 1975.

The kinship care strategy does not change the existing ability of local authorities to make payments to kinship carers but proposes adding to it by introducing a new regulation that will require⁸ an allowance to be paid to approved carers of ‘looked after children.’

“If the kinship carer is approved and if a kinship care arrangement has been established for a looked after child, an allowance will be paid, as it is for every looked after child in foster care. Any child benefit contribution to the household income will be deducted from the kinship carer’s allowance, prior to payment by the local authority” (Scottish Government, 2007a)

COSLA has agreed that allowances will be paid, with one of the policy commitments being;

“Kinship care – providing allowances for kinship carers of looked after children to treat them on an equivalent basis to foster carers.”(Scottish Government and COSLA, 2007)

Local authorities currently have powers to make payments to kinship carers under the legislation listed in table 3, below. This implies that meeting the terms of the concordat is not dependent on the passage of the proposed regulations. The degree to which local authorities introduce the allowances prior to the regulations coming into force will be a matter for individual Single Outcome Agreements⁹. The proposed regulations are not expected to be in force before 2009 (Scottish Government personal communication 17 December 2007).

The amount to be paid is not stated in the draft regulations which suggests it will be at the discretion of local authorities. A Government press release stated the amount of £119 to £198 per week (Scottish Government, 2007d) which is the level recommended by the Fostering

⁷ Fostering allowances are discretionary. 53% of Scottish local authorities pay the fostering network’s recommended rate of between £119 - £198, depending on the age of the child. Their annual survey highlights wide discrepancies between councils – with seven paying rates between £40 and £60 below those recommended.(The Fostering Network, 2007). The draft regulations would make allowances compulsory but not at any particular rate. The rate would remain a recommendation from COSLA and the fostering network.

⁸ Draft regulation 30 appears to contain a drafting error which would make the allowances discretionary. However, the policy intention is that fostering agencies will be required to pay an allowance to approved relative carers and approved foster carers.

⁹ The Scottish Government aims to move towards an outcome based approach to local authority funding. This includes Single Outcome Agreements (SOAs) with each local authority on the delivery of key policies. One of these is support for kinship care.

Network for foster carer allowances It is therefore likely that this will be the amount which the Government will recommend to local authorities.

In addition to allowances paid by local authorities, there are issues about the benefits system. In particular Aldgate and McIntosh (2006) referred to delays in transferring child benefit and that kinship care allowances are taken into account in income support calculations. The kinship care strategy states that the Scottish Government will work with the UK government to identify improvements.

Fostering allowances¹⁰ are ignored for calculating income in means tested benefits. (CPAG, 2007 p.869) However, carers who are caring for children under either the Arrangements to Look After Children (Scotland) Regulations 1996 or the Fostering of Children (Scotland) Regulations 1996 cannot claim child benefit for those children¹¹. Currently therefore, anyone approved under the foster care regulations gets their fostering allowance disregarded for benefits such as income support, but is not eligible for child benefit.

The draft regulations will replace both the 1996 regulations referred to above. In doing so, there will need to be consequential changes to the child benefit regulations and income support regulations (if only to maintain the current situation for foster carers). The new regulations will cover both 'relative carers' and 'foster carers'. The intended effect is that kinship carers will continue to be entitled to child benefit but the amount of allowance paid to the carer will deduct child benefit prior to payment of allowance. However, this will require changes to the benefits regulations which is an area reserved to Westminster.

The table below summarises the provision for payment and advice services under the strategy. The different types of court order to which the child may be subject are given across the top and the legal basis of payments is given in the left hand column. Carers of children who are not looked after will be able to get advice from the Citizen's Advice Bureau and as at present, may get paid allowances under a number of existing statutes.

Table 3: Provision of payment and advice following the Kinship Care and Fostering Strategy

	Child subject to supervision order s.70. 'looked after'	Child subject to s.25 order. 'looked after'	Child subject to permanence order. 'looked after'	Carers have s.11 order or child has no court order. Not 'looked after'	'relative carer' under draft looked after children (Scotland) regulations
Advice from CAS	yes	yes	yes	yes	Yes
Approval, agreement and allowance under draft reg 30	yes – payment required	yes – payment required.	yes – payment required	no	Yes and
Payment under s.50 children act 1975	possible	possible	possible	possible	possible
Payment under s.22 1995 act	possible	possible	possible	possible	possible
Payment under s.26 1995	no	yes	no	no	possible

n.b: the effect on means tested benefits and child benefit will depend on how the consequential amendments are made to the UK benefits legislation following the implementation of the draft Looked After Children (Scotland) Regulations.

¹⁰ paid under s.26 of the 1995 Act or regulation 9 of the Fostering of Children (Scotland) Regulations 1996

¹¹ regulation 16(3) Child Benefit (General) Regulation 2006/223

Choice of regulation

Another potential method to provide allowances is through [s.110 of the Adoption and Children \(Scotland\) Act 2007](#). This allows Ministers to introduce a 'carer allowance' through regulations. This could include allowances for kinship carers of children who are looked after or would have been required to be placed in foster or residential care had they not been cared for by a relative. Regulations can specify the rates to be paid and either require or recommend local authorities to pay that rate. The kinship care strategy uses the different route of proposing regulations under s. 5 of the Social Work (Scotland) Act 1968 and using almost the same wording as the current provision for foster care allowances, thus bringing fostering and kinship care allowances under the same regulations.

ASSESSMENT

If kinship care is a first option then assessment is even more important to ensure getting the placement right first time. Aldgate and McIntosh found that "how kinship carers are assessed is at the heart of where the threshold lies between family obligations and state intervention." Where the family have made arrangements themselves or where the carers have taken out a s.11 parental responsibilities order then there is no assessment required. However, the researchers found that there was some assessment if the local authority chose to pay allowances. Currently, where the child is 'looked after' by the local authority then assessment requirements differ depending on the type of court order the child is subject to.

A child can be placed with relatives in an 'immediate placement' on the completion of the following assessment. The social worker must

- interview the proposed carer
- confirm that the person is a friend or relative
- inspect the accommodation
- obtain information about any other persons living in the household
- reach a written agreement with the proposed carer. This is the same written agreement as for an emergency placement (Scottish Executive, 2004).

Guidance to the 1995 Act states that:

"Whilst not explicit within the regulations, it would be good practice to seek police checks on all members of the household, and a health reference on the prospective carers. Unless they subsequently go through the full approval process, such carers do not need to be approved by the fostering panel. "(Scottish Executive, 2004)

If the child is there under a s.25 order then this placement can only last six weeks before a full assessment for foster care is required. However, if the child is placed via a s.70 supervision order by a children's panel then the placement will last as long as the supervision order lasts without the need for further assessment¹². The draft regulations propose replacing this with a new assessment of 'relative carers' (i.e kinship carers of looked after children) and asks for views on the detail of the assessment.

The local authority has a duty to review children looked after and placed by them within six weeks of their placement and again within three months of this first review.¹³

¹² Regulations 14 and 15 Foster Care 1996

¹³ The Arrangements to Look After Children (Scotland) Regulations 1996 No. 3262, regulation 9(1)
providing research and information services to the Scottish Parliament

ISSUES WITH ASSESSMENT

Aldgate and McIntosh suggest that further consideration is needed of whether kinship carers should be assessed in the same way as foster carers. For example, one interview stated:

“[the carer] would not pass the fostering panel for her standards of care but the alternative is the child going to a foster home” (p.118)

Concerns in assessing kinship care focus on:

- the standard of basic care in the carer household
- the ability of the carers to deal with the management of children’s behaviour and emotions
- tensions in the social work role between supervision and support (p.117)

The fact that kinship care can be undertaken as a private issue within the family suggests that there should not be the same level of assessment as foster care but where the local authority is involved then, as discussed above, p. 6, it has a duty to ensure the welfare of the child. However, the type of assessment needed for kinship care may be different to that required of foster carers. This was discussed in the Executive’s consultation in 2005/06.

“There is an important distinction between the assessment of foster carers and of kinship carers. The attributes required to look after a wide range of foster children are not the same as those required to meet the needs of a particular child or young person.” (Scottish Executive, 2006a).

It suggested that assessment in kinship care needed to

“focus on the needs of an individual child or siblings within specific circumstances, and the ability of the kinship carer to look after them, given their specific needs.” (Scottish Executive, 2006a).

The consultation suggested that assessment needed to take account of the

“best interests of the specific children and weigh up the probable advantages of a kinship carer in relation to providing placement stability and continuity for the child against any other disadvantages that may be identified.” (Scottish Executive, 2006a).

The dilemma of the adequate level of assessment was raised in a report into child abuse and neglect in Eilean Siar (SWIA, 2005). In 2005 the Social Work Inspection Agency (SWIA) investigated the care provided by Eilean Siar local authority and found that children in a particular family had experienced severe and prolonged abuse. SWIA made 31 recommendations and found that the children should have been removed from the home earlier. Recommendations covered a range of areas of social work, health and police practice and raised crucial issues of how best to protect children. The facts of the case were complex and dealt with a broad range of local authority, health and police involvement. One part of the story was that for a while two of the children were placed with relatives. The report found that case records contained information which indicated that one of the relatives was not a suitable person to care for the children. The report stated that:

“We recognise that the local authority was not legally required to assess the children’s relatives as foster carers. However the imperative to promote the upbringing of children within their families must be balanced by an appropriate assessment of the suitability of

extended family members to provide a safe home. Later disclosures by the children suggest that they continued to be abused during their stay with relatives.” (SWIA, 2005)

Recommendation 23 sought improvement in assessment of children placed with relatives under a supervision requirement:

“The Scottish Executive should seek to amend the fostering regulations and relevant guidance so that relatives and friends must be formally approved as carers for a child who is looked after when that child is placed with them as a condition of a supervision requirement made by a children’s hearing. Approval should be based on an assessment of their ability to care for, protect and meet the needs of the child.” (SWIA, 2005)

Proposals for change

Reflecting the findings from Aldgate and McIntosh’s research and the recommendation from SWIA, the kinship care strategy includes proposals on assessments. The role for kinship care set out in the strategy has implications for the type of assessments required. It states that:

- it is the right of every child to have their family and friends explored as potential carers if they need to leave the care of the parents.
- any arrangement for care by family or friends must be in the best interests of the child
- the safety and needs of the child in any assessment of family or friends as carers must be paramount
- a child’s needs for good family and friends carers should take precedence over the wishes of a parent to exclude the family from care
- support to a family or friend placement should be available when needed

The strategy proposes that “kinship carers undergo an approval process broadly equivalent to that required for foster carers.” And that “a looked after child should not be with an unapproved carer for longer than necessary”. In emergency placements there will be a simplified assessment process.

Where a local authority recommends to a children’s hearing that a child is placed with someone who isn’t a foster carer (such as a kinship carer) then the current policy intention is that, within six months, the local authority should carry out an assessment of the carer’s suitability, prepare a plan for supporting the child and the carer, and provide the carer with information on what the way forward might be when the supervision requirement comes to an end (Scottish Government, 2007b).

The consultation on the draft regulations asked for views about the appropriate information to be required of ‘relative carers’ as part of the assessment and about the appropriate issues that an agreement between a ‘relative carer’ and a local authority should cover.

As mentioned above a reference group – made up of BAAF and TFN will develop assessment guidelines for kinship carers of looked after children and consider existing models of good practice for kinship carers of non-looked after children. This group is due to report in August 2008 and according to a recent parliamentary question the process of approval of ‘relative carers’ will begin during 2008/09 (Scottish Parliament, 2007c). The recommendations of the reference group will build on current arrangements and good practice.

Kinship carers of looked after children will also need to be members of the new vetting and barring system when the Protection of Vulnerable Groups (Scotland) Act 2007 asp 14 is commenced.

FAMILY GROUP CONFERENCING

The strategy states that Family Group Conferencing (FGC) should be routinely considered when a kinship care arrangement is being considered or when a child in kinship care needs a permanent plan (Scottish Government, 2007a at p.8). FGC is a method for decision making which places the responsibility for decisions with the family rather than with a social worker. Generally in FGC, the social worker provides relevant information then the family have 'private family time' to consider the situation and draw up a plan. It can be applied in a range of contexts and was first developed in the 1980s to deal with juvenile justice in New Zealand. Of particular relevance to kinship care is the central place of the extended family in FGC.

In Scotland, FGC is advocated by Children 1st. The organisation currently works with 15 local authorities to provide FGC services. There are also two local authorities who run their own FGC service: City of Edinburgh Council and Inverclyde Council. [Children 1st](#) has established a Family Group Conference Development Unit to promote the use of conferencing across a wide range of need and to develop best practice guidance.

A literature review of FGC (Barnsdale and Walker, 2007) found that it seems to be successful in a procedural sense. That is, families felt more involved in the decision making process. However, they found little research on the long term outcomes of FGC. The studies which have looked at outcomes suggest that there is a wide variation in whether plans are actually implemented. FGC can improve relations within a family and between families and social workers however power relations within the family need to be carefully considered.

The review highlights a Swedish study (Sundell and Vinnerjung, 2004), which tracked two groups of children for three years. One group had FGC (referred to here as family group decision making or FGDM) and the other had not. "After controlling for age, gender, family background and type and severity of problems, analysis found that FGDM children exhibited higher rates of re-referral." The review comments that:

"On balance, much of the available evidence suggests that FGDM probably does have a beneficial effect on outcomes for children and families. However, much of the available literature is methodologically weak in the sense that it does not include comparison with other decision-making approaches. Somewhat disconcertingly, the sole piece of literature to reach a negative conclusion on FGDM outcomes is also the most methodologically robust. While it would be unwise to lay too much emphasis on this one study, the emergence of more negative results does highlight the need for further critical review of how FGDM both fits with other child welfare processes and impacts on individual children and families." (Barnsdale and Waker, 2007 para 1.4.54)

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