

## **KINSHIP CARE ORDERS AND SUPPORT - INFORMATION AND GUIDANCE**

If you require any assistance in understanding this information and guidance or require any further information, please contact the duty worker, Resources Team, Children and Families Social Work (Tel: 01896 662799).

### **INFORMATION AND GUIDANCE**

This Information and Guidance sets out the types of support and guidance you can get if you are pursuing a Kinship Care Order or currently have a Kinship Care Order. This is in line with Part 13: Support for Kinship Care, Children and Young People (Scotland) Act 2014.

People are eligible for kinship care support and assistance (including financial support) if they fall within one of the following categories:

- A person who is applying for a Kinship Care Order (in relation to an eligible child who is below the age of 16);
- A person who is thinking about applying for a Kinship Care Order;
- A person with a Kinship Care Order in relation to a child under 16;
- A child under 16 subject to a Kinship Care Order (who is deemed by a local authority to be an eligible child);
- A child who has reached the age of 16, who was subject to a Kinship Care Order immediately prior to their 16th birthday (who is deemed by the local authority to be an eligible child);
- A person who is a guardian of an eligible child who is below the age of 16 (by virtue of an appointment under section 7 of the Children (Scotland) Act 1995);
- An eligible child who has a guardian.

The majority of carers who are either applying for a Kinship Care Order or already have a Kinship Care Order will already have been kinship carers whose situation has been assessed by Scottish Borders Council Children and Families Social Work as a kinship carer and been in receipt of support (including financial support). For those who have been granted a Kinship Care Order and not received financial support but wish to apply for it, the local authority must determine if they are eligible. This is determined by whether the child they look after is 'eligible'. The definition of an 'eligible' child is determined by the Children and Young People (Scotland) Act 2014, section 71(5).

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Essentially there are 2 categories of child who fall within the definition of an 'eligible child':

- A child who the local authority considers to be at risk of becoming looked after (looked after under a legal order by the local authority).
- A child who was previously looked after.

To determine if you are eligible for kinship care support and that you are looking after an 'eligible child', your situation will be assessed by a social worker.

## **KINSHIP CARE ORDERS**

The following questions and answers provide a range of information relating to Kinship Care Orders. If you require further information, please contact the duty worker, Resources Team, Children and Families Social Work (Tel: 01896 662799).

### **What is a kinship care order?**

A Kinship Care Order is a court order which has the effect that a child is to live with the person applying for the order (called a Residence Order). It is usually applied for under section 11(1) of the Children (Scotland) Act 1995. It is applied for under civil law, and the Council and Social Work Department are not involved with the case going to court. The child in question is not a Looked After Child. This means that the Social Work Department has no formal legal role in the child's life, but there can be some involvement on a voluntary basis. A residence order will only be a Kinship Care Order where the person the child lives with is related to the child or is a friend or acquaintance of one or more of the child's relatives.

### **What are benefits and limitations of a kinship care order?**

A Kinship Care Order provides a child with the security that they are being looked after on a longer term basis and a more secure basis than if the child lives with a relative by agreement of the parents without a court order or if the child is in the Children's Hearing System. The child is not a Looked After Child so is not subject to regular meetings with a social worker, does not have to attend Children's Hearings or statutory reviews. As the child is not Looked After, they are not eligible for Continuing Care and Aftercare services however.

A Kinship Care Order entitles the carer to receive support from the local authority. The types of support include advice, guidance and financial support. Financial support includes the provision of an allowance. Financial support will cease when the child who is cared for under a Kinship Care Order reaches 18 years old (their 18<sup>th</sup> birthday).

If you are thinking about getting a Kinship Care Order in relation to a child, you should seek legal advice from the solicitor. The local authority may also help towards the cost of getting a Kinship Care Order.

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## **How to find and instruct a solicitor**

You can find out the names and contact details of local solicitors using the Law Society of Scotland's Find a Solicitor search tool. You can search for firms of solicitors by your local town and the area of work the firm does. For Kinship Care Orders this would be Family and Relationships and then clicking the tab on the page to limit this to matters concerning children. The web address for this is <http://www.lawscot.org.uk/find-a-solicitor/>.

## **How to apply for Legal Aid to finance an application for a Kinship Care Order**

Some, but not all, solicitors accept legal aid cases including where you are seeking a Residence Order. The Scottish Legal Aid Board, or SLAB, which decides who can get Legal Aid, also has a tool for finding solicitors who do legal aid work on their website at <http://www.slab.org.uk/public/solicitor-finder/index.html>. If you cannot get onto the internet you can contact your local Citizens Advice Office or look in the phone book, or telephone the solicitors on the list of solicitors provided to see if they are taking on legal aid clients. The solicitor you choose will then apply to the Scottish Legal Aid Board for legal aid, if they think that your circumstances mean that SLAB might grant Legal Aid for your case. Many people in Scotland are entitled to some Legal Aid, if their disposable income is under a set amount and their disposable capital is under a set amount, and some are entitled to have their cases fully funded by Legal Aid. Your solicitor will be able to give you further information on Legal Aid and will tell you what information they need to assess whether you would be eligible for Legal Aid. The Scottish Legal Aid Board is also able to advise on this, with information on their website: <http://www.slab.org.uk/public/civil/eligibility/> and a telephone line 0131 240 2802.

## **How to apply to a local authority for support towards the financial costs of an Order and on-going financial support if an Order is granted**

To apply for support towards the financial costs of a Kinship Care Order, the applicant needs to complete the Kinship Care Support application form (**Appendix 1**). This application applies to kinship carers who are currently supported by Scottish Borders Council and those who are not receiving support.

For those kinship carers not currently receiving support from Scottish Borders Council, a further assessment of whether the child they are caring for is an 'eligible child' will be required.

## **What happens at a hearing on a kinship care order application at the Sheriff Court?**

If you decide to ask a solicitor to apply to the court for a Kinship Care Order, then the parents of the child, any legal guardian and anyone who currently has care of the child will need to be informed that you are looking for a Court Order. They will be given the chance to oppose it, within certain timescales. If they chose to oppose it then there will be a court hearing called a Child Welfare Hearing. These are normally held in private. Sometimes, depending on why the order is being opposed, the

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Sheriff (judge in the Scottish courts) can grant the order at that hearing, if he or she feels they have the information before them that they need to do this. If the Sheriff feels they need further information or if they need to hear from witnesses, then they will put a date in for a proof. A proof is where witnesses give evidence to the court, in this case the evidence would be about whether or not the child should live with you and possibly also about whether or not the child should live with their parents. You may have to be a witness and if so you will be asked questions by solicitors and the Sheriff. You will have to come to these hearings, unless your solicitor tells you otherwise. The procedure is supposed to run as quickly as possible, but the matters involved can be complex so it sometimes takes time for the cases to be dealt with.

### **How the child's, their parents and their kinship carers' views are taken into account by the court in connection with the application**

The court has to take into account, as far as practicable, the views of a child who is mature enough to give a view. The court has to give the child the opportunity to indicate if they wish to express a view, give the child the opportunity to express their view and must have regard to, but not necessarily follow, the child's views. Children who are over 12 are normally accepted to be mature enough to express a view, but a younger child could be too. The child will be sent a form by the solicitor for the person wanting the order, and if the child indicates that they wish to give their views then the court will decide on the further process for doing this, and should not make an order without the child being able to give their views first. The Sheriff can order that the child's views are only seen by them, but if the child's views are what are deciding the issue it is unlikely the Sheriff will do this. The child's parents will always be given the opportunity to give their views and to place evidence before the court, as will the kinship carer, if the child is living with them before the application. Even if the child is not living with the potential kinship carer, then it is likely that the court would want to hear from them.

### **What happens when a kinship care order is granted?**

When a Residence Order is granted, this means that you, if you applied for the Order, either have the right to decide where the child resides or that the court has said that the child should reside with you. Once the court has made this Order, it should happen otherwise you or whoever has care of the child is in risk of breaking the law and of being charged with contempt of court. If the child is with you, nothing will change except that the position of the child with you now has the legal protection of the court.

### **What may happen when a kinship care order is not granted?**

If the order is not granted, there is the potential to appeal to a higher court. If this appeal is not successful then it is likely that you would have to show that there had been some change in your circumstances, those of the child or of the child's parents before you could attempt to ask the court again for a court order. You would also want to consider whether appealing might result in less stability for the child and therefore in further stress. Your solicitor would be able to advise you on your chances of success with an appeal or further application.

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## **What do you do if you wish to complain about the services you have received (i.e. in relation to local authority processes, etc.)?**

In the first instance, if you are unhappy with any aspect of the service you receive, you should discuss this with the person (or the line manager) of the person you have been dealing with. This may easily resolve any concerns or disputes. If you are not satisfied with the response and wish to take the matter further, complaints in relation to Scottish Borders Council should be sent in writing to:

Social Work Complaints  
Scottish Borders Council  
Council HQ  
Newtown St. Boswells  
Melrose  
TD6 0SA

You can also complain online at the following address:

[https://www.scotborders.gov.uk/info/20016/have\\_your\\_say/665/social\\_work\\_complaints](https://www.scotborders.gov.uk/info/20016/have_your_say/665/social_work_complaints)

For further information please telephone: 0800 019 4490

## **Details of local and national advice and support networks for kinship carers**

The following organisations offer independent advice and support for kinship carers:

Kinship Care Advise Service Scotland (KCASS) 0808 800 0006.

Children 1st  
83 Whitehouse Loan  
Edinburgh, Edinburgh EH9 1AT  
United Kingdom  
(Parent Line Tel: 0800 0282233)

This Information and Guidance is intended to provide you with basic information about kinship care assistance and Kinship Care Orders. Further, more detailed information is available from the Resources Team, Children and Families Social Work (Tel: 01896 662799). Further information is available in Scottish Borders Council's Kinship Care Order Policy and Procedure.

If you are interested in applying for support in applying for a Kinship Care Order, already have a Kinship Care Order or want to apply retrospectively for kinship care support, see **Appendix 1** (attached).

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1 <sup>st</sup> Applicant	2 <sup>nd</sup> Applicant	Name of Child	Dates (start- end)	Which local authority
Yes / No	Yes / No			
Yes / No	Yes / No			
Yes / No	Yes / No			
Yes / No	Yes / No			

**Information about the child(ren) you look after**

Name	Gender	Date of Birth	Relationship to applicant(s)	How long has the child you care for lived with you?

**Do you have a Kinship Care Order for any children living with you?**

Name of child	Yes	No	Date and name of court in which Order issued. We will require a copy of each order with the application form.

**Please give details of everyone who lives with you (children and adults), and state their relationship to you:**

Name	Gender	Date of Birth	Relationship to applicant(s)

**If you are looking for other support, please tell us below what you would like support with.**

Signature Application 1.....

Signature Applicant 2.....

Date .....

This form should be returned to:

Duty Social work  
Langlee Complex Marigold Drive,  
Galashiels  
TD1 2LP

Once you have returned the form, you will be contacted by a social worker.

If you have not previously been supported by Scottish Borders Council as a kinship carer, an assessment will be required to determine if you are eligible for kinship care support and that you are looking after an 'eligible child'.

This essentially covers 2 areas relating to the child concerned. These are whether the child is:

- A child who the local authority considers to be at risk of becoming Looked After.
- A child who was previously Looked After.

This will involve a visit from a social worker who will discuss your circumstances and explain the process in more detail.

## VERSION CONTROL

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Appendix 1	Updated	Simplify information required Updated application form