

## Supplementary Business and Regulatory Impact Assessment

### **Title of Proposal**

The Kinship Care Assistance (Scotland) Order 2016

### **Purpose and intended effect**

- **Background**

The BRIA which accompanied the Children and Young People (Scotland) Act 2014 has already covered a portion of what is contained within these regulations (in relation to information and advice, and financial assistance towards the cost of applying for a kinship care order), and we do not intend to repeat that here. Instead, this BRIA specifically covers the introduction of statutory allowances for eligible kinship carers by Order, which was not foreseen when the previous BRIA was drafted. It should be seen as supplementary to the 2014 BRIA.

Children and young people in kinship care are some of the most vulnerable in our society. They have often had difficult and traumatic personal experiences, which may impact their social, emotional and behavioural development. The Scottish Government recognises the important role played by kinship carers in providing secure, stable and nurturing homes for children and young people, when they are no longer able to live with their birth parents. Remaining within the family setting, whenever possible and in the best interests of the child, can have a positive impact on the child's wellbeing with better long-term outcomes and life chances for the child. We believe that kinship carers who take on this responsibility are providing a valuable service and should be supported in carrying out this role.

Many kinship carers are on low incomes, and financial hardship is a major concern. Where the child that they care for has looked after status then they may not be entitled to claim benefits but they are entitled to an allowance from their local authority, similar to that provided to foster carers. Currently, we have a political agreement to ensure that allowances paid to kinship carers achieve local parity with those paid to foster carers, and to extend allowances (at the same rate) to an additional group of kinship carers, who hold a Kinship Care Order in relation to the child that they care for and who meet eligibility criteria, i.e. the child that they care for is or was:

- Previously looked after;
- Placed by the local authority; or
- At risk of becoming looked after.

Kinship carers in this group should be able to claim child-related benefits, and the purpose of an allowance on top of this is to ensure that these children, generally living in financially precarious situations, can have similar

opportunities to their peers.

- **Objective**

This Order makes the payment of allowances to this additional group statutory. However, it does not set any rate for allowances – this remains a matter for political agreement. This means it is in line with regulation 33 of the Looked After Children (Scotland) Regulations 2009, under which allowances for children in kinship care who are looked after are generally paid.

This proposal is in line with Scottish, UK and EU policy around improving outcomes for children, protecting vulnerable groups and increasing opportunities for disadvantaged children and young people.

- **Rationale for Government intervention**

Our proposal is intended to enhance the wellbeing of eligible children in kinship care and to help to ensure that they can have similar opportunities to their peers.

We expect that this proposal will divert some children from becoming looked after, where it is not appropriate or necessary. This is in line with our aim to have a care system where fewer children need to become looked after; where quicker decisions are made about permanence; where there is a substantial reduction in the number of children and young people on long-term statutory supervision; and where the outcomes for each child are improved<sup>1</sup>. Children and young people who come into care are more likely to have poorer outcomes than their peers, because of their life experiences and the barriers that they face. Educational attainment outcomes for most looked after children are significantly worse than for other children and young people<sup>2</sup>. However, research shows that children in kinship care can have better outcomes than looked after children, as the kinship carers' commitment to the child provides them with psychological security and stability<sup>3</sup>.

We also expect that this proposal will help the household finances of a largely low-income group. While child poverty has fallen markedly in the past decade, 170,000 children and young people in Scotland still live below the poverty threshold (17% of all children and young people)<sup>4</sup>. Children and young people who grow up in poor households are more likely to have low self-esteem, play truant, leave home earlier, leave school earlier and with fewer qualifications, and be economically inactive as adults<sup>5</sup>. By providing financial assistance, this policy can help ensure that children in kinship care have the same opportunities as their peers and can become effective contributors to society.

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<sup>1</sup> The Scottish Government, *Getting It Right For Looked After Children and Young People: Early engagement, early permanence and improving the quality of care* (2015)

<sup>2</sup> The Scottish Government, *Education Outcomes for Scotland's Looked After Children 2013/14*

<sup>3</sup> Selwyn, J, Farmer, E, Meakings, S and Vaisey, P, *The Poor Relations? Children and informal kinship Carers speak out* (2013)

<sup>4</sup> Scottish Government, *Poverty and Income Inequality in Scotland: 2013-14* (2015)

<sup>5</sup> Ermisch, J, Francesconi, M, and Pevalin, D, *The Outcomes for Children of Poverty* (2001)

The Scottish Government's purpose is to focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

This policy aligns particularly closely with 3 out of the 5 Strategic Objectives – Wealthier and Fairer, Smarter, and Healthier.

It also aligns closely with several of the National Outcomes:

- We are better educated, more skilled and more successful, renowned for our research and innovation;
- Our young people are successful learners, confident individuals, effective contributors and responsible citizens;
- Our children have the best start in life and are ready to succeed;
- We have tackled the significant inequalities in Scottish society; and
- We have improved the life chances for children, young people and families at risk.

## **Consultation**

- **Within Government**

We have had ongoing discussion with local government directorate in relation to the impact of this proposal on local authorities.

- **Public Consultation**

Since the formal consultation detailed in the original BRIA we have held two informal consultations on the contents of regulations. The first ran for 12 weeks between July and October 2014. A total of 17 responses were received, from 6 local authorities and 11 third sector organisations, including kinship care groups. In addition, Children 1<sup>st</sup> held three consultation days on our behalf, engaging with just under 100 attendees. They also distributed a survey based on the consultation, receiving 230 responses from kinship carers and 177 responses from children and young people in kinship care. This consultation did not specifically cover allowances as funding was not in place at this time. However, despite this, respondents took the opportunity to make it clear that allowances were a key issue for many of them, with fairness and consistency seen as important.

The second informal consultation ran from 8 October to 6 November 2015 and specifically focused on the inclusion of allowances in regulations. A total of 6 responses were received, with 2 from local authorities and 4 from third sector organisations. In addition, a small group (1 from local authority, 3 from third sector) met to discuss the proposals. Most respondents welcomed the proposals, although they did highlight areas where clarification will be required. We are confident that this can be addressed in the guidance which is being developed to accompany the regulations.

In addition to public consultation, given the financial impacts on local

authorities, we have had significant and extensive discussions with COSLA about the estimated cost of this proposal, which have informed our modelling of those costs.

- **Business**

This proposal places a duty on local authorities and will not affect businesses.

## **Options**

All the options impact on local authorities, who pay allowances, and kinship carers, who receive them. No other sectors or groups are affected.

The financial cost of providing allowances to the group of kinship carers covered by this proposal, and thus the financial cost of all the options below, is estimated at **£6.8m**. This figure is net of any benefits which a kinship carer may be eligible for. To calculate this, we used a combination of data from Children's Social Work Statistics Scotland, an FOI exercise on foster care and kinship care rates undertaken by CELCIS and the EHRC, as these are not centrally collated, and data on section 11 orders collected directly from individual local authorities, again as these are not centrally collated. We consider that these are the most robust data sets available to us, and local authorities were unable to identify any alternatives.

The Scottish Government has agreed to meet this cost, as previous payments to this group have been on an informal basis. Allocations have been made to each local authority, starting from 1 October 2015. The options set out below are options for what, if anything, should be placed in statute in relation to these allowances.

### **Option 1 – do nothing**

The first option is to leave the situation as it currently is. Many local authorities have been paying allowances to this group of kinship carers on a non-statutory basis. Our political agreement with COSLA means that, since 1 October 2015, all local authorities should now pay allowances to eligible kinship carers in this group, at the same rate as they pay foster carers.

#### *Benefits*

- Local authorities have already agreed to make payments to eligible kinship carers, without legislation in place, thus meeting the policy objective if the payments are made.
- Saving of Parliamentary time, both now and if regulations require to be amended because situations have changed in the future.

#### *Costs*

- There would be a cost to kinship care families if the political agreement does not hold or if non-COSLA local authorities decide to reject the agreement. This is difficult to calculate as it would depend on policies adopted by individual local authorities and rates of allowance paid, if any. Removal or reduction of an allowance could make a significant difference to the wellbeing of a child living in a low-income family, and the potential social and economic

costs of poverty are detailed above. This would translate into a potential social and economic cost to the state also. In addition, if the removal or reduction of an allowance was to lead to the breakdown of a kinship care arrangement and the child having to go into foster or residential care, this represents a significant cost to the state.

### **Option 2 – place a statutory duty on local authorities to pay a financial allowance to eligible kinship carers**

The second option is to place a statutory duty on local authorities to pay a financial allowance to eligible kinship carers. The Children and Young People (Scotland) Act 2014 allows us to do this in regulations under Part 13 (support for kinship care). Under this option we would not set any rate for payments. This is our preferred option

#### *Benefits*

- By not setting any rate for payments, we recognise that local authorities have already agreed to make payments at a particular level and we respect the political agreement we and they have entered into in good faith. This should allow us to maintain a good working relationship with them and with COSLA based on trust.
- Kinship carers have a degree of security. This should encourage them to engage further with the state and contribute to the stability and security of placements.
- The Scottish Government retains the option of setting minimum rates should that prove necessary.
- Currently, non-statutory payments are made through several different legal mechanisms, none of which are designed for this. These regulations will provide a legal mechanism specifically for these payments, thus simplifying and clarifying processes.

#### *Costs*

- Although some payment would be legally required, providing a degree of mitigation, the potential costs set out under option 1 in relation to the risk to kinship carers remain here too.

### **Option 3 – place a statutory duty on local authorities to pay a financial allowance to eligible kinship carers at the same rate as that which they pay to foster carers**

The third option is to place a statutory duty on local authorities to pay a financial allowance to eligible kinship carers at the same rate as that which they pay to foster carers. This would essentially put all of what is currently a political agreement into legislation.

#### *Benefits*

- Kinship carers would have significant security in relation to the level of their payment.
- Currently, non-statutory payments are made through several different legal mechanisms, none of which are designed for this. These regulations will

provide a legal mechanism specifically for these payments, thus simplifying and clarifying processes.

#### *Costs*

- This is not consistent with the way allowances are dealt with for children who have looked after status, either in kinship or in foster care. This would create inconsistency with allowances for children who have looked after status, either in kinship or foster care, where no rates are specified in statute at the current time.
- This approach indicates a lack of trust in COSLA and local authorities to uphold the political agreement and is likely to have a cost in terms of our relationship with them.

#### **Scottish Firms Impact Test**

Not relevant – no businesses are affected by this.

#### **Competition Assessment**

Not relevant – no businesses are affected by this.

#### **Test run of business forms**

Not relevant – this proposal does not generate any new business forms.

#### **Legal Aid Impact Test**

Please see 2014 BRIA for consideration of this.

#### **Enforcement, sanctions and monitoring**

The Scottish Government will monitor the situation with allowances and take action as necessary if local authorities are not acting on their new duty to pay an allowance to eligible kinship carers. We will do this through interaction with COSLA and local authorities, kinship carers and third sector organisations who have contact with kinship carers.

The normal controls of administrative law would apply and ultimately failure to control could result in judicial review. In addition there are general powers of control and enforcement which are conferred on Scottish Ministers in respect of local authorities. These include guidance and direction making powers.

#### **Implementation and delivery plan**

Subject to completing the Parliamentary process, regulations will come into force on 1 April 2016. As previously noted, local authorities are already subject to a political agreement on allowances, which commenced on 1 October 2015. Funding has been allocated to each local authority for this purpose.

### **Post-implementation review**

In the 2014 BRIA, the Scottish Government committed to formally reviewing the Children and Young People (Scotland) Act within 10 years of it coming into force to ensure that it is still fit for purpose.

### **Summary and recommendation**

We recommend option 2 - place a statutory duty on local authorities to pay a financial allowance to eligible kinship carers. Option 1 involves too much uncertainty and risk for kinship carers, with the risk of breakdown of the political agreement. Option 3 would set specific rates for payments. Since no rates are set in statute for payments to looked after children, this option would be creating further inequality where we are trying to provide parity. Option 2 provides a balanced approach which recognises the political agreement which is in place around allowances, provides some security for kinship carers, and is in line with existing arrangements for allowances for looked after children. There is still some risk to kinship carers but this is mitigated by the fact that an allowance must be paid. In addition, the Scottish Government could move from this point to Option 3 if it was required in future.

As noted above, the Scottish Government has already committed to pay the full cost of £6.8m to implement this policy, in order to support kinship carers and children and young people in kinship care.

**Declaration and publication**

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

- Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Aileen Campbell  
Minister for Children and Young People**

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