

## **POLICY NOTE**

### **THE KINSHIP CARE ASSISTANCE (SCOTLAND) ORDER 2016**

#### **SSI 2016/153**

1. The above instrument is made in exercise of the powers conferred by section 71(2) and (5)(b) and 73(3) and (4) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to affirmative procedure.

#### **Policy Objectives**

2. This instrument relates to the duty placed on local authorities by section 71(1) of the 2014 Act. This section provides that a local authority must make arrangements to secure that kinship care assistance is made available to those who apply for, consider applying for, have obtained, or are subject to a kinship care order if the relevant eligibility test is met. In addition, kinship care assistance is to be made available to eligible children who have reached the age of 16, but who were subject to a kinship care order immediately prior to turning 16 years old.

3. The overall policy objective behind this instrument and Part 13 is to ensure that additional support is provided that will assist kinship carers, children and young people in kinship care, to provide safe and stable long-term care for children who might otherwise require or continue to require formal care. This is in recognition of the unique parenting role of kinship carers, the bond between the child and carer and the different expectations in relation to, and circumstances experienced by kinship carers, and the children and young people they care for.

4. Section 71(2) of the 2014 Act enables Scottish Ministers to specify by Order the description of kinship care assistance. Section 71(5)(b) enables Scottish Ministers to specify by Order other descriptions of eligible child. Section 72 provides that a kinship care order is any order made under section 11(1) of the 1995 Act that grants parental rights and responsibilities to a qualifying person or a residence order which has the effect that the child lives with (or is to live with) a qualifying person. Section 73(3) enables Scottish Ministers to make further provision for when or how kinship care assistance is to be made, when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 71(5) and such other matters about the provision of kinship care assistance as the Scottish Minister’s consider appropriate. Section 73(4) enables Scottish Ministers to make provision about the circumstances in which a local authority may provide kinship care assistance subject to conditions.

5. This instrument prescribes:

- The manner in which a local authority shall provide kinship care assistance. This provision links to the wellbeing assessment under Part 18 of the 2014 Act. This ensures the wellbeing of the child is paramount in any actions that are taken.

- The types of kinship care assistance that local authorities must or may provide to each category of eligible person. The different types of kinship care assistance prescribed are: an allowance; financial support towards the cost of an application for a kinship care order; and information and advice. The purpose of an allowance is to ensure that children living in kinship care, often in low-income households, can have similar opportunities to their peers. The purpose of financial support with the cost of an application is to ensure that low-income families can apply for a kinship care order. The purpose of the provision of information and advice is to ensure that all kinship carers and the children and young people that they care for are provided with support throughout the kinship care placement.
- An additional definition of eligible child. This will ensure that children who were previously looked after and who no longer require formal supervision are eligible for kinship care assistance. The intention is to divert some children from being looked after, where it is not appropriate.
- Factors that must be considered in assessing whether a child is at risk of being looked after for the purposes of being an eligible child. This provision links to the wellbeing assessment under Part 18 of the 2014 Act. This ensures the wellbeing of the child is paramount in any actions that are taken.
- That a person must apply to a local authority for kinship care assistance, and the procedure that local authorities must follow when notifying a person who has applied for kinship care assistance. This is to ensure that all parties are clear about what decisions have been taken and why.
- Information that local authorities must publish. This will ensure that eligible persons are aware of local practice and procedure.

## **Consultation**

6. There is no requirement under the 2014 Act to consult on this instrument. However, throughout the development of this instrument we have engaged with key stakeholders including local authorities and third sector organisations providing services for children and families, such as COSLA, Children 1st, Mentor UK, CELCIS and Social Work Scotland.

7. Two informal consultations were conducted on the legislative proposals for this instrument. The first ran for 12 weeks between July and October 2014. A total of 17 written responses were received, just under 100 people attended consultation events and 407 people responded to a consultation survey. 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, and in addition, a small group met to discuss the proposals.

8. These consultations were broadly supportive of our proposals and policy objectives. Respondents highlighted a number of issues and as a result a number of amendments have been made to the drafting of this instrument. In addition, some issues will be addressed in non-statutory guidance which CELCIS have been commissioned to draft.

## **Impact Assessments**

9. An Equality Impact Assessment (EQIA) and a Business and Regulatory Impact Assessment (BRIA) were completed for the Children and Young People (Scotland) Bill prior to its introduction to Parliament.

## **Financial Effects**

10. The BRIA which accompanied the Children and Young People (Scotland) Act 2014 has already covered a portion of what is contained within this Order (in relation to information and advice, and financial assistance towards the cost of applying for a kinship care order). A supplementary BRIA to the 2014 BRIA has been completed, that specifically covers the introduction of statutory allowances for eligible kinship carers, which was not foreseen when the previous BRIA was drafted. The Scottish Government has fully funded the additional cost of allowances.

Scottish Government  
Children and Families Directorate  
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