

# CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 13 – Support for Kinship Care**

##### *Section 71 – Assistance in relation to kinship care orders*

181. Subsections (1) and (2) of section 71 provide that local authorities must make arrangements to ensure that kinship care assistance, which is assistance of such description as specified by the Scottish Ministers by order, is made available to those persons, living in its area, specified in subsection (3). Those persons specified in subsection (3) are: a person applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years; an eligible child who has not attained the age of 16 years who is the subject of a kinship care order; a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists; a child who is 16 years old where, immediately before attaining the age of 16, the child was the subject of a kinship care order and where the child is still eligible; a person who is a guardian by virtue of an appointment under section 7 of the Children (Scotland) Act 1995 of an eligible child who has not attained the age of 16 years (but this is subject to subsection (4) which provides that this does not include a parent who is a guardian of an eligible child), and an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.
182. Subsection (5) defines an “eligible child” as a child who the local authority considers to be at risk of becoming looked after, or who falls within such other description as the Scottish Ministers may by order specify.

##### *Section 72 – Orders which are kinship care orders*

183. A kinship care order is not a new, or separate, form of court order. “Kinship care order” is a label used in the Act to describe certain forms of existing court order granted in certain circumstances. Subsection (1) of section 72 explains that for the purposes of section 71, a “kinship care order” is an order under section 11(1) of the 1995 Act which gives a qualifying person the right to have the child living with that person or to otherwise regulate the child’s residence; a residence order which has the effect of the child living with or predominately living with a qualifying person; or an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.
184. Subsection (2) provides that a “qualifying person” means a person who, at the time the order is made, is related to a child, is a friend or acquaintance of someone related to a child or who has another relationship to, or connection with, a child, as specified by order by the Scottish Ministers. An acquaintance is someone who is known slightly to the relative, where the relationship does not necessarily have the same depth or intimacy as a friendship, for example a neighbour. It will be for the court to decide on a case by case basis whether to grant the orders referred to in section 72(1) in the usual way

for the particular order concerned; it will not be for the court to determine whether the order so granted constitutes a “kinship care order”.

185. Subsection (3) provides that a parent is not a “qualifying person” for the purposes of subsection (1). In subsection (2) where it refers to a person who is related to a child, subsection (4) provides that this includes someone married to or in a civil partnership with a person who is related to the child, or a person who is related to the child by half blood.

***Section 73 – Kinship care assistance: further provision***

186. Subsection (1) of section 73 provides that the kinship care assistance which the Scottish Ministers may specify in an order under section 71(1) includes: the provision of counselling, advice or information about any matter; financial support (or support in kind) of any description; and any service provided by a local authority on a subsidised basis.
187. Subsection (2) provides that the assistance specified by such an order may include assistance which a person was entitled to from, or being provided with by, a local authority, immediately prior to a person becoming entitled to assistance under section 71(1). This allows for a person to continue to receive assistance (which is of a description of assistance specified by Ministers by order under section 71(1)) which they received from a local authority prior to their becoming eligible.
188. Subsection (3) provides that the Scottish Ministers may, by order, make provision about: when or how kinship care assistance is to be provided; when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 71(5) (at risk of becoming looked after or falling within such other description as the Scottish Ministers specify by order); when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 71(5); and such other matters about the provision of kinship care assistance specified in an order under section 71(1) as the Scottish Ministers consider appropriate.
189. Subsection (4) provides that an order under subsection (3)(d) may include provision about circumstances in which a local authority may provide kinship care assistance specified in an order under section 71(2) subject to conditions (including conditions as to payment for the assistance or the repayment of financial support) and consequences of such conditions not being met (including the recovery of any financial support provided).