

Kinship Care Bill

[AS INTRODUCED]

CONTENTS

- 1 Meaning of ‘kinship care’
- 2 Evidence of a kinship care arrangement
- 3 Kinship care allowance
- 4 Kinship care leave
- 5 Extension of pupil premium to children subject to a kinship care arrangement
- 6 Revision of school admissions code
- 7 Extension of virtual school heads to children in kinship care
- 8 Regulations
- 9 Interpretation
- 10 Extent
- 11 Commencement and short title

[AS INTRODUCED]

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B I L L

TO

Provide for a statutory definition of kinship care; to make provision about allowances and parental leave for kinship carers who take on responsibility for children whose parents are unable to care for them; to make provision about education in relation to children who are looked after by a kinship carer; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Meaning of ‘kinship care’

- (1) Kinship care describes an arrangement where a child is raised by a friend, relative or extended family member other than a parent.
- (2) Subsections (3) to (8) set out the arrangements that are recognised as being types of kinship care. 5
- (3) An arrangement where a child is adopted (within the meaning of Chapter 4 of the Adoption and Children Act 2002) by a friend, relative or extended family member (“kinship adoption”).
- (4) An arrangement where—
 - (a) a child is looked after by a local authority (within the meaning of section 22 of the Children Act 1989), and 10
 - (b) a friend, relative or extended family member of that child is approved by the local authority to be a foster carer for that child (“kinship foster care”).
- (5) An arrangement created by a special guardianship order pursuant to section 14A of the Children Act 1989 (“special guardianship”). 15
- (6) An arrangement created by a child arrangements order pursuant to section 8 of the Children Act 1989 where the court orders that a child is to live predominantly with a friend, relative or extended family member of that child (“kinship child arrangement”). 20
- (7) An arrangement where a child is fostered privately (within the meaning of section 66 of the Children Act 1989) by a friend or extended family member (“private fostering arrangement”).

- (8) Any other arrangement where a child is cared for, and provided with accommodation in their own home—
- (a) by a relative of the child, other than—
 - (i) a parent of the child; or
 - (ii) a person who is not a parent of the child but who has parental responsibility for the child; and
 - (b) where the arrangement has lasted, or is intended to last, for at least 28 days
- (“private family arrangement”).

2 Evidence of a kinship care arrangement 10

- (1) The Secretary of State may, by regulations, establish a process by which a person (“P”) may prove to—
- (a) a public body, or
 - (b) P’s employer
- that P has an entitlement under or by virtue of sections 3 or 4, that the school attended by the child P cares for should receive an amount of pupil premium grant by virtue of section 5, or that the child P cares for may benefit from school admissions arrangements put in place by virtue of section 6 or from the duty placed on local authorities by section 7. 15
- (2) P may prove to a public body or to P’s employer that P has an entitlement under or by virtue of sections 3 or 4, that the school attended by the child P cares for should receive an amount of pupil premium grant by virtue of section 5, or that the child P cares for may benefit from school admissions arrangements put in place by virtue of section 6 or from the duty placed on local authorities by section 7 by a means other than the process established by regulations under subsection (1). 20
- (3) Regulations under subsection (1) must provide that the evidence listed in subsection (4) must be taken into account when determining for the purposes of the process established by those regulations whether P is engaged in a kinship care arrangement. 25
- (4) Regulations under subsection (1) must provide that the evidence listed in subsection (4) must be taken into account when determining for the purposes of the process established by those regulations whether P is engaged in a kinship care arrangement. 30
- (4) The evidence that must be taken into account is—
- (a) an adoption order or a Scottish or Northern Irish adoption order;
 - (b) a sealed copy of an interim care order or care order;
 - (c) an agreement between P and a local authority that a child is to be looked after pursuant to section 20 of the Children Act 1989;
 - (d) a sealed copy of a special guardianship order;
 - (e) a sealed copy of a child arrangements order;
 - (f) that P is in receipt of guardian’s allowance in respect of a child;
 - (g) that P is in receipt of child benefit in respect of a child and P is not the parent of that child; 35
 - (h) a statement signed by a registered social worker that P is caring for a child who normally lives with P on an informal basis;
 - (i) any other evidence that the Secretary of State considers relevant. 40

- (5) In this section, “guardian’s allowance” and “child benefit” have the same meanings as in the Social Security Contributions and Benefits Act 1992.

3 Kinship care allowance

- (1) A person is entitled to a kinship care allowance for any week in which that person is engaged in caring for a child under an eligible kinship care arrangement in England. 5
- (2) In this section, “eligible kinship care arrangement” means –
- (a) special guardianship
 - (b) a kinship child arrangement
 - (c) a private fostering arrangement, or 10
 - (d) a private family arrangement
- within the meaning given by section 1.
- (3) A person is not entitled to an allowance under this section unless that person satisfies conditions as to residence or presence in England prescribed in regulations made by the Secretary of State. 15
- (4) A person may claim an allowance under this section in respect of more than one child.
- (5) Where, apart from this subsection, two or more persons would be entitled for the same week to such an allowance in respect of the same child, one of them only is entitled, and the person so entitled is – 20
- (a) the person jointly elected by those two for that purpose, or
 - (b) in default of such an election, the person determined by, and at the discretion of, the Secretary of State.
- (6) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a child under an eligible kinship care arrangement. 25
- (7) An allowance under this section is payable at the weekly rate specified by the Secretary of State in regulations.
- (8) Regulations under subsection 7 may specify – 30
- (a) different weekly rates for different ages of children being cared for, and
 - (b) different weekly rates for different regions of England.
- (9) Regulations under subsection 7 must specify a weekly rate that is no lower than the minimum weekly allowance for foster carers published by the Secretary of State pursuant to section 23 of the Care Standards Act 2000. 35

4 Kinship care leave

- (1) The Employment Rights Act 1996 is amended as follows.

- (2) After section 80EE insert –

“CHAPTER 5

KINSHIP CARE LEAVE

80EF Kinship care leave

- | | | |
|-----|--|----|
| (1) | The Secretary of State must make regulations entitling an employee to be absent from work on leave under this section if the employee satisfies conditions specified in the regulations as to an eligible kinship care arrangement with a child. | 5 |
| (2) | The regulations must include provision for determining – | |
| | (a) the extent of an employee’s entitlement to leave under this section in respect of a child; | 10 |
| | (b) when leave under this section may be taken. | |
| (3) | Provision under subsection (2)(a) must secure that – | |
| | (a) where only one employee is entitled to leave under this section in respect of a given child, the employee is entitled to at least 52 weeks’ leave; | 15 |
| | (b) where more than one employee is entitled to leave under this section in respect of the same child, those employees are entitled to share at least 52 weeks’ leave between them. | |
| (4) | An employee is entitled to leave under this section only if the eligible kinship care arrangement is intended to last – | 20 |
| | (a) at least one year, and | |
| | (b) until the child being cared for attains the age of 18. | |
| (5) | For the purposes of this Chapter, “eligible kinship care arrangement” means – | 25 |
| | (a) special guardianship, | |
| | (b) a kinship child arrangement, | |
| | (c) a private fostering arrangement, or | |
| | (d) a private family arrangement | |
| | within the meaning given by section 1 of the Kinship Care Act 2023. | 30 |
| (6) | The regulations may make provision about how leave under this section is to be taken. | |
| (7) | In this section – | |
| | (a) “special guardianship”, “kinship child arrangement”, “private fostering arrangement” and “private family arrangement” have the same meanings as in section 1 of the Kinship Care Act 2022. | 35 |
| | (b) “week” means any period of seven days. | |

80EG Rights during and after kinship care leave

- (1) Regulations under section 80EF must provide—
 - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied but for the absence, 5
 - (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and 10
 - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80EH.
- (2) The reference in subsection (1)(c) to absence on leave under section 80EF includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
 - (a) maternity leave,
 - (b) paternity leave 20
 - (c) adoption leave
 - (d) shared parental leave
 - (e) parental leave
 - (f) parental bereavement leave.
- (3) In subsection (1)(a), “terms and conditions of employment”— 25
 - (a) includes matters connected with an employee’s employment whether or not they arise under the contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (4) Regulations under section 80EF may specify matters which are, or are not, to be treated as remuneration for the purposes of this section. 30
- (5) Regulations under section 80EF may make provision, in relation to the right to return mentioned in subsection (1)(c), about—
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return. 35

80EH Special cases

- (1) Regulations under section 80EF may make provision about—
 - (a) redundancy during or after a period of leave under that section, or
 - (b) dismissal (other than by reason of redundancy) during a period of leave under that section. 40
- (2) Provision by virtue of subsection (1) may include—

- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

5

80EI Chapter 5: supplemental

- (1) Regulations under section 80EF may—
 - (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers; 10
 - (b) make provision requiring employers or employees to keep records;
 - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements; 15
 - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
 - (e) make special provision for cases where an employee has a right which corresponds to a right under section 80EF and which arises under the person’s contract of employment or otherwise; 20
 - (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week’s pay) in relation to an employee who is or has been absent from work on leave under section 80EF;
 - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80EF; 25
 - (h) make different provision for different cases or circumstances;
 - (i) make consequential provision.
- (2) The cases or circumstances mentioned in subsection (1)(h) include— 30
 - (a) more than one child being subject to the same eligible kinship care arrangement, and
 - (b) a child being subject to an eligible kinship care arrangement on two or more separate occasions,
 and regulations may, in particular, make special provision regarding the applicability and extent of the entitlement to leave in such circumstances.” 35
- (3) The Secretary of State may by regulations make provision for some or all of a period of kinship care leave to be paid.

5 Extension of pupil premium to children subject to a kinship care arrangement 40

- (1) The Secretary of State must, for the financial year beginning 1 April 2023 and for each year thereafter, provide that an amount is payable from the pupil

premium grant to schools and local authorities in respect of each registered pupil in England who is subject to an eligible kinship care arrangement.

- (2) The amount payable under subsection (1) must be equal to the amount that is payable for a pupil who is a looked after child.

- (3) In this section – 5

“eligible kinship care arrangement” means –

- (a) kinship adoption,
- (b) special guardianship,
- (c) a kinship child arrangement,
- (d) a private fostering arrangement, or 10
- (e) a private family arrangement

within the meaning given by section 1.

“looked after child” has the same meaning as in the Children Act 1989;

“pupil premium grant” means the grant of that name paid to a school or a local authority by the Secretary of State under section 14 of the Education Act 2002 (power of Secretary of State and Senedd Cymru to give financial assistance for purposes related to education or children etc).” 15

6 Revision of school admissions code

- (1) For section 88B of the School Standards and Framework Act 1998 (Admission arrangements relating to children looked after by local authority) substitute – 20

“88B Admissions arrangements relating to looked after children and children in kinship care

- (1) Regulations may require the admission authorities for maintained schools in England to include in their admission arrangements such provision relating to the admission of children who are – 25
- (a) looked after by a local authority in England, or
 - (b) cared for under a kinship care arrangement
- as may be prescribed.

- (2) Regulations under subsection (1) may in particular include provision for securing that, subject to sections 86(3), 86B(2) and (4) and 87, such children are to be offered admission in preference to other children. 30

- (3) In this section, “kinship care arrangement” means –

- (a) kinship adoption
- (b) special guardianship 35
- (c) a kinship child arrangement
- (d) a private fostering arrangement, or
- (e) a private family arrangement

within the meaning given by section 1 of the Kinship Care Act 2023.”

- (2) Within 12 months of the passage of this Act, the Secretary of State must take the steps prescribed by section 85 of the School Standards and Framework 40

Act 1988 with a view to the revision of the code for school admissions issued under section 84 of that Act (Code for school admissions).

7 Extension of virtual school heads to children in kinship care

- (1) A local authority in England has a duty to promote the educational attainment of a child being cared for under a kinship care arrangement (see section 1). 5
- (2) A local authority must appoint at least one person for the purpose of discharging the duty imposed by subsection (1).
- (3) A person appointed by a local authority under subsection (2) must be an officer employed by that authority or another local authority.
- (4) A person appointed by a local authority under subsection (2) may be the same person as that appointed under section 22(3B) of the Children Act 1989. 10

8 Regulations

Regulations under this Act—

- (a) are to be made by statutory instrument;
- (b) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament. 15

9 Interpretation

In this Act—

- “child” means a person under the age of 18;
- “extended family member”, in relation to a child, means a person related by full blood, half blood or by marriage or civil partnership, but who is not— 20
- (a) a parent, or
 - (b) a relative;
- “friend” includes— 25
- (a) a person known closely by the child, their parent(s) or their relative(s), but who is not a parent, relative or extended family member of the child;
 - (b) any stepparent, with or without parental responsibility for the child, who is not in a subsisting relationship with the birth parent; 30
 - (c) a person who was formerly in a cohabiting relationship with the child’s parent, whose relationship with the child was that of a child of the family;
 - (d) a person who formerly had a prior connection to the child in a professional or voluntary capacity, such as a teacher, youth worker or childminder. 35
- “parent” means—
- (a) any birth parent, with or without parental responsibility for the child; 40

- (b) any stepparent, with or without parental responsibility for the child, who is in a subsisting relationship with the birth parent;
 - (c) any adoptive parent who prior to the making of the adoption order in respect of the child was not—
 - (i) a relative or extended family member as defined in this Act, or
 - (ii) a friend;
 - (d) any parent by virtue of section 42 or section 43 of the Human Fertilisation and Embryology Act 2008, whether or not they have parental responsibility for the child.
- “relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership).

10 Extent

- (1) Subject to the following provisions, this Act extends to England and Wales and Scotland but not to Northern Ireland.
- (2) An amendment or repeal made by this Act has the same extent as the provision to which it relates.
- (3) Sections 3, 5 and 7 extend to England and Wales only.

11 Commencement and short title

- (1) Sections 1 to 7 come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint; and different days may be appointed for different purposes.
- (2) Sections 8, 9 and 10 and this section come into force on the day on which this Act is passed.
- (3) This Act may be cited as the Kinship Care Act 2023.

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