



# Kinship Care

Advice service for Scotland



## Understanding Legal Orders

Often the use of legal terminology can be confusing and inappropriately formal when we are talking about the care of our children. Because each child and kinship carer's circumstances are unique, it is important that the correct legal Order is put in place to make sure that our child is safe and kinship carers properly supported.

This leaflet explains some of the Orders put in place when children cannot live with their birth parents and provides an overview of what each of these entails.

### General principles

Children should be brought up and cared for by their parents without intervention from the State. Where it is decided that this cannot happen, a child should be placed with kinship carers wherever appropriate and possible. There are a number of legal mechanisms designed to support a child living with their kinship carers.

Orders can be made only where it is necessary and even then, only the minimum intervention into people's lives is allowed.

### Legal Orders

There are a number of legal Orders which can secure a child's accommodation away from home. Some Orders are put in place by a Children's Hearing, others by the Courts.

### Court Orders

#### Under the Children (Scotland) Act 1995

#### Kinship Care Order (KCO) Section 11

Kinship carers are those who are related to the child or have known the child and with whom the child has a pre-existing relationship. They are distinct from, for example, a foster carer or someone not

otherwise known to the child or family. Under a KCO, the Court can grant some or all Parental Rights and Responsibilities-(PRRs)- to kinship carers. PRRs are held by the child's birth mother and sometimes the birth father. The important point is that, under a KCO, the PRRs are not completely removed from the parents; they are shared with the kinship carers.

---

“ There are a number of legal mechanisms designed to support a child living with their kinship carers.

Orders can be made only where it is necessary and even then, only the minimum intervention into people's lives is allowed.”

---

Sometimes the Local authority will contribute to the legal costs involved in applying for the KCO; they may also meet some or all of any subsequent legal costs. This varies across the 32 Scottish local authorities so it is important that kinship carers know from the outset what financial and other support they can expect from their local authority. Kinship carers may be eligible for financial assistance for their application via the the Scottish Legal Aid Board

(SLAB) (You can contact the Kinship Care Advice Service for Scotland helpline for more information). Therefore, it is a good idea to ask to see the local authority's Kinship Care Policy so that you can find out about this in advance and to have in writing the local authority's commitment to the costs of any legal proceedings.

Before deciding to apply for a KCO, do contact the local authority to see whether or not they are supportive of the application.

A KCO can really only work effectively, where there is acceptance by the parents of the kinship carers' right to make decisions about the child and the parents and kinship carers can work together. Otherwise, where there is disagreement among the adults, a Sheriff may need to make a decision to resolve it. This can be costly and cause anxiety.

In the absence of agreement between the birth parents and kinship carers about the ongoing care of the child, the local authority may consider applying for a Permanence Order so that appropriate planning for the child can take place.

## Court Orders Under the Adoption and Children (Scotland) Act 2007

### Adoption Order (AO)

Prospective adopters- and this includes kinship carers- can petition the Court to adopt the child. This will be done by direct petition to the Court and the kinship carers will instruct their own solicitor to act on their behalf. Often the local authority will meet some or all the legal costs and this should be clarified at the outset. Those who hold PRRs must consent to the adoption or the Court may dispense with the necessity for consent. This will be where the parent is dead, cannot be found, is incapable of consenting or

cannot in the Court's opinion satisfactorily discharge their PRRs and are likely to continue to be unable to do so. The Court may dispense with the consent where the child's welfare otherwise requires it.

The child must give consent to the adoption if they are aged 12 or over. The child would need to be considered incapable of giving consent for the adoption otherwise to be granted. Once the adoption order is granted, the child will be as though born into the adoptive family and the child's birth certificate will be changed to reflect this. The Court may decide that the child should have direct or indirect contact with the birth parents or siblings.

### Permanence Order (PO)

Only a local authority can apply to the Court for this. Before the Court will grant a PO they need to be convinced that nothing other than a PO would be sufficient and evidence that to live with the parent, is or is likely to cause significant harm to the welfare of the child. Under the PO, PRRs will be removed from the parents, although they may maintain contact with the child, as may any siblings. The local authority has the right to decide where the child will live and to make important decisions about the child's life. There will be ancillary provisions attached to the PO which are tailored to the circumstances of each child. Sometimes the local authority will have these rights and delegate them to the kinship carers and other times they will be granted to the kinship carers by the Court. Typically, ancillary provisions will deal with who receives school report cards, who decides what school the child attends, who signs medical consent forms, decides if the child can go abroad, have sleepovers, have their ears pierced etc.

The child must give consent to the PO being granted if they are aged 12 or over. The child would need to be considered incapable of giving consent for the PO otherwise to be granted.

---

**“Once the adoption order is granted, the child will be as though born into the adoptive family and the child's birth certificate will be changed to reflect this.”**

---





### Permanence Order with Authority to Adopt (POA)

This is the same as a Permanence Order but with the additional provision of granting authority to adopt. This means that the issue of parental consent to the adoption will be dealt with and once the POA is granted, the child may be adopted. Criteria for the dispensing with the consent of those who have PRRs are the same as for the direct petition adoption. Those wishing to adopt the child would petition the Court after the POA is granted. This means that a good deal of the contentious aspects of adoption have already been decided by the Court on the application of the local authority so that the petition stage is much more straightforward.

## Children's Hearings

### Under the Children's Hearing Scotland (Act) 2011

#### Compulsory Supervision Order (CSO)

This will be put in place by a Children's Hearing which will have met and discussed the family circumstances with the child, relevant persons (parents and in some cases, carers) and professionals. This can only be done once Grounds for Referral (reasons for concern) have been accepted by the child and relevant persons or established as true by a sheriff. The Order can last for a maximum of one year without being reviewed by the Hearing. The local authority can ask for a review at any time and the child or relevant person can ask for it to be reviewed after 3 months of it having been made.

The local authority must implement the Order according to its terms. Measures can be attached

to the Order, determining for example, where the child resides or what contact arrangements should be made. The Order relates to the child and to the local authority and cannot oblige a parent to act in any way, for example, to stop drinking or to cooperate with the local authority plan. This Order will be made only where voluntary measures have been considered inadequate or inappropriate. While Parental Rights and Responsibilities (PRRs) remain with the parents, this Order legitimately interferes with the exercise of these.

A child whose ultimate plan is to live with kinship carers for the rest of their childhood or to be permanently fostered or adopted will often be subject to a CSO at the initial stages of the process. This can secure their residence away from home while longer term plans are made, for example, to allow the kinship carers to apply to the Court to obtain PRRs.

The Order can be appealed as well as reviewed and Hearings can make a range of decisions including returning the child to the care of the parent. This makes it a less secure means of putting in place settled arrangements for the child and is not seen as an appropriate mechanism for securing long term plans.

---

**“A child whose ultimate plan is to live with kinship carers for the rest of their childhood or to be permanently fostered or adopted will often be subject to a Compulsory Supervision Order. This can secure their residence away from home while longer term plans are made, for example, to allow the kinship carers to apply to the Court to obtain Parental Rights and Responsibilities.”**

---

#### Interim Compulsory Supervision Order (ICSO)

This Order is similar to a CSO in that it can suspend the exercise of the parents' PRRs so that Children's Hearings can for example, determine where a child should stay. As the name suggests, this is a short-term measure, often in place while Grounds for Referral are being considered at Court or until the local authority is in a position to make a longer-term plan and recommendation. An ICSO normally lasts

for a maximum of 22 days and can be renewed by Hearings, but after 66 days, a Court would need to consider the need for its continuation.

A child may be placed with kinship or foster carers under this Order on an emergency basis.

### Child Protection Order (CPO)

While anyone may apply for a CPO, it is almost always the local authority who will apply to a sheriff for a CPO where there is urgency and they believe the child is or is likely to suffer significant harm. The CPO can authorise that the child be “produced”, removed to a place of safety, not removed from a place, e.g. a hospital or for an assessment to be carried out. A CPO can last for only a few days until a Children’s Hearing is arranged to make a longer-term decision. The local authority will always first consider placing a child with kinship carers under this emergency Order. If it is an appropriate placement, this will help to minimise any alarm and confusion for the child.

### Emergency Protection Order (EPO)

In very rare situations, the Police will apply for an EPO to secure the immediate safety of a child. This Order can last for only 24 hours. If a child still needs protection or support to keep them staying where they are, then the Local authority may apply for a CPO immediately thereafter.

## No Order Under the Children (Scotland) Act 1995

### Reception into Care Section 25

Where a parent has consented to the child’s reception into care, or where the parent cannot be found or is unable to give consent, the child can be received into care without an Order being issued. The parent can seek the return of the child to their care at any time, thus reducing the security that this arrangement offers. However, where the child has been accommodated by the local authority for more than 6 months, the parent has to give notice that they wish the child returned to them. If the child is already placed for adoption, the Court can consider whether or not such a change is reasonable. The local authority could, during the fortnight notice period apply for a CPO to prevent the child’s return to the parents’ care, but they would need first to evidence that a CPO is necessary.

This provides a brief explanation of some of the legal orders which kinship carers may come across. It is so important to bear in mind that the specific circumstances of the child and family will determine which if any Order is needed. These Orders are designed to provide a child with the safety, security and stability that is their right, while recognising and respecting the rights and responsibilities of the significant adults in the child’s life.

*Rhona Pollock Legal Consultant for KCASS*



### GET IN TOUCH

Call our helpline: 0808 800 0006 (freephone)  
Lines open 10am-2.30pm, Mon to Fri

Visit our website at: [www.kinship.scot](http://www.kinship.scot)

Email: [kinship@adoptionuk.org.uk](mailto:kinship@adoptionuk.org.uk)

 [kinshipcarecas](https://www.facebook.com/kinshipcarecas)

 [@kinshipscotland](https://twitter.com/kinshipscotland)

### FOR ADDITIONAL INFORMATION

[www.clanchildlaw.org](http://www.clanchildlaw.org)

<https://sclc.org.uk/>

