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Consultation

Law Commission Kinship Care: consultation response

21 October 2026

Chapter 10

1.0 Question 1. 10.1 We provisionally propose to adopt the definition of kinship care contained in section 22I of the Children Act 1989 (and set out at paragraph 3.48 of this consultation paper) for the purposes of our proposed kinship care order and kinship parental responsibility agreements. Do consultees agree? Paragraph 3.73 Consultation

1.1 Yes

2.0 Question 2. 10.2 We ask for consultees' views on whether a child in a kinship care arrangement in England and Wales, as defined in this consultation paper, should automatically come within the category of a "child in need". Paragraph 3.88 Consultation

2.1 No – potentially intrusive and unnecessary. Rather than every child in kinship care becoming a child in need, every family that meets the statutory definition of kinship care becomes eligible for statutory assessment of needs and a support plan. This should be offered rather than requested, with an option for children and families to opt out. This differentiates from the current duty to carry out an assessment and discretion to provide support, contrary to our suggestion that it is a statutory requirement to carry out an assessment and offer support. Child in need status per se does not create a pathway to a more secure status and could potentially defer away from a tailored assessments based on the child's needs and family circumstances.

2.2 Cross-refer with Working Together statutory guidance, which considers how a family-first approach could ensure that kinship families receive holistic, continuous support based on their needs and circumstances.

2.3 At a membership event, in response to this question, 12% of attendees thought that all children living in kinship arrangements should be considered 'children in need', 51% thought they should in specific circumstances, 26% thought that they should not and 11% were unsure or needed more information.

3.0 Question 3. 10.3 We provisionally propose that it should be possible for a court to make an interim special guardianship order where special guardianship has been

raised in the course of public law care proceedings. Do consultees agree? Paragraph 4.84 Consultation

3.1 We recognise the potential value of introducing interim special guardianship orders (ISGOs), particularly where special guardianship is being considered during care proceedings. However, we have concerns about how such orders would operate in practice, particularly alongside interim care orders (ICOs), and whether they would adequately reflect the different needs and circumstances of kinship families, without further clarity about assessment required and therefore timing of when one would most appropriately be used.

3.2 A central concern is the potential conflict between the exercise of parental responsibility under an ISGO and an ICO. Under the current legal framework, a special guardianship order brings a care order to an end, reflecting the transfer of primary decision-making responsibility to the special guardian. By contrast, an ICO enables the local authority to exercise parental responsibility and take responsibility for the child's care and placement. Allowing both orders to coexist could create uncertainty about decision-making and accountability, potentially leaving local authorities responsible for a child's care without sufficient control over the placement arrangements. Care must also be taken to avoid excessive judicial involvement in day-to-day care planning. There are also important practical and relational considerations. Granting kinship carers parental responsibility at an early stage of proceedings may be premature, particularly where assessments remain incomplete or family relationships are complex as this risks adding further tension to navigate potentially contributing to additional complexity not achieving simplification

3.3 An ISGO may have particular value where a kinship arrangement has been identified as suitable following an agreed level of assessment but a period of further assessment or observation is needed before a final order is made. However, this should not become a routine mechanism for extending proceedings or delaying permanence.

3.4 Importantly, it is a fundamental consequence of a care order that the local authority receives the child into its care and acquires parental responsibility for the child, with the power to determine the extent to which others may exercise their parental responsibility.

3.5 Munby J in Re A (A Child) [2009] EWHC 865 (Fam):

> *"It is a cardinal principle of the **Children Act 1989** (the 1989 Act) that once a care order has been made, whether interim or final, it is for the local authority, and not the court, to decide how to meet its parental responsibilities for the child. The decision-making power as to the care, residence and general welfare of the child is vested in the local authority, not in the court."*

3.6 If an interim order conferring parental responsibility is made alongside a care order, whether an interim Special Guardianship Order or an interim Kinship Care Order, it is essential that such an order does not cut across the local authority's statutory powers and duties under a care order. In particular, it should be made explicit that the making of an interim SGO or KCO does not determine where the child is to live. The decision as to the child's placement remains one for the local authority in the exercise of its parental responsibility and care-planning functions.

3.7 Nor do we support a model whereby the court is required to allocate or delineate the exercise of parental responsibility between kinship carers, parents and the local authority. Such an approach

would represent a significant departure from the statutory scheme established by section 33 of the Children Act 1989. It would also be impractical in the context of interim proceedings, requiring the court to engage in matters of care planning that are properly the responsibility of the local authority. There is a further risk that interim hearings would become exercises in negotiating the distribution of parental responsibility between parties, rather than focusing on the child's welfare and immediate needs.

3.8 One of the principal purposes of the proposed Kinship Care Order, and any interim equivalent, is to facilitate placement with kinship carers without the need for their approval as foster carers under Regulation 24 Care Planning, Placement and Case Review (England) Regulations 2010 and the Fostering Services (England) Regulations 2011. Where an interim order confers parental responsibility on a kinship carer, the local authority would be able to place the child (as a child in their care) with that carer under Part 4, Chapter 1 of the Care Planning etc Regulations 2010 as a placement with a parent or person holding parental responsibility, rather than as a placement with foster carers. See Q70 for further information about care planning and assessment realities of public law proceedings.

4.0 Question 4. 10.4 We ask for consultees' views on whether, and if so how, the existing requirements for the special guardianship assessment set out in the Schedules to the Special Guardianship Regulations in England and Wales respectively, should be modified to address the specific nature of a kinship special guardian. Paragraph 4.90 226 Consultation

4.1 See below response to question 47.

4.2 As a minimum, we consider a holistic and proportionate assessment similar to CoramBAAF's Form K should be utilised, which for example currently covers:

- Child's wishes and feelings
- Meaning of pre-existing relationship between child and prospective carer
- Summary of parental information
- Childhood
- Adulthood and caring for children
- Adult relationships
- Education and employment
- Health and lifestyle
- Capacity to meet the child's needs including safeguarding
- Family relationships including parental involvement and family time/contact
- Financial situation
- Housing
- Household and work commitments
- Support network
- Checks and references
- Assessment of support needs

4.3 “When a kinship carer is formally assessed, the assessment process will be reasonable, proportionate and treat family members with trust, whilst prioritising the safety of the child. Assessments for kinship carers will continue to prioritise keeping children safe. Children’s social care practitioners will establish a trusting, supportive relationship with kinship carers to enable this. Carers will not have to jump through multiple, unnecessary assessments and explain their situation to numerous practitioners. The focus of the process will be whether this person can provide a safe, stable and loving environment for the child.” National Kinship Strategy 2023

4.4 CoramBAAF are happy to collaborate to look at updating Form K to ensure it is suitable and legally compliant following any legislative amendments introduced to the SGO schedule including kinship foster care approval, which can continue to be flexible enough to adapt to the private law and public law contexts. Form K is currently suitable for use in private and public law proceedings, as well as for SGO and kinship foster care assessments, and to make recommendations for child arrangements order even though no specified form or assessment is currently legally required.

5.0 Question 5. 10.5 We provisionally propose that when making a special guardianship order: (1) the court should be required to consider the potential for the reunification of the child to the parents’ care; and (2) the default should remain for the order to be made for the duration of the child’s minority. Do consultees agree? Paragraph 4.104

5.1 No, it should not be a requirement because the court should be considering reunification at any point in order to inform the care plan. Consideration of reunification does not automatically mean a short order or in-built reviews are required by default.

5.2 Requiring courts routinely to consider reunification when making a special guardianship order risks undermining the order’s purpose as a permanence arrangement. There should be a clear distinction between reunification to parental care and maintaining or developing family relationships, including family time/contact. If a return to parental care is a realistic prospect in the near future, a care order may be more appropriate, with the local authority responsible for planning and supporting that process. Parents should have clearer routes to reassessment and to seeking changes in family time/contact without placing an unreasonable and unnecessary burden on special guardians. Any consideration of future change should be specific about the circumstances that would justify review, while preserving stability for the child. We agree that the ordinary duration of a special guardianship order should remain until the child reaches 18, however we would have welcomed consideration of maintaining legal relationship post-18.

5.3 We acknowledge the tensions – kinship care should be a journey not a destination – we think the unintended consequence of any additional requirement to consider potential for reunification and automatic review may be emotional and psychological instability for both children and kinship carers. See Q70.

6.0 Question 6. 10.6 We ask for consultees’ views on when a court makes a special guardianship order: (1) if the default duration (until the child reaches 18) remains, it should be possible for the court to attach a review date; and (2) if a review is included,

whether this should be after a defined period of time, or when certain conditions are met. Paragraph 4.105 Consultation

6.1 As above.

6.2 We have reservations about attaching routine review dates to special guardianship orders, given their purpose as permanence orders. Any review mechanism should distinguish between reviewing support and family time/contact arrangements and reviewing the legal order itself. Consideration could instead be given to clearer processes for parents seeking changes, including appropriate notice, clarity of responsibility around assessments and support for parents to achieve and evidence change, review of the special guardianship support plan and access to mediation or family group decision-making where suitable. Any requirements must take account of existing permission and MIAM rules and the need to avoid unnecessary litigation.

7.0 Question 7. 10.7 We provisionally propose that the UK Government consider revising the guidance on special guardianship support plans to emphasise the importance for local authorities to consider what support is needed to ensure contact between a child in kinship care under a special guardianship order, and their parents. Do consultees agree? Paragraph 4.122 227 Consultation

7.1 Yes, but the guidance should address support for family time/contact with siblings and other people important to the child, not only parents. The approach should be consistent with the wider principles governing family relationships and family time/contact, including section 34 of the Children Act 1989 where applicable.

8.0 Question 8. 10.8 We provisionally propose that the court should, when making a special guardianship order, be required to consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, requiring any person other than the special guardian to obtain permission before being able to apply for any order under section 8 of the Children Act 1989. Do consultees agree? Paragraph 4.125 Consultation

8.1 No – see re P (A Minor) (Residence Order: Child's Welfare) [1999] 3 WLR 1164

8.2 No. An order under section 91(14) of the Children Act 1989 is a significant restriction on the ability to make applications, 'should be used sparingly' and should be considered on the facts of the individual case, rather than through a specific requirement linked to the making of an SGO. The court already has the power to make such an order where the statutory test is met. See section 91A of the Children Act 1989.

9.0 Question 9. 10.9 We provisionally propose that a local authority should be under a duty to investigate whether the child has any family members abroad who may be

suitable prospective special guardians. Do consultees agree? Paragraph 4.135 Consultation

9.1 Yes, but the duty should not be confined to prospective special guardians. Suitable family members abroad should be considered as part of assessing the full range of options, including fostering and adoption where appropriate. The child's welfare must remain central, with robust assessments of existing relationships, identity, practical arrangements, safeguarding and support. An overseas placement should not be presumed beneficial solely because of a perceived connection with the child's cultural heritage or family origins. The assessment should also consider the child's relationships in the UK and how these will be maintained.

10.0 Question 10. 10.10 We provisionally propose that where a child is living with a kinship carer as defined in section 22I of the Children Act 1989 (but where the child has not been living with the kinship carer for at least one year immediately before the application, such that section 10(5B) of the Children Act 1989 is not satisfied), the kinship carer be eligible to apply for a child arrangements order without first requiring permission from the court to do so. Do consultees agree? Paragraph 5.57 228 Consultation

10.1 Yes. This would allow a kinship carer to seek parental responsibility through a child arrangements order without waiting for the one-year residence requirement, subject to the court's assessment of the child's welfare.

11.0 Question 11. 10.11 We provisionally propose that when making a "live with" child arrangements order in favour of a kinship carer, the court should be required to consider the potential for reunification of the child with their parents when deciding on the duration of the order. Do consultees agree? Paragraph 5.58 Consultation

11.1 No. We question why this requirement would apply only to child arrangements orders in favour of kinship carers. Any consideration of reunification and the duration of an order should reflect the child's individual circumstances and the purpose of the order. Fixed-term arrangements may create uncertainty, particularly where parents and carers face practical and financial barriers to returning to court.

11.2 Could this unintentionally lead to reduction of use of CAO with parents consenting to CAO in the hope it will not lead to an SGO? It risks building unintended consequence of nobody having overriding PR, and parents interfering as equal partners with schools etc.

11.3 Ideas around reunification and orders for a fixed duration of time, is built on the premise that families will return and re-engage with the court process. This is not often the lived and practical reality of parents and carers where there may be real financial and other barriers to accessing justice.

12.0 Question 12. 10.12 We provisionally propose that the court should, when making a "live with" child arrangements order in favour of a kinship carer, be required to consider whether the best interests of the child require an order to be made under

section 91(14) of the Children Act 1989, requiring any person other than the kinship carer to obtain permission before being able to apply for any order under section 8 of the Children Act 1989 (a child arrangements order, prohibited steps order, or specific issue order). Do consultees agree? Paragraph 5.59 Consultation

12.1 No, it's a significant interference with statutory rights. An order under section 91(14) should be made only where justified by the individual circumstances. We question why an additional requirement to consider such an order would apply specifically to kinship carers. Even if s91(14) was appropriate, why only for kinship carers?

13.0 Question 13. 10.13 We ask consultees who are, or have been, kinship carers holding a "live with" child arrangements order: (1) to share their experience on whether when making the order, the court also imposed a requirement on the parents of the child to obtain permission before making any future application; and (2) if no requirement for permission was made, to share their views on whether they think it would have been helpful for such a requirement to have been included. Paragraph 5.60 229 Consultation

13.1 N/A

14.0 Question 14. 10.14 We ask for consultees' views on whether in all applications for a child arrangements "live with" order where the applicant is (or will be) a kinship carer, a welfare report under section 7 of the Children Act 1989 should form a mandatory part of the Child Impact Report. Paragraph 5.78 Consultation

14.1 No. A mandatory section 7 report in every application would risk unnecessary intrusion and delay, particularly given pressures on local authorities and Cafcass. The need for a report should be determined by the facts of the case.

14.2 When determining whether a section 7 report is needed, a decision should also be made as to whether an assessment of support need is required (e.g. Form K support plan which is currently not mandated by statute but should be in our view).

14.3 We agree for the need for distinction between parents and non-parents but not for non-parents kinship carer and any other person who is not a parent (e.g. unmarried step parent, friend, relative, private foster carer who wants PR etc unless they all come under definition of kinship carer).

15.0 Question 15. 10.15 We ask for consultees' views on whether when considering a section 8 order application by a kinship carer there are any factors which a Child Impact Report, or a welfare report under section 7 of the Children Act 1989 (if mandatory) should be required to investigate, which are not already contained within



the section 1(3) of the Children Act 1989 welfare checklist. Paragraph 5.79 Consultation

15.1 We do not identify any additional factors specific to kinship care that require amendment to the welfare checklist in section 1(3) of the ***Children Act 1989***. If gaps are identified, consideration should be given to amendments applicable to all children.

16.0 Question 16. 10.16 The current fostering regulations in England apply equally to prospective kinship foster carers and unrelated foster carers. In relation to assessment criteria, review and visits procedures, and other post-approval requirements, we ask consultees for their views on: (1) whether there is merit in introducing regulations that are adapted specifically to kinship foster care, as distinct from unrelated foster care; and (2) if so, what adaptations would be appropriate? Paragraph 6.53 Consultation

16.1 There may be merit in adapting aspects of the fostering framework to reflect kinship carers' existing family relationships and the needs of the particular child and that particular carer, including managing family time/contact and wider family dynamics. However, the essential safeguarding and fostering functions including to support and supervision should remain recognisable and equivalent. Flexibility is important: for example, in interpreting fostering standards, in approval and reviews, in delegating authority, and in undertaking the statutory supervision and support role, avoiding unnecessary duplication, acknowledging the complexity and uniqueness of family relationships and these needing to endure outside of local authority spaces.

16.2 Detailed practice arrangements may be better addressed in statutory guidance than through overly prescriptive regulations. Reform should also avoid creating a lower-status or less-supported category of kinship foster carer; it should be tailored but not so different that the task is being made unrecognisable as a fostering task. Ensuring it is sufficiently flexible, whilst maintaining it is the same task.

16.3 In reality, often Reg 24 is utilised to place a child in an emergency while completing the kinship assessment. If fostering regs could be made bespoke to kinship care, given their approval is bespoke to a specific child, it could remove them from an unconnected parallel process by putting them into a parallel process that is at least specific to their role and relationship, and designed with them in mind. However, there is a potential for this to result in disparities in how kinship foster carers are regarded.

17.0 Question 17. 10.17 We provisionally propose that local authorities should be required to use a prescribed kinship foster care assessment form when assessing kinship foster carers. Do consultees agree? Paragraph 6.57 230 Consultation -

17.1 No. The regulations already prescribe the information to be considered in an assessment. A mandatory form may be too inflexible for different family circumstances and local structures and could create an additional or duplicate assessment process when other orders may also be being considered. The focus should be on a holistic, needs-based assessment that informs care planning, rather than multiple parallel assessments meeting multiple regulatory requirements (fostering regs or SGO schedule)

17.2 Regulations set out what information needs to be included, and therefore why is there need for a prescribed form as no other assessment form is mandated by regulations.

17.3 A prescribed kinship foster carer assessment would risk needing to be fairly basic in relation to the obligatory aspects. The schedules already create a basic template of what should be mandatory. You risk unintentionally creating a dual process – requiring a specific assessment form for kinship foster carers and an additional assessment for other types of orders such as SGO.

17.4 The focus should be on the need for a holistic needs-based process, as achieved by CoramBAAF's Form K, moving away from the requirement to have multiple assessments carried out.

17.5 The kinship care assessment should inform care planning for the child and not the other way around. It is essential to avoid an unintended consequence where a kinship carer could be assessed separately as a kinship foster carer then require a later assessment to become a special guardian for example.

18.0 Question 18. 10.18 We provisionally propose that the statutory requirement for visits and reviews in England should be varied as follows: (1) local authority visits to children in kinship foster care placements should be conducted at least every 6 months, rather than every 3 months; and (2) subsequent local authority reviews of children in kinship foster care placements should be conducted at least every 12 months, rather than every 6 months. Do consultees agree? Paragraph 6.60 Consultation

18.1 The frequency of visits and reviews should reflect the child's needs, the stability of the kinship arrangement and the family's circumstances. Kinship care does not necessarily require less oversight. Any reduction should be considered and agreed through the review process rather than imposed unilaterally, with provision for more frequent visits where necessary.

18.2 Reduction in visits could be linked to the placement becoming a type of longer foster placement, therefore resulting in a reduction in visits.

18.3 Change of frequency of visits could be agreed at review on a case-by-case basis, so there is a shared agreement rather than a unilateral decision by the LA.

18.4 It needs to be based on child needs and family circumstances to ensure kinship fostering does not equate to less intervention, as sometimes it may require more intervention and support.

19.0 Question 19. 10.19 We provisionally propose that it should be possible for a child's parents to enter into an agreement with a child's kinship carer(s) to share parental responsibility for a child. Do consultees agree? Paragraph 7.97 Consultation

19.1 Yes, but consideration should be given to applying existing parental responsibility agreement frameworks, rather than creating a separate process. The position of unmarried partners should also be considered.

20.0 Question 20. 10.20 We provisionally propose that a kinship parental responsibility agreement should require the consent of all parents with parental responsibility, and

of any other individuals who hold parental responsibility for the child, before the agreement is made. Do consultees agree? Paragraph 7.98 231 Consultation

20.1 Yes. The consent requirements should be consistent with existing parental responsibility agreement frameworks, including the need to obtain the consent of all holders of parental responsibility.

21.0 Question 21. 10.21 We provisionally propose that, where parental responsibility for a child is shared using a kinship parental responsibility agreement, it should not be possible for the agreement to provide for either the parents or kinship carer to exercise enhanced parental responsibility. By enhanced parental responsibility, we mean parental responsibility that can be exercised by one of its holders to the exclusion of any other holders. Do consultees agree? Paragraph 7.99 Consultation

21.1 Yes. A parental responsibility agreement should not confer enhanced parental responsibility on either the parents or the kinship carer.

22.0 Question 22. 10.22 We provisionally propose that: (1) only kinship carers who fall within both the definition of kinship carer in section 22I of the Children Act 1989, and the definition of relative in section 105 of the Children Act 1989 (that is "a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent") should be able to enter into a kinship parental responsibility agreement; (2) it should be possible for a prospective carer under a kinship parental responsibility agreement to satisfy the definition in section 22I of the Act based on caring for a child at a date after the kinship parental responsibility agreement is made, with this date to be specified in the agreement; (3) the number of kinship carers with whom parental responsibility can be shared should be limited to two in each agreement; and (4) it should only be possible for there to be one kinship parental responsibility agreement with respect to a child at any one time. Do consultees agree? Paragraph 7.100 232 Consultation

22.1 Question 1, 3, 4: We support restricting agreements to close relatives given the perceived or real protective factors afforded by a close relationship but question the proposed limit of two carers per agreement and one agreement per child. These may create practical difficulties for families with more than one care arrangement or carer. The interaction with other parental responsibility arrangements and the statutory recognition of multiple kinship arrangements should be considered. The limitation on agreements risks creating some practical difficulties, as it may require an order for revocation before a new carer/arrangement can be added. This potentially contradicts with the Children's Wellbeing and Schools Act 2026 which specifically envisions more than one similar type of arrangement.

22.2 Question 2: We cannot envisage a circumstance where this would be required and therefore do not have a definitive view. We don't envisage a negative consequence of the KPRA being agreed

at an earlier date than is absolutely required, given the implicit consensual nature of the agreement.

23.0 Question 23. 10.23 We provisionally propose that a kinship parental responsibility agreement should: (1) take effect on the later of the date on which it is received and recorded by the Central Family Court and any commencement date set out in the agreement; (2) be brought to an end by: (a) the expiry of the period set out in the agreement; (b) an order of the court made on the application of any person who has parental responsibility for the child, removing parental responsibility from the person to whom it was provided by the agreement; (c) an order of the court made on the application of the child with permission of the court, removing parental responsibility from the person to whom it was provided by the agreement, such permission only to be granted where the court is satisfied that the child has sufficient understanding to make the application; or (d) the child reaching the age of 18; and (3) be for such period as the parties specify subject to a minimum duration of one year. Do consultees agree? Paragraph 7.101 233 Consultation

23.1 We have reservations about allowing parental responsibility agreements to be made for a fixed period. It is unclear why kinship agreements should differ from other parental responsibility agreements. Fixed expiry dates may encourage the use of repeated short-term agreements to avoid the need for a later court application for an SGO or CAO or to end the arrangement potentially creating uncertainty for children.

24.0 Question 24. 10.24 We provisionally propose the following process for the making of a kinship parental responsibility agreement: (1) the parents and the kinship carer must sign the document before a justice of the peace (a magistrate), a justices' clerk, an assistant to a justices' clerk, or a court official who is authorised by the judge to administer oaths; (2) the parents and the kinship carer must provide evidence of their identity; (3) the parents must provide evidence that they have parental responsibility for the child; (4) the kinship carer must provide evidence that they are within the category of people entitled to apply for a kinship parental responsibility agreement; (5) the application form must require the parties to list all those who already have parental responsibility for the child, thus ensuring that there is no pre existing kinship parental responsibility agreement with respect to the same child; (6) the kinship parental responsibility agreement and the supporting evidence must be sent to the Central Family Court, with the agreement to be recorded and sealed by the Court; and (7) copies of the sealed kinship parental responsibility agreement must be sent by the

Court to the parents and kinship carer(s). Do consultees agree? Paragraph 7.102 Consultation -

24.1 Broadly yes to all points. The process should be consistent with other parental responsibility agreements, with appropriate verification of identity, entitlement and consent.

25.0 Question 25. 10.25 Section 66 of the Children Act 1989, uses the terms "a privately fostered child" and "to foster a child privately". We have been told that some stakeholders find this language confusing, because, for example, of the potential for confusion with children being looked after by the local authority who have been placed with foster carers. We ask for consultees' views on whether and why they find these terms confusing. Paragraph 7.114 234 Consultation

25.1 Yes. The terminology can cause confusion with mainstream foster care, including placements arranged through independent fostering agencies. There is also a lack of awareness among the public and professionals about private fostering, meaning many private foster carers do not recognise or identify themselves as such. Clearer terminology would help distinguish private fostering from looked-after children placed with approved foster carers.

25.2 During a members' engagement event, the following were suggested:

- Private arrangement
- Alternative care arrangement
- Private care arrangement

25.3 There was a feeling that there is too much emphasis on the use of the word 'private' which doesn't convey the need for the local authority to have a role in assessing and supporting the private fostering arrangement. There was unanimous consensus that the term should be changed.

26.0 Question 26. 10.26 We ask for consultees' views on whether a child cared for by a foster carer in the child's own home, in the absence of any parent or other person with parental responsibility for that child, should fall within the definition of a privately fostered child. Paragraph 7.115 Consultation

26.1 The definition should be clarified, particularly where a child remains in their own home with an adult who has already been a significant carer, but who does not hold parental responsibility and is not a close relative. Any amendment should avoid unintentionally bringing ordinary childcare arrangements within private fostering such as nannying. Or recent example, father in prison, child left in family home with father's girlfriend who was primary carer anyway – should they be private foster carers?

27.0 Question 27. 10.27 We ask for consultees' views on whether a child who is not disabled and is aged 16 or 17 should fall within the definition of a privately fostered

child, if they are living in an arrangement that would, but for their age, be classed as a private fostering arrangement. Paragraph 7.116 Consultation

27.1 Yes. The private fostering framework should extend to 16- and 17-year-olds who would otherwise not meet the definition, with proportionate flexibility in visiting and oversight according to age, needs and circumstances. There was unanimous consensus at a members' engagement session that private fostering arrangements should be extended to 18, with flexibility. This is consistent with ensuring that protection afforded to children is available to all up to age 18, rather than treating 16-17 years old differently to other children, which is inappropriate and inconsistent with children's rights frameworks.

28.0 Question 28. 10.28 We provisionally propose that (1) A kinship care order should be introduced; and (2) when making a decision about whether to make, vary or discharge a kinship care order, (a) the welfare of the child shall be the court's paramount consideration; and (b) the court shall be required to have particular regard to the matters contained in the "welfare checklist" in section 1(3) of the Children Act 1989. Do consultees agree? Paragraph 8.20 235 Consultation

28.1 Yes, to both proposals

29.0 Question 29. 10.29 We provisionally propose that to apply for a kinship care order appointing them as a child's kinship guardian, an applicant must (1) be aged 18 or over; (2) be a kinship carer (defined as we propose in Consultation Question 1) for the child; and (3) have provided care and support for the child in a kinship care arrangement for at least 28 days immediately preceding the application for a kinship care order. Do consultees agree? Paragraph 8.38 Consultation

29.1 Yes, subject to consideration of exceptional cases involving 16- or 17-year-old siblings who care for younger children, where an interim KCO may be appropriate. Consideration could be given to whether the kinship carer who is 16 or 17 needs to become a looked after child in their own right.

29.2 We also question whether 28 days is a sufficient period for an unrelated or previously uninvolved carer; a longer period may be appropriate (e.g. 3 months in the 12 months preceding the application).

30.0 Question 30. 10.30 We provisionally propose that (1) a relative, friend or person connected with the child who does not meet the requirements set out in Consultation Question 1 may apply for an interim kinship care order if they have obtained the permission of the court to make the application; but (2) this should not extend to an individual who is a parent of the child in respect of whom a kinship care order is sought. Do consultees agree? Paragraph 8.39 Consultation

30.1 Yes to both points. Parents should not be eligible for a kinship care order. The legislation should also clarify whether an order can be made where a proposed kinship guardian lives in the same household as a parent, including where the adults are unmarried partners.

31.0 Question 31. 10.31 We provisionally propose that it should be possible for more than one kinship carer jointly to apply for a kinship care order appointing them as a child's kinship guardians. Do consultees agree? Paragraph 8.40 236 Consultation

31.1 Yes

32.0 Question 32. 10.32 We provisionally propose that the court may make a kinship care order if it considers that the order should be made, even though no application for a kinship care order has been made. Do consultees agree? Paragraph 8.41 Consultation

32.1 Yes

32.2 Experience with special guardianship orders demonstrates the risk of rushed decisions. Kinship carers should have access to independent legal advice and, at a minimum, legal aid within care proceedings. The impact on family relationships of requiring carers to make an application should also be considered.

32.3 PLWG guidance for special guardianship says this should only be in exceptional circumstances, but that has not been the case.

33.0 Question 33. 10.33 We provisionally propose that a kinship care order grant a kinship guardian parental responsibility for the child for the duration of their appointment. Do consultees agree? Paragraph 8.59 Consultation

33.1 Yes, subject to previously expressed concerns about fixed-term orders and the potential uncertainty for children and carers. The purpose and duration of parental responsibility should be clear. We still believe this is an opportunity to consider permanence post-18. The required focus on reunification can exist, gradually and organically, with a concurring permanence order. Professionals' account of children's understanding is that they are capable of navigating uncertainty and changes but find it beneficial to know that someone holds that permanence order. This should be a product of good practice, rather than a product of the legal system. See Q70.

34.0 Question 34. 10.34 We further provisionally propose that when making a kinship care order, the court should be required to consider how, having regard to the particular circumstances of the case, parental responsibility should be exercised for the duration of the order. Do consultees agree? Paragraph 8.60 Consultation

34.1 No. The exercise of parental responsibility should be determined by the child's changing day-to-day needs. The only determination about PR within a kinship care order should be whether it is enhanced or shared. The detail about day-to-day decisions should be sufficiently determined by the holders of the shared or enhanced PR. Specific issues order already exist where required. Children's needs change over time and therefore unrealistic to set an expectation for kinship families and parents to re-engage with an adversarial family justice system with no access to legal aid to reach agreement over parental responsibility decision-making.

34.2 Mechanism for review should go beyond capturing the child's needs at one point in time, and instead allow for a flexible plan with explicit expectations of ongoing review.

34.3 Agreements can be made in the kinship care order support plan, around some day to day needs of particular significance to family members. Although not legally enforceable, this mirrors current good practice in kinship support planning, and enables a more relational and potentially collaborative approach without reliance on rigid rules about specific situations that would need frequent review according to a child's needs, age and understanding.

34.4 The differentiation of enhanced or shared is a robust and clear framework that families can be supported to understand and operate within. Where individualised agreements on exercise of PR exist within individual orders, the unintended consequence may be increased confusion and uncertainty not intended clarity.

35.0 Question 35. 10.35 We provisionally propose that the court be able to direct as part of a kinship care order that a person with parental responsibility named in the order shall be entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child. This would mean that such a person would gain what we have referred to in this consultation paper as "enhanced parental responsibility". Do consultees agree? Paragraph 8.61 237 Consultation

35.1 Yes, where justified by the circumstances of the individual case. It has to be on a case-by-case and circumstances specific decision, with child welfare consideration at the centre.

36.0 Question 36. 10.36 We ask for consultees' views on whether the court's power to grant enhanced parental responsibility to a holder of parental responsibility (as envisaged in Consultation Question 35 above) in a kinship care order, should be limited to a particular category of holders of parental responsibility. Paragraph 8.62 Consultation

36.1 The power should be exercised on a case-by-case basis, taking account of the child's needs and the circumstances of the placement rather than the category of kinship carer alone.

37.0 Question 37. 10.37 We further provisionally propose that the court be able to direct, as part of a kinship care order, that restrictions shall be attached to the exercise of any person's parental responsibility (including the exercise of enhanced parental responsibility). Do consultees agree? Paragraph 8.63 Consultation

37.1 Restrictions on the exercise of parental responsibility should be considered on a case by case basis, but could be imposed through the making of specific issue or prohibited steps orders rather than as part of the KCO.

38.0 Question 38. 10.38 We provisionally propose that whilst a kinship care order is in force with respect to a child (1) no person shall (a) cause the child to be known by a new surname; or (b) remove the child from the United Kingdom without either the

written consent of every person who has parental responsibility for the child or the permission of the court; but (2) it shall be possible for a person named in the kinship care order to remove the child from the United Kingdom for no longer than such a period as the court shall specify when making the kinship care order, to a maximum of three months. Do consultees agree? Paragraph 8.64 238 Consultation

38.1 We support consistency with the rules applying to special guardianship orders, but question whether the proposed restrictions should mirror those provisions more closely. For example, we propose that the removal from the country should exactly mirror existing provision within SGO e.g. for no longer than 3 months. We don't consider the additional level of discretion to be needed.

39.0 Question 39. 10.39 We provisionally propose that when making a kinship care order, the court must (1) consider how the relationship between the child and the parents should be managed; and (2) set out in the kinship care order the extent to which the child is to spend time or otherwise have contact with the parents. Do consultees agree? Paragraph 8.72 Consultation

39.1 Yes, to (1) - the court should consider relationships with parents, siblings and other people important to the child. But the detail should be set out in a support plan not the order. The arrangements should be individualised, supported where necessary and not unduly rigid within an order as this does not align with children's changing needs over time, including how their relationship with their parents should be managed.

40.0 Question 40. 10.40 Additionally, we ask for consultees' views on whether, when the court is considering whether to make a kinship care order, there should be a rebuttable presumption that the involvement of a parent (which may be direct or indirect) in a child's life will further their welfare. Such a presumption would reflect the presumption currently contained in section 1(2A) of the Children Act 1989, and would apply unless there is evidence before the court that the parent's involvement in the child's life would put the child at risk of suffering harm, whatever the form of the involvement. Paragraph 8.73 Consultation

40.1 Yes, however, the presumption should not displace an individual assessment of the child's welfare and the nature and safety of parental involvement. There also needs to be consideration of Article 8 rights, and any interference with such fundamental rights must be justified.

41.0 Question 41. 10.41 We provisionally propose that where support for those involved in the kinship care arrangement has been assessed by the local authority, the final kinship care order should record the assessed level of support, and a kinship care

support plan should be attached to the order. Do consultees agree? Paragraph 8.78 239 Consultation

41.1 No. Whilst we endorse an assessment of support need being offered to any kinship carer, including specifically as a statutory duty as part of making a KCO, we don't agree that levels of support should be recorded within the order. We would be concerned that there would be a need to return to court in the future to review the support plan, when reviews should be undertaken regularly by the local authority.

41.2 Currently an SGO support plan is required at the point of an SGO being granted. Its review and variation are a matter for the local authority and the kinship family and the family's right to challenge could be via the complaints' process and/or judicial review, not by re-considering the SGO itself.

41.3 In our view, when considering the making of a KCO, the local authority must offer an assessment of support need and support plan regardless of the previous or current legal status of the child, and regardless of whether made in public or private law proceedings.

41.4 Consideration could be given as to whether reforms need to be accompanied by regulation to deal with assessment, rights and responsibilities, similar to adoption and SGO, and whether this should be a statutory requirement as opposed to merely being included in a recital to the order.

42.0 Question 42. 10.42 We ask for consultees' views on (1) the extent to which a local authority should be required to assess the support needs of those involved in a kinship care arrangement when a kinship care order is sought; and (2) how any such requirement might operate. Paragraph 8.79 Consultation

42.1 In our view, when considering the making of a KCO, the local authority must offer an assessment of support need and support plan regardless of the previous or current legal status of the child, and regardless of whether made in public or private law proceedings

42.2 The assessment and support framework should be consistent, so far as appropriate, across kinship care, special guardianship, child arrangements, adoption, and other permanence arrangements. Support should be based on assessed needs rather than solely on the legal order. It will be essential to have the same rules around eligibility to assessment of support and support planning to avoid the support dictating the order sought.

42.3 We suggest a clause prohibiting the court from making a KCO without being satisfied that the offer of assessment of support has been made.

43.0 Question 43. 10.43 We provisionally propose that a kinship care order may be made in respect of a child appointing a kinship guardian for such period as the court considers appropriate, save that the order shall in any event cease to have effect when the child reaches the age of 18. Do consultees agree? Paragraph 8.86 Consultation

43.1 We have concerns about fixed-term kinship care orders, as set out in our response to Question 33. The implications of orders ending at 18 should also be considered, particularly for continuing

support. Ending at 18 presents same issues as SGOs, but to extend into adulthood requires more detailed consideration.

43.2 One potential solution to post-18 support and avoiding cliff edge would be by reviewing definition of care leaver and leaving care entitlement to broaden inclusion of children in kinship care.

44.0 Question 44. 10.44 We provisionally propose that there should be no minimum period of appointment for a kinship guardian. Do consultees agree? Paragraph 8.87 240 Consultation

44.1 We don't agree these should be a fixed term, therefore we don't have a view.

45.0 Question 45. 10.45 We provisionally propose that it should be possible for the court to make an interim kinship care order, which would (1) have effect for a period specified in the order, which would be no longer than a maximum period to be set out in statute; and (2) automatically cease upon the earlier of the disposal of the application for a kinship care order by the court, or the child reaching the age of 18. Do consultees agree? Paragraph 8.93 Consultation

45.1 Yes, in principle, but the relationship between an interim kinship care order and an interim care order, especially the exercise of parental responsibility and placement decisions, requires careful clarification. This will need to be specifically drawn out/ set out in some detail to provide clear guidance to practitioners. See Q70.

46.0 Question 46. 10.46 We ask consultees for their views on whether the provisionally proposed maximum duration of an interim kinship care order should be: (1) 8 weeks; (2) 16 weeks; (3) 26 weeks; or (4) some other period. Paragraph 8.94 Consultation

46.1 One of the key issue that this is trying to resolve is the 16 weeks reg 24 limit therefore we question the benefit of limiting it to either 8/16/26 weeks. We propose that an interim kinship order could be made until end of proceedings or when a further order is granted. It should be based on the individual needs and specific circumstances. We are concerned about unintended consequences including additional court hearings, potential for additional and potentially unnecessary assessment if directed by court and risk of a specific duration order expiring if there are challenges with court timetables and available court time

47.0 Question 47. 10.47 We provisionally propose that (1) a child may not apply to vary or discharge a kinship care order of which they are the subject without the permission of the court; and (2) the court may only grant permission to make such an

application if is satisfied that the child has sufficient understanding to make the proposed application. Do consultees agree? Paragraph 8.110 241 Consultation

47.1 Yes – same as with SGO but also highlights the need to make legal aid more widely available so that children are not being used as a mechanism for accessing legal aid.

47.2 Any proposed changes should be accompanied by accessible legal advice and legal aid so that children and families can exercise their rights effectively.

48.0 Question 48. 10.48 We provisionally propose that the court should, when making a kinship care order, consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, placing restrictions on the making of applications (1) to vary the order; (2) to discharge the order; or (3) seeking a direction about how the provisions of the order should operate by any person other than the kinship guardian. An order under section 91(14) of the Children Act 1989 would have effect for a fixed period, and would prevent a named person from applying to vary or discharge the kinship care order, or to seek a direction about how it should operate, without first obtaining the permission of the court. Do consultees agree? Paragraph 8.111 Consultation

48.1 No. Section 91(14) orders is a significant interference and should be made only where the statutory test is met in the individual case, not as a routine consideration linked to kinship care orders.

49.0 Question 49. 10.49 We provisionally propose that the making of a care order in relation to a child who is the subject of a kinship care order should not automatically discharge the kinship care order. Do consultees agree? Paragraph 8.112 Consultation

49.1 Yes. A care order should not automatically discharge a kinship care order. The court should consider the interaction between the orders and the appropriate exercise of parental responsibility on a case-by-case basis, including whether the kinship guardians should remain parties to proceedings.

50.0 Question 50. 10.50 We provisionally propose that the court may vary or discharge a kinship care order upon the application of a local authority designated in a care order with respect to the child. Do consultees agree? Paragraph 8.113 242 Consultation

50.1 Yes. The local authority should be able to seek variation or discharge where appropriate, subject to the court's assessment of the child's welfare.

51.0 Question 51. 10.51 We invite consultees' views as to whether it should be possible for a kinship care order to contain provisions for a review of the order, or of

any named provisions (such as a parental involvement provision) contained in the order, after a period specified when the order is made. Paragraph 8.118 Consultation

51.1 No. We do not support routine review dates for kinship care orders. Variation or discharge should ordinarily follow an application rather than automatic review. Fixed review points may create uncertainty for children, carers and parents and undermine stability. Reviews of support and family time/contact arrangements should be distinguished from reviews of the legal order itself.

51.2 We acknowledge the tensions – kinship care should be a journey not a destination – we think the unintended consequence of a review of the order may be emotional and psychological instability for both children and kinship carers. See Q70.

51.3 We have concerns that this may result in more short-term orders because agreement is easier to reach on short-term orders.

51.4 This highlights the need to separate the order from other elements and instead consider a social care-led review of support plans, which should include other named provisions including parental involvement provisions. For example, this would not prevent the reunification of a child with their parent while a kinship order is in place. Currently, a child can be reunified with their birth parents under SGO or CAO, and reunification is governed by placement with parents' regulations whilst a care order is in place.

51.5 We suggest this may be an opportunity to review how a KCO may be discharged where there is agreement by all parties, bearing in mind the potential risk for undue pressure on those with PR to consent to discharge if made a statutory entitlement. This is especially in the current context with limitations on access to legal aid.

51.6 This also highlights the need for access to justice and legal aid availability. See Q70.

52.0 Question 52. 10.52 We ask for consultees' views on (1) how a kinship care order could operate in a case where the kinship carers live overseas; and (2) how any problems with the use of kinship care orders in an international context could be avoided. Paragraph 8.122 Consultation

52.1 In theory, any order regulating PR should be recognised in another country where the 1996 HC is in force – Art. 23(1) 'The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States' so without the need for further formality. In practice this varies from country to country – some do simply recognise, some require registration, some ignore and require an application for a local nearest equivalent order. It is most helpful to overseas authorities when an English court order sets out the precise legal consequences, restrictions etc in recitals, so requiring this would be useful. This would be useful both in HC 96 and non-HC cases where there is no prospect of recognition and a local order will inevitably need to be sought.

52.2 Because we have been concerned for years that accurate disaggregated statistics are not being kept on the number of children being removed from the UK and placed with relatives abroad, might this offer an opportunity to introduce a counting mechanism?

52.3 Consideration should also be given to 4 nations of UK, not just overseas. Consider scope for including amendments by agreements, recognising the new order. Usually, this happens when the other 3 nations bring about new provisions but is not often the case for new provision introduced by England – it is paramount that England and other 3 nations are able to accept each other's orders.

53.0 Question 53. 10.53 We ask for consultees' views as to the court process to be followed when an application is made for a kinship care order. Paragraph 8.126 243 Consultation

53.1 Care planning in the kinship context is not linear, therefore a prescribed process might not be helpful or adequate and risks creating duplication. Where appropriate, the court should be able to make KCO within any other proceedings. Consideration will need to be given as to how much assessment is required (e.g. looking specifically at interim KCO). Statute or regulations may need to prescribe the level of assessment required, for example, in the context of interim KCO. Currently SGO brings proceedings to an end, so consideration needs to be given as to how that applies with KCO when there may still be ongoing/concurrent proceedings.

54.0 Question 54. 10.54 We ask for consultees' views as to the process which should be used to assess the suitability of the proposed arrangement to meet the child's needs, when an application is made for a kinship care order. 10.55 In particular, we ask for consultees' views on (1) who should prepare any such assessment or report; (2) whether there should be a requirement to notify the local authority before an application for a kinship care order is made, and, if so, what that should be; and (3) the matters which should be covered by any assessment or report, and the extent to which these should be variable depending on the characteristics of the kinship care order sought. Paragraph 8.135 Consultation

54.1 Difficult – if treating KCO as permanence orders like SGO and adoption seems reasonable that same reporting standards should apply – but if shorter term orders with parental consent or no safeguarding issues could be dealt with on evidence not full assessment. Could be left to court to decide in each circumstances whether s7/37 report necessary or whether LA evidence should cover relevant circumstances in care proceedings, but in any situation an assessment of support must be offered.

54.2 1) No prior LA involvement – Cafcass to prepare assessment of suitability of arrangement with the requirement that assessment covers discussion regarding support plan. We consider that there should be statutory duty to offer an assessment of support needs if KCO is being applied for or made. If offer accepted, then that would require the LA to do an assessment of needs and prepare support plans. This will require joint working between Cafcass and LA, and Cafcass must refer for an assessment of support need. Where existing/ongoing LA involvement, then LA to prepare assessment of suitability of arrangement, assessment of support needs and prepare support plan.

54.3 2) Yes, there should be a notification requirement, similar to SGOs, however it does not have to have the same minimum 3 months notification requirement attached as in the case of SGO. To

facilitate the overall process and reduce administrative process on kinship carers, the requirement could be for the court to notify the LA upon receipt of an application. It is important that the LA is notified, as this would support LA with resource allocation and forward planning, so to minimise future delays and provision of services. It would also help Cafcass understand if there was prior LA involvement (e.g. in private law proceedings), and who should complete assessment of suitability of arrangement. This would also be aligned with existing arrangements in relation to SGO and ongoing push in the private fostering space for LA to be notified of such arrangements.

54.4 3) As a minimum, we consider a holistic and proportionate assessment similar to CoramBAAF's Form K should be utilised, which for example currently covers:

- Child's wishes and feelings
- Meaning of pre-existing relationship between child and prospective carer
- Summary of parental information
- Childhood
- Adulthood and caring for children
- Adult relationships
- Education and employment
- Health and lifestyle
- Capacity to meet the child's needs including safeguarding
- Family relationships including parental involvement and family time/contact
- Financial situation
- Housing
- Household and work commitments
- Support network
- Checks and references
- Assessment of support needs

54.5 "When a kinship carer is formally assessed, the assessment process will be reasonable, proportionate and treat family members with trust, whilst prioritising the safety of the child. Assessments for kinship carers will continue to prioritise keeping children safe. Children's social care practitioners will establish a trusting, supportive relationship with kinship carers to enable this. Carers will not have to jump through multiple, unnecessary assessments and explain their situation to numerous practitioners. The focus of the process will be whether this person can provide a safe, stable and loving environment for the child." National Kinship Strategy (2023)

54.6 CoramBAAF are happy to collaborate to look at updating Form K to ensure it is suitable and legally compliant following any legislative amendments introduced by the existence of Kinship Care Orders, including kinship foster care approval, which can continue to be flexible enough to adapt to the private law and public law contexts. Form K is currently suitable for use in private and public law proceedings, as well as for SGO and kinship foster care assessments, and to make recommendations for child arrangements order even though no specified form or assessment is currently legally required. We consider Form K is particularly suited for what is being considered. However, we would be very happy to provide feedback on any prescribed assessment form that is devised.

55.0 Question 55. 10.56 We ask for consultees' views as to how best to ensure that the child's views are heard, both at the time the kinship care order is made and subsequently. Paragraph 8.138 Consultation

55.1 The child's wishes and feelings should be obtained and considered in an age-appropriate way both when the order is made and subsequently. The process should provide appropriate independent opportunities for participation, including through Cafcass or other suitable professionals, without unnecessary repetition of interviews.

55.2 Below are some potential suggestions:

- Including requirement for mediation, with CAFACASS including voice of the child in private proceedings, child will have CG in care proceedings anyway.
- Mandate CAFCASS child impact assessment framework/child impact report for kinship care orders, in private and public law matters, for both LA and Cafcass initiated assessments. A prescribed form could bring together all the elements ensuring there isn't disparity in assessment practice and quality of assessment (e.g. Form K includes child's views).
- Statutory requirement for children's views (e.g. using existing Cafcass child impact assessment) to be captured within any report for assessment of suitability, assessment for support plan and subsequent support plan reviews, according to the child's age and understanding.
- Statutory offer of advocacy support to children and young people where kinship care order is being considered, including access to Children Act 1989 statutory complaints procedure.

56.0 Question 56. 10.57 We ask for consultees' views on whether, when care proceedings are brought by a local authority and the court is considering whether to make a kinship care order within those proceedings: (1) the potential kinship guardian should automatically be granted party status within the care proceedings; or (2) the court should be required to consider at an early stage whether to make the potential kinship guardian a party to the proceedings. Paragraph 8.141 244 Consultation

56.1 The position on party status and legal aid should be clear and should not disadvantage prospective kinship guardians, including those living overseas. Access to independent legal advice is particularly important where an order would confer substantial parental responsibility.

56.2 Consideration should also be given to clarifying the legal aid position for potential overseas carers.

56.3 Party status should not be automatic as you could end up with more than one potential carer all wanting to be joined to maintain equal status. Legal aid position needs to be considered – litigants in person would be likely to make proceedings longer but the local authority should not be expected to fund potential carers, which has huge implications for resources and may become a considerable barrier to accessing justice. Legal aid provision must absolutely be considered and expanded to include kinship care orders. Whilst we recognise the parameters of the Law Commission role, the proposals have resource implications, and at the very least a recommendation needs to be made to the relevant Government departments on these matters.

There are real pressures on the family justice system, and there may be real implications in terms of extended court time, that needs to be carefully considered with Ministry of Justice colleagues.

56.4 There should also be specific directions from court at point of joining and after each filing of evidence as to what should be disclosed and not a blanket entitlement to all documents filed. There may be other ways to grant access to specific information by amending the Family Procedural Rules, without necessarily having to join carers as parties. Even as interveners, they will still get party status and the same barriers to access to justice would apply. Access to court documents and guidance around access permission and necessary redactions needs to be addressed; whilst not within the scope of this consultation, recommendations should be made to the Office of the President of the Family Division, for example.

57.0 Question 57. 10.58 We provisionally propose that when a kinship care order is in force in relation to a child, no person shall be permitted to apply for (1) a special guardianship order; or (2) a child arrangements order; in relation to that child. As an exception to this rule, a person may apply for such a special guardianship order or a child arrangements order at the same time as they make an application to discharge the kinship care order, and replace it with the order sought. Do consultees agree? Paragraph 8.152 Consultation

57.1 Any restriction on applications for other orders should preserve an effective route to vary the kinship care order where necessary and should not create gaps in protection for the child. There should be specific provisions for applications to be made to vary the KCO, especially in the context of family time/contact.

57.2 Yes. However, we consider that given the evolving nature of kinship families, and the unique nature of their journeys, an umbrella “kinship order” that encompasses all aspects including e.g. family time may not be the best course of action. It may be more appropriate for the kinship order to exist separately from other aspects more closely related to care and family planning such as family time. These considerations would be best captured, and periodically reviewed, within a support plan. It should be exceptional yet possible for a subsequent section 8 order to be made available.

57.3 Alternatively, the kinship care order should be devised with built in flexibility to enable aspects of the order to be considered, but without the potential for the order in its entirety to be reconsidered and the expectation for families to constantly re-engage with the family justice system, especially in the current context where access to justice is not guaranteed due to the limitations around the availability of access to legal aid.

57.4 Alternatively, we consider that a kinship order and a separate kinship contact order, with a requirement to seek the child’s view, wishes and feelings and captured, considering age and understanding, may be more appropriate. In this context, a child arrangements order would not be available. This would address the specific concern and potentially simplify the process for kinship families, without having to resort to using a CAO alongside a KCO which could cause confusion and sit at odds with kinship care orders.

58.0 Question 58. 10.59 We provisionally propose that when a kinship care order is in force in relation to a child, no person shall be permitted to apply for (1) a prohibited steps order; or (2) a specific issue order; in relation to that child. Do consultees agree? Paragraph 8.153 Consultation

58.1 No. Parents and children should retain an appropriate route to apply for prohibited steps or specific issue orders, subject to permission where justified (e.g. significant medical issues, change of religion, contact with siblings who remain with parents). The proposed restriction could prevent necessary applications about important decisions affecting the child.

58.2 Prohibited steps orders and specific issue orders can be more agile types of orders, which would be more suitable in specific circumstances or where there is a degree of urgency, without having to reopen the KCO and adhere to likely more prolonged timescales.

58.3 Provision will need to be considered within KCO to enable application for e.g. change of name or moving overseas if built in within the order. We suggest that it mirrors current provisions that apply to SGOs.

59.0 Question 59. 10.60 We provisionally propose that, if kinship care orders are introduced, a kinship carer (as defined in our proposed definition) should no longer be able to apply for a special guardianship order in relation to the child for whom they are caring. Do consultees agree? Paragraph 8.161 245 Consultation

59.1 We welcome the proposal for kinship care orders. The proposed kinship care order must provide genuinely equivalent protections and support if the option for SGOs for kinship carers is removed. Different legal regimes should not create arbitrary differences in outcomes or entitlements. Unless regimes are exactly the same, this could lead to carers getting different support under different orders.

59.2 There should be absolute clarity within the definitions of kinship carers, KCOs and SGOs that there are no cohorts of people who remain able to apply for either order, therefore choosing the order/pathway because of resources. This is either achieved by restricting availability of order or having a clear definition of eligibility.

59.3 If there are additional benefits afforded by either order, there is the potential for unintended consequences. There is a financial structure that exists within current provisions relating to SGOs, based on regulations, statutory guidance and case law, which could potentially undermine efforts for financial equity between the two types of orders. If provisions relating to SGO are more embedded within the law, and those relating to kinship are embedded at a local policy level, that could also create and exacerbate financial inequity disincentivising individuals from applying for one order as opposed to another, or incentivising one order over the other.

59.4 There should be no additional benefits to having an SGO, as opposed to a kinship care order, otherwise it undermines the aim of the proposed reforms. We acknowledge the remit of the project and allocation of resources being beyond it, however consider it difficult if not impossible to detach rights and entitlements for support from our commentary on proposed orders.

60.0 Question 60. 10.61 We provisionally propose that, if kinship care orders are introduced, it should no longer be possible for kinship carers (as defined in our proposed definition) to apply for a 'live with' or 'spend time with' child arrangements order. Do consultees agree? Paragraph 8.167 Consultation

60.1 Yes, if the kinship care order can provide equivalent arrangements to those currently available through child arrangements orders and related section 8 orders, without restricting necessary flexibility.

61.0 Question 61. 10.62 We provisionally propose that if kinship care orders are introduced, when an application for permission to discharge or vary a special guardianship order is made by (1) a parent; (2) a guardian; (3) a step-parent of the child who has parental responsibility for the child, or (4) a person who immediately prior to the making of the special guardianship order had (but no longer has) parental responsibility for the child, the requirement under section 14(D) of the Children Act 1989 that the applicant must satisfy the court that there has been a significant change in circumstances since the making of the special guardianship order should not apply where the applicant is seeking the permission of the court to discharge a special guardianship order and replace it with a kinship care order appointing the child's special guardian as a kinship guardian. Do consultees agree? Paragraph 8.177 Consultation

61.1 Yes, subject to clarification of why a change between orders would be needed and assurance that the legal framework does not create unnecessary barriers or procedural duplication.

62.0 Question 62. 10.63 We provisionally propose that a care order in relation to a child should be discharged by the making of a final kinship care order. Do consultees agree? Paragraph 8.188 246 Consultation

62.1 Yes.

63.0 Question 63. 10.64 We provisionally propose that a care order in relation to a child should not be discharged by the making of an interim kinship care order. Do consultees agree? Paragraph 8.189 Consultation

63.1 Yes, but should not be automatic. This depends on the legal effect of an interim kinship care order and how it would interact with a care order. The respective responsibilities must be clearly defined before a position can be reached.

63.2 It should be automatically discharged by the making of an IKO, there could be circumstances, e.g. where a longer interim period is required to assess the capacity of the carers, where the IKO should last longer than proceedings.

63.3 Please also note the concerns in the response to Q3 about the co-existence of care and Kinship orders.

64.0 Question 64. 10.65 We provisionally propose that, if a care order and an interim kinship care order are in force at the same time, the court should when making the interim care order determine how parental responsibility is to be exercised by either the local authority, the parents, the kinship guardian or anyone else with parental responsibility. Do consultees agree? Paragraph 8.190 Consultation

64.1 No. The proposal risks involving the court in detailed care planning and creating conflicting responsibilities between the local authority and kinship guardian. It is a fundamental consequence of a care order that the local authority receives the child into its care and acquires parental responsibility for the child, with the power to determine the extent to which others may exercise their parental responsibility.

64.2 Munby J in Re A (A Child) [2009] EWHC 865 (Fam):

> *"It is a cardinal principle of the **Children Act 1989** (the 1989 Act) that once a care order has been made, whether interim or final, it is for the local authority, and not the court, to decide how to meet its parental responsibilities for the child. The decision-making power as to the care, residence and general welfare of the child is vested in the local authority, not in the court."*

64.3 If an interim order conferring parental responsibility is made alongside a care order, whether an interim Special Guardianship Order or an interim Kinship Care Order, it is essential that such an order does not cut across the local authority's statutory powers and duties under a care order. In particular, it should be made explicit that the making of an interim SGO or KCO does not determine where the child is to live. The decision as to the child's placement remains one for the local authority in the exercise of its parental responsibility and care-planning functions.

64.4 Nor do we support a model whereby the court is required to allocate or delineate the exercise of parental responsibility between kinship carers, parents and the local authority. Such an approach would represent a significant departure from the statutory scheme established by section 33 of the Children Act 1989. It would also be impractical in the context of interim proceedings, requiring the court to engage in matters of care planning that are properly the responsibility of the local authority. There is a further risk that interim hearings would become exercises in negotiating the distribution of parental responsibility between parties, rather than focusing on the child's welfare and immediate needs.

64.5 One of the principal purposes of the proposed Kinship Care Order, and any interim equivalent, is to facilitate placement with kinship carers without the need for their approval as foster carers under Regulation 24 Care Planning etc Regulations and the Fostering Services (England) Regulations 2011. Where an interim order confers parental responsibility on a kinship carer, the local authority would be able to place the child with that carer under Part 4, Chapter 1 of the Care Planning etc Regulations 2010 as a placement with a parent or person holding parental responsibility, rather than as a placement with foster carers. See Q70.



65.0 Question 65. 10.66 We provisionally propose that (1) it should be possible for the court to make a supervision order at the same time as making an interim kinship care order, and (2) the duration of the supervision order should not be limited by the duration of the interim kinship care order. Do consultees agree? Paragraph 8.191 Consultation

65.1 Yes. A supervision order may provide an appropriate mechanism for continued local authority involvement in some cases.

66.0 Question 66. 10.67 We invite any other views which consultees may have on the involvement of a local authority when an interim or final kinship care order is made. Paragraph 8.192 247 Consultation

66.1 See question 64 above.

66.2 The level of local authority involvement should be proportionate to the child's needs and family circumstances. The framework must distinguish support and supervision from responsibility for placement and care.

66.3 *Any* introduction of interim orders must make clear level of assessment required, and consider impact in both private and public law proceedings. Q54 sets out our views on how decisions could be made about who writes the required assessment and referral to the local authority for a support plan a requirement where CAFCASS completing the report. Interim orders may be helpful in private law to maintain status quo when a child is living with a carer but where PR is needed while longer term decisions about the child's future are needed, and where a kinship PRA is not achievable and threshold is not met for public law proceedings. Forthcoming Hidden 10% research should provide valuable insights into the experiences of kinship families in private law that may inform thinking around involvement of the local authority.

66.4 Consideration also needs to be given to setting out the responsible authority if the offer of an assessment of support and support plan becomes a legal duty attached to an interim and final kinship care order. Clarity would be needed according to placing and residing local authority, when responsibility transfers, and protocol for transfer. There is an opportunity for clarity on legal responsibilities, given the lived reality of kinship families when they do not live in the placing local authority area, without leaving this for families and local authorities to navigate. Without clarity, there is a real risk that the needs of children and families and provision of services may not be adequately prioritised. We consider this should not be a matter left solely to local policies and resource allocation, and should be laid out clearly within the law. Currently, in the case of SGOs, this can quickly become a matter of dispute.

67.0 Question 67. 10.68 We ask consultees to share any further comments or views they may have on our proposals for the introduction of a kinship care order. Paragraph 8.194 Consultation

67.1 See question 70 below.

67.2 The reforms should avoid creating unnecessary parallel assessments or rigid distinctions between kinship care arrangements. The child's welfare, continuity of care, family relationships and access to support should remain central.

68.0 Question 68. 10.69 We ask consultees to tell us if they believe or have evidence or data to suggest that (1) the operation of the current law governing kinship care; or (2) the provisional proposals which we make in this consultation paper results, or would if the law were reformed in the way we provisionally propose result, in advantages or disadvantages to certain groups or based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). Paragraph 9.31 Consultation

68.1 The inclusion of step-parent as a relative relies on marriage or civil partnership, and discriminates against an unmarried partner of a parent. It is illogical to exclude an unmarried partner who may have cared for the child for some time, from having rights to apply as a kinship carer, but include, for example, a man who has married a parent's half-sister but may have no relationship with the child.

69.0 Question 69. 10.70 We ask for consultees' views on how any disparities in the operation of the current law governing kinship care could be reduced or removed. Paragraph 9.32 Consultation

69.1 See also question 70 below.

69.2 Disparities could be addressed through clearer, centralised national policy and guidance, more consistent access to legal aid and support, and proportionate assessment processes across local authorities.

69.3 Additionally, consideration could be given in how to achieve more equity in relation to children living abroad and perspective kinship carers living in the UK. There is currently a lack of process to establish kinship care arrangements (from certain countries) where the child is outside the UK and the carer resides in the UK. There are so few entry clearance options that international adoption is often the only remedy, even though this is slow, expensive and a potentially damaging instrumentalization of adoption for immigration purposes.

69.4 Furthermore, we note that the impact of insecure immigration status and NRPF is noted at para. 9.17. Disparities could be removed or reduced by working with the Home Office to promote the goals of kinship care reform. Home Office guidance should take account of the Government's goals for kinship care and so that Home Office decision-makers can make appropriate decisions about children in informal or formal kinship care arrangement, including assessments of children's best interests. For example, when the Home Office decides on a family applying for a change of condition to have an NRPF condition removed, it should be relevant that the Government has an overall objective of supporting that family providing kinship care, which at the moment would not be part of the test the Home Office considers. Local authorities could support families to apply for change of conditions and the Home Office could amend the change of conditions guidance to reflect the goal of supporting families to provide kinship care including

where the barrier is not having recourse. It should be noted in this context that the problem of NRPF is set to significantly worsen with the Government's proposed 'earned settlement' reforms, which include settlement routes - and therefore NRPF conditions - for periods of up to 30 years. Almost all families across the immigration system look set to be on longer routes to settlement, living with insecure status and NRPF, for longer periods of time. This will impact how kinship care is experienced by children with migrant kinship networks because there will be more insecurity, more NRPF, more years saving for extremely high fees, and less certainty about families' futures.

70.0 Question 70. 10.71 We ask consultees to tell us anything relating to their experiences of kinship care arrangements, or our provisionally proposed reforms, that they have not yet had a chance to express in response to earlier consultation questions. Paragraph 9.34

70.1 Coram BAAF is the UK's leading membership organisation for professionals working across adoption, fostering and kinship care. We provide information, best practice guidance, advice, training and resources to support our members and influence policy to improve outcomes for children and young people. Our corporate members in England, Wales, Scotland and Northern Ireland represent 94% of all local authorities as well as regional adoption agencies, health and social care trusts, independent fostering providers and voluntary adoption agencies, and cover 88% of all children and family social workers. Our 650+ individual and associate members - comprising lawyers, health professionals, educational institutions, therapeutic and family support services, and more - reflect the multidisciplinary nature of our work.

70.2 To inform our response, CoramBAAF held three consultation events for members during September 2026, attended by a total of 379 participants. These focused on: (1) amendments to current legislation (SGOs, CAOs and kinship foster care; (2) introducing new legislation (Kinship Care Order and Kinship Parental Responsibility Agreement); and (3) private fostering. The discussions highlighted the diversity of kinship care arrangements, the importance of preserving flexibility and the need for any reforms to reflect the practical realities of children, families and professionals.

70.3 We welcome the Law Commission's comprehensive review of the legal framework for kinship care and the opportunity to contribute to proposals that could improve legal clarity, consistency and outcomes for children and families.

70.4 We support the development of a clearer and more coherent legal framework that recognises kinship care as a distinct form of care and designed specifically to meet the needs of kinship families. The focus should remain on the individual child's needs, family circumstances and the suitability of the proposed arrangement, rather than requiring families to fit within particular legal categories to access appropriate support. Legal reforms should also seek to reduce unnecessary duplication between assessments and approval processes, while maintaining appropriate safeguarding standards and prioritising support planning. Current assessment and approval processes require many kinship carers to concurrently fit into the parallel processes of both fostering approval and court. A more holistic and needs-led approach would better reflect the circumstances of kinship families and support continuity between different legal arrangements, with assessment informing legal options for child and carer rather than likely legal option informing both type and timescale for assessment. We therefore suggest that interim orders (either ISGO or IKCO) could best be used to remove need for full approval as foster carers

when unnecessary and/or to provide time to further assess and plan outside of rigid timescales that don't meet the needs of kinship families. Clarity is needed about the level of assessment required to make an interim order. Where sufficient assessment of a prospective carer has been completed during PLO and where the child is already in their care, an interim order may be appropriate alongside an ICO when proceedings are initiated. Care planning will then inform whether approval as a foster care is required but avoids risk of both regulatory timescales and meeting of fostering standards and processes being prioritised over what is in the best interests of the child. Where the child is placed in an emergency under Regulation 24, the interim order could more appropriately be used once further assessment has been completed, but for the same reason to avoid both regulatory timescales and meeting of fostering standards and processes being prioritised over what is in the best interests of the child. See Coram BAAF Practice Notes: PN Kinship assessment timescales: impact and practice considerations and Unlawful placements in kinship care | CoramBAAF Decision-making on final orders should be determined by a holistic and proportionate kinship assessment that prioritises the child's wishes and feelings and the meaning of the pre-existing relationship between child and carer, therefore informed by the needs and circumstances of the kinship family not determined by likely final order.

70.5 We suggest that the proposed kinship care order be renamed the kinship order, using more neutral terminology and avoiding potentially unhelpful associations with the more interventionist care order. This would provide a more positive framing for the new legal arrangement, recognising that a kinship order would not necessarily involve or require the child to be subject to a care order. The distinction would also help avoid potential confusion about the nature and legal implications of the proposed order.

70.6 A central concern throughout our response is the importance of preserving permanence and stability for children while recognising that family relationships and circumstances may change, and the journey that kinship families may need to undertake. However, the legal framework should not create an expectation that kinship carers and parents must repeatedly return to court to review or renew arrangements. The family justice system is not currently designed or sufficiently resourced to support repeated engagement by families, particularly where proceedings may be adversarial, financially inaccessible and damaging to family relationships that need to endure beyond the conclusion of proceedings and outside of local authority and court spaces. We therefore have reservations about time-limited orders and routine review mechanisms, favouring practice based and relational alternatives that support family relationships without undermining permanence.

70.7 We support the increased focus on reunification practice and policy and consider that reunification with parents may be appropriate in some circumstances, but this requires careful consideration of the child's needs, safety and relationships, alongside the support available to the family. We recognise the uniqueness of kinship care, and the need to conceptualise it as a journey not just a destination. The challenges and complexities associated with reunification are not necessarily resolved through the introduction of fixed-term orders. Legal mechanisms and reforms should avoid creating an expectation of reunification at the expense of stability and permanence. We consider that efforts to achieve reunification with parents can co-exist with kinship care orders lasting for a child's minority, provided there is clarity and understanding among all those involved, particularly children, alongside appropriate ongoing review of the child's circumstances and needs. This can be achieved through skilled social work assessment and practice, including reviews of support plans that include assessment of changing family

relationships and potential for reunification, and clarity around reunification pathways for all family members, rather than through the introduction of fixed-term legal orders, which could introduce uncertainty and instability, potentially undermining children's sense of legal, relational/psychological and physical permanence.

70.8 The interaction between the proposed interim/kinship care order and interim/care orders also requires careful consideration. In particular, there must be clarity about the exercise of parental responsibility, responsibility for placement decisions and the respective roles of the court, local authority and kinship carers. Any proposed framework must avoid creating conflicting responsibilities, leaving local authorities accountable for arrangements over which they have insufficient control, or excessive judicial involvement in day-to-day care planning.

70.9 Particular consideration should be given to the transition to adulthood. The needs of children in kinship care do not necessarily end at 18, yet existing legal and support frameworks can create a significant cliff edge. The reforms present an opportunity to consider how rights, including to practical, financial and relational support, can continue beyond childhood, recognising the long-term nature of kinship relationships and the different entitlements associated with legal status. This could include reviewing eligibility for leaving-care services and support, to ensure this captures the unique and continuing needs of cohorts of children and young people that may become subject to a kinship order.

70.10 We are disappointed by the absence of any consideration of how a legal relationships with their kinship carers could be achieved for children post 18. Currently this is only achievable through adoption by their kinship carers, which is not always an appropriate order for kinship families.

70.11 We also support extending the private fostering framework to children aged 16 and 17, with appropriate flexibility in the level and frequency of oversight according to the child's age, needs and circumstances.

70.12 We strongly recommend that kinship carers have access to publicly funded legal advice and representation. We are particularly concerned that the proposed reforms may have limited practical effect without equality of access to legal representation and meaningful participation in proceedings. Kinship carers are frequently expected to make significant, lifelong commitments while navigating complex legal processes and family dynamics, sometimes without independent advice or the resources to participate effectively, or with this being offered at the end of proceedings rather than at the beginning to facilitate informed decision-making. The introduction of notions such as enhanced or shared parental responsibility within a kinship care order framework will require a clear understanding of their meaning and implications by all those involved, as there is a risk that kinship families may engage with the family justice system without a full understanding of the options available to them. Requiring carers to initiate applications or repeatedly engage in adversarial proceedings may also place unnecessary strain on family relationships, that need to endure beyond court and local authority spaces. Legal aid should therefore be considered an essential part of implementing these reforms, rather than a separate issue.

70.13 While we recognise that the Commission's remit is primarily concerned with reform of the legal framework rather than funding and service provision, it is difficult to assess the effectiveness of the proposals without considering the resources required to implement them. New legal orders, assessment requirements and review mechanisms may place additional demands on courts,

CAFCASS, local authorities and families. Without sufficient judicial capacity, legal aid, professional training and local authority resources, reforms intended to simplify the system could instead create further complexity, delay and inequality. We therefore encourage the Commission to consider the practical and financial implications of its recommendations, including the need for clear statutory guidance, accessible information for families and effective implementation, with recommendations made to the relevant agencies and Government bodies across the family justice system.

70.14 It is similarly difficult to comment on the suitability of some proposals, as current planning and decisions by kinship families is often determined by the statutory support eligibility attached to different options. Whilst acknowledging the remit of the project, it is difficult to fully comment on future proposals around legal status where they are detached from support eligibility. It is difficult to comment on effectiveness or appropriateness of proposed orders without being cognisant of family's future rights and entitlements to support.

70.15 Research evidence around children's experiences of kinship care is limited, however DfE commissioned study with national Kinship Care Ambassador capturing children's experience of kinship care, which will be published shortly and must inform thinking around notions of permanency, family relationships and reunification in the kinship context. See: https://www.coram.org.uk/news/childrens-experiences-of-kinship-care/

70.16 Ultimately, legislative reform should not simply introduce additional legal routes, but create a more coherent, accessible and proportionate system that supports children to remain safely within their family networks, provides kinship carers with appropriate legal authority and support, and promotes stability, permanence and meaningful family relationships.