Children and Families Bill 2013

Briefing on supporting family and friends carers instead of children being in care (clause 91 & new clauses)

House of Commons Committee stage

Prepared by
Family Rights Group on behalf of the Kinship Care Alliance

Endorsed by the following organisations in the Kinship Care Alliance:

British Association for Adoption and Fostering
Buddle UK
The Fostering Network
The Grandparents’ Association
Grandparents Plus
Nagalro
PAC
The Who Cares? Trust

Also supported by:
Action for Children
A National Voice
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Voice

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Supporting family and friends care arrangements as an alternative to children entering the care system

1. Introduction

An estimated 300,000 children are being raised by relatives and friends (known as family and friends carers), in many cases as an alternative to being brought up by unrelated carers in the care system. The consequence of these relatives stepping in is that there are huge savings to the state\(^1\). These carers are typically grandparents, aunts, uncles or siblings, who are raising the child because of parental mental or physical ill health, learning disabilities, domestic abuse, alcohol or substance misuse, or imprisonment or bereavement.

Research suggests that most family and friends care arrangements (86%) are initiated by the carers themselves rather than social workers seeking them out\(^2\).

Only an estimated 6% of children who are raised in family and friends care are looked after by the local authority\(^3\) and are placed with their carers approved as foster carers for them\(^4\). By far the majority are living with their relatives and friends outside the care system, either with the parents’ agreement\(^5\) or under a residence order or special guardianship order which they are granted by the courts.

In this briefing (and the linked briefing on pre proceedings) we propose a number of amendments/new clauses to the Children and Families Bill which seek to enable more children who cannot live with their parents, to live safely within their family network and be effectively supported.

2. Context

Outcomes for children raised in family and friends care:

Despite these children suffering from similar adversities to children in the care system, their carers often having multiple problems of their own\(^6\) and support being

\(^1\) The cost of an independent foster care place averages £40,000 a year, and the average cost of care proceedings to the state exceeds £25,000

\(^2\) Farmer E and Moyers S (2008) Kinship Care: Fostering Effective Family and Friends Placements (Jessica Kingsley);

\(^3\) A child is looked after by the local authority if they are in care with the agreement of their parents or others with parental responsibility or if they are under an Emergency Protection Order or Care Order. In these circumstances the relative or friend must refer back to the social worker about all major decisions concerning the child’s life.

\(^4\) They must be approved in accordance with the Fostering Services Regulations 2011 and the national Minimum Standards on Fostering, unless the placement is made in an emergency in which case they must be approved in accordance with Regulation 24 Care Planning, Placement and Case Review Regulations 2010.

\(^5\) Since they do not have parental responsibility for the child in these circumstances, they have to refer back to the parents in relation to most important decisions about the child’s life. The child may also be removed from their care by the parents.

\(^6\) 3 out of 4 family and friends carers experience severe financial hardship; a third are lone carers and 1 in 3 live in overcrowded conditions; 3 out of 10 have a chronic illness or disability (Farmer and Moyers 2008, ibid)
inadequate or non-existent, research confirms that

- Compared to children in unconnected foster care, children raised in family and friends care are doing considerably better, in terms of attachment to their carer, their sense of belonging, their confidence that they will be staying with their carers, and their educational outcomes. These children are less likely to be depressed or have emotional or behavioural problems, and their carers keep them just as safe from any further harm as unconnected carers;
- Most family and friends provided excellent care for these children and put their children’s needs first above those of their parents. There was no significant difference between the rates of poor placements between family and friends carers and unrelated carers.
- Family and friends carers are more likely to match their ethnicity (88% v 78%) and to be highly committed to them (63%) than unrelated foster carers, leading to more stable placements.

These outcomes suggest that family and friends care may be the optimal arrangement for many children who cannot stay safely at home with their parents. Moreover, it is consistent with their rights under the European Convention to respect for family life. It is also an increasingly important practical option for children unable to live with the parents, given the record numbers of children in care proceedings and the severe shortage of unrelated foster carers, which is resulting in many children in care experiencing temporary placements, being split up from their siblings and having to move away from their school and family support network.

The need for a family and friends care support system:

Despite the success of these placements, without adequate support, many are under huge strain. We know from our advice work that some even break down. In a recent study, 95% of family and friends carers identified at least one unmet need for support; most mentioned several. Even more worryingly, carers who were raising the most challenging children were the most likely to be receiving no support at all.

Drawing on our collective experience of advising thousands of family and friends carers each year, we believe this lack of support is attributable to a number of

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7 The kind of support that is needed includes: a social worker being allocated, help to manage the complexities of the contact arrangements particularly with the parents, and counselling and specialist help for children with the most severe emotional and behavioural problems
9 Article 8(2) ECHR
11 Their experience is likely to become even more bleak once the Welfare Reform Act 2012 is implemented because of a) benefit cap: family and friends carers who may have large households, as a result of taking on a sibling group of children in addition to their own, are likely to find their benefits are restricted by the cap, irrespective of their needs; and b) conditionality requirement for job-seeker’s allowance: those caring for a school age over 5 will need to be available for work once they have been caring for the child for 9 months, in order to get job seeker’s allowance. However, many are not working because either they were asked by Children’s Services to give up work in order to raise the child; or because the children have significant needs.
factors:

i) Despite carers are not legally liable for these children, they get little, if any help because, unless the child is looked after, they are not entitled to local authority financial or other support (for example help with contact arrangements or challenging behaviour, bereavement counselling etc) for these children.

If a child is looked after, the carer must be approved as a foster carer and they are entitled to a fostering allowance. An overwhelming majority (94%) of family and friends carers are not in this category.

If the child is not looked after local authority financial support is discretionary. Yet their carers often face huge a financial burden as a result of taking on the children. 38% lose or have to give up their job, most have had to refurbish their homes, buy basic items such as beds, bedding and clothing, as well as facing additional costs such as child/after school care. Some have also paid out vast sums on legal bills to secure the child’s future with them; (see financial section on page 8 for further details).

Although there is general duty on local authorities to establish a special guardianship support service akin to adoption support, this doesn’t give an individual carer a right to a specific service. Moreover, there is no equivalent support service for children in family and friends care under a residence order or no order. This may help explain why a survey of family and friends carers found those with special guardianship orders are the most satisfied with the legal order compared to other family and friends carers raising children under other legal orders or no order.

ii) With a few notable exceptions, and despite the recent family and friends care government guidance, most local authorities are not structured in a way that actively promotes and supports family and friends care. Often, there is no dedicated family and friends care team, hence the needs of these children and their carers are dealt with by a number of different teams in Children’s Services who may lack the necessary specialist knowledge and expertise.

iii) There are no official published statistics on the numbers of children in family and friends care nationally or locally. The University of Bristol have analysed 2001 census data, but this only relates to children living with family members i.e. excludes those living with friends. Local authorities do not collect or report consistent data on the number of children in family and friends care.

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12 Parents are liable for to maintain their children under s.1 Child Support Act 1991; family and friends carers are not.
14 Aziz R, Roth D and Lindley B (2012) ibid
15 There is provision for a residence order allowance in Schedule 1 para 15 CA but there is no framework for delivering this so it is often provided administered, if at all, on an ad hoc basis.
17 Statutory Guidance on Family and Friends Care DE, 2011
18 Shailen Nandy, Julie Selwyn, Elaine Farmer and Paula Vaisey (2011) Spotlight on Kinship Care (University of Bristol).
whom they support nor the needs of such children and carers. This makes it very difficult for local authorities to effectively design, develop, finance and deliver specialist family and friends care support.

The government responded to the evidence on the lack of support for family and friends care in April 2011, by issuing statutory guidance which aimed to promote more effective help. It says:

“No child or young person should have to become a looked after child, whether by agreement with those holding parental responsibility or by virtue of a court order, for the sole purpose of enabling financial, practical or other support to be provided to the child’s carer.” (Paragraph 2.19)

It also requires all English local authorities to have a family and friends care policy outlining the support they provide to family and friends carers in their area by September 2011.

The aspirations of this guidance are clearly laudable, but the reality is rather bleak. 15 months after the deadline set in guidance, over 30% of English local authorities have still not published a family and friends care policy. Furthermore the guidance does not change the fundamental legal position that, whilst local authorities have to provide support to looked after children placed with family and friends carers (6% of children in family and friends care), they do not have to support the remaining 94% of children in family and friends care who are not looked after.

19 DfE (2011) ibid
3. Amendments

A. Proposed Amendment – Support for family & friends carers when children are not looked after

In the current financial climate, most local authorities are seeking to reduce service provision wherever they can, with the result that non-statutory services are being cut rather than developed. Our amendment, which mirrors the special guardianship support service required by s.14F CA, seeks to redress this shortcoming by requiring local authorities to provide support to meet identified needs of children being raised in family and friends care under a private arrangement or residence order.

The circumstances we have identified as to when it would apply, restrict this support to children who would otherwise be in the care system, because they are at risk or their parent is incapacitated, dead or in prison.

**Proposed amendment:** Insert a new clause in Children Act 1989 after s.17B insert

**s. 17C Support for family & friends carers when children are not looked after**

| (1) Each local authority must make arrangements for the provision within their area of family and friends care support services, including (a) counselling, advice and information; and (b) such other services as are prescribed, in relation to family and friends care. |
| (2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support. |
| (3) At the request of any of the following persons— (a) a relative, wider family member or friend caring for a child in any of the circumstances (hereinafter referred to as C) set out in subsection 4 below; (b) a parent or other person with parental responsibility; or (c) a child living with C in circumstances set out in subsection 4 below; or (d) any other person who falls within a prescribed description, a local authority must carry out an assessment of that person’s needs for family and friends care support services. |
| (4) The circumstances referred to in subsection (3)(a) & (c) are: a) the child comes to live with C as a result of enquiries or plans made under s.47 of this Act; or b) the child comes to live with C following an investigation under s. 37 of this Act; or c) C has been granted a Residence Order/Child Arrangements Order to avoid the child being looked after, within care proceedings on the child or following the accommodation of a child; or |
d) there is professional evidence of the impairment of the parents’ ability to care for the child; or

e) the parent is dead or in prison

(5) A local authority may, at the request of any other person, carry out an assessment of that person’s needs for family and friends care support services.

(6) Where, as a result of an assessment, a local authority decide that a person has needs for family and friends care support services, they must then decide whether to provide any such services to that person.

(7) If—
(a) a local authority decide to provide any family and friends care support services to a person, and
(b) the circumstances fall within a prescribed description, the local authority must prepare a plan in accordance with which family and friends care support services are to be provided to him, and keep the plan under review.

(8) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of family and friends care support services in accordance with plans and reviewing the provision of family and friends care support services.

(9) The regulations may in particular make provision—
(a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;
(b) about the way in which a plan is to be prepared;
(c) about the way in which, and the time at which, a plan or the provision of family and friends care support services is to be reviewed;
(d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
(e) as to the circumstances in which a local authority may provide family and friends care support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);
(f) as to the consequences of conditions imposed by virtue of paragraph
(e) not being met (including the recovery of any financial support provided);
(g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority’s area;
(h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing family and friends care support services to any person.

(10) A local authority may provide family and friends care support services (or any part of them) by securing their provision by—
(a) another local authority; or
(b) a person within a description prescribed in regulations of persons who may provide family and friends care support services, and may also arrange with any such authority or person for that other authority or that person to carry out the local authority’s functions in relation to assessments under this section.
(11) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

(12) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.
## Proposed Amendment: National Financial Allowance

The aim of the following amendment is to ensure that family and friends carers receive a basic financial allowance from central government to support them raise a child who cannot remain with their parents and would otherwise be in the care system. As in the amendment above, support would be restricted to cases of children, who cannot live with their parents and would otherwise be in the care system, because they are at risk or their parent is incapacitated, dead or in prison.

### Proposed amendment 2:

**Insert a new section 77A into the Social Security Contributions and Benefits Act 1992**

**Family and friends carer’s allowance**

77A.—(1) A person shall be entitled to a family and friends carer’s allowance in respect of a child or qualifying young person if—

(a) the person is a relative, friend or other person connected with the child or qualifying young person, and

(b) the person would be treated for the purposes of Part IX of this Act as having the child or qualifying young person living with him, and

(c) the circumstances are any of those specified in subsection (2) below.

(2) The circumstances referred to in subsection (1)(c) above are—

a) the child or qualifying young person comes to live with the person as a result of enquiries or plans made under s.47 of the Children Act 1989; or

b) the child or qualifying young person comes to live with the person following an investigation under s. 37 of the Children Act 1989; or

c) the person has been granted a Residence Order/Child Arrangements Order to avoid the child or qualifying young person being looked after, within care proceedings on the child or qualifying young person or following the accommodation of the child or qualifying young person; or

d) there is professional evidence of the impairment of the parents’ ability to care for the child or qualifying young person; or

e) the parents are dead or in prison; or

f) the circumstances described in subsections (2)(d) and 2(e) apply to one of the parents and the person claiming family and friends carer’s allowance shows that he was at the date of the claim unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent.

(3) For the purposes of this section, ‘child’ and ‘qualifying young person’ shall have the same meaning as in Section IX of this Act.

(4) Family and friends carer’s allowance shall be payable at such weekly rate as shall
be prescribed

(5) Regulations—
(a) may define who is to be treated as a ‘relative, friend or other person connected to the child’ for the purposes of this section
(b) may prescribe the circumstances in which a parent is to be treated for the purposes of this section as being in prison.

The need for a national financial allowance for family and friends carers:

The circumstances, needs and outcomes of family and friends care arrangements are outlined above together with our proposed amendment for a family and friends care support service. This provides a mechanism for local authorities to provide discretionary support to meet the assessed needs of children in family and friends care under residence orders or where there is no order at all, more effectively. However, this does not address the additional costs to family and friends carers of raising a child who is not their own.

Legal liability for maintaining children technically remains with the parents at all times\(^{21}\) even if they are cared for by someone else.\(^{22}\) At no point does legal liability transfer to family and friends carers (except in adoption) however, in reality they often bear the additional financial as well as emotional costs. These family and friends carers often already have existing responsibilities, for example caring for older relatives, and/or their own children. Family and friends carers are entitled to apply for child benefit (although there are sometimes practical difficulties around transferring this from the parents) and they may also apply for tax credits according to their means, and an allowance for the child where they are in receipt of income support. However, there is no recognition in the benefits system of the additional costs of raising a child who is not their own.

There is no academic or government study which has analysed in depth the costs to family and friends carers of bringing up a child who cannot live with their parents. However, analysis by The Fostering Network found that the cost of caring for a foster child is fifty percent higher than the cost of caring for a birth child.\(^{23}\) These extra costs are rooted partly in the emotional distress that the children have often experienced, and which can be expressed in challenging and destructive behaviour, bedwetting and difficult eating habits. In addition, there are significant costs associated with maintaining contact with parents, other family members and engaging with the social workers and health and education staff who are involved with the child. This is why foster carers receive specific allowances from local authorities, paid at substantially higher rates than state benefits and tax credits.

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\(^{21}\) If children are adopted this liability shifts on the making of the adoption order to the adoptive parents.

\(^{22}\) S.1 Child Support Act 1991

There are four key financial issues for family and friends carers raising a child outside the looked after system:

i. **The immediate costs of a child coming to live with the carer, often in an unplanned situation:**
   Many placements with family and friends carers occur in an emergency or initially as a temporary arrangement. In a survey of 500 family and friends carers, over 80% had spent money on clothing, shoes and bedding for their kin child. 42% had spent £1000 or more on purchases for the child. Four out of five had received no financial help from the local authority with such purchases.\(^\text{24}\)

ii. **The costs of applying for a legal order to provide the child with security and permanence:**
   Some family and friends carers incur large legal costs when applying for a residence or special guardianship order to secure the care of children at risk of harm. A 2010 survey found that that carers’ expenditure on legal costs ranged from less than £200 (where the respondents had kept costs low by representing themselves in court) to £38,000 for complex cases. The majority receive no financial assistance and changes to legal aid mean that even fewer family and friends carers will have access to public funding to help meet such costs.\(^\text{25}\)

iii. **Lost income, resulting from the carer reducing working hours, leaving paid work, foregoing career opportunities or losing pension rights:**
   As stated above, 38% of carers lose their job or have to give up work to take on the care of the kin child.\(^\text{26}\) Unlike new birth parents or adoptive parents, family and friends carers are not entitled to statutory paid leave from employment when a child arrives. In some cases, carers have lost their job because of the number of meetings that they are required to attend with statutory services about the child, particularly if the child has significant behavioural problems and is at risk or has been expelled from school. In some cases the social worker has stipulated that the carer is expected to give up their job to look care for the child, because of the child’s needs and difficulties.

   Giving up or reducing work commitments can have a dramatic immediate and long term impact on the carer’s financial situation: lost income, loss of promotion prospects, loss of pension rights. For some people this means having to draw state benefits for the first time. For older carers, leaving their job may mean they will never be able to get back into the labour market.

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\(^{24}\) Aziz R, Roth D, Lindley B (2012) ibid

\(^{25}\) Family Rights Group (Jan 2010) The harsh reality – the financial situation of family and friends carers www.frg.org.uk

\(^{26}\) Aziz R, Roth D and Lindley B (2012) ibid
“Like most we have had a dramatic change of life style. All ‘retirement’ plans gone. I had to give up work and if I try and return later I will have lost all seniority therefore will be on minimum wage”
– grandparent carer, Family Rights Group Discussion Board

iv. **The actual ongoing costs of raising a child:**
This may include paying extra rent on a bigger home, higher utility bills, child care etc. Moreover, family and friends carers are affected by the new benefit cap under the Welfare Reform Act 2012, even if the reason for their larger household is that they have taken on a sibling group who would otherwise be in the care system, at a considerably greater expense to the state.

“I had to leave a well-paid job, I struggle every day with bills, I go hungry to feed my grandson... we don’t have holidays, I have to go without any social life to afford to keep him.” - Grandparent carer

“I lost my job as a direct result of having time off to attend court, care for the baby and attend his hospital appointments etc. My husband took redundancy and we had to sell our home and most of the furniture in order to pay the legal costs and fund a move of over 350 miles away to ensure the safety of our grandson...We went from a joint income of £76000 a year, a gorgeous home which we had worked hard for over 20 years to build - to having no home of our own, few possessions and living on an initial income of £9000.” – Grandparent carer

It was envisaged at the time that special guardianship legislation was passed that many foster carers would apply for special guardianship orders for older children in their care. Whilst we know that there have been cases of successful orders in such situations, we also know that many foster carers are reluctant to apply for such orders because they fear that the support they would receive would be inadequate, as compared to the mandatory support they and the child receive as a foster carer. We believe that more foster carers would apply for special guardianship orders if they could be guaranteed continued financial support and that the regulations should be amended accordingly.
C. Proposed Amendments: Improved support for special guardians

The aim of these amendments is to ensure that improved support for adopters in this Bill, in the form of personal budgets and better information about support is extended to special guardians who, like adopters, are providing a permanent home for the child as an alternative to them being in the care system.

Proposed amendments:

1. Insert a new clause 4A Special Guardianship Support Services: personal budgets

In Part 2 of the Children Act 1989 (Special Guardianship Support Service after section 14F insert

“14G Special Guardianship support services: personal budgets

(1) This section applies where—
   (a) after carrying out an assessment under section 14F, a local authority in England decide to provide any special guardianship support services to a person (“the recipient”), and
   (b) the recipient is a child being cared for by a special guardian or a special guardian.

   (2) The local authority must prepare a personal budget for the recipient if asked to do so by the recipient or (in prescribed circumstances) a person of a prescribed description.

   (3) The authority must(?) prepare a “personal budget” for the recipient if they identify an amount as available to secure the special guardianship support services that they have decided to provide, with a view to the recipient being involved in securing those services.

   (4) Regulations may make provision about personal budgets, in particular—
      (a) about requests for personal budgets;
      (b) about the amount of a personal budget;
      (c) about the sources of the funds making up a personal budget;
      (d) for payments (“direct payments”) representing all or part of a personal budget to be made to the recipient, or (in prescribed circumstances) a person of a prescribed description, in order to secure any special guardianship support services to which the budget relates;
      (e) about the description of special guardianship support services to which personal budgets and direct payments may (and may not) relate;
      (f) for a personal budget or direct payment to cover the agreed cost of the special guardianship support services to which the budget or payment relates;
(g) about when, how, to whom and on what conditions direct payments may (and may not) be made;
(h) about when direct payments may be required to be repaid and the recovery of unpaid sums;
(i) about conditions with which a person or body making direct payments must comply before, after or at the time of making a direct payment;
(j) about arrangements for providing information, advice or support in connection with personal budgets and direct payments.

(5) If the regulations include provision authorising direct payments, they must—
(a) require the consent of the recipient, or (in prescribed circumstances) a person of a prescribed description, to be obtained before direct payments are made;
(b) require the authority to stop making direct payments where the required consent is withdrawn.

(6) Any special guardianship support services secured by means of direct payments made by a local authority are to be treated as special guardianship support services provided by the authority for all purposes, subject to any prescribed conditions or exceptions.

(7) In this section “prescribed” means prescribed by regulations.”

2. Insert a new clause 5A Special Guardianship Support Services: duty to provide information

In Part 2 of the Children Act 1989 (Special Guardianship Support Service) after section 14F insert—

“14H Special Guardianship support services: duty to provide information

(1) Except in circumstances prescribed by regulations, a local authority in England must provide the information specified in subsection (2) to—
(a) any person who has contacted the authority to request information about special guardianship support
(b) any person within the authority’s area who the authority are aware is a special guardian for a child, and
(c) any person within the authority’s area who is a special guardian and has contacted the authority to request any of the information specified in subsection (2).

(2) The information is—
(a) information about the special guardianship support services available to people in the authority’s area;
(b) information about the right to request an assessment under section 14F (assessments etc for special guardianship support services), and the authority’s duties under that section and regulations made under it;
(c) information about the authority’s duties under section 14G (special guardianship support services: personal budgets) and regulations made under it;
(d) any other information prescribed by regulations.”
D. Proposed Amendments: Employment protection for family and friends carers

The aim of these amendments are to bring family and friends carers as well as adopters into employment protection

<table>
<thead>
<tr>
<th>Proposed amendments to clause 91: Statutory rights to leave and pay of prospective adopters with whom looked after children are placed, special guardians, and family and friends carers (amendments set out in red)</th>
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<tbody>
<tr>
<td>(1) In section 75A of the Employment Rights Act 1996 (ordinary adoption leave), after subsection (1) there is inserted—</td>
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<td>“(1A) The conditions that may be prescribed under subsection (1) include conditions as to—</td>
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<td>(a) being a local authority foster parent;</td>
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<td>(b) being approved as a prospective adopter;</td>
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<td>(c) being notified by a local authority in England that a child is to be, or is expected to be, placed with the employee under section 22C of the Children Act 1989</td>
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<td>(d) becoming a special guardian under section 14A of the Children Act 1989</td>
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<td>(e) becoming a family and friends carer in prescribed circumstances.”</td>
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<tr>
<td>(1A) In section 75B of the Employment Rights Act 1996 (additional adoption leave), after subsection (1) there is inserted—</td>
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<td>(2) In section 80B of the Employment Rights Act 1996 (entitlement to ordinary paternity leave: adoption)—</td>
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<td>(a) in subsection (5), after paragraph (a) there is inserted—</td>
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<td>“(aa) make provision excluding the right to be absent on leave under this section in the case of an employee who, by virtue of provision under subsection (6A), has already exercised a right to be absent on leave under this section in connection with the same child;”;</td>
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<td>(b) after subsection (6) there is inserted—</td>
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<td>“(6A) Regulations under subsection (1) shall include provision for leave in respect of a child”</td>
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(a) placed, or expected to be placed, under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter;

(b) for whom a special guardian has been appointed under section 14A of the Children Act 1989;

(c) placed in a family and friends care arrangement in prescribed circumstances.

(6B) This section has effect in relation to regulations made by virtue of subsection (6A) as if—

(a) references to being placed for adoption were references to being placed under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter or to being placed with a special guardian under section 14A of the Children Act 1989 or to being placed in a family and friends care arrangement in prescribed circumstances;

(b) references to placement for adoption were references to placement under section 22C or section 14A with such a person or to placement with a family and friends carer in prescribed circumstances;

(c) paragraph (aa) of subsection (5) were omitted.”

(3) In section 171ZB of the Social Security Contributions and Benefits Act 1992 (entitlement to ordinary statutory paternity pay: adoption), after subsection (7) there is inserted—

“(8) This section has effect in a case involving a child placed under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter, or placed with a special guardian under s14A of the Children Act 1989 or placed in a family and friends care arrangement in prescribed circumstances, with the following modifications—

(a) the references in subsection (2) to a child being placed for adoption under the law of any part of the United Kingdom are to be treated as references to a child being placed under section 22C in that manner or to being placed with a special guardian under section 14A or to being placed in a family and friends care arrangement in prescribed circumstances;

(b) the reference in subsection (3) to the week in which the adopter is notified of being matched with the child for the purposes of adoption is to be treated as a reference to the week in which the prospective adopter is notified that the child is to be, or is expected to be, placed with the prospective adopter under section 22C or the week the special guardian is expected to be appointed or the week the child is expected to be placed in a family and friends care arrangement in prescribed circumstances;

(c) the reference in subsection (6) to placement for adoption is to be treated as a reference to placement under section 22C or section 14A or to placement with a family and friends carer in prescribed circumstances ;
(d) the definition in subsection (7) is to be treated as if it were a definition of "prospective adopter" or "special guardian" or "family and friends carer in prescribed circumstances".

(9) Where, by virtue of subsection (8), a person becomes entitled to statutory paternity pay in connection with the placement of a child under section 22C or 14A of the Children Act 1989 or placement with a family and friends carer in prescribed circumstances, the person may not become entitled to payments of statutory paternity pay in connection with the placement of the child for adoption.

(4) In section 171ZE of the Social Security Contributions and Benefits Act 1992 (rate and period of pay), after subsection (11) there is inserted—

"(12) Where statutory paternity pay is payable to a person by virtue of section 171ZB(8), this section has effect as if—

(a) the references in subsections (3)(b) and (10) to placement for adoption were references to placement under section 22C or 14A of the Children Act 1989 or placement with a family and friends carer in prescribed circumstances;

(b) the references in subsection (10) to being placed for adoption were references to being placed under section 22C or 14A or to being placed with a family and friends carer in prescribed circumstances;"

(5) In section 171ZL of the Social Security Contributions and Benefits Act 1992 (entitlement to statutory adoption pay), after subsection (8) there is inserted—

"(9) This section has effect in a case involving a child who is, or is expected to be, placed under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter, or placed with a special guardian under section 14A of the Children Act 1989 or placed in a family and friends care arrangement in prescribed circumstances, with the following modifications—

(a) the references in subsections (2)(a) and (4A)(a) to a child being placed for adoption under the law of any part of the United Kingdom are to be treated as references to a child being placed under section 22C in that manner or to being placed with a special guardian under section 14A or to being placed in a family and friends care arrangement in prescribed circumstances;

(b) the reference in subsection (3) to the week in which the person is notified that he has been matched with the child for the purposes of adoption is to be treated as a reference to the week in which the person is notified that the child is to be, or is expected to be, placed with him under section 22C or the week the special guardian is expected to be appointed or the week the child is expected to be placed in a family and friends care arrangement in prescribed circumstances;

(c) the references in subsection (4B)(a) to adoption are to be treated as references to placement under section 22C or 14 A or placement with a family and friends carer in prescribed circumstances;

(d) the reference in subsection (5) to placement, or expected placement, for adoption is to be treated as a reference to
placement, or expected placement, under section 22C or 14 A or placement with a family and friends carer in prescribed circumstances;

(10) Where, by virtue of subsection (9), a person becomes entitled to statutory adoption pay in respect of a child who is, or is expected to be, placed under section 22C or 14A of the Children Act 1989 or placement with a family and friends carer in prescribed circumstances, the person may not become entitled to payments of statutory adoption pay as a result of the child being, or being expected to be, placed for adoption."

(6) In section 171ZN of the Social Security Contributions and Benefits Act 1992 (rate and period of pay), after subsection (8) there is inserted—

“(9) Where statutory adoption pay is payable to a person by virtue of section 171ZL(9), this section has effect as if the reference in subsection (2E) to the week in which the person is notified that he has been matched with a child for the purposes of adoption were a reference to the week in which the person is notified that a child is to be, or is expected to be, placed with him under section 22C of the Children Act 1989 or the week the special guardian is expected to be appointed or the week the child is expected to be placed in a family and friends care arrangement in prescribed circumstances."

(7) In the Social Security Contributions and Benefits Act 1992—

(a) in section 171ZJ(1), at the appropriate place there is inserted—

““local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);”;

““local authority foster parent” has the same meaning as in the Children Act 1989 (see section 22C(12) of that Act);”;

(b) in section 171ZS(1), at the appropriate place there is inserted—

““local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);”;

““local authority foster parent” has the same meaning as in the Children Act 1989 (see section 22C(12) of that Act);”.

Family and friends carers and employment

Adoptive parents have the right to take ordinary adoptive leave and additional adoptive leave (s75A & s75B Employment Rights Act 1996), totalling twelve months. By contrast, the vast majority of family and friends carers who are raising children outside the looked after system are not currently entitled to even one day of statutory paid leave from employment when they take on the indefinite care of a child. The children who come to live with family and friends carers often have complex needs, and many carers have no option but to give up work in order to settle them in and to attend required meetings with statutory agencies. In a recent survey, 38% of family
and friends carers had left their job, lost their job or taken early retirement when they took on care of the child/ren.\textsuperscript{27}

Clause 91 of the Bill proposes to extend:
- ordinary adoptive leave (cl.91(1)),
- ordinary paternity leave (adoption) (cl.91(2)),
- statutory paternity pay (adoption) (cl.91(3)), and
- statutory adoption pay ((cl.91(4)) to foster families with whom a child is placed with a view to potential adoption.

These provisions are a mixture of direct changes to legislation, and changes that enable the Secretary of State to define conditions or provisions through regulations.

Our amendments extend the same employment rights to:

(a) Family and friends carers who have (or are applying for) a special guardianship order (which is intended to be an alternative to adoption when it is in the interests of the child to maintain their legal ties to their birth parents)

(b) Family and friends carers who take on the care of a child in certain defined circumstances where the alternative might be state care. The defined circumstances could include:
   i. the child has (or is proposed to) come to live with the employee as a result of plans made within a child protection enquiry under section 47 of the Children Act 1989; or
   ii. the child has (or is proposed to) come to live with the employee following an investigation under section 37 of the Children Act 1989; or
   iii. the employee has (or is applying for) a residence order arising out of care proceedings under section 31 of the Children Act 1989; or
   iv. the employee has (or is applying for) a residence order following the accommodation of the child under section 20 of the Children Act 1989; or
   v. the employee has (or is applying for) a residence order to avoid the child becoming looked after within care proceedings on the child or following the accommodation of the child, and there is professional evidence that the parents are unable to care for the child, are dead or imprisoned.

Our amendments do not define these circumstances, but give the Secretary of State the power to define them.

Our amendments also extend the right to additional adoptive leave to family and friends carers in these categories.

There is detailed provision made by regulations (The Paternity and Adoption Leave Regulations 2002) for employees to give notice of their intention to take adoptive leave, and for the evidence of adoption an employer has the right to require. These regulations would also need to be amended to accommodate the different types of evidence available in cases of special guardianship or other family and friends care.

\textsuperscript{27} Aziz R, Roth D and Lindley B (2012) ibid
and the potential for different timing in giving notice to employers (as many family and friends care placements are made in an emergency, without notice to the carer).