

#TimeToDefine #KinshipCare

Towards defining kinship care in law: a draft definition

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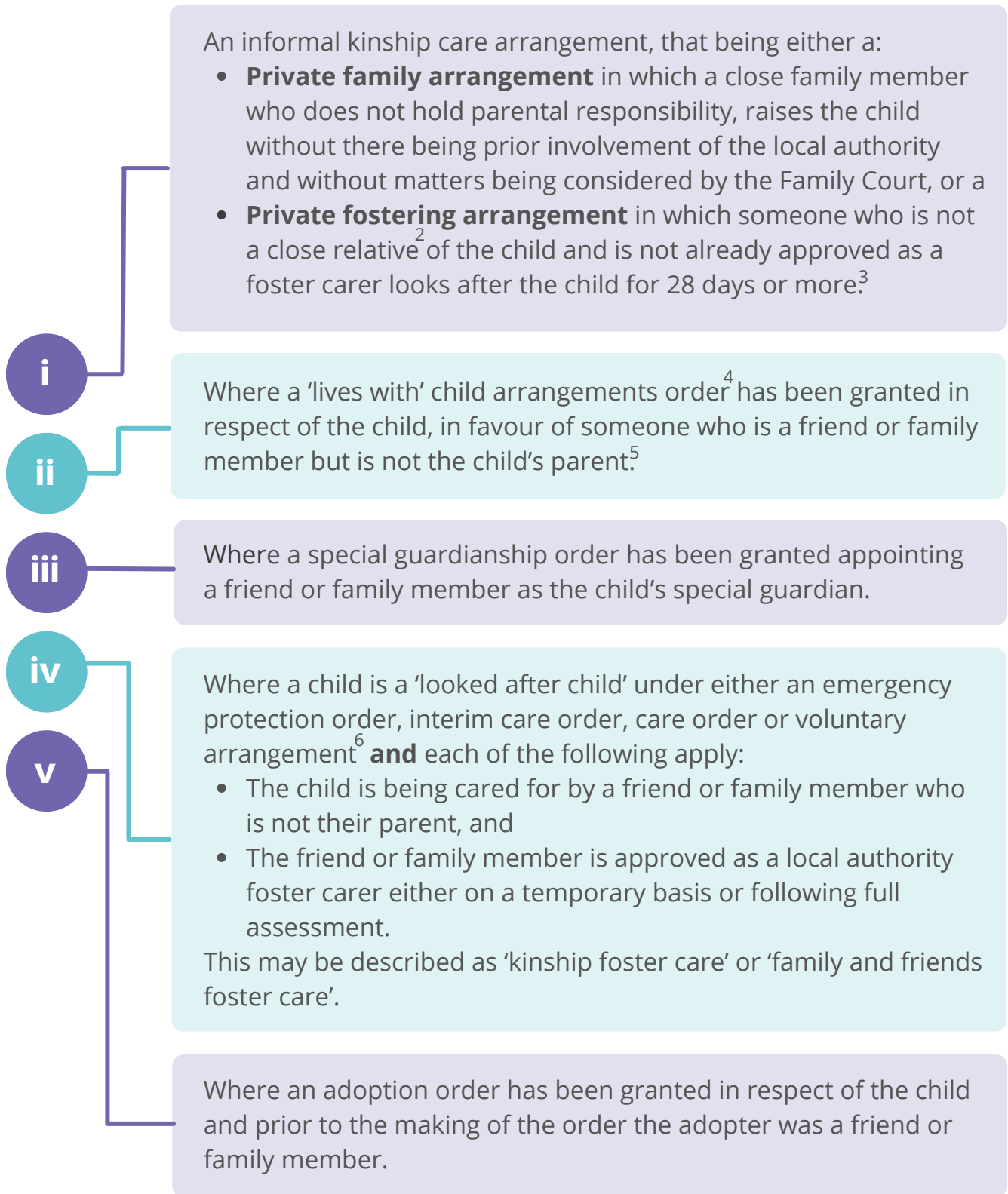


Time to Define is a proposal from Family Rights Group for a clear and simple legal framework for kinship care. As a first and crucial step, we are calling for a single definition of kinship care to be written into legislation and guaranteed support for kinship carers and their children. Read more about the proposal [here](#).

In this second paper, we set out what that definition could look like. We have worked with members of our kinship carers' panel in developing this. We look forward to further discussion with families and practitioners across the child welfare and family justice sector.



Kinship care is any situation in which a child is being raised in the care¹ of a friend or family member who is not their parent. The arrangement may be temporary or longer term. The following are all types of kinship care arrangement:



¹ See page five for details of how 'raised in the care of' could be defined

² In relation to private fostering, relative has the meaning given in section 105 of the Children Act 1989. It includes only the following: Grandparent, brother, sister, uncle, or aunt (whether full blood or half blood or by marriage or civil partnership), and stepparent (a married stepparent, including a civil partner)

³ As per section 66(1)(a) and (b) of the Children Act 1989

⁴ Pursuant to a relevant court power in section 10 of the Children Act 1989

⁵ See note regarding who is a parent

⁶ Under section 20 of the Children Act 1989

'Friend or family member' and 'parent' have the meaning given below:



Who is a 'friend or family member'?

It is important that the definition incorporates a (non-exhaustive) list of individuals who can potentially be kinship carers. This should reflect those categories of friends and family which research, practice and families tells us are often kinship carers. This includes:

- A close friend of the child, or of the child's parent(s)⁷
- A 'close family member' of the child. This includes anyone who is defined as a relative under the Children Act 1989 that being 'a grandparent, brother, sister, uncle or aunt - whether of full blood or half blood or by marriage or civil partnership) or step-parent'. It also includes someone who is the child's great aunt, great uncle or cousin
- A close friend of the child's 'close family member'
- A 'close family member' of the child's half blood⁸ brother or sister
- Someone who formerly the child's step-parent⁹. They may or may not have parental responsibility for the child
- Someone who was previously in a cohabiting relationship with the child's parent **and** whose relationship with the child was that of a child of the family
- A person with a prior connection to the child who does not otherwise fall within one of the other categories above. Examples include a teacher, youth worker, childminder.

Someone who is a parent is not and cannot be considered to be a kinship carer. The meaning of parent would need to be clearly defined within any legislation and would include the following therefore:

- 'Any birth parent, whether with or without parental responsibility for the child'
- 'Any stepparent, whether with or without parental responsibility for the child, who is in a subsisting relationship with the birth parent'
- 'Any adoptive parent who prior to the making of the adoption order in respect of the child was not a 'friend or family member' as defined in this Act'
- 'Any parent by virtue of section 42 or section 43 of the Human Fertilisation and Embryology Act 2008, whether or not they have parental responsibility under sections 2(1A) and 2(2A) of the Children Act 1989.'

But 'parent' would not include a former stepparent. Someone who was a child's stepparent will be a former stepparent if they are no longer married to, or in a civil partnership with, a parent who has parental responsibility for the child.

⁷ The phrase 'close friend' is also used within the UN Guidelines on the Alternative Care of Children.

⁸ The terms 'half-blood' and 'full-blood' are adopted from terminology used already in the Children Act 1989. Kinship carers and others highlight that this terminology is not well-liked and can discomfort. Alternative forms of wording should be consulted upon.

⁹ A step-parent means a person who is married to, or in a civil partnership with, a parent who has parental responsibility for the child.

When is someone an approved local authority foster carer?

The definition will need to make clear when someone is an approved local authority foster carer. This will be where they are either:

- Approved on a temporary basis (in accordance with regulations 24 and 25 of The Care Planning, Placement and Case Review (England) Regulations 2010), or
- Approved as a foster carer following full assessment (under regulation 27 of the Fostering Services (England) Regulations 2011).

What does 'raised in the care of' mean?

The phrase 'raised in the care of' will also itself need to be defined. This should be done in a way which:

- Reflects that kinship care involves a child being with the carer on an ongoing basis but that may be a short, medium or longer term or permanent arrangement
- Acknowledges that some kinship carers may be raising children as part of a shared care arrangement of some sort.

We have drawn on our unique combination of legal and social work expertise, and direct work with families, to devise this draft definition. Kinship carers from our panel have helped us to think through language and practicalities.

Any legal definition of kinship care must be broad enough to ensure that no kinship carers are left out. It should also be simple and transparent, with nothing left open to interpretation, so that families and practitioners are clear about what their rights and responsibilities are.

In crafting this definition, we have drawn on the existing domestic legal and practice framework and a wider body of material. The draft definition also aims to address some notable gaps and anomalies in the existing legal framework. For example, how former stepparents and former cohabitants are included within the definition. How kinship carers raising children as part of shared care arrangements are to be recognised. The current 28 days criteria for private fostering arrangements also means that prior to this point those kinship families are simply not perceived in law and this needs to be addressed.

Our proposal serves as a solid foundation on which Government can construct, and consult on, new legislation. We look forward to hearing what families, legal and social work practitioners and others think.