

## Health and Social Services Committee

### HSS (2)-04-05(p.7)

Date: Wednesday 2 March 2005

Venue: Committee Rooms 3&4, National Assembly for Wales

Title: Special Guardianship (Wales) Regulations 2005

#### Purpose

1. These regulations (reference HSS 08 (04) in the subordinate legislation programme) were identified by the Committee on 14 January 2004 for further consideration.

#### Summary

2. This paper places these regulations in the context of the Adoption and Children Act 2002 and outlines the main provisions of the regulations.

#### Background

3. The Prime Minister's Review of Adoption (July 2000) identified that there was a significant group of children, mainly older, who did not wish to make the absolute legal break with their birth family that is associated with adoption. The report identified the need for an intermediate legal status between adoption and residence orders that offered greater legal security but without absolute legal severance from the child's birth family. In the White Paper *Adoption: a new approach* (December 2000), the Government committed to creating a new private law order called special guardianship that would provide legal permanence short of adoption. The White Paper stated that special guardianship orders would:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing
- provide a firm foundation on which to build a lifelong, permanent relationship between the child and their carer
- be legally secure
- preserve the basic link between the child and their birth family, and be accompanied by proper access to a full range of support services including, where appropriate, financial support.

4. The Adoption and Children Act 2002 (the 2002 Act) includes provision for the legal framework for special guardianship orders and special guardianship support services. The 2002 Act amends the Children Act 1989 to provide for the provision of special guardianship support services. Section 14F(1) of the Children Act requires local authorities to make arrangements for the provision of special guardianship support services in their area. The decision whether to provide special guardianship support services to any person rests with the local authority. Although local authorities are required to make arrangements to provide special guardianship support services they do not have to provide services directly and may contract the provision of services to other prescribed organisations (section 14F(9)).

5. Special guardianship support services are defined as counselling, advice and information and any other services prescribed by Regulations. Section 14F(2) states that this power is to be exercised in order to secure that local authorities provide financial support to special guardians. The explanatory notes to the 2002 Act state that it is intended to use these powers to make Regulations to ensure that local authorities put in place a range of support services. The services are to be available where appropriate for special guardians, children subject to special guardianship orders, their parents and, where appropriate, to others that could include members of the child's family.

6. The draft Special Guardianship (Wales) Regulations use the power in section 14F(1)(b) to prescribe the range of special guardianship support services that local authorities are required to provide.

7. The draft regulations accompanying this paper require local authorities to put in place an appropriate range of services to encourage the use of special guardianship orders and to support children looked after in arrangements supported by a special guardianship order, as well as meeting commitments made in the White Paper and during the passage of the 2002 Act.

#### Financial Implications

8. The financial implications are addressed in the regulatory appraisal which accompanies this paper and which explores the costs and benefits of the options in respect of these regulations. The regulatory appraisal notes that special guardianship orders are not yet available and therefore the potential numbers of orders and the cost of providing special guardianship support services is difficult to estimate with any degree of accuracy.

9. However, local authorities should be able to meet the costs from within their existing allocated funds. It is important to note that many children becoming the subject of special guardianship orders will already be in care or being cared for by foster parents as part of the looked after system, and some of the savings that local authorities make from the transition should be redirected towards special guardianship support services.

10. There is unlikely to be any financial impact upon the NHS as those children looked after, who are likely to be the beneficiaries of Special Guardianship, should already be in receipt of appropriate health services.

#### Cross Cutting Themes

11. There is no impact on small businesses. The Special Guardianship (Wales) Regulations will impact solely upon the 22 local authorities in Wales. Local authorities will be required to comply with the Special Guardianship (Wales) Regulations.

12. Complaints from service users about special guardianship support services will be heard in the first instance through local authority complaints procedures or the child-specific Children Act complaints procedure where applicable.

13. By creating a new legal status, special guardianships will allow a significant group of children who do not wish to make the absolute legal break with their birth family associated with adoption, legal permanence whilst preserving the link with their own family. The option will be available to all children displaced from their natural family, regardless of sex, colour or creed. Well-informed guidance and counselling will be made available to children, their families, and potential guardians alike.

14. Adding to the options available for displaced children without creating any new financial burdens for the community is entirely compatible with the objectives for sustainable development.

#### Action for Health and Social Services Committee

15. To scrutinise the draft Special Guardianship (Wales) Regulations 2005.

Dr Brian Gibbons  
Minister for Health and Social Services

**2005 No. (W. )**

**CHILDREN AND YOUNG  
PERSONS**

**WALES**

**The Special Guardianship (Wales)  
Regulations 2005**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision in respect of special guardianship. The Adoption and Children Act 2002 inserted provisions about special guardianship into the Children Act 1989 (“the Act”).

Part 2 of the Regulations prescribe the matters which a local authority must deal with in a report to the court prepared pursuant to section 14A(8) of the Act when the local authority has received notice of a person’s application for a special guardianship order under section 14A(3) or (6) of the Act or has been requested by a court to conduct an investigation and prepare a report pursuant to section 14A(9) of the Act.

Part 3 of these Regulations makes provision for special guardianship support services. Special guardianship support services are defined by section 14F(1) of the Act as counselling, advice and information and such other services as are prescribed by regulations, in relation to special guardianship. Such services are prescribed in regulation 3 of these Regulations. Regulation 4 specifies the circumstances in which special guardianship support services in the form of financial support may be paid.

Regulation 5 specifies the persons who are entitled to an assessment of their needs for special guardianship support services. Regulation 6 specifies the procedure for an assessment and regulation 7 provides for the determination of the amount of financial support.

After carrying out an assessment, the local authority must give notice under regulation 8 as to any special guardianship support services that are proposed to be provided and as to the period within which representations may be made about the proposal. Regulation 9 makes provision for the local authority to make a decision as to whether any special guardianship support services are to be provided and for the notification of that decision. Regulation 10 makes provision about the supply of information and the giving of notices.

Where special guardianship support services are to be provided to a person, regulation 11 provides for the local authority to prepare a plan in accordance with which the services are to be provided. Regulation 12 makes provision for the review of special guardianship support services and for the revision of the plan.

Regulation 13 makes provision in connection with advice and assistance for persons who used to be subject to special guardianship and regulation 14 makes provision in connection with representation (including complaints) about special guardianship support services.



**2005 No. (W.)**

**CHILDREN AND YOUNG  
PERSON**

**WALES**

**The Special Guardianship (Wales)  
Regulations 2005**

*Made*

*Coming into force* [.....] 2005

**ARRANGEMENT OF REGULATIONS**

**PART 1**

**GENERAL**

1. Citation, commencement, application and interpretation

**PART 2**

**SPECIAL GUARDIANSHIP ORDERS –  
REPORTS**

2. Reports

**PART 3**

**SPECIAL GUARDIANSHIP SUPPORT  
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3. Provision of special guardianship support services
4. Circumstances in which financial support may be paid
5. Assessment of needs for special guardianship support services
6. Assessment procedure
7. Financial support – assessments and amount
8. Notification of assessment
9. Decision as to special guardianship support services

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12. Review of the provision of special guardianship support services

#### PART 4

#### MISCELLANEOUS PROVISIONS IN RELATION TO SPECIAL GUARDIANSHIP

13. Relevant authority for the purposes of sections 24(5)(za) of the Act
14. Functions specified under section 26(3C) of the Act

#### THE SCHEDULE Regulation 2

Reports – matters prescribed for the purposes of section 14A(8)(b) of the Act

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 14A(8)(b), 14F, 24(5)(za), 26(3C) and 104 of the Children Act 1989(a)(b) hereby makes the following Regulations:

#### PART 1

#### GENERAL

#### **Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Special Guardianship (Wales) Regulations 2005 and come into force on [..... 2005].

(2) These Regulations apply in relation to Wales.

(3) In these Regulations —

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- (a) 1989 c.41. Sections 14A and 14F of the Act were inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38). Section 24(5)(za) of the Act was inserted by section 139(1) of, and paragraph 60(c) of Schedule 3 to, the Adoption and Children Act 2002. Section 26(3C) of the Act was inserted by section 117(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43). *See* section 105(1) of the Act for the meaning of “prescribed”.
  - (b) The powers are conferred upon the Secretary of State. Article 2(a) of, and the entry in respect of the Act in the Schedule to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) provide that the functions of the Secretary of State under the Act are exercisable by the Assembly in relation to Wales. Section 145(1) of the Adoption and Children Act 2002 and section 197(1) of the Health and Social Care (Community Health and Standards) Act 2003 provide that references to the Act in S.I. 1999/672 are to be treated as references to the Act as amended by the 2002 and 2003 Acts respectively.



“the Act” (“*y Ddeddf*”) means the Children Act 1989;

“adoption support agencies” has the same meaning as in the Care Standards Act 2000(a);

“special guardianship support services” means those services falling within regulation 3(1) and section 14F(1)(a) of the Act;

“independent fostering agencies” (“*asiantaethau maethu annibynnol*”) has the meaning given in regulation 2(1) of the Fostering Services (Wales) Regulations 2003(b).

“local education authority” (“*awdurdod addysg lleol*”) has the same meaning as in the Education Act 1996(c);

“prospective special guardian” (“*darpar warcheidwad arbennig*”) means a person—

(a) who has given notice to a local authority under section 14A(7) of the Act of an intention to apply for an SGO in accordance with section 14A(3) of the Act; or

(b) in respect of whom a court has requested that a local authority conduct an investigation and prepare a report pursuant to section 14A(9) of the Act;

“related person” (“”) means, in relation to a relevant child—

(a) a relative of the child within the meaning of section 105 of the Act; and

(b) any other person with whom the child has a relationship which appears to the local authority to be beneficial to the child’s welfare;

“relevant child” means a child in respect of whom—

(a) an SGO is in force (referred to in these regulations as “a child subject to an SGO”);

(b) a person has given notice to a local authority under section 14A(7) of the Act of an intention to apply for an SGO in accordance with section 14A(3) of the Act (referred to in these regulations as “a child in respect of whom an SGO is sought”); or

(c) a court has asked a local authority to conduct an investigation and prepare a report pursuant to section 14A(9) of the Act (referred to in these regulations as “a child in respect of whom the court has required a report”),

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(a) 2000 c. 14.  
(b) S.I. 2003/237.  
(c) 1996 c.56.

and references to “relevant children” shall be construed accordingly;

“SGO” means a special guardianship order;

“special guardian” (“*gwarcheidwad arbennig*”) means a person appointed to be a special guardian under an SGO made pursuant to section 14A of the Act (special guardianship orders)

“voluntary adoption agencies” (“*asiantaethau mabwysiadu gwirfoddol*”) has the same meaning as in section 4 of the Care Standards Act 2000.

- (4) In these Regulations, a reference—
- (a) to the Schedule is to the Schedule to these Regulations;
  - (b) to a numbered regulation is to the regulation in these Regulations bearing that number;
  - (c) in a regulation or the Schedule to a numbered paragraph is to the paragraph in that regulation or the Schedule bearing that number.

## PART 2

### SPECIAL GUARDIANSHIP ORDERS – REPORTS

#### **Reports**

2. The matters specified in the Schedule are prescribed for the purposes of section 14A(8)(b) of the Act(a).

## PART 3

### SPECIAL GUARDIANSHIP SUPPORT SERVICES

#### **Provision of special guardianship support services**

3.—(1) For the purposes of section 14F(1)(b) of the Act(b), the following services are prescribed in relation to special guardianship—

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- (a) Section 14A(8) of the Act requires a local authority, following receipt of a notice under section 14A(7) of a person’s intention to apply for a special guardianship order, to investigate the matter and prepare a report for the court. Section 14A(9) also permits the court to require a local authority to conduct an investigation and prepare a report. Section 14A(8)(b) provides that a report must deal with such matters as are prescribed.
  - (b) Section 14F(1) of the Act provides: “Each local authority must make arrangements for the provision within their area of special guardianship support services, which means: (a) counselling,

- (a) the provision of financial support under regulation 4;
- (b) services to enable groups of relevant children, special guardians, prospective special guardians and parents of relevant children (or groups consisting of any combination of those individuals) to discuss matters relating to special guardianship;
- (c) assistance for relevant children, their parents and related persons in relation to arrangements made for contact between such children and any of the following —
  - (i) their parents;
  - (ii) their former guardians or special guardians;
  - (iii) related persons;
- (d) services provided in relation to the therapeutic needs of a relevant child;
- (e) assistance for the purpose of ensuring the continuance of the relationship between a relevant child and a special guardian or prospective special guardian, including—
  - (i) training for that person to meet any special needs of the child;
  - (ii) respite care;
- (f) where the relationship between a child and his or her special guardian is in danger of breaking down, assistance whose aim is to ensure that does not occur, including—
  - (i) mediation; and
  - (ii) organising and holding meetings between such of the interested parties as appear to the authority to be appropriate to address the difficulties faced by the relationship between the child and his or her special guardian.

(2) The fact that a person is outside a local authority's area does not prevent the provision of special guardianship support services to him or her in accordance with these Regulations.

(3) The following are prescribed for the purposes of section 14F(9)(b) of the Act—

- (a) adoption support agencies;
- (b) Local Health Boards, NHS Trusts and Primary Care Trusts;
- (c) local education authorities;
- (d) voluntary adoption agencies; and
- (e) independent fostering agencies.

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advice and information; and (b) such other services as are prescribed, in relation to special guardianship”.

### **Circumstances in which financial support can be paid**

4.—(1) Financial support can only be paid to a special guardian or prospective special guardian in the following cases, namely where—

- (a) a child subject to an SGO lives with his or her special guardian and the local authority considers that financial support is necessary to ensure that that person can continue to look after that child;
- (b) a child in respect of whom an SGO is sought or a child in respect of whom the court has required a report lives with a prospective special guardian and the local authority both—
  - (i) supports the person’s application for an SGO; and
  - (ii) considers that financial support is necessary to ensure that the person can continue to look after the child pending the court’s decision on whether to make an SGO;
- (c) the local authority considers that—
  - (i) the making of an SGO, or of an order for financial provision to be made to or for the benefit of a child, would be beneficial to the interests of a relevant child; and
  - (ii) it is appropriate to contribute to or meet any legal costs, including court fees, of a special guardian or prospective special guardian, as the case may be, associated with seeking an SGO; or
- (d) a relevant child lives with his or her prospective special guardian or special guardian and the local authority considers that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of his or her illness, disability, emotional or behavioural difficulties or the consequences of his or her past abuse or neglect.

(2) Financial support must not be paid under this regulation unless the local authority has required the special or prospective special guardian (“the guardian”) to undertake to—

- (a) inform the local authority forthwith if—
  - (i) the guardian changes his or her address;
  - (ii) the relevant child no longer has his home with the guardian;
  - (iii) the child dies; or

- (iv) the guardian's financial circumstances, or the relevant child's financial needs or resources, change;

either orally or in writing, provided that where the information is provided orally the authority must require it to be confirmed in writing within 7 days; and

- (b) provide the authority with an annual statement (starting from a date to be specified by the authority) of his or her financial circumstances or the relevant child's financial needs and resources.

### **Assessment of needs for special guardianship support services**

5.—(1) Subject to paragraph (2), a local authority must, on request, carry out an assessment of the following persons' needs for special guardianship support services, namely—

- (a) a person falling within section 14F(3)(a) to (c) of the Act;
- (b) a child of a special guardian;
- (c) a child in respect of whom an SGO is sought or a child in respect of whom the court has required a report;
- (d) a child (other than one falling within (a) to (c) above) who is named in a report produced under section 14A(8) of the Act;
- (e) a prospective special guardian; and
- (f) a related person provided that before the request for an assessment was made arrangements were in place for contact between the person and the relevant child,

and, accordingly, the persons in sub-paragraphs (b) to (f) are hereby prescribed for the purposes of section 14F(3)(d) of the Act.

(2) Paragraph (1) does not apply unless—

- (a) the person who has requested an assessment falls within any of sub-paragraphs (a) to (e) of paragraph (1) and he or she either—
  - (i) lives in the area of the local authority;
  - (ii) intends to live in that area;
  - (iii) is a child looked after by that authority; or
  - (iv) is a person in respect of whom the court asked the local authority to prepare a report under section 14A(9), or a child to whom such a report relates or would relate; or
- (b) where the person falls within sub-paragraph (f) of paragraph (1), the relevant child lives or

intends to live in the authority's area or is looked after by that authority.

(3) An assessment of a person's needs for special guardianship support services may be carried out just by reference to a particular special guardianship support service where—

- (a) the person whose needs are being assessed has requested a particular special guardianship support service; or
- (b) it appears to the authority that the person's needs for special guardianship support services may be adequately assessed by reference to a particular special guardianship support service.

#### **Assessment procedure**

6.—(1) Without prejudice to regulation 7, in carrying out an assessment of a person's needs for special guardianship support services, a local authority must—

- (a) have regard to the following considerations, namely—
  - (i) the needs of the person being assessed and how these might be met;
  - (ii) the needs of the relevant child and the family members of any special guardian or prospective special guardian, in so far as they have not been addressed under head (i) above, and how these might be met;
  - (iii) the circumstances that led up to the making of the SGO in respect of a child subject to an SGO; and
  - (iv) any special needs of a child subject to an SGO arising from the fact that—
    - (aa) the child has been looked after by a local authority;
    - (bb) the child has been habitually resident outside the British Islands; or
    - (cc) the special guardian is a relative of the child;
- (b) interview the person whose needs are being assessed and, where that person is a child subject to an SGO, his or her special guardian; and
- (c) where it appears to the authority that there may be a need for the provision of services for the person whose needs are being assessed—
  - (i) by a Local Health Board, NHS Trust or Primary Care Trust; or

- (ii) which fall within the functions of a local education authority,

it must consult that Board, Trust or authority.

(2) A local authority must ensure that an assessment of a person's needs for special guardianship support services—

- (a) is carried out by, or under the supervision of, an individual who has suitable qualifications, experience and skills for that purpose; and
- (b) results in a written report of the assessment.

### **Financial support – assessments and amount**

7.—(1) This regulation applies where a local authority carries out an assessment of a person's needs for special guardianship support services in the form of financial support.

(2) The assessment may be by reference only to financial support under regulation 4.

(3) In determining the amount of financial support, the local authority must take account of—

- (a) the financial resources available to the special guardian or the prospective special guardian as the case may be;
- (b) the amount required by the person just mentioned in respect of his or her reasonable outgoings and commitments (excluding outgoings in respect of the relevant child);
- (c) the needs and resources of the relevant child;
- (d) necessary expenditure on legal costs (to include court fees) in respect of proceedings relating to an SGO or an application for financial provision to be made to, or for the benefit of, the relevant child;
- (e) necessary expenditure in order to facilitate the relevant child having his or her home with a person falling within sub-paragraph (a) above, including any initial expenditure necessary for the purposes of accommodating the child, to include any necessary provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and of clothing, toys and other items necessary for the purposes of looking after the child;
- (f) necessary expenditure of the person falling within sub-paragraph (a) above associated with any special educational needs or special behavioural difficulties of the relevant child, including—
  - (i) the costs of equipment required for the purposes of meeting any special educational needs of the child;

- (ii) the costs of rectifying any damage in the home in which the child lives, where such costs arise out of the special behavioural difficulties of the child;
- (iii) the costs of placing the child in a boarding school, where that placement is necessary to meet the special educational needs of the child; and
- (iv) any other costs of meeting any special needs of the child; and
- (g) expenditure on travel for the purposes of visits between a relevant child and his or her parent or relative.

(4) Financial support must not be paid to meet any needs in so far as those needs can reasonably be expected to be met by virtue of the payment to the person falling within paragraph 3(a) of any benefit (including tax credit) or allowance.

(5) Unless paragraphs (6) and (7) apply, financial support must not include any element of remuneration for the care of a relevant child.

(6) This paragraph applies where—

- (a) as a prospective special guardian, a person was the foster parent of a relevant child;
- (b) the local authority consider that any fostering allowance paid to that person for fostering that child will cease upon the making of an SGO; and
- (c) before an SGO is made, the local authority decide to pay financial support and determine that it is to be paid periodically.

(7) This paragraph applies—

- (a) at any time until the day two years after the making of the SGO (“the second anniversary”); or
- (b) at any time after the second anniversary where, on the date on which the local authority decides to pay financial support, any of the circumstances specified in regulation 4(1) apply.

### **Notification of assessment**

**8.—**(1) After carrying out an assessment under regulation 6 the local authority shall, in accordance with regulation 10—

- (a) supply the information specified in paragraph (2); and
- (b) give notice of the right to make representations under paragraph (3).

(2) The information specified is—



- (a) a statement of the needs for special guardianship support services of the person whose needs were assessed;
- (b) whether the local authority proposes to provide special guardianship support services to the person;
- (c) the services, if any, which it is proposed to provide to the person; and
- (d) where the assessment relates to the person's need for financial support—
  - (i) the basis on which that financial support is determined;
  - (ii) the proposed amount which would be payable;
  - (iii) any conditions which the local authority proposes to impose on the provision of that financial support in accordance with regulation 9(10).

(3) The person notified in accordance with paragraph (2) shall have the right to make representations to the local authority concerning the proposal in paragraph (2)(b) within a period specified by the local authority.

(4) The local authority shall not make a decision under regulation 9 until—

- (a) the person referred to in paragraph (3) has—
  - (i) made representations to the local authority; or
  - (ii) notified the local authority that he or she is satisfied with the proposed decision; or
- (b) the period specified for making representations has expired.

#### **Decision as to special guardianship support services**

**9.**—(1) The local authority shall, having regard to the assessment, and after considering any representations received during the period specified under regulation 8—

- (a) consider whether the person whose needs have been assessed has needs for special guardianship support services; and
- (b) decide whether any such services are to be provided to the person.

(2) The local authority shall give notice of the decision under paragraph (1), and of the reasons for that decision, in accordance with regulation 10.

(3) Where the assessment relates only to the provision of information, the requirement in paragraph (2) to give notice shall not apply where the local authority do not consider it appropriate to give such notice.

(4) Paragraphs (5) to (10) shall apply where the local authority decide that financial support is to be paid.

(5) The local authority shall determine and shall notify in accordance with regulation 10—

- (a) in accordance with regulation 7, the amount that is to be payable;
- (b) the conditions, if any, which are to be imposed in accordance with paragraph (10) on the provision or use of that financial support;
- (c) the date, if any, by which any conditions are to be met;
- (d) the consequences of not meeting any conditions;
- (e) where the financial support is to be paid as a single payment, the date on which the payment is to be made;
- (f) where the financial support is to be paid in instalments or periodically—
  - (i) the frequency with which payment will be made;
  - (ii) the date of the first payment, and
  - (iii) the date, if any, on which payment will cease.

(6) The notification under paragraph (2) shall also include information as to—

- (a) the method of determination of the amount of the financial support;
- (b) the arrangements for the review, variation or termination of the financial support; and
- (c) the responsibilities of the local authority under regulation 12 and of the person receiving support pursuant to regulation 4(2) and paragraph (10).

(7) Subject to paragraphs (8) and (9), financial support shall be paid as a single payment.

(8) The person to whom the financial support is to be paid and the local authority may agree that the support shall be paid—

- (a) in instalments; or
- (b) periodically,

on and until such dates as the local authority may specify.

(9) Where the local authority decide that the financial support is to meet any needs which are likely to give rise to expenditure which is likely to be recurring, they may determine that that financial support shall be paid—

- (a) in instalments; or
- (b) periodically,

on and until such dates as the local authority may specify.

(10) The local authority may impose such conditions as they consider appropriate upon the payment of financial support, which may include conditions as to—

- (a) the timescale within which and the purpose for which the payment should be utilised; and
- (b) compliance with the matters referred to in regulation 4(2).

### **Notices**

**10.**—(1) Any information required to be supplied, or notice required to be given, under regulations 8,9 and 12, shall be given in writing to—

- (a) where the person whose needs for special guardianship support services have been assessed is an adult, that person;
- (b) where the person whose needs for special guardianship support services have been assessed is a child and paragraph (2) applies—
  - (i) to the child; and
  - (ii) except where it appears inappropriate to the local authority to do so, to—
    - (aa) the special guardian or prospective special guardian;
    - (bb) where the child does not have a special guardian or prospective special guardian, the adult the local authority consider most appropriate;
- (c) where the person whose needs for special guardianship support services have been assessed is a child and paragraph (2) does not apply, to the person, if any, to whom subparagraph (b)(ii) applies.

(2) This paragraph applies where—

- (a) it appears to the local authority that the child is of sufficient age and understanding for it to be appropriate to give him or her such notice; and
- (b) it does not appear to the local authority to be inappropriate to give him such notice.

### **Special guardianship support services plan**

**11.**—(1) The circumstances prescribed for the purposes of section 14F(6)(b) of the Act are that the local authority decide to provide special guardianship support services to a person on more than a single occasion.

(2) Regulations 6 to 8 shall apply in relation to plans under section 14F(6) and this regulation as they apply in relation to an assessment under regulation 5.

(3) If the local authority considers it appropriate, for the purposes of preparing the plan, the local authority shall consult—

- (a) any person falling within regulation 10(1); and
- (b) where the person to whom the plan relates lives in another local authority area, that local authority,
- (c) and such consultation shall include discussion as to when the plan should be reviewed.

(4) Where it appears to the local authority that there may be a need for the provision of services to the person to whom the plan will relate—

- (a) by a Local Health Board, NHS Trust or Primary Care Trust; or
- (b) which fall within the functions of a local education authority,

the local authority shall consult that Board, Trust or authority, for the purposes of preparing the plan.

(5) The local authority shall provide a copy of the plan—

- (a) in accordance with regulation 10;
- (b) where paragraph (4)(a) applies, to the Local Health Board, NHS Trust or Primary Care Trust;
- (c) where paragraph (4)(b) applies, to the local education authority; and
- (d) where the person to whom the plan relates lives in another local authority area, to that local authority.

### **Review of the provision of special guardianship support services**

**12.**—(1) Where the local authority provides special guardianship support services for a person which do not include financial support, they shall review the provision of such services—

- (a) if any relevant change in the person's circumstances, including a change of address, comes to their notice; and
- (b) in any event, from time to time.

(2) Where the local authority provides special guardianship support services for a person which comprise, or include, financial support they shall review the provision of such services—

- (a) if any relevant change in the person's circumstances, including a change of address, comes to their notice; and

(b) upon receipt of the annual statement referred to in regulation 4(2)(b).

(3) Regulations 6 to 8 shall apply in relation to a review under this regulation as they apply in relation to an assessment under regulation 5.

(4) The local authority shall, having regard to the review and after considering any representations received within the period specified under regulation 8—

(a) decide whether to vary or terminate the provision of special guardianship support services; and

(b) review and, where appropriate, revise the plan.

(5) If the local authority decide to vary or terminate the provision of special guardianship support services, or revise the plan—

(a) they shall give notice of their decision in accordance with regulation 10, which shall include the reasons for the decision; and

(b) paragraphs (3) to (10) of regulation 9 shall apply to a decision under paragraph (4) as they apply to a decision under paragraph (1) of regulation 9.

(6) Subject to paragraph (7), where any condition imposed in accordance with regulation 9(10) is not complied with, the local authority may—

(a) review, suspend, or cease payment of financial support; and

(b) seek to recover all or part of the financial support they have paid.

(7) Where the condition not complied with is the requirement to provide an annual statement in accordance with an agreement referred to in regulation 4(2), the local authority shall not take any steps under paragraph (6) until—

(a) they have sent to the person who entered into the agreement a written reminder of the need to provide an annual statement; and

(b) 28 working days have expired since the date on which that notice was sent.

(8) Where, having taken the steps specified in paragraph (7), the local authority determine under paragraph (6) that payment of financial support should be suspended, they may lift that suspension upon receipt of the annual statement referred to in regulation 4(2)(b).

(9) The local authority shall cease payment of financial support with effect from the date that they become aware that the circumstances in paragraph (10) apply.

(10) The circumstances are that—

- (a) a special guardianship order has ceased to have effect, or has been revoked; or
- (b) the child in respect of whom the special guardianship support services are provided—
  - (i) has ceased to have his home with a special guardian or prospective special guardian;
  - (ii) is in receipt of income support under Part VII of the Social Security Contributions and Benefits Act 1992<sup>(a)</sup> or of jobseeker's allowance under the Jobseekers Act 1995<sup>(b)</sup>; or
  - (iii) has begun full-time paid employment.

**PART 4**

**MISCELLANEOUS PROVISIONS IN  
RELATION TO SPECIAL  
GUARDIANSHIP**

**Relevant authority for the purposes of sections 24(5)(za) of the Act**

**13.** For the purposes of section 24(5)(za) of the Act (persons qualifying for advice and assistance), the relevant authority shall be the local authority which last looked after the person.

**Functions specified under section 26(3C) of the Act**

**14.** The following functions under section 14F of the Act are specified for the purposes of section 26(3C) of the Act (review of cases and inquiries into representations – special guardianship support services)—

- (a) financial support;
- (b) support groups for children referred to in regulation 3(1)(b)(i);
- (c) assistance in relation to contact referred to in regulation 3(1)(c);
- (d) therapeutic services referred to in regulation 3(1)(d); and
- (e) assistance for the purpose of ensuring continuation of relationships referred to in regulation 3(1)(e).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(c)</sup>

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(a) 1992 c.4.  
 (b) 1995 c.18.  
 (c) 1998 c.38.

Date  
Name  
Title

## THE SCHEDULE Regulation 2

### **Reports – matters prescribed for the purposes of section 14A(8)(b) of the Act**

1. The following matters are prescribed for the purposes of section 14A(8)(b) of the Act
2. In respect of a child in respect of whom a special guardianship order is sought or a child in respect of whom the court has required a report (referred to in this Schedule as “the child”)—
  - (a) name, sex, date and place of birth and home address;
  - (b) nationality and immigration status;
  - (c) physical description;
  - (d) developmental needs, to include physical, educational and emotional needs and a report on the child’s health;
  - (e) religious persuasion, racial origin and cultural and linguistic background;
  - (f) details of any court proceedings relating to parental responsibility or maintenance for the child or relating to the child’s residence;
  - (g) the extent of the child’s contact with members of the child’s family;
  - (h) any placement with foster parents or any other care arrangements relating to the child;
  - (i) education, to include any special educational needs; and
  - (j) the child’s wishes and feelings about special guardianship.
3. In respect of the family of the child—
  - (a) name, date and place of birth and home address of the child’s parents, siblings and any other person the local authority considers to be relevant;
  - (b) nationality and immigration status of the child’s parents;
  - (c) if the child’s parent is a member of a couple, an assessment of the stability of that relationship and, if the parent is married, the date and place of marriage;
  - (d) whether the child’s father has parental responsibility for the child;

- (e) whether either parent is considered by the local authority to be likely to apply for an order under the Act in respect of the child;
- (f) physical description of the parents, siblings and any other person the local authority considers to be relevant;
- (g) religious persuasion, racial origin and cultural and linguistic background of the parents;
- (h) the occupations, past and present, and educational attainment of the parents;
- (i) the care arrangements in respect of any of the child's siblings who have not attained the age of 18 years;
- (j) the views of the parents in relation to the application for a special guardianship order in respect of the child; and
- (k) the reason why any of the information prescribed above in this paragraph is not available.

4. In respect of the prospective special guardian or, where two or more persons are jointly prospective special guardians, each of them—

- (a) name, date and place of birth and home address;
- (b) nationality and immigration status;
- (c) relationship to the child;
- (d) a physical description;
- (e) if the prospective special guardian is a member of a couple, an assessment of the stability of that relationship and, if the prospective special guardian is married, the date and place of marriage;
- (f) religious persuasion, racial origin and cultural and linguistic background of the prospective special guardian and willingness of the prospective special guardian to follow the wishes of the child or of the child's parent in relation to the religious or cultural upbringing of the child;
- (g) occupations, past and present, and educational attainment;
- (h) a report on the health of the prospective special guardian;
- (i) particulars of the prospective special guardian's home, to include details of income, comments on the living standards of the household and any wider family and environmental factors which may impact on the parenting capacity of the prospective special guardian;
- (j) previous experience of caring for children;
- (k) any past assessment as a prospective adopter, foster parent or special guardian;



(l) reasons for applying for a special guardianship order;

(m) parenting capacity, to include an assessment of the prospective special guardian's ability to bring the child up throughout the child's childhood;

(n) details of three personal referees, no more than one of whom is a relative of the prospective special guardian, with a report of the referees' views in respect of the prospective special guardian; and

(o) details of the proposed living arrangements for the child, if these are intended to change after a special guardianship order is made.

5. In respect of the local authority which compiled the report—

(a) name and address;

(b) details as to whether any of the information referred to in paragraphs 1 to 3 was initially obtained by the local authority otherwise than for the purposes of preparing the report and, if so, the purpose for which, and the date upon which, it was obtained;

(c) details of steps taken to verify the identity of the prospective special guardian;

(d) details of any past involvement of the local authority with the prospective special guardian, including any past preparation for that person to be a foster parent or adoptive parent;

(e) details of any assessment which the local authority has undertaken in respect of special guardianship support services for the prospective special guardian, the child or the child's parent;

(f) where section 14A(7)(a) of the Act applies and the prospective special guardian lives in the area of another local authority, details of the local authority's enquiries of that other local authority about the prospective special guardian; and

(g) details of the local authority's opinions as to whether the prospective special guardian would or would not be a suitable special guardian for the child.

6. In respect of the conclusions reached in the report—

(a) a summary prepared by the medical professional who provided the information referred to in paragraphs 1(d) and 3(h) on the health of the child and of the prospective special guardian;

(b) details of the opinion of the person making the report on—

(i) the implications of the making of a special guardianship order for the child;

- (ii) how any special health needs of the child may be met;
  - (iii) whether the making of a special guardianship order would be in the best long-term interests of the child;
  - (iv) how any emotional, behavioural and educational needs of the child may be met;
  - (v) the effect on the child's parents of the making of a special guardianship order; and
  - (vi) if appropriate, the merits of the making of a placement order or an adoption order under the Adoption and Children Act 2002<sup>(a)</sup> or a residence order under section 8 of the Act in respect of the child; and
- (c) details of the conclusions and recommendations of the person making the report on the issue of whether a special guardianship order should be made in respect of the child.

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<sup>(a)</sup> 2002 c.38.

## REGULATORY APPRAISAL

### Title of the Regulatory Proposal:

### *The Special Guardianship (Wales) Regulations 2005*

### Purpose and Intended Effect

#### *Background*

1. The Prime Minister's Review of Adoption (July 2000) identified that there was a significant group of children, mainly older, who did not wish to make the absolute legal break with their birth family that is associated with adoption. The Review suggested that, although planned long-term fostering might suit some children, it lacked security and a proper sense of permanence in a family. The report identified the need for an intermediate legal status between adoption and residence orders that offered greater legal security but without absolute legal severance from the child's birth family. The report recommended providing a new legal option for providing permanence short of adoption. This was strongly supported in the public consultation that followed.
2. In the White Paper *Adoption: a new approach* (December 2000), the Government committed to creating a new private law order called special guardianship that would provide legal permanence short of adoption. The White Paper stated that special guardianship orders would:
  - give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing
  - provide a firm foundation on which to build a lifelong, permanent relationship between the child and their carer
  - be legally secure
  - preserve the basic link between the child and their birth family, and be accompanied by proper access to a full range of support services including, where appropriate, financial support.
3. The Adoption and Children Act 2002 (the 2002 Act) overhauls the outdated Adoption Act 1976, modernises the whole existing legal framework for adoption and makes significant amendments to the Children Act 1989, including the provision of the legal framework for special guardianship orders and special guardianship support services. The provisions on special guardianship are expected to come into force in September 2005.

#### *Issue*

4. Section 14F of the Children Act 1989 as inserted by the Adoption and Children Act 2002 provides for the provision of special guardianship support services. Section 14F(1) requires local authorities to make arrangements for the provision of special guardianship support services in their area. The decision whether to provide special guardianship

support services to any person rests with the local authority. Although local authorities are required to make arrangements to provide special guardianship support services they do not have to provide services directly and may contract the provision of services to other prescribed organisations (section 14F(9)).

5. Special guardianship support services are defined as counselling, advice and information and any other services prescribed by Regulations. Section 14F(2) states that this power is to be exercised so as to secure that local authorities provide financial support to special guardians. The explanatory notes to the 2002 Act state that it is intended to use these powers to make Regulations to ensure that local authorities put in place a range of support services to be available where appropriate for special guardians and children subject to special guardianship orders, their parents and, where appropriate, to others, that could include members of the child's family.
6. The draft Special Guardianship (Wales) Regulations use the power in section 14F(1)(b) to prescribe the range of special guardianship support services that local authorities are required to provide.

#### *Objective*

7. To bring forward Regulations that require local authorities to put in place an appropriate range of services to encourage the use of special guardianship orders and to support children looked after in arrangements supported by a special guardianship order, as well as meeting commitments made in the White Paper and during the passage of the 2002 Act.

#### **Risk Assessment**

8. It is expected that special guardianship orders will be an option for children who would benefit from a permanent, legally secure relationship with their carer but where it is desirable to retain the basic legal link between the child and their birth family. Special guardianship support services are intended to support and encourage the use of special guardianship orders as well as helping special guardianship arrangements to continue where they may otherwise disrupt. The provisions relating solely to special guardianship orders could be brought into force without the accompanying provisions on special guardianship support services. However, special guardianship support services are expected to play a central role in making special guardianship orders workable, particularly in enabling foster carers to undertake the long term care for children who would otherwise be looked after. The key risk is that, without them, the special guardianship provisions cannot be brought into effect as intended and their benefits will be greatly reduced or lost entirely.

9. An inadequate range of special guardianship support services increases the risk of special guardianship arrangements breaking down where access to sufficient support may have allowed them to continue. An arrangement that breaks down will mean a lack of stability and permanence for the child and could result in the child being taken into local authority care. Where a special guardianship order may be in a child's best interests the unavailability of appropriate support services could prevent an order being pursued.
10. A decision between adoption or special guardianship should be made in the best interests of the child. If the scope for special guardianship support services were to be significantly narrower than the current range of adoption support services introduced through Regulations in October 2004, this could risk creating an incentive to pursue adoption rather than special guardianship even where this was not in the child's best interests. Equally, a much broader range of special guardianship support services might create an unhelpful incentive.

## **Options**

### Option 1

11. To do nothing (i.e. to not bring section 14F into force) and rely on existing family support services provided by local authorities.

### Option 2

12. To bring forward Regulations to require that local authorities provide financial support to special guardians.

### Option 3

13. To bring forward Regulations to require that local authorities provide financial support to special guardians and recommend in guidance that local authorities should provide a full range of support services as a matter of good practice.

### Option 4

14. To bring forward the Special Guardianship (Wales) Regulations 2004 to require that local authorities make arrangements to provide a full range of support services, including financial support.

## **Benefits**

### Option 1

15. There are no perceived benefits in terms of encouraging the use of special guardianship orders or supporting children and special guardians. This option does not meet the objective.

### Option 2

16. This option would partially meet the objective of supporting and encouraging the use of special guardianship orders. It would also meet the commitment in the 2002 Act to ensure that local authorities provide financial support for special guardians. However, it would not take any account of the wider needs of those who may request support services, that may not be addressed by financial support alone. Although local authorities would be able to offer financial support to those affected by special guardianship to allow them to buy support services this is likely to have a negative impact on access to support services.

### Option 3

17. This option would partially meet the objective of supporting and encouraging the use of special guardianship orders. It would also meet the commitment in the 2002 Act to ensure that local authorities provide financial support for special guardians. However, guidance is likely to be interpreted and implemented differently in each local authority, possibly leading to widely differing approaches between local authorities. This could result in substantial regional variations in the provision of special guardianship support services.

### Option 4

18. This option would recognise that the range of support needed by children and their special guardians and others affected by special guardianship may well extend beyond financial support. Requiring local authorities to make arrangements for the provision of a specific range of services should also ensure that each local authority takes a consistent approach to the range of support services that they provide. This option is the most effective way of meeting the objective.

## **Costs**

### Option 1

19. No direct costs to local authorities but, as set out above, this option would not meet the objective to encourage the use of special guardianship orders. This option may also risk a greater number of special guardianship arrangements breaking down and increase the

possibility of children having to be taken into local authority care. This could increase costs to local authorities substantially.

### Option 2

20. Special guardianship orders are not yet available and so the potential numbers of orders and the cost of providing special guardianship support services is difficult to estimate with any degree of accuracy. The costs to local authorities should be able to be met from their existing allocated funds. It is also important to consider that many children becoming the subject of special guardianship orders will previously have been cared for by foster parents as part of the looked after system, and the some of the savings that local authorities make from this transition should be redirected towards special guardianship support services. The relative direct costs of this option are not expected to be significantly different from options 3 and 4. However, the narrow range of services may decrease the opportunities for children to leave local authority care via a special guardianship order. The absence of support services could also increase the risk of children being taken into care at a potentially much greater cost to the local authority.

### Option 3

21. The costs of this option are not expected to be significantly different from options 2 and 4. However, the likely differences in approach between local authorities to providing special guardianship support services may decrease the opportunities for children to leave local authority care via a special guardianship order. The absence of support services in some local authorities could also increase the risk of children being taken into care at a potentially much greater cost to the local authority.

### Option 4

22. The costs of this option are not expected to be significantly different from options 2 and 3. The wider range of support services that local authorities would be required to arrange for the provision of and the uniformity between all local authorities under this option is the most effective way of encouraging and supporting the use of special guardianship orders, as well as minimising the number of relationships that may break down without access to appropriate support.

### **Compliance costs for business, charities and voluntary organisations**

23. There is no impact on small businesses. The Special Guardianship (Wales) Regulations will impact solely upon the 22 local authorities in Wales.

### *Enforcement and sanctions*

24. Local authorities will be required to comply with the Special Guardianship (Wales) Regulations.
25. Complaints from service users about special guardianship support services will be heard in the first instance through local authority complaints procedures which may be the child-specific Children Act complaints procedure, if applicable.

### **Results of Consultations**

26. The draft Special Guardianship (Wales) Regulations and accompanying guidance were issued for full public consultation in June 2004 to ensure that all adoption stakeholders had maximum opportunity to consider the proposed content and coverage of the documentation. Following consultation events held in South and North Wales interested parties were invited to consider and respond to the proposals. The consultation period of three months ended on 10 September 2004.
27. Altogether 11 written responses were received; these have been taken into account, together with our appreciation of the views expressed at the consultation events, in preparation of the final draft of these regulations.
28. All of the respondents felt the information content required for the local authority report was about right. When asked if the process for assessing, planning and reviewing special guardianship support services was sufficient, most respondents felt it complied to current and established practice. Respondents felt the regulations around financial support were about right. Overall, the majority concurred that the consultation was helpful in interpreting the requirements set out in the Regulations.
29. When respondents were asked if they agreed with the assessments of the likely impact and the probable benefits of the new Regulations, the majority stated that the assessments were about right.

### **Monitoring and Review**

30. The Welsh Assembly Government is currently considering the most suitable way of gathering information on maintaining the use of special guardianship orders and the provision of special guardianship support services.

### **Summary and Recommendations**



31. Special guardianship orders will provide a new legal route to permanence for children where adoption is not suitable and facilitate children to leave local authority care. The new orders will allow special guardians greater responsibility for decisions concerning the child's day-to-day life. An appropriate range of special guardianship support services will support and encourage the use of special guardianship orders and contribute to minimising the risk of relationships breaking down. The Welsh Assembly Government has indicated its intention to bring forward Regulations to require local authorities to arrange for special guardianship support services.
32. We recommend bringing forward the Special Guardianship (Wales) Regulations (option 4) as the most effective way to achieve the objective.