WELSH STATUTORY INSTRUMENTS

2005 No. 1513 (W.117)

CHILDREN AND YOUNG PERSONS, WALES

The Special Guardianship (Wales) Regulations 2005

Made - - - -	*7 June 2005*
Coming into force - -	*30 December 2005*

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(**1**)(**2**) hereby makes the following Regulations:

PART 1

GENERAL

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Special Guardianship (Wales) Regulations 2005 and they come into force on 30 December 2005.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations—

"the Act" ("*y Ddeddf*") means the Children Act 1989;

"adoption support agencies" ("*asiantaethau cymorth mabwysiadu*") has the same meaning as in the Care Standards Act 2000(**3**);

"couple" ("*cwpl*") has the same meaning as in section 144 of the Adoption and Children Act 2002(**4**);

(**1**) 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".

(**2**) 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.

(**3**) 2000 c. 14.

(**4**) 2002 c. 38.

"independent fostering agencies" ("*asiantaethau maethu annibynnol*") has the same meaning as in regulation 2(1) of the Fostering Services (Wales) Regulations 2003(**5**);

"local education authority" ("*awdurdod addysg lleol*") has the same meaning as in the Education Act 1996(**6**);

"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 a local authority to conduct an investigation and prepare a report pursuant to section 14A(9) of the Act;

"related person" ("*person perthynol*") 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" ("*plentyn perthnasol*") 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"),

and references to "relevant children" shall be construed accordingly;

"SGO" ("*GGA*") 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 support services" ("*gwasanaethau cymorth gwarcheidiaeth arbennig*") means those services falling within regulation 3(1) and section 14F(1)(a) of the Act; and

"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 to a numbered paragraph is to the paragraph in that regulation bearing that number.

(**5**) S.I. 2003/237.
(**6**) 1996 c. 56.

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(**7**).

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(**8**), the following services are prescribed in relation to special guardianship—

(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; and

(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 prevent that occurring, including—

(i) mediation; and

(ii) organising and holding meetings between such persons as appear to the authority to be appropriate in order 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—

(**7**) 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.

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

(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.

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 consider that financial support is necessary to ensure that the guardian can continue to look after the 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 consider that—

(i) it would be beneficial for the child for an SGO to be made; and

(ii) financial support is necessary to ensure that the prospective special guardian can continue to look after the child pending the court's decision on whether to make an SGO;

(c) the local authority consider 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 for a relevant child; and

(ii) it is appropriate to contribute to or meet any legal costs, including court fees, of a prospective special guardian or special guardian associated with seeking an SGO or an order for financial provision; or

(d) a relevant child lives with his or her prospective special guardian or special guardian and the local authority consider that the child needs special care which requires a greater expenditure of resources than would otherwise be the case due to the child's illness, disability, emotional or behavioural difficulties or the consequences of past abuse or neglect.

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

(a) inform them forthwith if—

(i) the guardian changes his or her address;

(ii) the relevant child no longer has his or her 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 it must 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 and 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 the authority.

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

Assessment procedure

6.—(1) 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 an SGO in respect of a child subject to an SGO;

(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;