
WELSH STATUTORY INSTRUMENTS

2018 No. 573 (W. 102)

CHILDREN AND YOUNG PERSONS, WALES

**The Special Guardianship (Wales)
(Amendment) Regulations 2018**

<i>Made</i>	- - - -	<i>2 May 2018</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>8 May 2018</i>
<i>Coming into force</i>	- -	<i>2 July 2018</i>

The Welsh Ministers, in exercise of the powers conferred by sections 14A(8)(b), 14F and 104(4) of the Children Act 1989⁽¹⁾ make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Special Guardianship (Wales) (Amendment) Regulations 2018 and they come into force on 2 July 2018.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, “the 2005 Regulations” (“*Rheoliadau 2005*”) means the Special Guardianship (Wales) Regulations 2005⁽²⁾.

2. Regulation 4 does not apply where, before 2 July 2018—

- (a) an individual has given the appropriate local authority written notice of their intention to apply for a special guardianship order in accordance with section 14A(7) of the Children Act 1989, or
- (b) a court has asked a local authority to conduct an investigation and prepare a report in accordance with section 14A(9) of the Children Act 1989.

Amendments to the 2005 Regulations

3. The 2005 Regulations are amended in accordance with the following provisions.

(1) 1989 c. 41. The functions of the Secretary of State were transferred to the National Assembly of Wales under paragraph 1 of Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) S.I. 2005/1513 (W. 117).

Reports

4.—(1) The Schedule to the 2005 Regulations (reports – matters prescribed for the purposes of section 14A(8)(b) of the Act) is amended as follows.

(2) In paragraph 2 of the Schedule (matters in respect of the child)—

- (a) in sub-paragraph (a) after “address” insert “(including local authority area)”;
- (b) in sub-paragraph (b) for “and immigration status” substitute “(and immigration status where appropriate)”;
- (c) in sub-paragraph (c) before “physical description” insert “a photograph and”;
- (d) in sub-paragraph (d) omit “and a report on the child’s health”;
- (e) in sub-paragraph (e) after “religious persuasion” insert “(including details of baptism, confirmation or equivalent ceremonies)”;
- (f) for sub-paragraph (f) substitute—
 - “(f) details of any order made by a court with respect to the child under the Act including—
 - (i) the name of the court;
 - (ii) the order made; and
 - (iii) the date on which the order was made;”;
- (g) in sub-paragraph (g) for “members of his or her family” substitute “his or her relatives and any other person the local authority consider relevant”;
- (h) after sub-paragraph (g) insert—
 - “(ga) any harm which the child has suffered;
 - (gb) any risk of future harm to the child posed by the child’s parents, relatives or any other person the local authority considers relevant;”;
- (i) after sub-paragraph (h) insert—
 - “(ha) whether the child is being looked after or has been looked after by a local authority or is or has been provided with accommodation by a voluntary organisation, and details (including dates) of any placements by the authority or organisation;
 - (hb) whether the prospective special guardian is a local authority foster parent of the child;”;
- (j) for sub-paragraph (i) substitute—
 - “(i) the child’s educational attainments and whether the child is subject to a statement of special educational needs under the Education Act 1996(3);”;
- (k) for sub-paragraph (j) substitute—
 - “(j) an assessment of the child’s wishes and feelings (having regard to the child’s age and understanding) about—
 - (i) special guardianship;
 - (ii) his or her religious and cultural upbringing; and
 - (iii) contact with his or her relatives and any other person the local authority considers relevant;”;
- (l) after sub-paragraph (j) insert—

- (k) the date on which the child’s wishes and feelings were last assessed;
 - (l) a description of the child’s personality, his or her social development and his or her emotional and behavioural development and any related current needs or likely future needs;
 - (m) details of the child’s interests, likes and dislikes;
 - (n) a health history and a description of the state of the child’s health, including any treatment the child is receiving; and
 - (o) names, addresses and types of nurseries or schools attended, with dates of attendance.”
- (3) In paragraph 3 of the Schedule (matters in respect of the family of the child)—
 - (a) in sub-paragraph (a) after “address” insert “(and the date on which their address was last confirmed) of each”;
 - (b) in sub-paragraph (b) for “and immigration status” substitute “(and immigration status where appropriate)”;
 - (c) after sub-paragraph (b) insert—
 - “(ba) whether the child’s parents were married to each other at the time of the child’s birth or subsequently married and whether they have divorced or separated.”;
 - (d) in sub-paragraph (d) before “whether” insert “where the child’s parents are not married,” and after “child” insert “and, if so, how it was acquired”;
 - (e) after sub-paragraph (e) insert—
 - “(ea) if the identity or whereabouts of either parent is not known, the information about the parent that has been ascertained and from whom the information has been obtained, and the steps that have been taken to establish maternity or paternity as the case may be;
 - (eb) the past and present relationship of the child’s parents with each other.”;
 - (f) in sub-paragraph (f) before “physical” insert “a photograph, if available, and a”;
 - (g) after sub-paragraph (f) insert—
 - “(fa) where available, the health history of each of the parents, including details of any serious physical or mental illness, any hereditary disease or disorder or disability.”;
 - (h) after sub-paragraph (h) insert—
 - “(ha) the personality and interests of the parents.”;
 - (i) for sub-paragraph (j) substitute—
 - “(j) the views, wishes and feelings of the child’s parents in relation to—
 - (i) the application for a special guardianship order in respect of the child;
 - (ii) the child’s religious and cultural upbringing; and
 - (iii) contact with the child.”; and
 - (j) after sub-paragraph (j) insert—
 - “(ja) in respect of each of the child’s siblings under the age of 18—
 - (i) the person with whom the sibling is living;
 - (ii) whether the sibling is looked after by a local authority or provided with accommodation by a voluntary organisation; and

- (iii) details of any court order made with respect to the sibling under the Act including the name of the court, the order made and the date on which the order was made; and”.
- (4) In paragraph 4 (matters in respect of the prospective special guardian or, where two or more persons are jointly prospective special guardians, each of them)—
- (a) in sub-paragraph (a) after “address” insert “(including local authority area)”;
 - (b) in sub-paragraph (b) for “and immigration status” substitute “(and immigration status where appropriate)”;
 - (c) in sub-paragraph (d) before “physical” insert “photograph and”;
 - (d) after sub-paragraph (e) insert—
 - “(ea) if the prospective special guardian is a member of a couple and is applying alone for a special guardianship order, the reasons for this;
 - (eb) details of any previous marriage, civil partnership, or significant relationship;”;
 - (e) after sub-paragraph (f) insert—
 - “(fa) whether the prospective special guardian is a relative of the child;
 - (fb) an assessment of the prospective special guardian’s current and past relationship with the child, the child’s parents and any related person;”;
 - (f) in sub-paragraph (h) after “guardian” insert “, including details of any serious physical or mental illness, any hereditary disease or disorder or disability”;
 - (g) in sub-paragraph (i) after “home” insert “and neighbourhood” and after “income” insert “and expenditure”;
 - (h) in sub-paragraph (l) after “order” insert “and extent of understanding of the nature and effect of special guardianship and whether the prospective special guardian has discussed special guardianship with the child”;
 - (i) for sub-paragraph (m) substitute—
 - “(m) an assessment of the prospective special guardian’s parenting capacity, including—
 - (i) their understanding of, and ability to meet the child’s current and likely future needs, particularly, any needs the child may have arising from harm that the child has suffered;
 - (ii) their understanding of, and ability to protect the child from any current or future risk of harm posed by the child’s parents, relatives or any other person the local authority consider relevant, particularly in relation to contact between any such person and the child;
 - (iii) their ability, suitability and commitment to bring up the child until the child reaches the age of eighteen; and
 - (iv) their understanding of a special guardian’s role and its likely impact on their life;
 - (ma) details of any other members of the prospective special guardian’s household and details of any children of the prospective special guardian even if not resident in the household;
 - (mb) details of the parents and any siblings of the prospective special guardian, with their ages;
 - (mc) details of the personality and interests of the prospective special guardian;

- (md) details of any previous family court proceedings in which the prospective special guardian has been involved (which have not yet been referred to elsewhere in the report);”;
- (j) for sub-paragraph (n) substitute—
 - “(n) details of the prospective special guardian’s three personal referees, no more than one of whom is a relative of the prospective special guardian, and a report of each of the interviews with the referees;”;
- (k) after sub-paragraph (n) insert—
 - “(na) the views of other members of the prospective special guardian’s household and wider family (where relevant) in relation to the proposed special guardianship order;
 - (nb) an assessment of the interaction between each of the members of the prospective special guardian’s household;
 - (nc) an assessment of the child’s current and likely future relationship with the family of the prospective special guardian;
 - (nd) any hopes and expectations the prospective special guardian has for the child’s future;
 - (ne) the prospective special guardian’s wishes and feelings in relation to current and future contact between the child and the child’s relatives or any other person the local authority considers relevant;”;
- (l) in sub-paragraph (o) for “.” substitute “; and”; and
- (m) after sub-paragraph (o) insert—
 - “(p) in respect of the prospective special guardian and any other member of the prospective special guardian’s household who is aged 18 or over, an enhanced criminal record certificate issued under section 113B of the Police Act 1997(4) which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act).”
- (5) In paragraph 5 (matters in respect of the local authority which compiled the report)—
 - (a) in sub-paragraph (e) after “parent” insert “and the period for which those services are to be provided”; and
 - (b) after paragraph (e) insert—
 - “(ea) where the local authority has decided not to provide special guardianship support services, the reasons why;”.
- (6) In paragraph 6 (matters in respect of the conclusions reached in the report)—
 - (a) in sub-paragraph (b)—
 - (i) for paragraph (v) substitute—
 - “(v) the effect of the making of the special guardianship order on the child’s parents, the prospective special guardian and his or her family and any other person the local authority considers relevant;”;
 - (ii) in paragraph (vi) after “child;” omit “and”;
 - (b) in sub-paragraph (c) for “.” substitute “; and”;
 - (c) after sub-paragraph (c) insert—

- “(d) a recommendation as to the arrangements that should be put in place for contact between the child and the child’s relatives or any other person the local authority considers relevant.”

Provision of special guardianship support services

- 5.—(1) In regulation 3 (provision of special guardianship support services)—
- (a) in paragraph (1)(e)(ii), for “respite care” substitute “short breaks”; and
 - (b) paragraph (2) is omitted.
- (2) After regulation 3 insert—

“Services for persons outside the area

3A.—(1) Section 14F of the Act (special guardianship support services) applies to a local authority in respect of the following persons who are outside the local authority area—

- (a) a relevant child who is looked after by the local authority or was looked after by the local authority immediately before the making of a special guardianship order;
- (b) a special guardian or prospective special guardian of such a child;
- (c) a child of a special guardian or prospective special guardian mentioned in sub-paragraph (b).

(2) But section 14F ceases to apply at the end of the period of three years from the date of the special guardianship order except in a case where the local authority are providing financial support under Part 3 and the decision to provide that support was made before the making of the order.

(3) The local authority providing special guardianship support services to a person who falls within those listed in regulation 3A(1)(a) to (c) must, not later than three months before the end of the three year period referred to in paragraph (2)—

- (a) review the special guardianship support services provided to that person;
- (b) notify the local authority where that person lives of any continuing need for special guardianship support services; and
- (c) refer that person to relevant local information, advice and assistance.

(4) Nothing in this regulation prevents a local authority from providing special guardianship support services to persons outside their area where they consider it appropriate to do so.”

Assessment of needs for special guardianship support services

6. In regulation 5 (assessment of needs for special guardianship support services)—
- (a) for paragraph (1) substitute—

“(1) The following persons are prescribed for the purposes of section 14F(3) of the Act (persons at whose request an assessment must be carried out)—

- (a) a person falling within section 14F(3)(a) to (c) of the Act;
- (b) a relevant child who is looked after by the local authority or who was looked after by the local authority immediately before the making of the special guardianship order;
- (c) a child of the special guardian or prospective special guardian mentioned in sub-paragraph (d);
- (d) a special guardian or prospective special guardian of a relevant child;

- (e) a parent of a relevant child;
 - (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
 - (g) a child (other than one falling within sub-paragraphs (a) to (c) above) who is named in a report produced under section 14A(8) of the Act.”; and
- (b) omit paragraph (2).

2 May 2018

Huw Irranca-Davies
Minister for Children and Social Care, under
authority of the Cabinet Secretary for Health and
Social Services, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Special Guardianship (Wales) Regulations 2005 (“the 2005 Regulations”).

The main changes are—

(1) amendments to the Schedule which lists the matters which the local authority must deal with in their report for the court for the purposes of section 14A(8)(b) of the Children Act 1989;

(2) provision under section 14F (special guardianship support services) to prescribe circumstances in which section 14F applies to a local authority in respect of persons who are outside that local authority’s area;

(3) provision for the local authority providing special guardianship support services to persons outside their local authority area to—

- (a) review the special guardianship support services provided to that person;
- (b) notify the local authority where that person lives of any continuing need for support services; and
- (c) refer that person to relevant local services.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.