



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 2

#### AMENDMENTS OF THE CHILDREN ACT 1989

#### 115 Special guardianship

(1) After section 14 of the 1989 Act there is inserted—

*“Special guardianship*

#### **14A Special guardianship orders**

- (1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians).
- (2) A special guardian—
  - (a) must be aged eighteen or over; and
  - (b) must not be a parent of the child in question,and subsections (3) to (6) are to be read in that light.
- (3) The court may make a special guardianship order with respect to any child on the application of an individual who—
  - (a) is entitled to make such an application with respect to the child; or
  - (b) has obtained the leave of the court to make the application,or on the joint application of more than one such individual.
- (4) Section 9(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for a section 8 order.
- (5) The individuals who are entitled to apply for a special guardianship order with respect to a child are—

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- (a) any guardian of the child;
  - (b) any individual in whose favour a residence order is in force with respect to the child;
  - (c) any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section);
  - (d) a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application.
- (6) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—
- (a) an application for the order has been made by an individual who falls within subsection (3)(a) or (b) (or more than one such individual jointly); or
  - (b) the court considers that a special guardianship order should be made even though no such application has been made.
- (7) No individual may make an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application—
- (a) if the child in question is being looked after by a local authority, to that local authority, or
  - (b) otherwise, to the local authority in whose area the individual is ordinarily resident.
- (8) On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with—
- (a) the suitability of the applicant to be a special guardian;
  - (b) such matters (if any) as may be prescribed by the Secretary of State; and
  - (c) any other matter which the local authority consider to be relevant.
- (9) The court may itself ask a local authority to conduct such an investigation and prepare such a report, and the local authority must do so.
- (10) The local authority may make such arrangements as they see fit for any person to act on their behalf in connection with conducting an investigation or preparing a report referred to in subsection (8) or (9).
- (11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).
- (12) Subsections (8) and (9) of section 10 apply in relation to special guardianship orders as they apply in relation to section 8 orders.
- (13) This section is subject to section 29(5) and (6) of the Adoption and Children Act 2002.

#### **14B Special guardianship orders: making**

- (1) Before making a special guardianship order, the court must consider whether, if the order were made—

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- (a) a contact order should also be made with respect to the child, and
  - (b) any section 8 order in force with respect to the child should be varied or discharged.
- (2) On making a special guardianship order, the court may also—
- (a) give leave for the child to be known by a new surname;
  - (b) grant the leave required by section 14C(3)(b), either generally or for specified purposes.

#### **14C Special guardianship orders: effect**

- (1) The effect of a special guardianship order is that while the order remains in force—
- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
  - (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).
- (2) Subsection (1) does not affect—
- (a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or
  - (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.
- (3) While a special guardianship order is in force with respect to a child, no person may—
- (a) cause the child to be known by a new surname; or
  - (b) remove him from the United Kingdom,
- without either the written consent of every person who has parental responsibility for the child or the leave of the court.
- (4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.
- (5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—
- (a) each parent of the child with parental responsibility; and
  - (b) each guardian of the child,
- but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.
- (6) This section is subject to section 29(7) of the Adoption and Children Act 2002.

#### **14D Special guardianship orders: variation and discharge**

- (1) The court may vary or discharge a special guardianship order on the application of—
- (a) the special guardian (or any of them, if there are more than one);

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- (b) any parent or guardian of the child concerned;
  - (c) any individual in whose favour a residence order is in force with respect to the child;
  - (d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
  - (e) the child himself; or
  - (f) a local authority designated in a care order with respect to the child.
- (2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).
- (3) The following must obtain the leave of the court before making an application under subsection (1)—
- (a) the child;
  - (b) any parent or guardian of his;
  - (c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 4A;
  - (d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.
- (4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1).
- (5) The court may not grant leave to a person falling within subsection (3)(b) (c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

#### **14E Special guardianship orders: supplementary**

- (1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (in the light of any rules made by virtue of subsection (3))—
- (a) draw up a timetable with a view to determining the question without delay; and
  - (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.
- (2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.
- (3) The power to make rules in subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that.
- (4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

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- (5) Section 11(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 8 orders.

#### **14F Special guardianship support services**

- (1) 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.
- (2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.
- (3) At the request of any of the following persons—
- (a) a child with respect to whom a special guardianship order is in force;
  - (b) a special guardian;
  - (c) a parent;
  - (d) any other person who falls within a prescribed description,
- a local authority may carry out an assessment of that person's needs for special guardianship support services (but, if the Secretary of State so provides in regulations, they must do so if he is a person of a prescribed description, or if his case falls within a prescribed description, or if both he and his case fall within prescribed descriptions).
- (4) A local authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.
- (5) Where, as a result of an assessment, a local authority decide that a person has needs for special guardianship support services, they must then decide whether to provide any such services to that person.
- (6) If—
- (a) a local authority decide to provide any special guardianship support services to a person, and
  - (b) the circumstances fall within a prescribed description,
- the local authority must prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.
- (7) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support services in accordance with plans and reviewing the provision of special guardianship support services.
- (8) The regulations may in particular make provision—
- (a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;
  - (b) about the way in which a plan is to be prepared;
  - (c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;

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- (d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
  - (e) as to the circumstances in which a local authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);
  - (f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided);
  - (g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area;
  - (h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing special guardianship support services to any person.
- (9) A local authority may provide special guardianship support services (or any part of them) by securing their provision by—
- (a) another local authority; or
  - (b) a person within a description prescribed in regulations of persons who may provide special guardianship support services,
- and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.
- (10) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.
- (11) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.

#### **14G Special guardianship support services: representations**

- (1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by any person to whom they may provide special guardianship support services about the discharge of their functions under section 14F in relation to him.
  - (2) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).
  - (3) In considering representations under subsection (1), a local authority shall comply with regulations (if any) made by the Secretary of State for the purposes of this subsection.”
- (2) The 1989 Act is amended as follows.
- (3) In section 1 (welfare of the child), in subsection (4)(b), after “discharge” there is inserted “ a special guardianship order or ”.
- (4) In section 5 (appointment of guardians)—
- (a) in subsection (1)—

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- (i) in paragraph (b), for “or guardian” there is substituted “, guardian or special guardian”, and
- (ii) at the end of paragraph (b) there is inserted “; or
  - (c) paragraph (b) does not apply, and the child’s only or last surviving special guardian dies.”,
- (b) in subsection (4), at the end there is inserted “; and a special guardian of a child may appoint another individual to be the child’s guardian in the event of his death”, and
- (c) in subsection (7), at the end of paragraph (b) there is inserted “ or he was the child’s only (or last surviving) special guardian”.

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**Commencement Information**

- I1** S. 115 in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), **art. 2(1)(m)(x)**,
- I2** S. 115 in force at 30.12.2005 in so far as not already in force by [S.I. 2005/2213](#), **art. 2(k)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A inserted by [2014 c. 6 s. 5](#)
- s. 141(7) inserted by [2010 c. 26 Sch. 3 para. 13](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 3 Pt. 2 repealed (4.9.2013) without ever being in force by [2013 c. 22](#), s. 17(4) ; S.I. 2013/2200 art. 2(a))