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## 2022 CHAPTER 18

### PART 2 **N.I.**

#### Children order amendments

PROSPECTIVE

#### Special guardianship **N.I.**

**119.**—(1) After Article 14 of the Children Order insert—

*“Special guardianship*

#### **Special guardianship orders**

**14A.**—(1) A “special guardianship order” is an order appointing one or more persons to be a child’s “special guardian” (or special guardians).

(2) A special guardian—

- (a) must be aged 18 or over; and
- (b) must not be a parent of the child in question,

and paragraphs (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 a person 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 person.

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(4) The persons who are entitled to apply for a special guardianship order with respect to a child are—

- (a) any guardian of the child with whom the child has lived for a period of at least one year immediately preceding the application;
- (b) any person in whose favour a residence order is in force with respect to the child and with whom the child has lived for a period of at least one year immediately preceding the application;
- (c) any person listed in paragraph (5)(b) of Article 10 (as read with paragraph (10) of that Article);
- (d) any person listed in paragraph (5)(c) of Article 10 and with whom the child has lived for a period of at least one year immediately preceding the application;
- (e) an authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application;
- (f) a relative with whom the child has lived for a period of at least one year immediately preceding the application.

(5) A person may not apply for leave to make an application for a special guardianship order with respect to a child unless the child concerned has lived with the person who may be appointed as the child's special guardian 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—

- (a) in any family proceedings in which a question arises with respect to the welfare of the child if an application for the order has been made by a person who falls within paragraph (3)(a) or (b) (or more than one such person jointly); or
- (b) in any proceedings on an application for a care or supervision order in which a question arises with respect to the welfare of the child if the court considers that a special guardianship order should be made even though no such application has been made.

(7) No person may make any application under paragraph (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, the person has given written notice of intention to make the application—

- (a) if the child in question is being looked after by an authority, to that authority; or
- (b) otherwise, to the authority in whose area the person is ordinarily resident.

(8) On receipt of such a notice, the authority must investigate the matter and prepare a report for the court dealing with—

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- (a) the suitability of the applicant to be a special guardian;
- (b) such matters (if any) as may be prescribed; and
- (c) any other matter which the authority considers to be relevant.

(9) The court may itself ask an authority to conduct such an investigation and prepare such a report, and the authority must do so.

(10) If the child in question is being looked after by an authority, a report referred to in paragraph (8) or (9) must be prepared in accordance with prescribed arrangements.

(11) The authority may make such arrangements as it sees fit for any person to act on its behalf in connection with conducting an investigation or preparing a report referred to in paragraph (8) or (9).

(12) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in paragraph (8).

(13) Paragraphs (8) and (9) of Article 10 apply in relation to special guardianship orders as they apply in relation to Article 8 orders.

(14) This Article is subject to section 26(5) and (6) of the Adoption and Children Act (Northern Ireland) 2022.

#### **Special guardianship orders: making**

**14B.**—(1) Before making a special guardianship order, the court must consider whether, if the order were made—

- (a) a contact order should also be made with respect to the child; and
- (b) any Article 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 Article 14C(3)(b), either generally or for specified purposes.

#### **Special guardianship orders: effect**

**14C.**—(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 Order, 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).

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(2) Paragraph (1) does not affect—

- (a) the operation of any statutory provision 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 the child 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) Paragraph (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of the child.

(5) If the child with respect to whom a special guardianship order is in force dies, the special guardian of the child 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 Article is subject to section 26(7) of the Adoption and Children Act (Northern Ireland) 2022.

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

**14D.**—(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);
- (b) any parent or guardian of the child concerned;
- (c) any person in whose favour a residence order is in force with respect to the child;
- (d) any person not falling within any of sub-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; or
- (f) an authority designated in a care order with respect to the child.

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(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 paragraph (1).

(3) The following must obtain the leave of the court before making an application under paragraph (1)—

- (a) the child;
- (b) any parent or guardian of the child;
- (c) any step-parent of the child who has acquired, and has not lost, parental responsibility for the child by virtue of Article 7(1A);
- (d) any person falling within paragraph (1)(d) who, immediately before the making of the special guardianship order had, but no longer has, parental responsibility for the child.

(4) Where the person applying for leave to make an application under paragraph (1) is the child, the court may only grant leave if it is satisfied that the child has sufficient understanding to make the proposed application under paragraph (1).

(5) The court may not grant leave to a person falling within paragraph (3) (b), (c) or (d) unless it is satisfied that there has been a change in circumstances since the making of the special guardianship order.

### **Special guardianship orders: supplementary**

**14E.—**(1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court must (in the light of any rules made by virtue of paragraph (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) Paragraph (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 of court in paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of Article 11.

(4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

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

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### **Special guardianship support services**

**14F.—**(1) Each authority must make arrangements for the provision within its 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 paragraph (1)(b) is to be exercised so as to secure that authorities provide financial support.

(3) An authority must at the request of—

- (a) a relevant child;
- (b) a special guardian of a relevant child;
- (c) a prospective special guardian of a relevant child;
- (d) a parent of a relevant child; or
- (e) any other person who falls within a prescribed description (subject to sub-paragraph (a) of paragraph (10)),

carry out an assessment of that person's needs for special guardianship support services.

(4) In paragraph (3)—

- (a) “relevant child” means a child in respect of whom—
  - (i) a special guardianship order is in force;
  - (ii) a person has given notice to an authority under Article 14A(7) of intention to make an application for a special guardianship order; or
  - (iii) a court is considering whether a special guardianship order should be made and has asked an authority to conduct an investigation and prepare a report under Article 14A(9);
- (b) “prospective special guardian” means a person—

- (i) who has given notice to an authority under Article 14A(7) of the person's intention to make an application for a special guardianship order; or
- (ii) in respect of whom a court has requested that an authority conduct an investigation and prepare a report under Article 14A(9).

(5) An authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.

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(6) Where, as a result of an assessment, an authority decides that a person has needs for special guardianship support services, it must then decide whether to provide any such services to that person, subject to paragraph (7).

(7) An authority must provide special guardianship support services to a person under paragraph (6) where that person falls within—

- (a) any of sub-paragraphs (a) to (d) of paragraph (3); or
- (b) a prescribed description.

(8) If—

- (a) an authority decides to provide any special guardianship support services to a person under paragraph (6) or is under a duty to do so by virtue of paragraph (7); and
- (b) the circumstances fall within a prescribed description,

the authority must prepare a plan in accordance with which special guardianship support services are to be provided to that person, and keep the plan under review.

(9) The Department 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.

(10) The regulations may in particular make provision—

- (a) as to the circumstances in which a person mentioned in sub-paragraph (e) of paragraph (3) is to have a right to request an assessment of that person's needs in accordance with that paragraph;
- (b) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;
- (c) about the way in which a plan is to be prepared;
- (d) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;
- (e) about the considerations to which an authority is to have regard in carrying out an assessment or review or preparing a plan;
- (f) as to the circumstances in which an authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);
- (g) as to the consequences of conditions imposed by virtue of sub-paragraph (f) not being met (including the recovery of any financial support provided);
- (h) as to the circumstances in which this Article may apply to an authority in respect of persons who are outside that authority's area;



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- (i) as to the circumstances in which an authority may recover from another authority the expenses of providing special guardianship support services to any person.

(11) An authority may provide special guardianship support services (or any part of them) by securing their provision by—

- (a) another authority; or
- (b) a person within a prescribed description of persons who may provide special guardianship support services,

and may also arrange with another authority or any such person for that other authority or that person to carry out the authority's functions in relation to assessments under this Article.

(12) An authority may carry out an assessment of the needs of any person for the purposes of this Article at the same time as an assessment of the person's needs is made under any other provision of this Order or under any other statutory provision.

(13) Article 46 (co-operation between authorities and other bodies) applies in relation to the exercise of functions of an authority under this Article as it applies in relation to the exercise of functions of an authority under Part 4."

(2) In Article 3 of that Order (child's welfare to be paramount consideration), in paragraph (4)(b), after "discharge" insert "a special guardianship order or".

(3) In Article 57 of that Order (interim orders), after paragraph (3) insert—

"(3A) Where, in any proceedings on an application for a care or a supervision order, a court makes a special guardianship order with respect to the child concerned, it may also make an interim supervision order with respect to the child if it considers it necessary to do so to satisfactorily safeguard the child's welfare."

(4) In Article 159 of that Order (appointment of guardians by court), in paragraph (1)—

- (a) in sub-paragraph (b), for "or guardian" substitute ", guardian or special guardian"; and
- (b) at the end of sub-paragraph (b) add—

“; or

(c) sub-paragraph (b) does not apply, and the child's only or last surviving special guardian dies."

(5) In Article 160 of that Order (appointment of guardians by parent or guardian)—

- (a) in paragraph (2), at the end add “; and a special guardian of a child may appoint another person to be the child's guardian in the event of the special guardian's death”; and



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(b) in paragraph (5), at the end of sub-paragraph (b) add “or the person was the child’s only (or last surviving) special guardian”.

**Commencement Information**

**II** S. 119 not in operation at Royal Assent, see [s. 160\(1\)](#)

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

- Act applied (with modifications) by S.I. 2018/412, Sch. 3 (as substituted) by [2022 c. 18 \(N.I.\) Sch. 3 para. 83](#)