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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1513**

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

**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(1);

“couple” (“*cwpl*”) has the same meaning as in section 144 of the Adoption and Children Act 2002(2);

“independent fostering agencies” (“*asiantaethau maethu annibynnol*”) has the same meaning as in regulation 2(1) of the Fostering Services (Wales) Regulations 2003(3);

“local education authority” (“*awdurdod addysg lleol*”) has the same meaning as in the Education Act 1996(4);

“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

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(1) 2000 c. 14.  
(2) 2002 c. 38.  
(3) S.I.2003/237.  
(4) 1996 c. 56.

- (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.

## 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(5).

## 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(6), 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 —

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(5) 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.

(6) 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”.

- (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—
  - (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;
    - (bb) the child has been habitually resident outside the British Islands; or
    - (cc) the special guardian is a relative of the child; and
  - (v) where the assessment relates to financial support, the requirements of regulation 7.
- (b) interview the person whose needs are being assessed and, where that person is a child subject to an SGO, the 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 by a Local Health Board, NHS Trust, Primary Care Trust or local education authority, 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 — amount**

7.—(1) In determining the amount of any 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 in relation 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 related persons.
- (2) 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 of any benefit (including tax credit) or allowance.
- (3) Unless paragraph (4) applies, financial support must not include any element of remuneration for the care of a relevant child.
- (4) This paragraph applies where—
- (a) as a prospective special guardian, a person was also 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.

### **Notification of assessment**

- 8.—**(1) After carrying out an assessment under regulation 6 the local authority must, 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) the authority's provisional view as to the person's needs for special guardianship support services;
  - (b) whether the local authority proposes to provide special guardianship support services to the person;
  - (c) details of 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; and
    - (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 (1) 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 in that notice.

(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 must, having regard to the assessment, and after considering any representations received during the period specified under regulation 8—

- (a) consider whether the assessed person 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 must 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 does not apply where the local authority do not consider it appropriate to give such notice.

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

(5) The local authority must determine and 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) must 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 must 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 recurring expenditure, 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, must be given in writing and—

(a) where the person whose needs for special guardianship support services have been assessed is an adult, to 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; or

(bb) where the child does not have a special guardian or prospective special guardian, to 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) above 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 or her 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) If the local authority considers it appropriate, for the purposes of preparing the plan, they must 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,

and such consultation must include discussion as to when the plan should be reviewed.



(3) 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 by a Local Health Board, NHS Trust, Primary Care Trust or local education authority, the local authority must consult that Board, Trust or authority, for the purposes of preparing the plan.

- (4) The local authority must provide a copy of the plan—
- (a) in accordance with regulation 10;
  - (b) where paragraph 3 applies, to the Local Health Board, Trust or authority; and
  - (c) unless the authority considers it unnecessary, 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 a local authority provide special guardianship support services for a person which do not include financial support, they must 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 a local authority provide special guardianship support services for a person which comprise, or include, financial support they must 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 apply with any necessary modifications in relation to a review under this regulation as they apply in relation to an assessment under regulation 5.

(4) The local authority must, 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 must give notice of their decision in accordance with regulation 10, and that notice must include the reasons for the decision; and
- (b) paragraphs (3) to (10) of regulation 9 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 must 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 must 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 or her 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(7) or of jobseeker's allowance under the Jobseekers Act 1995(8); 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 referred to in regulation 3(1)(b);
- (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).

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(7) 1992 c. 4.  
(8) 1995 c. 18.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(9)</sup>

7 June 2005

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly