

## **Explanatory Memorandum to:**

### **The Special Guardianship (Wales) (Amendment) Regulations 2018 and Code of Practice on the exercise of local authority functions in relation to special guardianship orders**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

#### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Special Guardianship (Wales) (Amendment) Regulations 2018
- Special Guardianship Orders: Code of practice on the exercise of local authority functions in relation to special guardianship orders

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**Minister for Children and Social Care**

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## **1. Description**

This Explanatory Memorandum relates to *The Special Guardianship (Wales) (Amendment) Regulations 2018* ('the Regulations') and the *Special Guardianship Orders: Code of Practice on local authority functions in relation to special guardianship orders* ('the Code of Practice'), which will come into force in July 2018. The Regulations make amendments to the Special Guardianship (Wales) Regulations 2005 in respect of matters to be included in local authority reports to the court, and provision of special guardianship support services to former looked after children living in another local authority area. The Code of Practice places requirements on local authorities relating to the exercise of their functions in relation to special guardianship orders.

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters have been identified.

## **2. Legislative background**

Special Guardianship Orders (SGOs) were introduced in England and Wales in December 2005, as a new permanence option for children, when section 115(1) of the Adoption and Children Act 2002 inserted new sections 14A-F into the Children Act 1989. The powers enabling these Regulations to be made are contained in sections 14A(8)(b), 14F and 104(4) of the Children Act 1989. The Regulations are being laid under the negative procedure.

Provisions concerning SGOs in Wales were made under the Special Guardianship (Wales) Regulations 2005, supported by statutory guidance issued under section 7 of the Local Authority Social Services Act 1970 (NAfW Circular 26/06). The guidance ceased to have statutory force in April 2016 when section 7 no longer applied to local authorities in Wales on implementation of the Social Services and Well-being (Wales) Act 2014. The guidance is being replaced by the Code of Practice, which is being issued under section 145 of the 2014 Act, which gives local authorities the power to issue codes on the exercise of social services functions. Local authorities, when exercising their functions in respect of SGOs, will be required to act in accordance with the requirements contained in the code and have regard to any guidelines contained within it.

Changes to the Special Guardianship (Wales) Regulations 2005 will be subject to the negative procedure. The making of the new code of practice will be subject to the procedure under section 146 of the Social Services and Well-being (Wales) Act 2014 which requires that it is laid before the Assembly for 40 days and then, in the absence of a resolution not to approve it, the code is brought into force on 2 July 2018 by an appointed day order.

### **3. Purpose & intended effect of the legislation**

The purpose of the Regulations is to:

- Amend the Schedule to the Special Guardianship (Wales) Regulations 2005 which lists the matters which the local authority must deal with in their report for the court about the suitability of the applicants to be special guardians. The proposed matters aim to give a more holistic assessment of the proposed arrangement, including any risk factors and how these will be addressed, to reinforce the aim of ensuring that the arrangement effectively supports the child up to the age of 18.
- Clarify which local authority is responsible for providing special guardianship support services to former looked after children living in another local authority area, through a new regulation specifying that the local authority which looked after a child immediately before a special guardianship order was made must continue to meet any identified special guardianship support needs for three years, regardless of where the child is living. There is an exception to this, in that where financial support was being provided by the local authority before the making of the order, that local authority will remain responsible for ongoing financial support as long as the family in question qualifies for payments.
- Require the local authority which is providing special guardianship support services to a former looked after child (living in another local authority area) to review those services not later than three months before the end of a three year period, to notify the local authority where the person receiving the support lives of any continuing need for support, and to refer the person to relevant local information, advice and assistance.

The purpose of the Code of Practice for local authorities is to replace the guidance issued by the Welsh Government in 2005, and which has since lost its statutory basis.

The Code of Practice relates to the functions conferred on local authorities by sections 14A-F of the Children Act 1989 in relation to Special Guardianship and the Special Guardianship (Wales) Regulations 2005, as amended by the Regulations.

The Code of Practice covers the following areas:

- Chapter 1: Preamble. This sets out the broad legislative and policy framework for SGOs, and sets out the rights-based outcomes that should be achieved for children subject to SGOs.

- Chapter 2: Assessment of suitability and reports to the court. This chapter includes how applications for SGOs are made (in both private and public law), how local authorities must assess the suitability of prospective special guardians, and the content of reports to the court. The prescribed matters, including those additional matters inserted through the Regulations, are set out in an Annex to the Code of Practice.
- Chapter 3: Provision of support services. This chapter requires local authorities to consider the needs of special guardians when securing their information, advice and assistance service, and to signpost special guardians to accessible and independent sources of advice. It covers the special guardianship support services prescribed in the 2005 Regulations, and sets out how local authorities must go about planning and providing these services.
- Chapter 4: Assessment of support services. This chapter sets out the arrangements for assessing the needs of those eligible for special guardianship support services. It clarifies which is the responsible local authority, describes the assessment procedure, and provides guidance on meeting care and supporting needs, including the link with care and support provided under the Social Services and Well-being (Wales) Act 2014.

This chapter introduces a specific requirement on local authorities to make children, prospective special guardians and other family members aware of their entitlement to request an assessment for special guardianship support services. This is a new requirement, not found in the original statutory guidance published in 2005. It formed part of the consultation undertaken in the autumn 2017.

- Chapter 5: Financial support. This chapter sets out the circumstances in which financial support can be paid to special guardians or prospective special guardians, and the factors a local authority must take into account when determining the amount. It explains what is meant by 'financial support', and provides guidance on financial support for foster carers who become special guardians.
- Chapters 6-8. These chapters set out the procedure for notifying a special guardian of the outcome of an assessment for support services, and the opportunity for making representations; notification of decisions regarding special guardianship support services; and general requirements regarding the giving of information and notices.
- Chapter 9: Support services plan. This chapter sets out when a plan should be prepared, who needs to be involved, what the plan must contain, and who must receive copies.

- Chapter 10: Review of support services. This chapter sets out the requirements on local authorities to review special guardianship support services plans, including arrangements to review financial support where there has been a change of circumstances.
- Chapter 11: Former looked after children: services outside of area. This chapter sets out which local authority is responsible for providing special guardianship support services to a child who was a looked after child immediately before the SGO was made. It includes guidance on the changes made by the Regulations.
- Chapter 12: SGOs and leaving care. This chapter covers a local authority's duty towards a young person aged 16-21 who was subject to a SGO and who was a looked after child immediately before the SGO was made. These young people come within the definition of 'category 5 young person' in section 104 of the Social Services and Well-being (Wales) Act 2014, and this chapter should be read in conjunction with the Code of Practice relating to Part 6 of that Act (chapter 5, 'Leaving Care').
- Chapter 13: Complaints and representations. This chapter deals with complaints and representations about special guardianship support services.

#### **4. Consultation**

The Regulations and Code of Practice were subject to a formal 12 week consultation between 4 September and 27 November 2017.

35 responses were received, 8 from individuals and the rest from organisations. These included 9 local authorities, the Children's Commissioner for Wales, CASCADE (Children's Social Care Research and Development Centre, Cardiff University), and voluntary organisations including the Fostering Network and Children in Wales, both of which had held consultation events with special guardians and former foster carers.

The proposed change to the Regulations, which concerned responsibility for supporting former looked after children, received broad support and is being introduced via the Regulations without further changes.

As a result of the consultation, two relatively minor changes were made to Regulation 4, on matters to be considered in reports to the court.

Changes were also made to the Code of Practice following consultation, in areas that were considered to need strengthening or greater clarification regarding guidance to local authorities. The proposal to include a new requirement for local authorities to

notify certain people of their entitlement to request an assessment for support was unanimously accepted, and has been included in the final Code of Practice.

A summary of the comments that were made and the Welsh Government's response to these is set out in the consultation summary report published on the Welsh Government website to coincide with the laying of the Regulations and Code of Practice.