

REGULATORY APPRAISAL

CHILDREN AND YOUNG PERSONS, WALES

THE SPECIAL GUARDIANSHIP (WALES) REGULATIONS 2005

Background

1. The Prime Minister's Review of Adoption (July 2000) identified that there was a significant group of children, mainly older, who did not wish to make the absolute legal break with their birth family that is associated with adoption. The Review suggested that, although planned long-term fostering might suit some children, it lacked security and a proper sense of permanence in a family. The report identified the need for an intermediate legal status between adoption and residence orders that offered greater legal security but without absolute legal severance from the child's birth family. The report recommended providing a new legal option for providing permanence short of adoption. This was strongly supported in the public consultation that followed.
2. In the White Paper *Adoption: a new approach* (December 2000), the Government committed to creating a new private law order called special guardianship that would provide legal permanence short of adoption.
3. The Adoption and Children Act 2002 (the 2002 Act) overhauls the outdated Adoption Act 1976, modernises the whole existing legal framework for adoption and makes significant amendments to the Children Act 1989, including the provision of the legal framework for special guardianship orders and special guardianship support services.

Purpose and intended effect

4. These Regulations requires a local authority, following receipt of a notice of a person's intention to apply for a special guardianship order, to investigate the matter and prepare a report for the court. The report must deal with such matters as are prescribed, in the Schedule to these Regulations.
5. They also make provisions for special guardianship support services. Special Guardianship support services are counselling, advice and information; and such other services as are prescribed, in relation to special guardianship including:
 - financial support;
 - provision of support groups;
 - assistance with contacting relatives;
 - therapeutic needs; and
 - assistance to ensure continuance of special guardian relationships.

Each local authority must make arrangements for the provision within their area of special guardianship support services.

6. The Regulations will determine which local authority shall be responsible for providing special guardianship support services to any particular person qualifying for advice and assistance under the Children Act 1989.

7. These Regulations will also specify the special guardianship support services that will be subject to existing provisions for the review of cases and for inquiries into representations made by particular persons.

Risk Assessment

8. It is expected that special guardianship orders will be an option for children who would benefit from a permanent, legally secure relationship with their carer, but where it is desirable to retain the basic legal link between the child and their birth family. Special guardianship support services are intended to support the use of special guardianship orders as well as helping special guardianship arrangements to continue where they may otherwise disrupt.
9. The provisions relating solely to the making of special guardianship orders could be brought into force without the accompanying provisions on special guardianship support services. However, special guardianship support services are expected to play a central role in making special guardianship orders workable, particularly in enabling carers to undertake the long term care for children who would otherwise be looked after. The key risk is that, without them, the special guardianship provisions will not be as effective as intended and their benefits will be greatly reduced or lost entirely.
10. An inadequate range of special guardianship support services increases the risk of special guardianship arrangements breaking down where access to sufficient support may have allowed them to continue. An arrangement that breaks down will mean a lack of stability and permanence for the child and could result in the child being taken into local authority care. Where a special guardianship order may be in a child's best interests the unavailability of appropriate support services could prevent an order being pursued.
11. Special guardianship orders will:
 - give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing;
 - provide a firm foundation on which to build a lifelong, permanent relationship between the child and their carer;
 - be legally secure; and
 - preserve the basic link between the child and their birth family, and be accompanied by proper access to a full range of support services including, where appropriate, financial support.
12. Special guardianship support services are defined as counselling, advice and information and any other services prescribed by Regulations. Section 14F(2) states that this power is to be exercised so as to secure that local authorities provide financial support to special guardians. It is intended to use these powers to make these Regulations to ensure that local authorities put in place a range of support services to be available where appropriate for special guardians and children subject to special guardianship orders, their parents and, where appropriate, to others, that could include members of the child's family.

Options

Option 1 - Do nothing

13. Rely on existing family support services provided by local authorities.

Option 2 – Introduce Minimal legislation and guidance

14. Bring forward Regulations to require that local authorities provide financial support to special guardians and recommend in guidance that local authorities should provide a full range of support services as a matter of good practice.

Option 3 - Make the legislation

15. These Regulations will require that local authorities make arrangements to provide a full range of support services, including financial support.

Business sectors affected

16. The Regulations will affect 22 local authorities in Wales.

Costs

17. The wider range of support services that local authorities would be required to arrange for the provision of and the uniformity between all local authorities under this option is the most effective way of encouraging and supporting the use of special guardianship orders, as well as minimising the number of relationships that may break down without access to appropriate support.

18. There are no direct costs to the Assembly.

19. There is no cost to other sectors. The proposals would impact solely on local authorities. It is not possible to predict how quickly the new special guardianship provisions will be taken up. Any additional costs that local authorities are likely to incur as a result of these Regulations are to be met from within the resources provided for local authorities within the Children First grant and in the revenue settlement. The budget for 2004-05 Children First grant was £28,051m. The budget for 2005-06 is £27,144m with a further £13,557m being made available within the revenue settlement, which provides a total of £40,701m. This £40,701m includes additional funding to take forward implementation of the Adoption and Children Act 2002.

Benefits

20. The range of support needed by children and their special guardians and others affected by special guardianship may well extend beyond financial support. Requiring local authorities to make arrangements for the provision of a specific range of services should also ensure that each local authority takes a consistent approach to the range of support services that they provide.

Small Firms' Impact Test

21. There is no impact on small businesses.

Competition Assessment

22. There are no competition issues to be considered. Each local authority will be responsible, within its own area, for the provision of special guardianship support services.

Enforcement and Sanctions

23. Local authorities will be required to comply with the Special Guardianship (Wales) Regulations. The Adoption and Children Act 2002 provides powers for Ministers to intervene in certain circumstances: the appropriate Minister may make an Order containing directions to ensure that the local authority complies with the duty within the period specified in the Order. Ministers will receive information about the failure of local authorities through a variety of sources, including Care Standards Inspectorate for Wales (CSIW) and Social Services Inspectorate Wales (SSIW).

24. These Regulations are to be made several months in advance of coming into force. This should provide sufficient time for local authorities to prepare for the new requirements, and so reduce the risk of the authorities being in breach of new requirements.

Consultation

With Stakeholders

25. The Regulations were issued for public consultation for 3 months from 9 June 2004 to 10 September 2004 and 11 written responses were received. Events were held in North and South Wales which 69 people attended from Local Authorities, Health Services and the Voluntary Sector. A list of consultees is at Annex 1.

26. Generally respondents were supportive of these Regulations. However, concern was expressed that greater clarity was needed to help people understand the difference between special guardianship orders and residency orders. Respondents agreed in principle to the provisions in these Regulations surrounding financial issues but sought assurance that foster carers would not lose out financially if they were to seek to become special guardians.

27. The Regulations have been re-drafted, in conjunction with colleagues in DfES and the Permanence and Adoption task and Finish group (established by the Welsh Assembly Government to guide the implementation of this legislation), to address the concerns raised.

With Subject Committee

28. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation submitted on 14 January 2004 (HSS(2)-01-04 (p.4a) item no. HSS 08(04)) when they were identified for detailed scrutiny.

29. The Committee considered the Regulations at their meeting on 2 March 2005 (Item 7: paper HSS(2)-04-05 (p.7). Members raised eight points of clarification but approved the Regulations without amendment. An extract of the Committee Minutes is attached at Annex 2.

Summary and Recommendation

30. Special guardianship orders will provide a new legal route to permanence for children where adoption is not suitable and facilitate children to leave local authority care. The new orders will allow special guardians greater responsibility for decisions concerning the child's day-to-day life. An appropriate range of special guardianship support services will support and encourage the use of special guardianship orders and contribute to minimising the risk of relationships breaking down.

Annex 1

Consultees

22 Local Authorities
22 Local Health Boards
NHS Trusts
Childrens Commmissioner
Chief Officer of Voluntary Adoption Agencies, Wales
British Association of Adoption and Fostering
After Adoption
St Davids Society
Voices from Care
CAFCASS
Welsh Local Government Association
ADSS
Designated Doctors and Nurses

Respondents

Dafydd Ifans	CAFCASS
Ruth Peggrem	Monmouthshire County Council
Dr Carolyn Sampeys	Cardiff & Vale NHS Trust
Maureen Edwards - Hayley Ennis	Ynys Mon Local Authority
Trish Wiltshire – Maggie Bain	Newport City Council
Peter Robson	Flintshire County Council
Dr Carys Graham	Child Protection, NPHS Wales
Pauline Galluccio	Powys LHB
Robert Pook	Caerphilly County Council
Two more respondents wanted to keep their identity confidential	

Item 7: Special Guardianship (Wales) Regulations 2005

Paper: HSS(2)-04-05(p.7)

7.1 The Committee identified the regulations for detailed scrutiny at its meeting on 14 January 2004. The proposed regulations were considered under the protocol for dealing with secondary legislation agreed by the Committee on 11 June 2003, whereby Members notify in advance any queries or amendments they wish to make to the draft. There were no proposals for amending the regulations, but Plaid Cymru raised eight points of clarification as indicated below.

- i. **Can the Minister detail the cost to each local authority?**
- ii. **Can the Minister detail what assessments has been made to determine the preparedness of local authorities in terms of financial ability, staffing, to acquire these new responsibilities?**
- iii. **Can the Minister confirm that these new regulations are subject to full funding by the National Assembly as part of the agreement by Sue Essex to fully fund new initiatives and responsibilities passed on to local authorities?**

Response: Uptake was expected to be small and slow and not place much demand on local authority resources. Demand should be covered by the planned increases in the children first budgets. There may be occasional cases of children with special needs, but those cases were likely to be receiving services already.

- iv. **Can the Minister clarify how the wishes of the child / young person are taken into account in decisions regarding whether that child person / young person can (i) become subject to a Special Guardianship Order, (ii) continue being subject to a Special Guardianship Order?**

Response: The child would be consulted and his or her wishes taken into account in the report that is made to the court.

- v. **Can the Minister clarify the support available to (i) child, (ii) carer, during the transition period where a child is no longer subject to a Special Guardianship Order?**

Response: There would be a statutory requirement on local authorities to continue to provide support through the transition period, according to the child's needs.

- vi. **Can the Minister clarify whether financial support can include money that may be placed into the Child Trust Fund of a child subject to a Special Guardianship Order, and whether this facility differs to that of financial support available to children within other care settings?**

Response: The local authority could contribute at its discretion, as could the natural parents or the guardian.

- vii. **Can the Minister clarify what criteria are considered when deciding which persons can be eligible as Special guardians, and does this criteria differ from other childcare carers?**

Response: It would be for the courts to determine eligibility, the regulations did not exclude anyone.

- viii. **Can the Minister list all groups/ individuals that were consulted, and can he clarify how their views were taken into account within the draft regulations?**

Response: Consultation included the Children's Commissioner and Voices from Care, to ensure that children's views were taken into account.

7.2 In response to an additional question on the regulations, the Minister confirmed that special guardians would have access to the same training as foster parents.

7.3 The Committee was content with the regulations as drafted.

Action

- Chair to send the Committee's report to the Chair of the Business Committee.