



**Isle of Man**  
**Government**  
*Reiltys Ellan Vannin*



# Special Guardianship Regulations Consultation

January 2014

Department of Social Care  
*Rhyenn Kiarail y Theay*

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The contents of this document are the property of the Department of Social Care.

## 1. EXECUTIVE SUMMARY

The vast majority of children will receive safe and effective care from their parents. Other children are less fortunate and the Government may need to become involved in family life. The Department of Social Care is committed to ensuring that all children are securely looked after to carers capable of providing safe and effective care for the duration of their childhood.

Many children who are looked after return home but for children who are unable to return home timely and purposeful decisions must be made about where they will live in the future. Legal arrangements sometimes have to be put in place to secure those decisions. Currently such children will live most commonly either in long term fostering or be adopted. If the child is adopted, the Adoption Order legally cuts all ties with the child's birth family, this is not appropriate in some cases. If a child is in foster care they remain in the care of the Department, usually under the powers of a Care Order. The Department is therefore responsible for making all major decisions regarding the child which can be frustrating for carers and can hinder a sense of security and belonging developing in the child.

Currently those entitled under section 11 of The Children & Young Persons Act 2001 can apply for a Residence Order which determines where a child will live and bestows parental responsibility on the person(s) in whose favour the Residence Order is made alongside the parents.

The Children & Young Persons (Amendment) Act 2011, brought forward as a Private Members Bill by Mr Quirk MHK, introduced a further legal option to support permanence. This legal option is Special Guardianship Orders which:

- Give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing. The child will no longer be looked after by the Department of Social Care;
- Provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer;
- is legally secure;
- Preserve the basic link between the child and their birth family; and
- Is accompanied by access to a range of support services including, where appropriate, financial support.

Residence orders are designed for circumstances where parents feel they have a continuing role to play in relation to the child, but cannot provide day to day care. With a Residence Order, as with a Special Guardianship Order, parental responsibility is shared, but a parent's ability to act independently in practice in the day to day care of the child is controlled by whomever the child lives with. A parent's ability to exercise their parental responsibility with a Residence Order is less restricted than it is with a Special Guardianship Order. A Residence Order can therefore be flexible enough to accommodate various shared care arrangements where a Special Guardianship Order cannot. For example whilst any other person with parental responsibility may not remove the child from the physical care of the person holding the Residence Order, they could take the same interest as any other parent in the child's education, and there may be frequent contact.

Special Guardianship Orders provide an intermediate legal status for children that offers greater security than long-term fostering but without the absolute legal severance from the birth family that stems from an adoption order.

Special guardianship is a private law order. Unlike adoption it is not a placement option and the Department cannot place a child for special guardianship. However, the Department may encourage existing foster carers and/or relatives to apply for a Special Guardianship Order, with appropriate support, as part of a plan to achieve permanence for a looked after child.

This document introduces the draft Regulations for the introduction of Special Guardianship Orders which includes the provision of support services where required.

All response should be returned by **5pm on Friday 21<sup>st</sup> February 2014**.

## **2. BACKGROUND**

### **2.1 What is Special Guardianship?**

A Special Guardianship Order (SGO) gives the special guardian parental responsibility for the child. The intention is that the special guardian will have clear responsibility for all the day-to-day decisions about caring for the child or young person and for taking any other decisions about their upbringing, for example their education.

Unlike adoption, under an SGO the parents remain the child's parents and retain parental responsibility, though their ability to exercise their parental responsibility is extremely limited.

### **2.2 Why are Regulations required?**

The Children and Young Persons (Amendment) Act 2011 inserts provisions into existing legislation to allow for the making of SGO's. The Regulations are required to set out further information in relation to SGO's and detail:

- who may apply for a special guardianship order;
- the circumstances in which a special guardianship order may be made;
- the nature and effect of special guardianship orders; and
- support services for those affected by special guardianship.

### **2.3 How will this work in practice?**

Under section 17A (9) of the Children & Young Persons (Amendment) Act 2011 and Subdivision 6 of the Special Guardianship Regulations the Department of Social Care has the option to appoint a suitable person to undertake the preparation of a report for Court regarding the suitability of prospective special guardians and to undertake assessment regarding the need for support services including the planning and review of such services.

In practice the Department is planning to use an approved adoption society to deliver these functions, their skills in assessing people who are putting themselves forward to look after children who are not their own will be an advantage. Where looked after children are the subject of a Special Guardianship Order application this arrangement will provide some independence from the Department who have the prime responsibility for the child.

### **2.4 Why is the Department consulting?**

Whilst it is not always necessary to hold a public consultation on secondary legislation the Department felt it appropriate to seek views on these Regulations. This is because the amendment to the Children and Young Persons Act only contains the legal provisions to enable the Department to make SGO's. The detail is contained in the Regulations and therefore the Department wishes to seek comments before taking the Regulations to Tynwald for approval.

### **3. CONSULTATION PROCESS**

The purpose of this consultation exercise is to invite comments on the intended Special Guardianship Regulations. The consultation is open to all those who are interested and we would welcome and appreciate your views.

Please be aware though that this is not a referendum – it is to provide you with information; seek your views and give all interested parties opportunity to comment. The consultation will allow the Department to take an informed decision on the final options for drafting the Special Guardianship Regulations. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

#### **3.1 Responses**

Comments should be submitted by **5pm Friday 21<sup>st</sup> February 2014** in writing, by post or email to:

Special Guardianship Consultation  
Department of Social Care  
4<sup>th</sup> Floor,  
Markwell House,  
Market Street,  
Douglas  
IM1 2RZ

Telephone: (01624) 698353

Email: [sian.scott@gov.im](mailto:sian.scott@gov.im)

#### **3.2 Copies of consultation document**

Copies of this document are available at: [www.gov.im/socialcare/consultations.gov](http://www.gov.im/socialcare/consultations.gov)

Paper copies of the consultation document are available at:

- Department of Social Care, Public Counters, Ground Floor Markwell House, Market Street, Douglas.
- Tynwald Library, Legislative Buildings, Finch Road, Douglas

#### **3.3 List of statutory persons and organisations to be consulted**

- Tynwald Members
- Attorney General
- Chief Officers of Government Departments Statutory Boards and Offices
- Local Authorities
- Isle of Man Chamber of Commerce
- Isle of Man Trade Union Council
- Isle of Man Law Society
- Isle of Man Construction Forum
- Council of Voluntary Organisations
- The Children's Centre
- St Christopher's
- Deemsters

### **3.4 Important points to remember**

- When submitting your views please indicate whether you are responding as an individual or on behalf of an organisation or a group of people.
- Where appropriate you should provide evidence to support your response.
- To ensure that the process is open, transparent, and in line with the Isle of Man Government's Code of Conduct on Consultation, submissions will only be considered where the name of the individual(s) or organization responding is provided.
- Unless you specifically request otherwise, any responses received may be published either in part or in their entirety, including your name.
- Please mark your response clearly if you wish your response and name to be kept confidential.
- Confidential responses will be included in any statistical summary and numbers of comments received.
- Any anonymous, abusive, or offensive responses will be discounted.

### **3.5 Steps which will be taken following consultation**

Following consultation, the next steps in the process will be as follows:

- The Department will review comments received from consultees.
- A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Government website.
- The Department will prepare the final regulations.

The regulations will then be submitted to Tynwald for approval.

### **3.6 Code of Practice of Consultation**

It is the intention of the Department to carry out this consultation in accordance with the Isle of Man Government's Code of Practice on Consultation which is available at [www.gov.im](http://www.gov.im) or upon request.

The Code sets out the following six criteria:

- 1) Consult widely throughout the process, allowing a minimum of six\* weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
- 2) Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3) Ensure your consultation is clear, concise and widely accessible.
- 4) Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5) Monitor your Department's effectiveness at consultation.
- 6) Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

\*Given the limited scope of the Regulations the Department has made the decision to hold a shorter consultation period of four weeks in accordance with criterion 1.4 of the Code.

**The consultation period ends at 5pm on Friday 21<sup>st</sup> February 2014**

## **4. OVERVIEW OF THE REGULATIONS**

### **4.1 Division 1 – Introduction**

This division includes the definitions of terms used in the Regulations. It details the conditions necessary for the regulations to apply.

In summary, for a special guardian or prospective special guardian to be eligible for support or services under these regulations they must have either been born on the Island or have been resident continuously for the previous 5 years.

### **4.2 Division 2 – Special Guardianship Support Services**

This division contains details of financial support and other services; assessments and plans, and reviews.

#### **Subdivision 1 - Provision of Services**

This subdivision details some of the support services (other than financial) that can be provided for special guardians and children and how arrangements will be made to secure provisions of these services. Examples of services would be mediation services, therapeutic services and training that may be required to meet the needs of the child.

#### **Subdivision 2 – Provision of Financial Support**

- **Circumstances**

The provision of financial support is detailed in this section covering the circumstances in which financial support can be paid; how it is paid and when it stops. Financial support will be considered in a variety of circumstances for example: in order to enable the special guardian or prospective special guardian to look after the child; for purposes of providing a home; resources if the child is ill, disabled or has emotional or behavioural difficulties.

- **Provision for former foster parents**

Regulation 8 details provisions for former foster parents who become special guardians. Financial support, subject to conditions, in the form of an allowance for former foster parents will be available if it is regarded as necessary and if the former foster parents had received an element of remuneration for previously fostering the relevant child.

- **Payments**

Payments of financial support may be done in a single payment (which subject to mutual agreement may be made in instalments) or by regular or adhoc payments.

- **Cessation**

All financial support will cease after a period of 2 years and would only continue after that time in exceptional circumstances. The other circumstances in which financial support would cease are also detailed for example if the child ceases full-time education or commences employment.

There are certain conditions for the provision of such financial support. These include various changes to the child's or special guardian's circumstances for example if the financial needs or resources of the child had changed or the



special guardian's financial circumstances had changed. Requirements for an annual statement to be supplied to the Department by the special guardian or prospective special guardian, that statement must contain various information about financial circumstances. Other conditions can be applied as and when the Department considers it appropriate to do so including what the financial support is to be spent on.

Should the condition to provide an annual statement not be adhered to then the Department may suspend or cease the payments and also seek to recover all or part of the financial support already paid. This will only be done once the Department has sent a written reminder to the special guardian or prospective special guardian and have waited 28 days from the date the reminder was sent.

### **Subdivision 3 – Assessments and Plans**

This subdivision covers requests and procedures for assessments; plans prepared by the Department in respect of support services; notification of proposed support and of decisions regarding support.

- **Request for Assessment**

Assessments may be carried out by the Department for any special guardianship support services and any person's connected to the relevant child can make a request for such assessment. Should the Department decide not to carry out an assessment it will inform the person in writing as to why this decision has been made.

- **Procedure for Assessment**

A list of the considerations that the Department will take into account when carrying out an assessment is included in Subdivision 2 regulations 12 (support services) and 13 (financial support) and includes such considerations as the parenting capacity of the special guardian (support services); what the life of the child might be like with the person considering their parenting capacity (support services); the financial needs and resources of the child (financial support).

Should the child have previously been looked after by the Department, then the Department will be required by the regulations to carry out an assessment.

- **Plan**

If support has been agreed (other than advice, information or a single occasion of support) a plan will be produced by the Department. The plan will include a contact person from the Department who will monitor provision of services in accordance with the plan and details of the support it proposes to provide will be included in the document.

- **Notification**

The Department will notify the special guardian or prospective special guardian of any proposed decision regarding support and will send a notice to the person giving them time to make any representations. The Department will only make a final decision either after the person is satisfied with the plan or after the period of time for making representations has expired. This time frame will be detailed in the correspondence.

#### **Subdivision 4 - Reviews**

The Department will review provision of services and financial support at least annually. This may be done more regularly if circumstances change. The conditions in regulations 12 and 13 regarding assessments equally apply in relation to reviews.

Any changes to provision because of the review will be detailed in writing to the special guardian and opportunity will be given for the person to make representations regarding this decision. Again the timeframe for making these representations will be detailed on the correspondence.

#### **Subdivision 5 – Urgent cases, Notices and Court Report**

- **Urgent Cases**

In the situation of an urgent case, any requirement in relation to carrying out an assessment, preparing a plan or giving notice will not apply if it means delaying provision of a service.

- **Notices**

Any notices will be given in writing and if the person to whom the notice is to be given is a child and the Department feels it would not be appropriate to present this to the child then it will be given to the child's special guardian, prospective special guardian or an adult that the Department considers appropriate.

- **Schedule**

The information contained in the Schedule is the matters which are to be dealt with in a report for the Court. This includes information about:

- the child;
- the child's family;
- the prospective special guardian;
- medical information;
- the wishes and feelings of the child and others;
- involvement by the Department;
- implications of making an order;
- alternative disposals and;
- recommendations.

#### **Subdivision 6 – Discharge of Functions**

- **Delegation by the Department**

This subdivision allows the Department to authorise a person to act on its behalf in relation to assessing the need for support services including the planning and review of such services.



## SPECIAL GUARDIANSHIP REGULATIONS 2013

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Consultation Draft

Statutory Document No. XX/20XX

*Children and Young Persons Act 2001*

## SPECIAL GUARDIANSHIP REGULATIONS 2013

*Approved by Tynwald:**Coming into Operation:**[insert date]*

The Department of Social Care makes the following Regulations under section 28 of the Children and Young Persons Act 2001.

### DIVISION 1 - INTRODUCTION

#### 1 Title

These Regulations are the Special Guardianship Regulations 2013.

#### 2 Commencement

If approved by Tynwald, these Regulations come into operation on [insert date]<sup>1</sup>.

#### 3 Interpretation

(1) In these Regulations—

“**the Act**” means the Children and Young Persons Act 2001;

“**couple**” has the same meaning as in section 58(1) of the Adoption Act 1984;

“**periodically**” in respect of payment of financial support means payments made both regularly and intermittently;

“**prospective special guardian**” means a person—

- (a) who has given notice to the Department under section 17A(6) of the Act of his or her intention to make an application for a special guardianship order in accordance with section 17A(3) of the Act; or
- (b) in respect of whom the court has requested that the Department conduct an investigation and prepare a report pursuant to section 17A(8) of the Act;

<sup>1</sup> As required by section 104(2) of the Children and Young Persons Act 2001.

“**relevant child**” means a child in respect of whom —

- (a) a special guardianship order is in force;
  - (b) a person has given notice to the Department under section 17A(6) of the Act of his or her intention to make an application for a special guardianship order in accordance with section 17A(3) of the Act; or
  - (c) the court is considering whether a special guardianship order should be made and has asked the Department to conduct an investigation and prepare a report pursuant to section 17A(8) of the Act.
- (2) In any case where —
- (a) a person aged 18 or over is in full-time education or training; and
  - (b) immediately before the person reached the age of 18, financial support was payable in relation to that person under Subdivision 2 of Division 2 of these Regulations,

then, for the purposes of the continued provision of financial support and any review of financial support, these Regulations shall have effect in relation to the person as if he or she were still a child.

#### **4 Eligibility**

These regulations apply to a prospective special guardian or a special guardian if the person —

- (a) was born in the Island; or
- (b) has been ordinarily resident in the Island throughout the 5 years immediately preceding his or her application for services or support in respect of special guardianship.

## **DIVISION 2 - SPECIAL GUARDIANSHIP SUPPORT SERVICES**

### **SUBDIVISION 1 — PROVISION OF SERVICES**

#### **5 Other special guardianship support services**

- (1) For the purposes of section 17F(1)(b) of the Act (special guardianship support services) the Department shall make arrangements for the provision of the following special guardianship support services (in addition to counselling, advice and information) —
- (a) financial support payable under Subdivision 2;
  - (b) assistance, including mediation services, in relation to arrangements for contact between a relevant child and —
    - (i) the child’s parent or a relative of the child; or

- (ii) any other person with whom such a child has a relationship which appears to the Department to be beneficial to the welfare of the child having regard to the factors specified in section 1(4) of the Act (welfare of the child);
  - (c) services in relation to the therapeutic needs of a relevant child;
  - (d) 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 that child;
    - (ii) mediation in relation to matters relating to special guardianship orders.
- (2) The services prescribed in paragraph 1 (b) to (d) may include giving assistance in cash.

## 6 Arrangements for securing provision of services

- (1) For the purposes of section 17F(7) of the Act (persons who may provide special guardianship support services) the Department may make available special guardianship support services by providing or securing their provision by the following persons —
- (a) an adoption society;
  - (b) an approved adoption society;
  - (c) another Government Department; and
  - (d) any other person under an arrangement, contract, engagement or understanding with the Department.
- (2) In paragraph (1) “**an adoption society**” and “**an approved adoption society**” have the same meaning as in the Adoption Act 1984.

## SUBDIVISION 2 — PROVISION OF FINANCIAL SUPPORT

### 7 Circumstances in which financial support is payable

- (1) Financial support is payable under this Subdivision to a special guardian or prospective special guardian —
- (a) to facilitate arrangements for a person to become the special guardian of a child where the Department considers such arrangements to be beneficial to the child's welfare; or
  - (b) to support the continuation of such arrangements after a special guardianship order is made.
- (2) Such support is payable only in the following circumstances —

- (a) where the Department considers that it would enable the special guardian or prospective special guardian to look after the child;
- (b) where the Department considers that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of the child's illness, disability, emotional or behavioural difficulties or the consequences of the child's past abuse or neglect;
- (c) where the Department considers that it is appropriate to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian, as the case may be, associated with —
  - (i) the making of a special guardianship order or any application to vary or discharge such an order;
  - (ii) an application for an order under section 11 of the Act (parental contact etc with children in care);
  - (iii) an order for financial provision to be made to or for the benefit of the child; or
- (d) where the Department considers that it is appropriate to contribute to the expenditure for the purposes of providing a suitable home for the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport, assisting the child's contact with birth parents or siblings and provision of clothing, toys and other items necessary for the purpose of looking after the child.

## 8 Provisions for former foster parents

- (1) This regulation applies if —
  - (a) the special guardian or prospective special guardian has been the official foster parent in respect of the child; and
  - (b) an element of remuneration was included in the payments made by the Department to that person in relation to his or her fostering the child.
- (2) Subject to paragraph 1 financial support under this Division may include an allowance for former foster parents but only where the decision to include such an allowance is taken before the special guardianship order is made, and the Department considers it necessary to enable that person to become the special guardian of a child.
- (3) That element of financial support that comprises of the allowance ceases to be payable after the expiry of the period of two years from the making of the special guardianship order unless the Department considers its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances.



## 9 Payment of financial support

Financial support under this Subdivision may be paid —

- (a) by a single payment or, if the Department and the special guardian or prospective special guardian agree, by instalments;
- (b) periodically, if it is provided to meet a need which is likely to give rise to recurring expenditure.

## 10 Cessation of financial support

(1) Financial support ceases to be payable —

- (a) to a special guardian or prospective special guardian if paragraph (2) applies; or
- (b) to a special guardian on the second anniversary of the making of the special guardianship order,

unless the Department considers its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances.

(2) This paragraph applies if the child —

- (a) dies;
- (b) ceases to have a home with the special guardian or prospective special guardian;
- (c) ceases full-time education or training and commences employment;
- (d) qualifies for income support, jobseeker's allowance, incapacity benefit or employed person's allowance in the child's own right; or
- (e) attains the age of 18 unless the child continues in full-time education or training, when it may continue until the end of the course or training the child is then undertaking.

(3) If financial support is to be paid periodically it is not payable until the special guardian or prospective special guardian agrees to the conditions in paragraphs (4) and (5).

(4) The first condition is that the special guardian or prospective special guardian must inform the Department immediately if —

- (a) the special guardian or prospective special guardian changes address;
- (b) any of the changes mentioned in paragraph (2) occurs; or
- (c) there is a change in —
  - (i) the special guardian's or prospective special guardian's financial circumstances; or

- (ii) the financial needs or resources of the child, which may affect the amount of financial support payable to the special guardian or prospective special guardian,
- and, if the information is given orally, confirm it in writing within 7 days.
- (5) The second condition is that the special guardian or prospective special guardian must complete and supply the Department with an annual statement as to the following matters —
- (a) the special guardian's or prospective special guardian's financial circumstances;
  - (b) the financial needs and resources of the child;
  - (c) the special guardian's or prospective special guardian's address; and
  - (d) whether the child still has a home with the special guardian or prospective special guardian.
- (6) In providing financial support the Department may impose any other conditions it considers appropriate, including the timescale within which, and purposes for which, any payment of financial support should be utilised.
- (7) Subject to paragraph (8), if any condition imposed in accordance with this regulation is not complied with, the Department may —
- (a) suspend or terminate payment of financial support; and
  - (b) seek to recover all or part of the financial support it has paid.
- (8) If the condition not complied with is a failure to provide an annual statement in accordance with an agreement referred to in paragraph (5), the Department must not take any steps under paragraph (7) until —
- (a) it has sent to the person who entered into the agreement a written reminder of the need to provide an annual statement; and
  - (b) 28 days have expired since the date on which that reminder was sent.

### SUBDIVISION 3 — ASSESSMENT AND PLANS

#### 11 Request for assessment

- (1) Paragraphs (2) and (3) apply if the Department receives a written request from or, in the case of a child, on behalf of, any of the following persons for an assessment of the person's needs for special guardianship support services —
- (a) a person mentioned in section 17F(3)(a) to (c) of the Act;
  - (b) a child of a special guardian;

- (c) any person whom the Department considers to have a significant and ongoing relationship with a relevant child.
- (2) The Department must consider whether to carry out an assessment.
- (3) In the case of a request from or on behalf of a previously looked after child, the Department must carry out an assessment.
- (4) If the Department is minded not to carry out an assessment it must give the person notice of the proposed decision (including the reasons for it) and must allow the person a reasonable opportunity to make representations in relation to that decision.
- (5) If —
  - (a) the request of a person for an assessment relates to a particular special guardianship support service, or
  - (b) it appears to the Department that a person's needs for special guardianship support services may be adequately assessed by reference to a particular special guardianship support service,the Department may carry out the assessment by reference to that service only.

## 12 Procedure for assessment

- (1) Where the Department carries out an assessment of a person's needs for special guardianship support services it must have regard to such of the following considerations as are relevant to the assessment —
  - (a) the developmental needs of the child;
  - (b) the parenting capacity of the special guardian or prospective special guardian, as the case may be;
  - (c) the family and environmental factors that have shaped the life of the child;
  - (d) what the life of the child might be like with the person falling within sub-paragraph (b);
  - (e) any previous assessments undertaken in relation to the child or a person falling within sub-paragraph (b);
  - (f) the needs of a person falling within sub-paragraph (b) and of that person's family;
  - (g) where it appears to the Department that there is a pre-existing relationship between a person falling within sub-paragraph (b) and the parent of the child, the likely impact of the special guardianship order on the relationships between that person, that child and that parent.
- (2) The Department must, where it considers it appropriate to do so —

- (a) interview the person whose needs for special guardianship support services are being assessed;
- (b) where the person falling within sub-paragraph (a) is a child, interview —
  - (i) any special guardian or prospective special guardian, as the case may be, of the child; or
  - (ii) any adult the Department considers it appropriate to interview.
- (3) Where it appears to the Department that the person may have a need for services from any other Government Department it must, as part of the assessment, consult that Department.
- (4) After undertaking an assessment, the Department must prepare a written report of the assessment.

### **13 Assessment of need for financial support**

- (1) This regulation applies where the Department carries out an assessment of a person's need for financial support.
- (2) In determining the amount of financial support, the Department must take account of any other grant, benefit, allowance or resource which is available to the person in respect of the person's needs as a result of becoming a special guardian of the child.
- (3) Subject to paragraphs (4) and (5) the Department must also take account of the following considerations —
  - (a) the person's financial resources, including any benefit, which would be available to the person if the child lived with him or her;
  - (b) the amount required by the person in respect of the person's reasonable outgoings and commitments (excluding outgoings in respect of the child);
  - (c) the financial needs and resources of the child.
- (4) The Department must disregard the considerations in paragraph (3) where it is considering providing financial support in respect of legal costs, including court fees, in a case where a special guardianship order is applied for in respect of a child who is looked after by the Department and the Department supports the making of the order or an application is made to vary or discharge a special guardianship order in respect of such a child.
- (5) The Department may disregard any of the considerations in paragraph (3) —
  - (a) if it is considering providing financial support in respect of —
    - (i) initial costs of providing a suitable home for the child and the child has been looked after by the Department;

- (ii) recurring costs in respect of travel for the purpose of visits between the child and a related person; or
  - (iii) any special care referred to in regulation 7(2)(b) in relation to a child who has been looked after by the Department; or
- (b) if it is considering including an element of allowance under regulation 8 (provisions for former foster parents).
- (6) In paragraph (5)(a)(ii) “related person” means a relative of the child or any other person with whom the child has a relationship which appears to the Department to be beneficial to the welfare of the child having regard to the factors specified in section 1(4) of the Act (welfare of the child).

#### **14 Plan**

- (1) This regulation applies in relation to the requirement in section 17F(6) of the Act for the Department to prepare a plan in accordance with which special guardianship support services are to be provided.
- (2) The Department must prepare a plan if —
- (a) it proposes to provide special guardianship support services to a person on more than one occasion; and
  - (b) the services are not limited to the provision of advice or information.
- (3) If it appears to the Department that the person may have a need for services from another Government Department, it must consult that Department before preparing the plan.
- (4) The Department must nominate a person to monitor the provision of the services in accordance with the plan.

#### **15 Notice of proposal as to special guardianship support services**

- (1) Before making any decision under section 17F(5) of the Act about a person's needs for special guardianship support services, the Department must allow the person an opportunity to make representations as follows.
- (2) The Department must first give the person notice of the proposed decision and specify the time allowed for making representations.
- (3) The notice must contain the following information —
- (a) a statement as to the person's needs for special guardianship support services;
  - (b) if the assessment relates to the person's need for financial support, the basis upon which financial support is determined;
  - (c) whether the Department proposes to provide the person with special guardianship support services;

- (d) the services (if any) that are proposed to be provided to the person;
  - (e) if financial support is to be paid to the person, the proposed amount that would be payable;
  - (f) if the financial support is to be paid to the person periodically, the conditions mentioned in regulation 10(4) and (5)); and
  - (g) any proposed conditions under regulation 10(6).
- (4) In a case where the Department proposes to provide special guardianship support services and is required to prepare a plan under section 17F(6) of the Act, the notice must be accompanied by a draft of that plan.
- (5) The Department must not make a decision until —
- (a) the person has made representations to the Department or notified the Department that the person is satisfied with the proposed decision and, where applicable, the draft plan; or
  - (b) the period of time for making representations has expired.

## **16 Notification of decision as to special guardianship support services**

- (1) After making their decision under section 17F(5) of the Act as to whether to provide special guardianship support services to a person, the Department must give the person notice of that decision, including the reasons for it.
- (2) If the Department is required to prepare a plan under section 17F(6) of the Act, the notice must include details of that plan and the person nominated under regulation 14(4).
- (3) If the Department decides that financial support is to be provided, the notice given under paragraph (1) must include the following information —
- (a) the method of the determination of the amount of financial support;
  - (b) where financial support is to be paid in instalments or periodically —
    - (i) the amount of financial support;
    - (ii) the frequency with which the payment will be made;
    - (iii) the period for which financial support is to be paid;
    - (iv) when payment will commence;
  - (c) if financial support is to be paid as a single payment, when the payment is to be made;
  - (d) if the financial support is to be paid periodically, the conditions mentioned in regulation 10(4) and (5);

- (e) if financial support is to be paid subject to any conditions imposed in accordance with regulation 10(6), those conditions, the date (if any) by which the conditions are to be met and the consequences of failing to meet the conditions;
- (f) the arrangements and procedure for review, variation and termination of financial support;
- (g) the responsibilities of —
  - (i) the Department under regulations 17 and 18 (reviews); and
  - (ii) the special guardian or prospective special guardian pursuant to any agreement mentioned in regulation 10.

#### SUBDIVISION 4 — REVIEWS

### 17 **Reviews: general procedure**

- (1) This regulation applies if the Department provides special guardianship support services for a person other than financial support payable periodically.
- (2) The Department must review the provision of such services —
  - (a) if any change in the person's circumstances which may affect the provision of special guardianship support services comes to their notice;
  - (b) at such stage in the implementation of the plan as it considers appropriate; and
  - (c) in any event, at least annually.
- (3) Regulations 12 and 13 (procedure for assessment and assessment of need for financial support) apply in relation to a review under this regulation as they apply in relation to an assessment under Subdivision 3 of this Division.
- (4) If the Department proposes to vary or terminate the provision of special guardianship support services to any person, before making any decision as a result of the review it must give the person an opportunity to make representations and for that purpose it must give the person notice of the proposed decision and specify the time allowed for making representations.
- (5) The notice must contain the information mentioned in regulation 15(3) (notice of proposal as to special guardianship support services) and, if the Department proposes to revise the plan, a draft of the revised plan.
- (6) The Department must, having regard to the review and after considering any representations received within the period specified in the notice —
  - (a) decide whether to vary or terminate the provision of special guardianship support services for the person; and

- (b) where appropriate, revise the plan.
- (7) The Department must give the person notice of their decision (including the reasons for it) and, if applicable, details of the revised plan.

## **18 Review of financial support payable periodically**

- (1) This regulation applies where the Department provides financial support for a person payable periodically.
- (2) The Department must review the financial support —
  - (a) on receipt of the annual statement mentioned in regulation 10(5);
  - (b) if any relevant change of circumstances or any breach of a condition mentioned in regulation 10 comes to their notice; and
  - (c) at any stage in the implementation of the plan that it considers appropriate.
- (3) In paragraph (2) a relevant change of circumstances is any of the changes that the person has agreed to notify under regulation 10.
- (4) Regulations 12 and 13 (procedure for assessment and assessment of need for financial support) apply in relation to a review under this regulation as they apply in relation to an assessment under Subdivision 3 of this Division.
- (5) If the Department proposes, as a result of the review, to reduce or terminate financial support or revise the plan, before making that decision, the Department must give the person an opportunity to make representations and for that purpose it must give the person notice of the proposed decision and specify the time allowed for making representations.
- (6) But paragraph (5) does not prevent the Department from suspending payment of financial support pending that decision.
- (7) The notice must contain the information mentioned in regulation 15(3) (notice of proposal as to special guardianship support services) and, if applicable, a draft of the revised plan.
- (8) The Department must, having regard to the review, and after considering any representations received within the period specified in the notice —
  - (a) decide whether to vary or terminate payment of the financial support or whether to seek to recover all or part of any financial support that has been paid; and
  - (b) if appropriate, revise the plan.
- (9) The Department must give the person notice of their decision, including the reasons for it, and, if applicable, the revised plan.



**SUBDIVISION 5 – URGENT CASES, NOTICES AND COURT REPORT****19 Urgent cases**

If any requirement applicable to the Department in this Division in relation to carrying out an assessment, preparing a plan or giving notice would delay the provision of a service in a case of urgency, that requirement does not apply.

**20 Notices**

- (1) Any notice required to be given under this Division must be given in writing.
- (2) If the person to whom notice is to be given is a child and –
  - (a) it appears to the Department that the child is not of sufficient age and understanding for it to be appropriate to give the child such notice; or
  - (b) in all the circumstances it is not appropriate to give the child such notice,

the notice must be given to the child's special guardian or prospective special guardian (where applicable) or otherwise to the adult the Department considers most appropriate.

**21 Court report**

The matters specified in the Schedule are the matters to be dealt with in a report for the court for the purposes of section 17A(7) of the Act.

**SUBDIVISION 6 – DISCHARGE OF FUNCTIONS****22 Delegation by the Department**

In Subdivisions 3, 4 and 5 any reference to the Department includes any person the Department authorises to act on its behalf.

**MADE**

**C R ROBERTSHAW**  
*Minister for Social Care*



## SCHEDULE

## MATTERS TO BE DEALT WITH IN A REPORT FOR THE COURT

**1 Information about the child**

In respect of the child —

- (a) name, sex, date and place of birth and address;
- (b) a photograph and physical description;
- (c) nationality (and immigration status where appropriate);
- (d) racial origin and cultural and linguistic background;
- (e) religious persuasion (including details of baptism, confirmation or equivalent ceremonies);
- (f) details of any siblings including their dates of birth;
- (g) the extent of the child's contact with the child's relatives and any other person the Department considers relevant;
- (h) whether the child is or has been looked after by the Department or is or has been provided with accommodation by a voluntary organisation and details (including dates) of placements by the Department or organisation;
- (i) whether the prospective special guardian is an official foster parent of the child;
- (j) a description of the child's —
  - (i) personality;
  - (ii) social development; and
  - (iii) emotional and behavioural development, and any related needs;
- (k) details of the child's interests, likes and dislikes;
- (l) a health history and a description of the state of the child's health which shall include any treatment the child is receiving;
- (m) names, addresses and types of nurseries or schools attended with dates;
- (n) the child's educational attainments;
- (o) details of any order made by a court with respect to the child under the Act including —
  - (i) the name of the court;
  - (ii) the order made; and
  - (iii) the date on which the order was made.

## 2 Information about the child's family

In respect of the child's family —

- (a) name, date and place of birth and address (and the date on which their last address was confirmed) of each parent of the child and the child's siblings under the age of 18;
- (b) a photograph, if available, and physical description of each parent;
- (c) nationality (and immigration status where appropriate) of each parent;
- (d) racial origin and cultural and linguistic background of each parent;
- (e) whether the child's parents were married to each other at the time of the child's birth or have subsequently married and whether they are divorced or separated;
- (f) where the child's parents have been previously married or formed a civil partnership, the date of the marriage or civil partnership;
- (g) where the child's parents are not married, whether the father has parental responsibility and, if so, how it was acquired;
- (h) if the identity or whereabouts of the father are not known, the information about him that has been ascertained and from whom, and the steps that have been taken to establish paternity;
- (i) the past and present relationship of the child's parents;
- (j) where available, the following information in respect of each parent—
  - (i) health history, including details of any serious physical or mental illness, any hereditary disease or disorder or disability;
  - (ii) religious persuasion;
  - (iii) educational history;
  - (iv) employment history;
  - (v) personality and interests;
- (k) in respect of the child's siblings under the age of 18 —
  - (i) the person with whom the sibling is living;
  - (ii) whether the sibling is looked after by the Department or provided with accommodation by a voluntary organisation; and
  - (iii) details of any court order made with respect to the sibling under the Act, including the name of the court, the order made and the date on which the order was made.

## 3 Wishes and feelings of the child and others

In respect of the wishes and feelings of the child and others —

- (a) an assessment of the child's wishes and feelings (considered in light of the child's age and understanding) regarding —
- (i) special guardianship;
  - (ii) the child's religious and cultural upbringing; and
  - (iii) contact with the child's relatives and any other person the Department considers relevant,
- and the date on which the child's wishes and feelings were last ascertained.
- (b) the wishes and feelings of each parent regarding —
- (i) special guardianship;
  - (ii) the child's religious and cultural upbringing; and
  - (iii) contact with the child,
- and the date on which the wishes and feelings of each parent were last ascertained; and
- (c) the wishes and feelings of any of the child's relatives, or any other person the Department considers relevant regarding the child and the dates on which those wishes and feelings were last ascertained.

#### **4 Information about prospective special guardian**

In respect of the prospective special guardian or, where two or more persons are jointly prospective special guardians, each of them —

- (a) name, date and place of birth and address;
- (b) a photograph and physical description;
- (c) nationality (and immigration status where appropriate);
- (d) racial origin and cultural and linguistic background;
- (e) if the prospective special guardian is —
  - (i) married, the date and place of marriage;
  - (ii) has formed a civil partnership, the date and place of registration of the civil partnership; or
  - (iii) has a partner, details of that relationship;
- (f) details of any previous marriage, civil partnership, or relationship;
- (g) where the prospective special guardians wish to apply jointly, the nature of their relationship and an assessment of the stability of that relationship;
- (h) if the prospective special guardian is a member of a couple and is applying alone for a special guardianship order, the reasons for this;
- (i) whether the prospective special guardian is a relative of the child;

- (j) prospective special guardian's relationship with the child;
- (k) a health history of the prospective special guardian including details of any serious physical or mental illness, any hereditary disease or disorder or disability;
- (l) a description of how the prospective special guardian relates to adults and children;
- (m) previous experience of caring for children;
- (n) parenting capacity, to include an assessment of the prospective special guardian's ability and suitability to bring up the child;
- (o) where there have been any past assessments as a prospective adopter, foster parent or special guardian, relevant details as appropriate;
- (p) details of income and expenditure;
- (q) information about the prospective special guardian's home and the neighbourhood in which the prospective special guardian lives;
- (r) details of other members of the household and details of any children of the prospective special guardian even if not resident in the household;
- (s) details of the parents and any siblings of the prospective special guardian, with their ages or ages at death;
- (t) the following information —
  - (i) religious persuasion;
  - (ii) educational history;
  - (iii) employment history; and
  - (iv) personality and interests;
- (u) details of any previous family court proceedings in which the prospective special guardian has been involved (which have not been referred to elsewhere in this report);
- (v) a report of each of the interviews with the three persons nominated by the prospective special guardian to provide personal references for him;
- (w) whether the prospective special guardian is willing to follow any wishes of the child or the child's parents in respect of the child's religious and cultural upbringing;
- (x) the views of other members of the prospective special guardian's household and wider family in relation to the proposed special guardianship order;
- (y) an assessment of the child's current and future relationship with the family of the prospective special guardian;
- (z) reasons for applying for a special guardianship order and extent of understanding of the nature and effect of special guardianship and

whether the prospective special guardian has discussed special guardianship with the child;

- (aa) any hopes and expectations the prospective special guardian has for the child's future; and
- (bb) the prospective special guardian's wishes and feelings in relation to contact between the child and the child's relatives or any other person the Department considers relevant.

## **5 Departmental involvement**

In respect of the Department —

- (a) details of any past involvement of the Department with the prospective special guardian, including any past preparation for that person to be an official foster parent or adoptive parent or special guardian;
- (b) a summary of any special guardianship support services provided by the Department for the prospective special guardian, the child or the child's parent and the period for which those services are to be provided; and
- (c) if the Department has decided not to provide special guardianship support services, the reasons why.

## **6 Medical information**

A summary prepared by the medical professional who provided the information referred to in paragraphs 1(l) and 4(k).

## **7 Implications**

The implications of the making of a special guardianship order for —

- (a) the child;
- (b) the child's parent;
- (c) the prospective special guardian and the prospective special guardian's family; and
- (d) any other person the Department considers relevant.

## **8 Alternative Disposals**

The relative merits of special guardianship and other orders which may be made under the Act with an assessment of whether the child's long term interests would be best met by a special guardianship order.

## **9 Recommendations**

A recommendation as to —

- (a) whether or not the special guardianship order sought should be made in respect of the child and, if not, any alternative proposal in respect of the child; and
- (b) what arrangements there should be for contact between the child and the child's relatives or any person the Department considers relevant.

Consultation Draft



*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations make provision in relation to special guardianship orders which are provided for in sections 17A to 17F of the Children and Young Persons Act 2001 (“the Act”).

Division 2 relates to the requirement in section 17F(1) of the Act for the Department to make arrangements for provision of special guardianship support services. Special guardianship support services are defined by section 17F(1) of the Act as counselling, advice and information, and other services prescribed by regulations, in relation to special guardianship.

Subdivision 1 of Division 2 deals with the provision of services. Such services are specified by regulation 5 and include financial support (as required by section 17F(2)). The provision of services may be secured from the persons specified in regulation 6.

Subdivision 2 of Division 2 deals with financial support. It may only be paid in the circumstances specified in regulation 7. It may include an allowance element where it is paid to a former official foster parent under regulation 8. Regulations 9 and 10 provide for payment of financial support, including conditions that may be imposed.

Subdivision 3 of Division 2 deals with assessment of a person's needs for special guardianship support services, plans for provision of services and notifications of proposals and decisions in relation to the provision of services.

Subdivision 4 of Division 2 deals with reviews of special guardianship support services.

Subdivision 5 of Division 2 contains miscellaneous provision in relation to special guardianship support services, including a general exemption from the requirements in relation to assessments, giving of notice etc. in cases of urgency (regulation 19) and provision as to service of notices (regulation 20). Regulation 21 introduces the Schedule which contains the matters to be included in the report for the court.

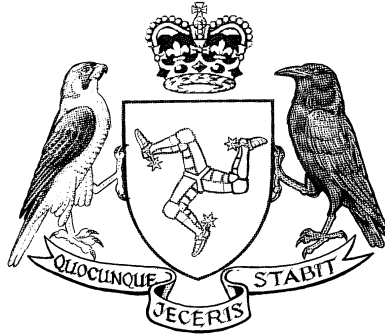
Subdivision 6 of Division 2 states that references to the Department in Subdivisions 3, 4 and 5 include any person authorised by the Department to act on its behalf.

# **CHILDREN AND YOUNG PERSONS (AMENDMENT) ACT 2011**

## **Arrangement of Sections**

### Section

- 1.** Short title
- 2.** Commencement
- 3.** Children and Young Persons Act 2001 amended
- 4.** Insertion of sections 17A to 17F: provisions about special guardianship
- 5.** Consequential and minor amendments to Children and Young Persons Act 2001
- 6.** Consequential amendment to Child Custody Act 1987



Isle of Man } Signed in Tynwald: 21st June 2011  
tu Mtit } Received Royal Assent: 21st June 2011  
Announced to Tynwald: 21st June 2011

## AN ACT

to provide for the making of special guardianship orders; to make minor amendments to the Children and Young Persons Act 2001 in respect of guardianship; and for connected purposes.

**B**E IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

**1.** The short title of this Act is the Children and Young Persons (Amendment) Act 2011. Short title

**2.** (1) This Act, other than section 1 and this section, comes into operation on such day or day as the Department of Social Care may by order appoint. Commencement

(2) An order under subsection (1) may make such consequential, incidental, transitional and transitory provision as appears to the Department to be necessary or expedient.

(3) Before making an order under subsection (1) the Department must consult the Deemsters.

**3.** The Children and Young Persons Act 2001 is amended in accordance with sections 4 and 5. Children and Young Persons Act 2001 amended

[c.20]

**4.** After section 17 insert —

Insertion of sections 17A to 17F: provisions about special guardianship

“Special  
guardianship  
orders  
P1989/41/  
14A

**17A.** (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) shall be aged 18 or over; and

(b) may 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) The individuals who are entitled to apply for a special guardianship order with respect to a child are —

(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 section 12(2)(b) or (c);

(d) an official foster parent with whom the child has lived for a period of at least 1 year immediately preceding the application;

(e) a person with whom the child has been privately fostered in accordance with regulations under Part 7 for a period of at least 1 year immediately preceding the application;

(f) a relative with whom the child has lived for a period of at least 1 year immediately preceding the application.

(5) 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.

(6) No individual may make an application under subsection (3) or (5)(a) unless, before the beginning of the period of 3 months ending with the date of the application, the individual has given written notice of his intention to make the application to the Department.

(7) On receipt of such a notice, the Department shall investigate the matter and prepare a report for the court dealing with —

- (a) the suitability of the applicant to be a special guardian; and
- (b) any other matter which the Department considers to be relevant.

(8) The court may itself ask the Department to conduct such an investigation and prepare such a report, and the Department shall do so.

(9) The Department 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 subsection (7) or (8).

(10) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (7).

(11) Section 13 applies in relation to an application for a special guardianship orders as it applies in relation to orders under section 11.

Special  
guardianship  
orders:  
making

P1989/41/  
14B

**17B.** (1) Before making a special guardianship order, the court shall consider whether, if the order were made —

- (a) a contact order should also be made with respect to the child;

- (b) any order in force under section 11 with respect to the child should be varied or discharged; and
- (c) if a contact order made with respect to the child is not discharged, any enforcement order relating to that contact order should be revoked.

(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 17C(3)(b), either generally or for specified purposes.

Special guardianship orders: effect **17C.** (1) The effect of a special guardianship order is that while the order remains in force —

P1989/41/14C

- (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 1 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 Island;

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 3 months, by a special guardian of the child.

(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.

Special  
guardianship  
orders:  
variation and  
discharge  
P1989/41/  
14D

**17D.** (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 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; or
- (f) the Department.

(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 the child;
- (c) 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 the child.

(4) If the person applying for leave to make an application under subsection (1) is the child, the court may grant leave only if it is satisfied that the child 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) or (c) unless satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

Special guardianship orders: supplementary  
P1989/41/  
14E

**17E.** (1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (subject to any rules of court) —

- (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 compliance with the timetable, so far as is reasonably practicable.

(2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

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

(4) Section 12(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to orders under section 11.



Special guardianship support services **17F.** (1) The Department shall make arrangements for the provision of special guardianship support services, which means —

P1989/41/14F

- (a) counselling, advice and information; and
- (b) such other services as it considers appropriate,

in relation to special guardianship.

(2) The power to make arrangements under subsection (1)(b) is to be exercised so as to secure that the Department provides 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,

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

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

(5) If, as a result of an assessment, the Department decides that a person has needs for special guardianship support services, it must then decide whether to provide any such services to that person.

(6) If —

- (a) the Department decides to provide any special guardianship support services to a person, and
- (b) the circumstances appear to the Department to warrant it,

the Department shall 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 Department may provide special guardianship support services (or any part of them) by securing their provision by another person.

(8) The Department 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.”.

Consequential  
and minor  
amendments  
to Children  
and Young  
Persons Act  
2001

**5.** (1) In section 1 (welfare of the child) in the opening words of subsection (4) after “an order under section 11,” insert “a special guardianship order,”.

(2) In section 6 (appointment of guardian by High Court) —

(a) in subsection (2) for “or guardian of his” substitute “, guardian or special guardian of his”; and

(b) in subsection (4) for “A person” substitute “An individual”.

(3) In section 7 (appointment of guardian by parent etc) —

(a) for the heading substitute “Appointment of guardian: other cases”;

(b) in subsection (1) for “person” substitute “individual”;

(c) in subsection (2) —

(i) for “person” substitute “individual”; and

(ii) at the end add “; and a special guardian of a child may appoint another individual to be the child’s guardian in the event of his death.”;

(d) in subsection (3) for “person making it” (in each place) substitute “individual making it”;

(e) in subsections (4) and (7) for “A person” substitute “An individual”;

(f) in subsections (5) and (6) for “a person” substitute “an individual” and for “that person” (in each place) substitute “that individual”; and

(g) in subsection (8) for “persons” substitute “individuals”.

(4) In section 8 (termination of appointment) in subsections (1) to (5) for “person” (in each place) substitute “individual”.

(5) In section 102(1) (interpretation: general) after the definition of “secure accommodation” insert —

““special guardian” and “special guardianship order” have the meanings respectively assigned by section 17A(1);”.

**6.** In section 20(1)(a) of the Child Custody Act 1987 (orders under the Children and Young Persons Act 2001 that are custody orders for the purposes of Part 1) after “section 11” insert “ or 17A”.

Consequential  
amendment to  
Child Custody  
Act 1987

[c.11]





**Isle of Man**  
Government

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