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## STATUTORY INSTRUMENTS

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# 2005 No. 1109

## The Special Guardianship Regulations 2005

PROSPECTIVE

### PART 2

#### SPECIAL GUARDIANSHIP SUPPORT SERVICES

##### CHAPTER 1

##### PROVISION OF SERVICES

###### Prescribed services

**3.—(1)** For the purposes of section 14F(1)(b) of the Act the following services are prescribed as special guardianship support services (in addition to counselling, advice and information)—

- (a) financial support payable under Chapter 2;
- (b) services to enable groups of—
  - (i) relevant children;
  - (ii) special guardians;
  - (iii) prospective special guardians; and
  - (iv) parents of relevant children,to discuss matters relating to special guardianship;
- (c) assistance, including mediation services, in relation to arrangements for contact between a relevant child and—
  - (i) his parent or a relative of his; or
  - (ii) any other person with whom such a child has a relationship which appears to the local authority to be beneficial to the welfare of the child having regard to the factors specified in section 1(3) of the Act;
- (d) services in relation to the therapeutic needs of a relevant child;
- (e) assistance for the purpose of ensuring the continuance of the relationship between a relevant child and a special guardian or prospective special guardian, including—
  - (i) training for that person to meet any special needs of that child;
  - (ii) subject to paragraph (3), respite care;
  - (iii) mediation in relation to matters relating to special guardianship orders.

(2) The services prescribed in paragraph (1)(b) to (e) may include giving assistance in cash.

(3) For the purposes of paragraph (1)(e)(ii) respite care that consists of the provision of accommodation must be accommodation provided by or on behalf of a local authority under

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section 23 of the Act (accommodation of looked after children) or by a voluntary organisation under section 59 of the Act.

#### Commencement Information

**I1** Reg. 3 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Arrangements for securing provision of services

**4.—(1)** The following are prescribed for the purposes of section 14F(9)(b) of the Act (persons who may provide special guardianship support services)—

- (a) a registered adoption society;
- (b) a registered adoption support agency;
- (c) a registered fostering agency;
- (d) a Local Health Board or Primary Care Trust;
- (e) a local education authority.

(2) In paragraph (1)—

- (a) “registered adoption society” has the same meaning as in the Adoption and Children Act 2002;
- (b) “adoption support agency” has the same meaning as in the Adoption and Children Act 2002 and “fostering agency” has the same meaning as in the Care Standards Act 2000<sup>(1)</sup> and “registered” in relation to any such agency means that a person is registered in respect of it under Part 2 of the Care Standards Act 2000.

#### Commencement Information

**I2** Reg. 4 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Services for persons outside the area

**5.—(1)** Section 14F of the Act (special guardianship support services) applies to a local authority in respect of the following persons who are outside the authority’s area—

- (a) a relevant child who is looked after by the local authority or was looked after by the local authority immediately before the making of a special guardianship order;
- (b) a special guardian or prospective special guardian of such a child;
- (c) a child of a special guardian or prospective special guardian mentioned in subparagraph (b).

(2) But section 14F ceases to apply at the end of the period of three years from the date of the special guardianship order except in a case where the local authority are providing financial support under Chapter 2 and the decision to provide that support was made before the making of the order.

(3) Nothing in this regulation prevents a local authority from providing special guardianship support services to persons outside their area where they consider it appropriate to do so.

(1) 2000 c. 14. See section 4(4).

**Commencement Information**

**I3** Reg. 5 in force at 30.12.2005, see [reg. 1\(1\)](#)

CHAPTER 2

PROVISION OF FINANCIAL SUPPORT

**Circumstances in which financial support is payable**

**6.—(1)** Financial support is payable under this Chapter 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 local authority consider 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 local authority consider that it is necessary to ensure that the special guardian or prospective special guardian can look after the child;
- (b) where the local authority consider that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect;
- (c) where the local authority consider 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 8 of the Act;
  - (iii) an order for financial provision to be made to or for the benefit of the child; or
- (d) where the local authority consider that it is appropriate to contribute to the expenditure necessary for the purposes of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and provision of clothing, toys and other items necessary for the purpose of looking after the child.

**Commencement Information**

**I4** Reg. 6 in force at 30.12.2005, see [reg. 1\(1\)](#)

**Remuneration for former foster parents**

**7.—(1)** Financial support under this Chapter may include an element of remuneration but only where the decision to include it is taken before the special guardianship order is made and the local authority consider it to be necessary in order to facilitate arrangements for a person to become a special guardian in a case where—

- (a) the special guardian or prospective special guardian has been a local authority foster parent in respect of the child; and

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(b) an element of remuneration was included in the payments made by the local authority to that person in relation to his fostering the child.

(2) But that element of remuneration ceases to be payable after the expiry of the period of two years from the making of the special guardianship order unless the local authority consider its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances.

#### Commencement Information

**I5** Reg. 7 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Payment of financial support

**8.** Financial support under this Chapter may be paid—

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

#### Commencement Information

**I6** Reg. 8 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Cessation of financial support

**9.** Financial support ceases to be payable to a special guardian or prospective special guardian if—

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

#### Commencement Information

**I7** Reg. 9 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Conditions

**10.—(1)** Where financial support is to be paid periodically it is not payable until the special guardian or prospective special guardian agrees to the following conditions—

- (a) that he will inform the local authority immediately if—
  - (i) he changes his address;
  - (ii) the child dies;
  - (iii) any of the changes mentioned in regulation 9 (cessation of financial support) occurs; or

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- (iv) there is a change in his financial circumstances or the financial needs or resources of the child which may affect the amount of financial support payable to him, and, where the information is given orally, to confirm it in writing within seven days;
- (b) that he will complete and supply the local authority with an annual statement as to the following matters—

- (i) his financial circumstances;
- (ii) the financial needs and resources of the child;
- (iii) his address and whether the child still has a home with him.

(2) The local authority may provide financial support subject to any other conditions they consider appropriate, including the timescale within which, and purposes for which, any payment of financial support should be utilised.

(3) Subject to paragraph (4), where any condition imposed in accordance with this regulation is not complied with, the local authority may—

- (a) suspend or terminate payment of financial support; and
- (b) seek to recover all or part of the financial support they have paid.

(4) Where the condition not complied with is a failure to provide an annual statement in accordance with an agreement referred to in paragraph (1), the local authority shall not take any steps under paragraph (3) until—

- (a) they have sent to the person who entered into the agreement a written reminder of the need to provide an annual statement; and
- (b) 28 days have expired since the date on which that reminder was sent.

#### **Commencement Information**

**I8** Reg. 10 in force at 30.12.2005, see [reg. 1\(1\)](#)

### CHAPTER 3

#### ASSESSMENT AND PLANS

##### **Request for assessment**

**11.—(1)** The following persons are prescribed for the purposes of section 14F(3) of the Act (persons at whose request an assessment must be carried out)—

- (a) a relevant child who is looked after by the local authority or was looked after by the local authority immediately before the making of a special guardianship order;
- (b) a special guardian or prospective special guardian of such a child;
- (c) a parent of such a child.

(2) Paragraph (3) applies if the local authority receive a written request from or, in the case of a child, on behalf of any of the following persons (not being a person falling within paragraph (1)) for an assessment of his needs for special guardianship support services—

- (a) a person mentioned in section 14F(3)(a) to (c) of the Act;
- (b) a child of a special guardian;
- (c) any person whom the local authority consider to have a significant and ongoing relationship with a relevant child.

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(3) The local authority must, if they are minded not to carry out an assessment, give the person notice of the proposed decision (including the reasons for it) and must allow him a reasonable opportunity to make representations in relation to that decision.

(4) Where the request of a person for an assessment relates to a particular special guardianship support service, or it appears to the local authority that a person's needs for special guardianship support services may be adequately assessed by reference to a particular special guardianship support service, the local authority may carry out the assessment by reference to that service only.

#### Commencement Information

**I9** Reg. 11 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Procedure for assessment

**12.—(1)** Where the local authority carry out an assessment of a person's needs for special guardianship support services they 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 local authority 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 local authority must, where they consider 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 local authority consider it appropriate to interview.
- (3) Where it appears to the local authority that the person may have a need for services from a Local Health Board, Primary Care Trust or local education authority, they must, as part of the assessment, consult that Local Health Board, Primary Care Trust or local education authority.
- (4) After undertaking an assessment, the local authority must prepare a written report of the assessment.

#### Commencement Information

**I10** Reg. 12 in force at 30.12.2005, see [reg. 1\(1\)](#)

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

13.—(1) This regulation applies where the local authority carry out an assessment of a person’s need for financial support.

(2) In determining the amount of financial support, the local authority must take account of any other grant, benefit, allowance or resource which is available to the person in respect of his needs as a result of becoming a special guardian of the child.

(3) Subject to paragraphs (4) and (5) the local authority must also take account of the following considerations—

- (a) the person’s financial resources, including any tax credit or benefit, which would be available to him if the child lived with him;
- (b) the amount required by the person in respect of his reasonable outgoings and commitments (excluding outgoings in respect of the child);
- (c) the financial needs and resources of the child.

(4) The local authority must disregard the considerations in paragraph (3) where they are 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 local authority and the authority support 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 local authority may disregard any of the considerations in paragraph (3)—

- (a) where they are considering providing financial support in respect of—
  - (i) initial costs of accommodating a child who has been looked after by the local authority;
  - (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 6(2)(b) in relation to a child who has been looked after by the local authority; or
- (b) where they are considering including an element of remuneration under regulation 7.

(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 local authority to be beneficial to the welfare of the child having regard to the factors specified in section 1(3) of the Act.

#### **Commencement Information**

**111** Reg. 13 in force at 30.12.2005, see [reg. 1\(1\)](#)

### **Plan**

14.—(1) This regulation applies in relation to the requirement in section 14F(6) of the Act for the local authority to prepare a plan in accordance with which special guardianship support services are to be provided.

(2) The local authority must prepare a plan if—

- (a) they propose 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.

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(3) Where it appears to the local authority that the person may have a need for services from a Local Health Board, Primary Care Trust or a local education authority, they must consult that Local Health Board, Primary Care Trust or local education authority before preparing the plan.

(4) The local authority must nominate a person to monitor the provision of the services in accordance with the plan.

#### Commencement Information

**I12** Reg. 14 in force at 30.12.2005, see [reg. 1\(1\)](#)

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

**15.**—(1) Before making any decision under section 14F(5) of the Act as to a person’s needs for special guardianship support services, the local authority must allow the person an opportunity to make representations in accordance with this regulation.

(2) The local authority must first give the person notice of the proposed decision and 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) where the assessment relates to his need for financial support, the basis upon which financial support is determined;
- (c) whether the local authority propose to provide him with special guardianship support services;
- (d) the services (if any) that are proposed to be provided to him;
- (e) if financial support is to be paid to him, the proposed amount that would be payable; and
- (f) any proposed conditions under regulation 10(2).

(4) In a case where the local authority propose to provide special guardianship support services and are required to prepare a plan under section 14F(6) of the Act, the notice must be accompanied by a draft of that plan.

(5) The local authority shall not make a decision until—

- (a) the person has made representations to the local authority or notified the local authority that he is satisfied with the proposed decision and, where applicable, the draft plan; or
- (b) the period of time for making representations has expired.

#### Commencement Information

**I13** Reg. 15 in force at 30.12.2005, see [reg. 1\(1\)](#)

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

**16.**—(1) After making their decision under section 14F(5) of the Act as to whether to provide special guardianship support services to a person, the local authority must give the person notice of that decision, including the reasons for it.

(2) Where the local authority are required to prepare a plan under section 14F(6) of the Act, the notice must include details of that plan and the person nominated under regulation 14(4).



(3) If the local authority decide 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) where financial support is to be paid as a single payment, when the payment is to be made;
- (d) where financial support is to be paid subject to any conditions imposed in accordance with regulation 10(2), those conditions, the date (if any) by which the conditions are to be met and the consequences of failing to meet the conditions;
- (e) the arrangements and procedure for review, variation and termination of financial support;
- (f) the responsibilities of—
  - (i) the local authority under regulations 17 and 18 (reviews); and
  - (ii) the special guardian or prospective special guardian pursuant to any agreement mentioned in regulation 10.

#### **Commencement Information**

**I14** Reg. 16 in force at 30.12.2005, see [reg. 1\(1\)](#)

## CHAPTER 4

### REVIEWS

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

**17.—(1)** This regulation applies where the local authority provide special guardianship support services for a person other than financial support payable periodically.

(2) The local authority 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 they consider appropriate; and
- (c) in any event, at least annually.

(3) Regulations 12 and 13 apply in relation to a review under this regulation as they apply in relation to an assessment under Chapter 3 of this Part.

(4) If the local authority propose to vary or terminate the provision of special guardianship support services to any person, before making any decision as a result of the review they must give the person an opportunity to make representations and for that purpose they must give him notice of the proposed decision and the time allowed for making representations.

(5) The notice must contain the information mentioned in regulation 15(3) and, if the local authority propose to revise the plan, a draft of the revised plan.

(6) The local authority must, having regard to the review and after considering any representations received within the period specified in the notice—

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- (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 local authority must give the person notice of their decision (including the reasons for it) and, if applicable, details of the revised plan.

#### Commencement Information

**I15** Reg. 17 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Review of financial support payable periodically

**18.**—(1) This regulation applies where the local authority provide financial support for a person payable periodically.

- (2) The local authority must review the financial support—
  - (a) on receipt of the annual statement mentioned in regulation 10;
  - (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 they consider 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 apply in relation to a review under this regulation as they apply in relation to an assessment under Chapter 3 of this Part.
- (5) If the local authority propose, as a result of the review, to reduce or terminate financial support or revise the plan, before making that decision, the local authority must give the person an opportunity to make representations and for that purpose they must give the person notice of the proposed decision and the time allowed for making representations.
- (6) But paragraph (5) does not prevent the local authority from suspending payment of financial support pending that decision.
- (7) The notice must contain the information mentioned in regulation 15(3) and, if applicable, a draft of the revised plan.
- (8) The local authority 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) where appropriate, revise the plan.
- (9) The local authority must give the person notice of their decision, including the reasons for it, and, if applicable, the revised plan.

#### Commencement Information

**I16** Reg. 18 in force at 30.12.2005, see [reg. 1\(1\)](#)

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## CHAPTER 5

### URGENT CASES AND NOTICES

#### Urgent cases

**19.** Where any requirement applicable to the local authority in this Part 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.

#### Commencement Information

**I17** Reg. 19 in force at 30.12.2005, see [reg. 1\(1\)](#)

#### Notices

**20.—(1)** Any notice required to be given under this Part 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 local authority that the child is not of sufficient age and understanding for it to be appropriate to give him such notice; or
- (b)** in all the circumstances it is not appropriate to give him such notice,

the notice must be given to his special guardian or prospective special guardian (where applicable) or otherwise to the adult the local authority consider most appropriate.

#### Commencement Information

**I18** Reg. 20 in force at 30.12.2005, see [reg. 1\(1\)](#)

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**Changes and effects yet to be applied to :**

- Regulations words substituted by [S.I. 2022/634 Sch. para. 1\(1\)\(3\)](#)

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

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. para. 1(ga)(gb) inserted by [S.I. 2016/111 reg. 4\(a\)](#)
- Sch. para. 2(ea) inserted by [S.I. 2019/1458 Sch. 3 para. 75\(b\)](#)
- reg. 4(2)(b)-(d) substituted for reg. 4(2)(b) by [S.I. 2019/237 Sch. 1 para. 10\(2\)](#)