

EXPLANATORY MEMORANDUM TO
THE SPECIAL GUARDIANSHIP (AMENDMENT) REGULATIONS

2016 No. 111

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the Schedule to the Special Guardianship Regulations 2005 (“the 2005 Regulations”), which prescribes the matters that must be dealt with by a local authority in their report to the court about prospective special guardians. The Special Guardianship (Amendment) Regulations 2016 (the “2016 Regulations”) amends the Schedule by prescribing additional matters.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument is being made to prescribe additional matters that have to be dealt with by a local authority in their report to a court about a prospective special guardian for a child.
- 4.2 A special guardianship order (SGO) gives parental responsibility for a child to a special guardian, who can exercise it to the exclusion of others with parental responsibility. The court cannot make a SGO unless it has received a report from the local authority. The report has to deal with the suitability of the applicant to be a special guardian, the matters prescribed by the Secretary of State and any other matter which the local authority considers relevant. The Schedule to the 2005 Regulations sets out the matters prescribed by the Secretary of State.
- 4.3 The 2016 Regulations are being made to amend the Schedule to the 2005 Regulations to include additional matters.

5. Extent and Territorial Application

- 5.1 The instrument extends to England and Wales.
- 5.2 This entire instrument applies only to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Special Guardianship was introduced as a new permanence option for children in December 2005. At the time it was considered that a new legal order was required to meet the needs of a significant group of children; these included mainly older children who had become separated from their birth family; children already settled with a relative or foster carer; and groups such as unaccompanied asylum seeking children, minority ethnic groups who have cultural difficulties with adoption and unaccompanied asylum-seeking children who may need a secure legal basis without breaking the strong attachment they may have with their family abroad.
- 7.2 Over time, there has been a gradual shift in the use of SGOs, for example, there has been an increase in the number of SGOs being awarded in relation to much younger children; concerns have been raised that the assessment process for special guardianship was, in some cases, not sufficiently robust; and there has been an increase in the number of SGOs awarded together with a supervision order which suggests concern about the suitability of the placement. As a result of these concerns the government launched a review of special guardianship; this included a “Call for Evidence”. which ran between 17 July and 18 September; the responses are summarised at paragraph 8 below.
- 7.3 The 2016 Regulations will add additional matters to the list of matters local authorities have to deal with in their reports to the court. This will help ensure that the assessment of potential special guardians are sufficiently robust and take account of the child’s current and likely future needs; any harm the child has previously suffered; any likely risk of future harm posed by the child’s parent or other relevant person; the nature of the prospective special guardian’s current and previous relationship with the child; the ability and suitability of the prospective special guardian to bring up the child until the child reaches the age of 18.

Consolidation

- 7.4 The 2016 Regulations only make slight amendments to the 2005 Regulations. There are currently no plans to further consolidate the Regulations.

8. Consultation outcome

- 8.1 As part of its review of special guardianship, the government launched a “Call for Evidence”; this ran from 17 July to 18 September 2015. There were 154 responses, from a range of people including local authorities, special guardians, social workers, lawyers and others. In addition to the responses the Department held consultation events with special guardians.
- 8.2 Of those responding, 71% of respondents said that the legislation, regulations and or statutory guidance relating to special guardianship needed to be changed; 35% of respondents said that practitioners were not clear and consistent about the factors to take into account when considering whether an SGO is the most appropriate order for which to apply; 16% said that they were; 71% of respondents said that the assessment

process for determining whether a prospective special guardian is suitable could be improved. The government response can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487243/SGR_Final_Combined_Report.pdf

9. Guidance

- 9.1 The changes were highlighted in the government's response to the consultation on special guardianship. The government will also amend Special Guardianship statutory guidance issued under Section 7 of the Local Authority Social Services Act 1970. to reflect the new arrangements for the assessment of potential special guardians and changes will be publicised through established networks, for example to Directors of Children's Services.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies. The government has conducted a public sector equalities duties assessment. This has concluded that there is no significant risk to individuals with protected characteristics. However, the government will review the impact of the changes on an ongoing basis through data collection and engagement with the family justice system.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Government will review the new arrangements through its work with Local Authorities, the Family Justice Board, Local Family Justice Boards, and representative organisations.

13. Contact

- 13.1 Angela Joyce on 0207 340 7185 or email angela.joyce@education.gsi.gov.uk can answer any queries regarding the instrument.