

Summer 2018 Edition of the AFA Cymru Legal Bulletin

Welcome to the summer edition of AFA's newsletter, which looks at the new special guardianship amendment regulations and code of practice. These come into force on 2 July 2018.

The Special Guardianship (Wales) (Amendment) Regulations 2018

The 2018 Regulations **amend** the Special Guardianship (Wales) Regulations 2005

Code of Practice on the exercise of social services functions in relation to special guardianship orders

The code of practice **repeals and replaces** the 2006 special guardianship statutory guidance.

A reminder – LA's must act in accordance with the requirements in the code, stated as 'musts' or 'must not'. LA's may have regard to any guidelines set out, stated as 'may' or 'may not', 'should' or 'should not'.

Both the regulations and code of practice come into force on **2 July 2018**.

Transitional provisions: the new regulations and code of practice will not apply where either the three months notice has been given to the local authority, or the court has ordered a SG report to be completed before 2 July.

There are three main areas where the 2018 regulations and code of practice have altered and enhanced the 2005 regulations and 2006 statutory guidance:

1. The Schedule, which lists matters to be dealt with in the report to the court considering the suitability of the applicants;
2. A new three year rule for taking on the responsibility for SG support when living away from the authority where the child was formerly looked after (referred to in this document as the original local authority);
3. Additional duties and guidelines to ensure that SG support is provided to those who need it.

In addition the code of practice ties special guardianship in with the UNCRC and Well-being Act 2014.

Please note that this is not an exhaustive list of amendments / additions but highlights the major changes.

1. THE SCHEDULE

See at the end of this document a copy of the Schedule, as amended by the 2018 regulations. The amendments are highlighted in blue (or are seen in grey if printed in black and white).

What the code of practice says about the Schedule:

The code of practice (Chapter 2: Assessment of suitability and reports to court) states that the amendments to the Schedule:

- Must be robust, objective and inquiring;
- Must be analysed and evaluated carefully;
- It is vital that the prospective SG's background is 'checked thoroughly';
- It is vital that the assessment considers the prospective SG's ability at the time the order is made AND in the future.

The Schedule expands on and includes:

- Details of the child, under 2(j);
- Details of the child's siblings ((3)(ja));
- The current relationship the prospective SG has with the child (4)(fa)(fb));
- Parenting capacity of the prospective SG, to include ability, suitability and commitments to bring the child up until the child reached 18 (4(m));
- An assessment of family dynamics (though it isn't called that in the regulations (4(na) – (ne));
- Enhanced DBS checks for the prospective SG and any other member of the household aged 18 or over (this is already common LA practice under the connected person's assessment but is now in the Schedule) (4(p));
- Need to state the period for which SG services are to be provided (5(e));
- Where SG services are not to be provided, state the reasons why (5(ea));
- Recommendations for contact (6(d)).

Useful additions in the Code of Practice:

Para 2.19 – no settling in period for SGO, as in adoption, so must give careful consideration to the existing relationship

Para 2.20 – 2.23

- LA's to ensure whenever possible that they allow sufficient time for prospective SG's to be able to have sufficient knowledge / come to terms with harm suffered by child(ren)
- early identification of prospective carers is important / must use family meetings
- Reference to Re S [2014]: an extension beyond 26 weeks may be necessary in cases where a 'a realistic alternative carer emerges late in the day'

2. THE NEW THREE YEAR 'RULE'

New reg 3A and chapter 11 Code of Practice

"Services for persons outside the area

3A.—(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 local authority 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 sub-paragraph (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 Part 3 and the decision to provide that support was made before the making of the order.

(3) The local authority providing special guardianship support services to a person who falls within those listed in regulation 3A(1)(a) to (c) **must, not later than three months before the end of the three year period referred to in paragraph (2)—**

- a) review the special guardianship support services provided to that person;**
- b) notify the local authority where that person lives of any continuing need for special guardianship support services; and**
- (c) refer that person to relevant local information, advice and assistance.**

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

The new 3A has two important elements:

- 1) The original LA now has a period of three years in which it maintains responsibility for providing SG services in the event of a child being placed in, or moving to, a different LA area within that three year period. The 2005 regulations were very vague on this and did not provide a timescale, so this is very helpful;
- 2) When that three year period, which starts from the time of the making of the SGO, is about to expire, the original LA must, not later than three months before the expiry of the three years, undertake a review, notify the relevant local authority of any continuing need for services and refer the SG to relevant local information, advice and assistance.

The Code of Practice imposes some additional duties / guidelines:

- If the child is to live in another LA area from the date of the order the original LA must inform that LA that the SGO has been made (para 11.3);
- LA's should co-operate to establish which services are to be provided locally (although original LA will finance for three years) (para 11.4);
- There will need to be agreement on who provides any Part 4 SSWBA service (it is expected that the original LA will continue to meet any ongoing needs, including those over and above prescribed SG support services, for the three years)(para 11.5).

Note that, as in the 2005 regulations, the three year 'rule' does not apply to the provision of financial support. That remains the responsibility of the original LA even when child is placed in, or moves to, a different local authority area.

3. ADDITIONAL DUTIES AND GUIDELINES FOR SPECIAL GUARDIANSHIP SUPPORT

The new regulation 5:

Assessment of needs for special guardianship support services

“(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 person falling within section 14F(3)(a) to (c) of the Act;
- b) a relevant child who is looked after by the local authority or who was looked after by the local authority immediately before the making of the special guardianship order;
- c) a child of the special guardian or prospective special guardian mentioned in sub-paragraph (d);
- d) a special guardian or prospective special guardian of a relevant child;
- e) a parent of a relevant child;
- f) a related person, provided that before the request for an assessment was made arrangements were in place for contact between the person and the relevant child; and
- g) a child (other than one falling within sub-paragraphs (a) to (c) above) who is named in a report produced under section 14A(8) of the Act.

Reg 5 sets out the list of people who are entitled to request an assessment.

Paragraph 4.3 of the Code of Practice imposes an additional duty: a local authority **must** make all of the above (the list) aware of their entitlement to request an assessment for special guardianship support services at every appropriate stage (i.e when an application is made, and again once the special guardianship order is in place),’

Paragraph 4.6:

- where an assessment is not requested the LA **must** record the fact on the report to the court and give the reasons
- where there is no assessment requested and an SGO is made, the LA **must** inform the child and SG of their entitlement to request an assessment should their circumstances change

Reviews of SG support (chapter 10 Code of Practice)

- LA **must** have arrangements to keep in touch with SG's (both original LA's and LA's where SG and child(ren) live following the first three years)
- As a minimum, LA's **must** make contact with SG's at least once a year (the financial assessment form will not count)
- Visits to the SG's home, by agreement, may be beneficial, e.g. where a complex package of support is being provided

BRINGING SPECIAL GUARDIANSHIP IN LINE WITH THE WELL-BEING ACT

Advocacy: 'an individual must feel that they are an equal partner in their relationships with professionals.' Professionals must ensure that judgements about the needs for advocacy are integral to the relevant duties under this code (para 1.5 & 6)

Overarching duties: LA's must have regard to Part 1 of the UNCRC and must promote the well-being of children and special guardians in line with the national well-being outcomes framework (para 1.28)

Para 1.30: 'In implementing this code of practice, local authorities must ensure that they strive to achieve these outcomes and measure the success of their special guardianship policies and procedures against them.' There follows in para 1.30 a useful table setting out the links between UNCRC articles, well-being outcomes and s1 Children Act principles.

The relationship between SG assessments and support services and Parts 3 & 4 Well-being Act assessments and care and support plans:

Chapter 4 C of P: Meeting care and support needs:

- Vital to ensure families are assisted in accessing mainstream services;
- LA's must inform SG's how to access support should circumstances change and additional needs arise;
- Some children will have additional care and support needs;
- Some SG's may have care and support needs arising from their role in caring for the child (e.g. if child is disabled or has particular emotional needs).
- In most cases, a child who is subject to an SGO and has care and support needs will also be entitled to a Part 3 assessment and C&S plan under Part 4;
- In these circumstances the LA should assess the need for SG support services as part of the Part 3 assessment;
- SG support services will be included in the overall Part 4 C&S plan;
- Where a looked after child becomes subject to a special guardianship arrangement, the relevant parts of the child's Part 6 care and support plan will usually be converted into a

Part 4 care and support plan, which will also include any arrangements for delivering any SG support services;

- A change of circumstances may lead a review of SG support services to extend to a Part 3 assessment as well.

THE SCHEDULE

Reports — matters prescribed for the purposes of section 14A(8)(b) of the Act

1. The following matters are prescribed for the purposes of section 14A(8)(b) of the Act.
2. In respect of a child in respect of whom a special guardianship order is sought or a child in respect of whom the court has required a report (referred to in this Schedule as “the child”)—
 - (a) name, sex, date and place of birth and home address, including local authority area;
 - (b) nationality (and immigration status where appropriate);
 - (c) a photograph and physical description;
 - (d) developmental needs, to include physical, educational and emotional needs;
 - (e) religious persuasion, including details of baptism, confirmation, or equivalent ceremonies, racial origin and cultural and linguistic background;
 - (f) details of any order made by a court with respect to a 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;
 - (g) the extent of the child’s contact with members of his or her family, relatives and any other person the local authority considers relevant;
 - (ga) any harm which the child has suffered;
 - (gb) any risk of future harm to the child posed by the child’s parents, relatives or any other person the local authority considers relevant;
 - (h) any placement with foster parents or any other care arrangements relating to the child;
 - (ha) whether the child is being looked after or has been looked after by a local authority or is or has been provided with accommodation by a voluntary organisation and details (including dates) of any placements by the authority or organisation;
 - (hb) whether the prospective special guardian is a local authority foster parent of the child;

- (i) the child's educational attainments and whether the child is subject to a statement of special educational needs under the Education Act 1996;
- (j) an assessment of the child's wishes and feelings (having regard to the child's age and understanding) about –
 - (i) special guardianship;
 - (ii) his religious and cultural upbringing; and
 - (iii) contact with his relatives and any other person the local authority considers relevant, and the date on which the child's wishes and feelings were last ascertained); and
- (k) the date on which the child's wishes and feelings were last assessed;
- (l) a description of the child's personality, his or her social development and his or her emotional and behavioural development and any related current needs or likely future needs;
- (m) details of the child's interests, likes and dislikes;
- (n) a health history and a description of the state of the child's health, including any treatment the child is receiving;
- (o) names, addresses and types of nurseries or schools attended with dates of attendance;

3. In respect of the family of the child—

- (a) name, date, place of birth and home address (and the date on which their last address was confirmed) of each of the child's parents, siblings and any other person the local authority considers to be relevant;
- (b) nationality (and immigration status where appropriate) of the child's parents;
- (ba) 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;
- (c) if the child's parent is a member of a couple, an assessment of the stability of that relationship and, if the parent is married or has entered into a civil partnership, the date and place of marriage or civil partnership;
- (d) where the child's parents are not married, whether the child's father has parental responsibility for the child, and if so, how it was acquired;

- (e) whether either parent is considered by the local authority to be likely to apply for an order under the Act in respect of the child;
- (ea) if the identity or whereabouts of either parent is not known, the information about the parent that has been ascertained and from whom the information has been obtained, and the steps that have been taken to establish maternity or paternity as the case may be;
- (eb) the past and present relationship of the child's parents with each other;
- (f) a photograph, if available, and a physical description of the parents, siblings and any other person the local authority considers to be relevant;
- (fa) where available, the health history of the parents, including details of any serious physical or mental illness, any hereditary disease or disorder or disability;
- (g) religious persuasion, racial origin and cultural and linguistic background of the parents;
- (h) the occupations, past and present, and educational attainment of the parents;
- (ha) the personality and interests of the parents;
- (i) the care arrangements in respect of any of the child's siblings who have not attained the age of 18 years;
- (j) the views (wishes and feelings) of the parents in relation to -
 - (i) the application for a special guardianship order in respect of the child;
 - (ii) the child's religious and cultural upbringing; and
 - (iii) contact with the child; and
- (ja)** 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 a local authority 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; and
- (k) the reason why any of the information prescribed above in this paragraph is not available.

4. 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 home address, [including local authority area](#);

(b) nationality and immigration status, [where appropriate](#);

(c) relationship to the child;

(d) a [photograph and](#) physical description;

(e) if the prospective special guardian is a member of a couple, an assessment of the stability of that relationship and, if the prospective special guardian is married or has entered into a civil partnership, the date and place of marriage or civil partnership;

[\(ea\) if the prospective special guardian is a member of a couple and is applying alone for a special guardianship order, the reasons for this](#)

[\(eb\) details of any previous marriage, civil partnership, or relationship](#);

(f) religious persuasion, racial origin and cultural and linguistic background of the prospective special guardian and willingness of the prospective special guardian to follow the wishes of the child or of the child's parent in relation to the religious or cultural upbringing of the child;

[\(fa\) whether the prospective special guardian is a relative of the child](#);

[\(fb\) an assessment of the nature of the prospective special guardian's current and past relationship with the child](#), the child's parents and any related person

(g) occupations, past and present, and educational attainment;

(h) a report on the health of the prospective special guardian, [including details of any serious physical or mental illness, any hereditary disease or disorder or disability](#);

(i) particulars of the prospective special guardian's home [and neighbourhood](#), to include details of income and expenditure, comments on the living standards of the household and any wider family and environmental factors which may impact on the parenting capacity of the prospective special guardian;

(j) previous experience of caring for children;

(k) any past assessment as a prospective adopter, foster parent or special guardian;

(l) 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](#);

- (m) an assessment of the prospective special guardian’s parenting capacity, including:
 - (i) their understanding of, and ability to meet the child’s current and likely future needs, particularly, any needs the child may have arising from harm that the child has suffered;
 - (ii) their understanding of, and ability to protect the child from any current or future risk of harm posed by the child’s parents, relatives or any other person the local authority consider relevant, particularly in relation to contact between any such person and the child;
 - (iii) their ability, suitability and commitment to bring up the child until the child reaches the age of eighteen; and
 - (iv) their understanding of a special guardian’s role and its likely impact on their life;
- (ma) details of any other members of the prospective guardian’s household and details of any children of the prospective special guardian even if not resident in the household;
- (mb) details of the parents and any siblings of the prospective special guardian, with their ages or ages;
- (mc) details of the personality and interests of the prospective special guardian;
- (md) details of any previous family court proceedings in which the prospective special guardian has been involved (which has not been referred to elsewhere in the report);
- (n) details of the prospective special guardian’s three personal referees, no more than one of whom is a relative of the prospective special guardian, and a report of each of the interviews with the referees;
- (na) the views of other members of the prospective special guardian’s household and wider family (where relevant) in relation to the proposed special guardianship order;
- (nb) an assessment of the interaction between each of the members of the prospective special guardian’s household;
- (nc) an assessment of the child’s current and likely future relationship with the family of the prospective special guardian;

(nd) any hopes and expectations the prospective special guardian has for the child's future;

(ne) the prospective guardian's wishes and feelings in relation to current and future contact between the child and his relatives or any other person the local authority considers relevant; and

(o) details of the proposed living arrangements for the child, if these are intended to change after a special guardianship order is made; and

(p) in respect of the prospective special guardian and any other member of the prospective special guardian's household, who is aged 18 or over, an enhanced criminal record certificate is sued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of s 113BA(2) of that Act

5. In respect of the local authority which compiled the report—

(a) name and address;

(b) details as to whether any of the information referred to in paragraphs 2 to 4 was initially obtained by the local authority otherwise than for the purposes of preparing the report and, if so, the purpose for which, and the date upon which, it was obtained;

(c) details of steps taken to verify the identity of the prospective special guardian;

(d) details of any past involvement of the local authority with the prospective special guardian, including any past preparation for that person to be a foster parent or adoptive parent;

(e) details of any assessment which the local authority has undertaken in respect of special guardianship support services for the prospective special guardian, the child or the child's parent and the period for which those services are to be provided;

(ea) where the local authority has decided not to provide special guardianship support services, the reasons why;

(f) where section 14A(7)(a) of the Act applies and the prospective special guardian lives in the area of another local authority, details of the local authority's enquiries of that other local authority about the prospective special guardian; and

(g) details of the local authority's opinions as to whether the prospective special guardian would or would not be a suitable special guardian for the child.

6. In respect of the conclusions reached in the report—

(a) a summary prepared by the medical professional who provided the information referred to in paragraphs 2(d) and 4(h) above on the health of the child and of the prospective special guardian;

(b) details of the opinion of the person making the report on—

(i) the implications of the making of a special guardianship order for the child;

(ii) how any special health needs of the child may be met;

(iii) whether the making of a special guardianship order would be in the best long-term interests of the child;

(iv) how any emotional, behavioural and educational needs of the child may be met;

(v) the effect of the making of the special guardianship order on the child's parents, the prospective special guardian and his or her family and any other person the local authority considers relevant, of the making of a special guardianship order; and

(vi) if appropriate, the merits of the making of a placement order or an adoption order under the Adoption and Children Act 2002(12) or a residence order under section 8 of the Act in respect of the child;

(c) details of the conclusions and recommendations of the person making the report on the issue of whether a special guardianship order should be made in respect of the child; and

(d) a recommendation as to what arrangements there should be for contact between the child and the child's relatives or any person the local authority considers relevant.

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