

Number: WG32590



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Special Guardianship Orders – amending regulations and code of practice

Date of issue: 04 September 2017
Action required: Responses by 27 November 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview	This consultation seeks views on proposed amendments to the Special Guardianship (Wales) Regulations 2005 and a new code of practice on local authority functions in relation to special guardianship orders.
How to respond	To respond to this consultation, please fill in the consultation response form and return it to the address below.
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>The consultation document, draft regulations and code of practice may be found at: https://consultations.gov.wales/consultations/special-guardianship-orders</p>
Contact details	<p>For further information:</p> <p>Improving Outcomes for Looked After Children Social Services and Integration Directorate Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>E-mail: lookedafterchildren@gov.wales</p> <p>Telephone: 03000 253049</p>
Data protection	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.</p> <p>The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send</p>

your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

What is this consultation about?

This consultation seeks views on proposed amendments to the Special Guardianship (Wales) Regulations 2005 ('the 2005 Regulations') and a new code of practice on the exercise of local authority functions in relation to special guardianship orders. The amending regulations and code of practice will come into force from 1 July 2018.

Background: special guardianship

A special guardianship order is a court order appointing a person or persons to be a child's special guardian. They were introduced in Wales in December 2005, as a new permanence option for children who could not live with their parents. A special guardianship order grants the special guardian a high degree of parental responsibility for virtually all decisions affecting the child, and limits the rights of birth parents to intervene or challenge the order without leave of a the court. It provides a legal status that offers greater security than long term fostering, but without the absolute legal break with the child's birth family that is associated with adoption. Children subject to special guardianship orders are not looked after by their local authority (i.e. they are not 'looked after children') although the local authority often provides financial or other support. For some children, a special guardianship arrangement enables them to leave local authority care, while for others a special guardianship arrangement is an alternative to care.

Special guardianship orders were introduced into the Children Act 1989 by the Adoption and Children Act 2002. Section 115(1) of the 2002 Act inserted new sections 14A-F into the Children Act. The new sections set out:

- 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
- the variation or discharge of special guardianship orders
- support services for those affected by special guardianship.

More detailed provisions were set out in the 2005 Regulations, covering:

- the matters a local authority must deal with in a report to the court when the authority receives notice of a person's application for a special guardianship order, or has been requested by a court to conduct an investigation and prepare a report
- provision of special guardianship support services
- the circumstances in which financial support can be paid
- the persons who are entitled to an assessment of their needs for special guardianship support services, and the procedure for an assessment
- determining the amount of financial support
- the support services they propose to provide following an assessment
- special guardianship support services plan
- review of provision of special guardianship support services.

The case for change

When they were introduced, it was thought that special guardianship orders would be particularly suitable for certain groups of children, including older children who had become separated from their birth families, children already settled with a relative or foster carer, children from minority ethnic groups which 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.

Over time there has been a gradual shift in the use of special guardianship orders. For example, there has been an increase in the number of special guardianship orders being awarded in relation to much younger children, and an increase in the number of special guardianship orders awarded together with a supervision order. This has had implications for the way local authorities assess the suitability and viability of special guardianship arrangements, with local authority assessments placing more emphasis on the capacity of special guardians to care for the child over the longer term, and on managing the potential risk of harm.

In 2016, the Welsh Government set up a technical group to review special guardianship arrangements in the light of these developments and following an extensive review of special guardianship orders in England. Members were drawn from local government, the voluntary sector, Cardiff University, the Children's Commissioner's office and CAF/CASS Cymru. The group collected data on special guardianship orders, reviewed the findings and recommendations of recent research, considered recent changes to legislation in England, and reflected upon current practice in Wales around assessment and support, and the challenges this poses for local authorities, families and the courts.

There is also a need to replace National Assembly for Wales Circular 26/06 - The Special Guardianship (Wales) Regulations 2005 Guidance. This guidance was issued under section 7 of the Local Authority Social Services Act 1970, which was disapplied in relation to Wales when the Social Services and Well-being (Wales) Act 2014 came into force in April 2015, and will need to be replaced with a new code of practice on local authority functions in relation to special guardianship orders under section 145 of the 2014 Act.

What changes are we proposing?

We are proposing to make the following changes to the statutory framework for special guardianship orders in Wales.

1. Additional matters to be considered and included in the local authority's report to the court

On receipt of an application from a prospective special guardian, or at the direction of the family court, a local authority must investigate and prepare a report to the court about the suitability of the applicants to be special guardians. The local authority report must include those matters prescribed in the Schedule to the 2005 Regulations.

We propose placing additional matters in the schedule, to create a stronger and more robust assessment framework for potential special guardians. These matters aim to give a more holistic assessment of the proposed arrangement, including any risk factors and how these will be addressed, to reinforce the aim of ensuring that the arrangement effectively supports the child up to the age of 18.

Key additions to the list of matters to be considered include:

- any harm the child has suffered, and any risk of future harm to the child posed by the child's parents, relatives or any other person the local authority considers relevant
- a description of the child's personality, his or her social development, emotional and behavioural development and any related current needs or likely future needs
- an assessment of the prospective special guardian's parenting capacity, including
 - their understanding of and ability to meet the child's current and future needs, particularly any needs the child may have arising from harm the child has suffered
 - an assessment of the prospective special guardian's understanding of, and ability to protect the child from any current or future risk of harm
 - their ability, suitability and commitment to bring up the child until he or she reaches the age of eighteen
 - their understanding of a special guardian's role and its likely impact on their life.
- an enhanced criminal record certificate which includes suitability information relating to children, in respect of the prospective special guardian and any other member of the special guardian's household who is aged 18 or over.

The full list of additional matters is set out in regulation 5 of the draft Special Guardianship (Wales) (Amendment) Regulations 2018.

2. Provision of special guardianship support services to former looked after children living in another local authority area

When a looked after child becomes subject to a special guardianship order, the care order is discharged or the voluntary accommodation arrangement comes to an end, and the child no longer has looked after status. The 2005 Regulations are unclear on where responsibility for meeting special guardianship support needs lies where a looked after child moves to another local authority area once the order has been made. The adoption regulations specify a three year period in similar circumstances.

We propose making a new regulation specifying that the local authority which looked after a child immediately before a special guardianship order was made must continue to meet any identified special guardianship support needs for three years, regardless of where the child is living. This applies to support for the former looked after child, the special guardian or prospective special guardian of such a child, or a child of the special guardian or prospective special guardian. This provision would align special guardianship support with the adoption support requirements in Wales, and is provided for in the proposed new regulation 3A of the 2005 Regulations as inserted by regulation 6 of the draft Special Guardianship (Wales) (Amendment) Regulations 2018.

The new regulation also requires the local authority, in these circumstances, to review the special guardianship support services provided not later than three months before the end of three year period, to notify the local authority where the person receiving the support lives of any continuing need for support, and to refer the person to relevant local information, advice and assistance.

3. Local authority duty to inform applicants of their entitlement to request an assessments for special guardianship support

Section 14F of the Children Act 1989 provides for a local authority to carry out an assessment for special guardianship support services if requested to by a child subject to a special guardianship order, a special guardian, a parent, or any other person prescribed in regulations.

Regulation 5 of the Special Guardianship (Wales) Regulations 2005 lists those people at whose request the local authority must undertake an assessment of need for special guardianship support services. In addition to those listed above, the regulation also prescribes a child of a special guardian, a child in respect of whom a special guardianship order is sought or in respect of whom a court has required a report, a child named in a report submitted to the court, a prospective special guardian, and a related person with contact arrangements.

We propose placing a new requirement in the code of practice that a local authority must make these people aware of their entitlement to request an assessment for special guardianship support services when an application is made or the court directs the local authority to carry out an assessment of suitability.

Consultation questions

1. Are you satisfied that the updated list of matters to be included in local authority reports to the court cover all relevant matters? **See draft regulation 5**

Yes / No

If you answered 'No', please tell us what additional matters you think should be included and why.

2. Do you agree with the proposal to require a local authority which formerly looked after a child (immediately before a special guardianship order was made) to meet any special guardianship support needs for three years regardless of where that child is living? **See draft regulation 6(1) and (2)**

Yes / No

If you answer 'No', please tell us why.

3. Do you agree that in these circumstances a local authority must review the special guardianship support services provided, and notify the local authority where the person lives of any continuing need for support? **See draft regulation 6(3)**

If you answer 'No', please tell us why.

4. Do you agree that local authorities should have a duty to inform relevant people of their entitlement to ask for an assessment for special guardianship support services? **See code of practice, page 23**

If you answer 'No', please tell us why.

5. Are there any other persons you think should be added to the list of prescribed people? **See draft regulation 7**
6. Are there any other comments you wish to make on the draft Special Guardianship (Wales) (Amendment) Regulations 2018?
7. The draft Code of Practice places various requirements upon local authorities in relation to their social services functions (things a local authority 'must' do). Are these requirements reasonable and proportionate, or should local authorities have more discretion, and if so in what areas?
8. Are there any comments you wish to make on the draft Code of Practice on the exercise of social services functions in relation to special guardianship orders?
9. Are there any other changes you think we should make, in regulations or in the code of practice, to improve the way special guardianship arrangements work in Wales?

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Question 1

Are you satisfied that the updated list of matters to be included in local authority reports to the court cover all relevant matters? **See draft regulation 5**

Yes / No

If you answered 'No', please tell us what additional matters you think should be included and why.

Question 2

Do you agree with the proposal to require a local authority which formerly looked after a child (immediately before a special guardianship order was made) to meet any special guardianship support needs for three years regardless of where that child is living? **See draft regulation 6(1) and (2)**

Yes / No

If you answer 'No', please tell us why.

Question 3

Do you agree that in these circumstances a local authority must review the special guardianship support services provided, and notify the local authority where the person lives of any continuing need for support? **See draft regulation 6(3)**

Yes / No

If you answer 'No', please tell us why.

Question 4

Do you agree that local authorities should have a duty to inform relevant people of their entitlement to ask for an assessment for special guardianship support services? **See code of practice, page 23**

Yes / No

If you answer 'No', please tell us why.

Question 5

Are there any other persons you think should be added to the list of prescribed people?

See draft regulation 7

Question 6

Are there any other comments you wish to make on the draft Special Guardianship (Wales) (Amendment) Regulations 2018?

Question 7

Are there any comments you wish to make on the draft Code of Practice on the exercise of social services functions in relation to special guardianship orders?

Question 8

Are there any other changes you think we should make, in regulations or in the code of practice, to improve the way special guardianship arrangements work in Wales?

Question 9

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: