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STATUTORY INSTRUMENTS

2016 No. 111

CHILDREN AND YOUNG PERSONS, ENGLAND

The Special Guardianship (Amendment) Regulations 2016

Made - - - - *2nd February 2016*
Laid before Parliament *5th February 2016*
Coming into force - - *29th February 2016*

The Secretary of State for Education makes these Regulations in exercise of the powers conferred by sections 14A(8)(b) and 104(4) of the Children Act 1989⁽¹⁾.

Citation, commencement and application

1. These Regulations may be cited as the Special Guardianship (Amendment) Regulations 2016 and come into force on 29 February 2016.
2. These regulations do not apply where, before 29 February 2016—
 - (a) an individual has given the appropriate local authority written notice of their intention to apply for a special guardianship order in accordance with section 14A(7) of the Children Act 1989, or
 - (b) a court has asked a local authority to conduct an investigation and prepare a report in accordance with section 14A(9) of the Children Act 1989.

Amendments to the Special Guardianship Regulations 2005

3. The Schedule to the Special Guardianship Regulations (2005)⁽²⁾ (matters to be dealt with in report for the court) is amended in accordance with regulations 4 and 5.
4. In paragraph 1 of the Schedule (matters in respect of the child) —
 - (a) after sub-paragraph (g) insert:
 - “(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 consider relevant;”
 - (b) in paragraph (j) after “related” insert “current needs or likely future”.

(1) 1989 c.41. Section 14A was inserted by section 115 of the Adoption and Children Act 2002 (c.38). For the definition of “prescribed” see section 105 of the Children Act 1989.
(2) S.I. 2005/1109 amended by S.I. 2008/1879, 2010/1172, 2013/235, 2013/630 and 2014/2103.

5. In paragraph 4 of the Schedule (matters in respect of the prospective special guardian or, where two or more persons are jointly prospective special guardians, each of them) —

(a) for sub-paragraph (j), substitute:

“(j) an assessment of the nature of the prospective special guardian’s current and past relationship with the child;”

(b) for sub-paragraph (n), substitute:

“(n) 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 and suitability to bring up the child until the child reaches the age of eighteen;”.

2nd February 2016

Edward Timpson
Minister of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Schedule to the Special Guardianship Regulations (2005) (“the 2005 Regulations”) which prescribes the matters to be dealt with by local authorities in reports they prepare for the court in applications for special guardianship orders.

The amendments do not apply where a local authority has been placed under a duty to report prior to the date that these amendments come into force (regulation 3).

Regulation 4 amends paragraph 1 of the Schedule to the 2005 Regulations (matters in respect of the child) by requiring the report to deal with any harm which the child has suffered and any risk of future harm to the child posed by their parents, relatives or any other person considered relevant, for example a partner of the parent. It also amends the provision relating to the child’s needs to ensure that both the child’s current needs and their likely future needs are dealt with in the report.

Regulation 5 amends paragraph 4 of the Schedule to the 2005 Regulations (matters in respect of the prospective special guardian or, where more than one, each of them). It replaces the provision relating to the prospective special guardian’s relationship with the child with a more detailed provision requiring an assessment of the nature of the child’s relationship with the prospective special guardian both at the time of the assessment and in the past. It also substitutes a new and more detailed provision relating to the parenting capacity of the prospective special guardian.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. An Explanatory Memorandum is available alongside this instrument on www.legislation.gov.uk.