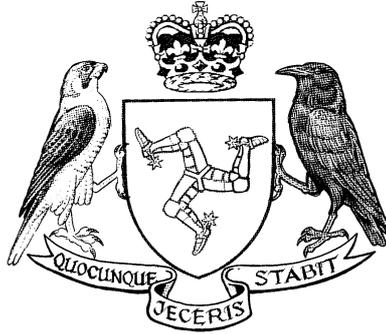


CHILDREN AND YOUNG PERSONS (AMENDMENT) ACT 2011

Arrangement of Sections

Section

- 1.** Short title
- 2.** Commencement
- 3.** Children and Young Persons Act 2001 amended
- 4.** Insertion of sections 17A to 17F: provisions about special guardianship
- 5.** Consequential and minor amendments to Children and Young Persons Act 2001
- 6.** Consequential amendment to Child Custody Act 1987



Isle of Man } Signed in Tynwald: 21st June 2011
tu Mtit } Received Royal Assent: 21st June 2011
Announced to Tynwald: 21st June 2011

AN ACT

to provide for the making of special guardianship orders; to make minor amendments to the Children and Young Persons Act 2001 in respect of guardianship; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1. The short title of this Act is the Children and Young Persons (Amendment) Act 2011. Short title

2. (1) This Act, other than section 1 and this section, comes into operation on such day or day as the Department of Social Care may by order appoint. Commencement

(2) An order under subsection (1) may make such consequential, incidental, transitional and transitory provision as appears to the Department to be necessary or expedient.

(3) Before making an order under subsection (1) the Department must consult the Deemsters.

3. The Children and Young Persons Act 2001 is amended in accordance with sections 4 and 5. Children and Young Persons Act 2001 amended

[c.20]

4. After section 17 insert —

Insertion of sections 17A to 17F: provisions about special guardianship

“Special
guardianship
orders
P1989/41/
14A

17A. (1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians).

(2) A special guardian —

(a) shall be aged 18 or over; and

(b) may not be a parent of the child in question,

and subsections (3) to (6) are to be read in that light.

(3) The court may make a special guardianship order with respect to any child on the application of an individual who —

(a) is entitled to make such an application with respect to the child; or

(b) has obtained the leave of the court to make the application,

or on the joint application of more than one such individual.

(4) The individuals who are entitled to apply for a special guardianship order with respect to a child are —

(a) any guardian of the child;

(b) any individual in whose favour a residence order is in force with respect to the child;

(c) any individual listed in section 12(2)(b) or (c);

(d) an official foster parent with whom the child has lived for a period of at least 1 year immediately preceding the application;

(e) a person with whom the child has been privately fostered in accordance with regulations under Part 7 for a period of at least 1 year immediately preceding the application;

(f) a relative with whom the child has lived for a period of at least 1 year immediately preceding the application.

(5) The court may also make a special guardianship order with respect to a child in any family

proceedings in which a question arises with respect to the welfare of the child if —

- (a) an application for the order has been made by an individual who falls within subsection (3)(a) or (b) (or more than one such individual jointly); or
- (b) the court considers that a special guardianship order should be made even though no such application has been made.

(6) No individual may make an application under subsection (3) or (5)(a) unless, before the beginning of the period of 3 months ending with the date of the application, the individual has given written notice of his intention to make the application to the Department.

(7) On receipt of such a notice, the Department shall investigate the matter and prepare a report for the court dealing with —

- (a) the suitability of the applicant to be a special guardian; and
- (b) any other matter which the Department considers to be relevant.

(8) The court may itself ask the Department to conduct such an investigation and prepare such a report, and the Department shall do so.

(9) The Department may make such arrangements as it sees fit for any person to act on its behalf in connection with conducting an investigation or preparing a report referred to in subsection (7) or (8).

(10) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (7).

(11) Section 13 applies in relation to an application for a special guardianship orders as it applies in relation to orders under section 11.

Special
guardianship
orders:
making

P1989/41/
14B

17B. (1) Before making a special guardianship order, the court shall consider whether, if the order were made —

- (a) a contact order should also be made with respect to the child;

- (b) any order in force under section 11 with respect to the child should be varied or discharged; and
- (c) if a contact order made with respect to the child is not discharged, any enforcement order relating to that contact order should be revoked.

(2) On making a special guardianship order, the court may also —

- (a) give leave for the child to be known by a new surname;
- (b) grant the leave required by section 17C(3)(b), either generally or for specified purposes.

Special guardianship orders: effect **17C.** (1) The effect of a special guardianship order is that while the order remains in force —

P1989/41/14C

- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
- (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

(2) Subsection (1) does not affect —

- (a) the operation of any enactment or rule of law which requires the consent of more than 1 person with parental responsibility in a matter affecting the child; or
- (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may —

- (a) cause the child to be known by a new surname; or
- (b) remove the child from the Island;

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than 3 months, by a special guardian of the child.

(5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to —

- (a) each parent of the child with parental responsibility; and
- (b) each guardian of the child;

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

Special
guardianship
orders:
variation and
discharge
P1989/41/
14D

17D. (1) The court may vary or discharge a special guardianship order on the application of —

- (a) the special guardian (or any of them, if there are more than one);
- (b) any parent or guardian of the child concerned;
- (c) any individual in whose favour a residence order is in force with respect to the child;
- (d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
- (e) the child; or
- (f) the Department.

(2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).

(3) The following must obtain the leave of the court before making an application under subsection (1) —

- (a) the child;
- (b) any parent or guardian of the child;
- (c) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for the child.

(4) If the person applying for leave to make an application under subsection (1) is the child, the court may grant leave only if it is satisfied that the child has sufficient understanding to make the proposed application under subsection (1).

(5) The court may not grant leave to a person falling within subsection (3)(b) or (c) unless satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

Special guardianship orders: supplementary
P1989/41/
14E

17E. (1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (subject to any rules of court) —

- (a) draw up a timetable with a view to determining the question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring compliance with the timetable, so far as is reasonably practicable.

(2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

(3) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

(4) Section 12(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to orders under section 11.

Special guardianship support services **17F.** (1) The Department shall make arrangements for the provision of special guardianship support services, which means —

P1989/41/14F

- (a) counselling, advice and information; and
- (b) such other services as it considers appropriate,

in relation to special guardianship.

(2) The power to make arrangements under subsection (1)(b) is to be exercised so as to secure that the Department provides financial support.

(3) At the request of any of the following persons —

- (a) a child with respect to whom a special guardianship order is in force;
- (b) a special guardian;
- (c) a parent;
- (d) any other person who falls within a prescribed description,

the Department may carry out an assessment of that person's needs for special guardianship support services.

(4) The Department may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.

(5) If, as a result of an assessment, the Department decides that a person has needs for special guardianship support services, it must then decide whether to provide any such services to that person.

(6) If —

- (a) the Department decides to provide any special guardianship support services to a person, and
- (b) the circumstances appear to the Department to warrant it,

the Department shall prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.

(7) The Department may provide special guardianship support services (or any part of them) by securing their provision by another person.

(8) The Department may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.”.

Consequential
and minor
amendments
to Children
and Young
Persons Act
2001

5. (1) In section 1 (welfare of the child) in the opening words of subsection (4) after “an order under section 11,” insert “a special guardianship order,”.

(2) In section 6 (appointment of guardian by High Court) —

(a) in subsection (2) for “or guardian of his” substitute “, guardian or special guardian of his”; and

(b) in subsection (4) for “A person” substitute “An individual”.

(3) In section 7 (appointment of guardian by parent etc) —

(a) for the heading substitute “Appointment of guardian: other cases”;

(b) in subsection (1) for “person” substitute “individual”;

(c) in subsection (2) —

(i) for “person” substitute “individual”; and

(ii) at the end add “; and a special guardian of a child may appoint another individual to be the child’s guardian in the event of his death.”;

(d) in subsection (3) for “person making it” (in each place) substitute “individual making it”;

(e) in subsections (4) and (7) for “A person” substitute “An individual”;

(f) in subsections (5) and (6) for “a person” substitute “an individual” and for “that person” (in each place) substitute “that individual”; and

(g) in subsection (8) for “persons” substitute “individuals”.

(4) In section 8 (termination of appointment) in subsections (1) to (5) for “person” (in each place) substitute “individual”.

(5) In section 102(1) (interpretation: general) after the definition of “secure accommodation” insert —

““special guardian” and “special guardianship order” have the meanings respectively assigned by section 17A(1);”.

6. In section 20(1)(a) of the Child Custody Act 1987 (orders under the Children and Young Persons Act 2001 that are custody orders for the purposes of Part 1) after “section 11” insert “ or 17A”.

Consequential
amendment to
Child Custody
Act 1987

[c.11]

