



FALKLAND ISLANDS

Children (Amendment) Ordinance 2017

(No. 17 OF 2017)

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FALKLAND ISLANDS

Children (Amendment) Ordinance 2017

(assented to: 24 October 2017)

(commencement: in accordance with section 2)

(published: 27 October 2017)

AN ORDINANCE

To amend the Children Ordinance 2014 to provide for the making of special guardianship orders by the court and to confer power on the Director of Health and Social Services to give general guidance in the exercise of functions arising out of support to be given by the Crown to children and families.

ENACTED by the Legislature of the Falkland Islands —

Part 1 — Introductory

1. Title

This Ordinance is the Children (Amendment) Ordinance 2017.

2. Commencement

This Ordinance comes into force on a day appointed by the Governor by notice in the *Gazette*.

Part 2 — Amendment of Children Ordinance

3. Amendment of Children Ordinance

This Ordinance amends the Children Ordinance.

4. Part 2 amended — Insertion of new sections

Part 2 of the Children Ordinance is amended by inserting the following new sections immediately after section 18 —

“18A. Special guardianship orders: general

(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) must be aged eighteen or over; and

(b) must 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) Section 13(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for a section 12 order.

(5) 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 has been made;

(c) any individual listed in subsection (5)(b) or (c) of section 14 (as read with subsection (12) of that section);

(d) a foster carer with whom the child has lived for a period of at least one year immediately preceding the application;

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

(6) 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.

(7) No individual may make an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, the person has given written notice of his or her intention to make the application if the child in question is being looked after by the Crown, to the Crown.

(8) On receipt of such a notice, the Crown must investigate the matter and prepare a report for the court dealing with —

(a) the suitability of the applicant to be a special guardian;

(b) such matters (if any) as may be prescribed by the Governor; and

(c) any other matter which the Crown consider to be relevant.

(9) The court may itself ask the Crown to conduct such an investigation and prepare such a report, and the Crown must do so.

(10) The Crown 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 (8) or (9).

(11) The court may not make a special guardianship order unless —

(a) it has received a report dealing with the matters referred to in subsection (8); or

(b) if after exercising its powers under subsection 6(b), it is satisfied that it has sufficient information equivalent to that required under subsection (8).

(12) Subsections (10) and (11) of section 14 apply in relation to special guardianship orders as they apply in relation to section 12 orders.

18B. Special guardianship orders: making

(1) Before making a special guardianship order, the court must consider whether, if the order were made —

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

(b) any section 12 order in force with respect to the child should be varied or discharged;

(c) where a provision contained in a residence order or contact order made with respect to the child is not discharged, any enforcement order relating to that provision should be revoked, and

(d) where an activity direction has been made —

(i) in proceedings for the making, variation or discharge of a residence order or contact order with respect to the child, or

(ii) in other proceedings that relate to such an order,

that direction should be discharged.

(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 18C(3)(b), either generally or for specified purposes.

18C. Special guardianship orders: effect

(1) The effect of a special guardianship order is that while the order remains in force —

(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 Ordinance, 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 one 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 freeing 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 Falkland Islands, 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 three months, by a special guardian of the child, or the removal of a child for any period whatsoever if it is for a medical purpose advised by a medical practitioner.

(5) If the child with respect to whom a special guardianship order is in force dies, the child's 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.

18D. Special guardianships orders: variation and discharge

(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 who is named in a residence order or a contact order as a person with whom the child is to live;

(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 Crown where there is a care order with respect to the child.

(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) Where it is reasonably required to secure the child's long term placement, the court may make an order that 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 step-parent of the child who has acquired, and has not lost, parental responsibility for the child by virtue of section 8;

(d) 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) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave 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)(c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

18E. Special guardianship orders: supplementary

(1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court must (in the light of any provision in rules of court that is of the kind mentioned in section 15(2)(a) or (b)) —

(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, so far as is reasonably practicable, that the timetable is adhered to.

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

(3) The power to make rules in subsection (2) of section 15 applies for the purposes of this section as it applies for the purposes of that.

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

(5) Section 15(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 12 orders.

18F. Special guardianship support services

(1) The Crown must consider whether it is feasible and appropriate to provide special guardianship support services to a child in respect of whom a special guardianship order application has been made and any person who has made a special guardian application. Any service that is considered to be feasible and appropriate in the circumstances will be made available only in so far as is reasonably practical within the Falkland Islands. This may include counselling, advice or information in relation to special guardianship.

(2) 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 Crown may carry out an assessment of that person's needs for special guardianship support services if the Crown considers this to be feasible and appropriate. If the Crown concludes that there are any such available services these will be provided only in so far as this is reasonably practical in the Falkland Islands.

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

(4) Where, as a result of an assessment, the Crown decides that a person has needs for special guardianship support services, the Crown must then decide whether to provide any of those services to that person.

(5) If —

(a) the Crown decides to provide any special guardianship support services to a person, and

(b) the circumstances fall within a prescribed description ,

the Crown may prepare a plan in accordance with which special guardianship support services are to be provided to the person, and keep the plan under review.

(6) The Governor may by regulations make provision about ——

(a) assessments;

(b) the preparation and review of plans;

(c) the provision of special guardianship support services in accordance with plans; and

(d) the review of the provision of special guardian support services.

(7) The regulations may in particular make provision —

(a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

(b) about the way in which a plan is to be prepared;

(c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;

(d) about the considerations to which the Crown is to have regard in carrying out an assessment or review or preparing a plan;

(e) as to the circumstances in which the Crown may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support); and

(f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided).

(8) The Crown may provide special guardianship support services (or any part of them) by securing their provision by an external provider approved by the Director of Health and Social Services where it is reasonably practical to do so.

(9) The Crown 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 the person's needs is made under any other provision of this Ordinance or under any other enactment.”

5. Part 9 amended — Insertion of new section

Part 9 of the Children Ordinance is amended by inserting the following new section immediately after section 100—

“100A. Director of Health and Social Services to make guidance

(1) The Director of Health and Social Services may prepare any guidance in relation to any matter which is to be prescribed under a provision of this Ordinance if the matter has not been prescribed.

(2) The Crown must, in the exercise of its functions under this Ordinance, including the exercise of any discretion conferred on it by any relevant enactment, act under the general guidance of the Director of Health and Social Services.

(3) The Director of Health and Social Services must make arrangements for any guidance made under subsection (1) to be made available to all relevant parties. (*electronically or in hard copy*).”

6. Heading to Part 9 amended

The heading to Part 9 of the Children Ordinance is deleted and substituted with the following—

“PART 9 SUBSIDIARY LEGISLATION AND GUIDANCE”.

Passed by the Legislature of the Falkland Islands on 28 September 2017.

CLAUDETTE PRIOR M.B.E.,
Clerk of the Legislative Assembly.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,
Clerk of the Legislative Assembly.