



On approval of the Rules for the Exercise of the Functions by the State in Custody and Guardianship

Unofficial translation

Decree of the Government of the Republic of Kazakhstan No. 382 dated March 30, 2012.

Unofficial translation

In accordance with paragraph 3 of Article 120 of the Code of the Republic of Kazakhstan dated December 26, 2011 “On Marriage (Matrimony) and Family”, the Government of the Republic of Kazakhstan **HEREBY DECREES AS FOLLOWS:**

1. That the attached Rules for the Exercise of the Functions by the State in Custody and Guardianship shall be approved.

2. This decree shall become effective from the day of the first official publication.

Prime Minister of the Republic of Kazakhstan

K. Massimov

Approved by
Decree of the Government of the
Republic of Kazakhstan
№ 382 dated March 30, 2012

Rules for the Exercise of the Functions by the State in Custody and Guardianship Chapter 1: General provisions

Footnote. The title of Chapter 1 - as reworded by Decree of the Government of the Republic of Kazakhstan № 339 of 26.05.2022 (shall be enacted ten calendar days from the date of its first official publication).

1. These Rules for the Exercise of the Functions by the State in Custody and Guardianship by the State are developed in accordance with the Code of the Republic of Kazakhstan dated December 26, 2011 “On Marriage (Matrimony) and the Family” and determine the procedure for the implementation of the state functions in custody and guardianship of minors and adults through local executive organs.

2. The functions of the state in custody and guardianship are one of the directions of state policy, the purpose of which shall be to protect the property and personal non-property rights of citizens who need special forms of protection of their rights and interests.

3. The functions of the state in guardianship and custody shall be implemented in order to protect the rights and interests of minors, including orphans and children deprived of parental care, who are in need of adoption, of transfer to a foster family, to establish guardianship or

custody over them, patronage, as well as orphans, children deprived of parental care, who are under guardianship or custody, under the patronage, and those brought up in organizations for orphans and children left without parental care.

Footnote. Paragraph 3 as amended by Decree of the Government of the Republic of Kazakhstan № 615 dated October 24, 2016 (shall be enforced from 01.01.2017).

4. Guardianship or custody shall be also established to protect property and personal non-property rights and interests of legally incompetent or partially incapable adults.

Chapter 2: Order for the exercise of the functions undertaken by the state in relation to custody and guardianship

Footnote. The title of Chapter 2 - as reworded by Decree of the Government of the Republic of Kazakhstan № 339 of 26.05.2022 (shall enter into force after ten calendar days from the date of its first official publication).

5. Coordination of activities and organization of interaction between state bodies and organizations in custody and guardianship over minors shall be carried out by the authorized body in the field of protection of the rights of children of the Republic of Kazakhstan, and for adults - through the authorized bodies of social protection of the population.

Footnote. Paragraph 5 as amended by Decree of the Government of the Republic of Kazakhstan № 312 dated 04.25.2015 (shall be enforced from the date of its first official publication).

6. The local executive bodies of districts, cities of oblast, republican significance, of the capital shall exercise the state functions of guardianship and custody in relation to minors through the authorized bodies of education and health, in respect of adults - through the authorized bodies of social protection of the population (hereinafter referred to as the body).

7. As prescribed by law, the authority shall ensure the protection of the rights and interests of children, incapacitated or legally incapacitated adults through:

1) participation in court proceedings to determine a child's place of residence, the procedure for communication between a parent and a child and the removal of a child who is with other persons, the child's place of residence when a child leaves the country for permanent residence with one parent, the suspension (restriction) or restoration of parental rights, child adoption, and the revocation or annulment of an adoption, referral of minors to special educational establishments or educational organisations with a special regime, disputes arising from custody and guardianship (patronage) of minors, establishment of paternity and recovery of maintenance from minors, and applications to restrict or deprive a minor aged 14 to 18 of the right to manage his or her own income, declaring a minor fully capable (emancipation), establishing paternity and collecting alimony as a percentage or a fixed sum of money to support the child, and reducing the amount of alimony, protection of

the labour and housing rights of minors, compensation for damage caused jointly by minors and adults, including with the participation of adults who are legally incapable or of limited capacity;

2) dealing with issues of attribution or change of surname, name of minors when provided for by the laws of the Republic of Kazakhstan;

3) initiation of proceedings under Article 27 of the Code of Civil Procedure, including the annulment of an adoption;

4) allowing parents who have been deprived of or restricted in their parental rights to visit their children, if this does not have a negative impact on the child;

5) immediate removal of a child from his or her parents or other persons who have custody of the child, if there is an immediate threat to the child's life or health, by virtue of an act of the district, provincial, national or metropolitan local authority, until a court ruling has been issued;

6) representing the legal interests of orphans and children deprived of parental care, children in custody or guardianship, in foster care, in adoptive families, and in establishments for orphans and children deprived of parental care, incapacitated or disabled adults, in relations with any persons (including the courts), when the actions of guardians or custodians or foster carers in representing the legal interests of wards contravene the laws of Kazakhstan or the interests of wards, or when guardians or custodians fail to protect the legal interests of their wards;

7) organization of work to identify orphaned children and children left without parental care, children in need of special social services;

8) resolving disagreements between parents on issues relating to the upbringing and education of children;

9) giving consent to those transactions that incapable or incapacitated adults cannot perform themselves, helping them to exercise their rights and fulfil their obligations and protecting them from abuse by third parties;

10) submission of data on orphans and children deprived of parental care who are on primary, regional and centralised registers upon the written request of the court;

11) issuing certificates for the disposal of property of minors;

12) establishment of custody or guardianship over an orphan child (children) and a child (children) deprived of parental care;

13) placement of a child (children) in foster care and assignment of payment of funds for maintenance of the child (children) placed in foster care;

14) placement of a child (children) in foster care and the assignment of a cash payment for his or her (their) maintenance;

15) assignment of a lump-sum cash payment due to the adoption of an orphan child and (or) a child deprived of parental care;

16) issuing the decision of the custody and guardianship authority on considering the opinion of the child who has reached the age of ten;

17) submission to the court the permit for transfer for adoption based on the commission's opinion on the reasonableness and compliance of the adoption with the interests of the child;

18) performing other actions required by the laws of the Republic of Kazakhstan to protect the property and personal non-property rights and interests of minors, including incapacitated or legally incapacitated adults.

Footnote. Paragraph 7 - as reworded by Decree of the Government of the Republic of Kazakhstan № 339 of 26.05.2022 (shall be put into effect ten calendar days from the date of its first official publication); as amended by the resolution of the Government of the Republic of Kazakhstan dated 01.07.2023 № 534 (effective ten calendar days after the date of its first official publication).

8. The body shall organize activities for the registration of orphans and children left without parental care, based on the specific circumstances of the loss of parental care, based on their interests, shall ensure the choice of the form of placement of children and subsequent monitoring of the conditions of detention, upbringing and education.

8-1. The body shall form the republican data bank of orphans, children left without parental care, and persons who want to take children to their families.

Footnote. The rules have been supplemented by paragraph 8-1 in accordance with Decree of the Government of the Republic of Kazakhstan № 615 dated October 24, 2016 (shall be enforced from 01.01.2017).

9. Orphans and children deprived of parental care shall be protected by an authority according to the procedure prescribed by law by placing them in foster care (adoption, custody or guardianship, foster care, foster family) and, in the absence of such an option, in all types of organisations for orphans and children deprived of parental care. The rights and interests of incapacitated or legally incapacitated adults shall be protected by an authority under the procedure laid down by law through their placement with a family (guardianship or trusteeship) or, failing that, in an organisation of the social protection system offering special social services to incapacitated or legally incapacitated adults.

For this purpose, the authority:

1) until the issue of placing orphans and children deprived of parental care in custody (guardianship), adoption, foster care, foster family care or an organisation for this category of children is resolved, shall provide them with temporary placement;

2) shall maintain records, select and prepare citizens who have expressed their desire to accept orphans and children deprived of parental care for custody (guardianship), foster care, adoptive or visiting families, or adoption, by providing the required methodological, psychological and legal assistance;

3) shall inspect the living conditions of orphans and children deprived of parental care, as well as persons claiming to be their caregivers;

- 4) shall make an inventory of the property of orphans and children deprived of parental care, as well as of incapacitated or disabled adults;
- 5) shall send letters of warning to public authorities and/or other organisations prohibiting transactions involving property belonging to orphans and children deprived of parental care, as well as adults who are legally incompetent or who have limited legal capacity;
- 6) shall administer the property of orphans and children deprived of parental care who are under custody or guardianship, placed in foster families or brought up in establishments for orphans and children deprived of parental care, and shall exercise control over the safekeeping of such property;
- 7) shall authorise the guardian or custodian to perform transactions involving the alienation, including exchange or donation, or to conclude on his or her behalf a surety agreement, the letting of housing for rent, free use or pledge, transactions involving the renunciation of the ward's rights to inheritance under the law and under the will, the division or severance of the property, and any other transactions which result in a reduction in the ward's property;
- 8) shall decide how the funds received by the guardian as a result of the transactions mentioned in sub-paragraph 7) of Paragraph 9 hereof are to be spent;
- 9) shall appoint guardians or custodians and issue to them a certificate of the established form;
- 10) shall prescribe and pay maintenance allowances for orphans and children deprived of parental care who are under custody and guardianship, in foster care and transferred to a foster family;
- 11) shall supervise the activities of guardians and custodians, foster carers, adoptive parents and the organisations where orphans and children deprived of parental care are brought up;
- 12) shall examine complaints against the actions of guardians and custodians, foster carers and foster parents;
- 13) shall authorise the guardian or custodian, their spouse or relatives, foster parent to pay the ward's debts incurred before the person was appointed guardian or custodian, foster parent ;
- 14) shall authorise the guardian to live separately from the ward who has attained the age of sixteen, providing that this does not adversely affect the upbringing and protection of the ward's rights and interests;
- 15) shall maintain records of the submission by guardians, foster carers and foster parents at least once every six months of reports on the ward's health status and work on his or her upbringing, and on the management of his or her property, as per the form annexed hereto;
- 16) shall suspend guardians or custodians, foster parents in the event of inadequate performance of their duties, including when they use guardianship or custody for mercenary

purposes or leave the ward without supervision and necessary assistance, and shall take the necessary measures;

17) shall file with the court an opinion on the compatibility of the adoption with the interests of the child;

18) at least once a year shall request reports on the living, education, upbringing and health conditions of the adopted child;

19) shall ascertain the consent of a child who has reached the age of ten years to be placed with a family and to a transaction regarding his or her property, and shall explain the meaning of these procedures in a way that he or she can understand.

Footnote. Paragraph 9 - as reworded by Decree of the Government of the Republic of Kazakhstan № 339 of 26.05.2022 (shall be brought into force ten calendar days from the date of its first official publication).

Appendix
to the Rules for the Exercise
of the Functions by the State
in Custody and Guardianship

Footnote. Appendix - as reworded by Decree of the Government of the Republic of Kazakhstan № 339 of 26.05.2022 (shall become effective after ten calendar days from the date of its first official publication).

Report of the guardian (foster carer, adoptive parent)

Surname, name, patronymic (if any) name of the guardian (foster carer, adoptive parent),
address of residence

1. Details of the ward _____

(how long has he/she been in the family, reasons for being in the family)

2. Living conditions, description of dwellings _____

(who owns the house)

3. Relationships within the family _____

4. Whether the ward has a room, a private space

5. Whether the ward has personal movable and immovable property

(its condition, who is the guardian of the immovable property, if any, who lives in the ward's home, if any)

6. Characteristics of the ward:

1) education: progress, challenges _____

(specify which additional education centres the child is attending);

2) health status: physical development, problems, measures taken, annual medical check-up.

7. Details of the income of the ward

Type of income	Amount per month											
	1	2	3	4	5	6	7	8	9	10	11	12
Child support												
Wards maintenance allowance												
Monthly insurance benefits												
Inherited money or gifted money												
Income from renting residential property												

8. Details of expenses incurred by the ward

Type of income	Amount	Date
Purchase of food during the reporting period		
Purchasing of clothes, footwear		
Purchases of hygiene products, necessities		
Purchases of medicines, care products		
Payment for household services (clothes, footwear repair)		
Purchases of durable goods (specify)		
Monthly deposits (for education, durable goods)		
