

11. CHILDREN – SPECIAL GUARDIANSHIP

The Adoption and Children Act 2002 introduces a completely new court order, Special Guardianship, intended to provide another option for legal permanence for children who cannot grow up with their birth families.

A Special Guardianship Order gives the special guardian legal parental responsibility for the child which is expected to last until the child is 18. But, unlike Adoption Orders, these orders do not remove parental responsibility from the child's birth parents, although their ability to exercise it is extremely limited.

In practice, this means that the child is no longer the responsibility of the local authority, and the special guardian will have more clear responsibility for all day-to-day decisions about caring for the child or young person, and for taking important decisions about their upbringing, for example their education.

Importantly, although birth parents retain their legal parental responsibility, the special guardian only has to consult with them about these decisions in exceptional circumstances.

When might Special Guardianship be the preferred option?

Any decision to apply for a Special Guardianship Order should clearly always be based on meeting the needs of the child or young person, but there are particular situations where it might be more appropriate. The most appropriate situation would be for older children and young people in long-term care, who may wish to retain some legal ties with their birth family and who do not want to be adopted.

Who can apply to be a Special Guardian?

A court may make a Special Guardianship Order in respect of a child on the application of:

- Any guardian of the child
- A local authority foster carer with whom the child has lived for one year immediately preceding the application
- Anyone who holds a residence order with respect to the child, or who has the consent of all those in whose favour a residence order is in force
- Anyone with whom the child has lived for three out of the last five years
- Where the child is in the care of a local authority, any person who has the consent of the local authority
- Anyone who has the consent of all those with parental responsibility for the child
- Any person, including the child, who has the leave of the court to apply

What is the process?

There is nothing in the Special Guardianship regulations setting out the process which local authorities must follow, as there is for adoption. Each local authority will need to establish their own policies and procedures to make a decision about special guardianship for children in their care, and it is not necessary to have a panel to make this recommendation.

All applicants must give their local authority 3 months notice in writing that they are going to apply for an order, and local authorities are required to produce to the court a report on all children, not just those who are looked after, when an application is made. This report must include information about the child, the child's wishes, the child's birth family, contact arrangements, the prospective special guardian and recommendations about whether or not an order should be made (See the schedule to the relevant regulations for further details). The local authority is expected to start work on this report, or arrange for someone else to do it, as soon as possible after receiving the notice. The court cannot make an order without having received a report. Local authorities are expected to ensure that the social worker who prepares the report is suitably qualified and experienced, but there are no restrictions on who can write the report as there are for adoption.

Before making the Special Guardianship Order a court must consider whether to vary or discharge any other existing order made under Section 8 of the Children Act 1989. The court can also decide to make a Section 8 Contact Order at the same time as the Special Guardianship Order. In all circumstances the court must consider the whole range of options available before making a Special Guardianship Order.

What kind of support is available for Special Guardians?

The Adoption and Children Act 2002, and the regulations made under it, require the local authority to make arrangements for the provision of special guardianship support services. These include financial and other

support for the Special Guardian, but also services for children and birth families, for example, mediation services to assist contact between the child and their birth family. (See relevant regulations for a full list of these services). These services should be integrated and developed alongside adoption support services and other more general provision for children and families.

If an application is made for Special Guardianship on a child who is looked after by a local authority then the child, the birth parent and the prospective special guardian are all entitled to an assessment on request for these support services. In addition, the local authority that last looked after the child continues to have the responsibility for assessment of need for these services and for providing them, for 3 years from the date when the Special Guardianship Order was made. Importantly, this local authority retains responsibility indefinitely for regular financial support agreed before the making of the Special Guardianship Order.

Children who were looked after by a local authority immediately before a Special Guardianship Order was made, and aged between 16 and 21 years, may qualify for the advice and assistance available to care leavers from that local authority.

A foster carer who becomes a special guardian for a child they were fostering, and who previously received an element of remuneration with the fostering allowance, can receive some remuneration up to 2 years after the order was made, and for a longer period in exceptional circumstances.

In all other situations, including when the 3 year period has expired, responsibility for assessing and providing support services is with the local authority where the special guardian lives.

If a child is not (or was not) looked after by a local authority, then there is no entitlement to an assessment for Special Guardianship support services, but this assessment may be requested.

What is different about Special Guardianship Orders?

Any child who was previously looked after by a local authority will cease to be looked after once a Special Guardianship Order is made. A Special Guardian may then exercise parental responsibility to the exclusion of all others with parental responsibility, apart from another special guardian. A Special Guardian can also appoint a guardian in the event of death. This differs from the holder of a Residence Order who exercises parental responsibility jointly with other people who have parental responsibility (the birth parents for example). However, Special Guardians, unlike adoptive parents, do not have exclusive parental responsibility, they cannot give their consent to change a child's surname, or live abroad for more than 3 months without the agreement of others with parental responsibility, or the leave of the court. They can also not override a parent's refusal to consent to the adoption of the child.

By contrast with adoption, where birth parents lose all their parental responsibility, under residence and special guardianship orders they retain the right to consent or not to adoption, and they can also apply for contact with their child through the courts.

Adoption Orders are almost always for life, while Residence Orders last until the child is 16 or 18. Special Guardianship Orders last until 18, but the court is asked to take account of the child's need for a lifelong relationship with their special guardian at the time the order is made.

Finally, Adoption Orders are irrevocable, but both Residence Orders and Special Guardianship Orders can be varied or discharged. However, the thresholds for revoking a Special Guardianship Order are higher, and a parent can only apply for revocation where the court has granted leave for the application because of a significant change in circumstances. Furthermore a parent may not make an application to vary or discharge a special guardianship order until the order has been in place for over 1 year.

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