

## Special Guardianship Orders

A special guardianship order is an order appointing one or more individuals to be a child's 'special guardian'. It is a private law order made under the Children Act 1989 and is intended for those children who cannot live with their birth parents and who would benefit from a legally secure placement.

It is a more secure order than a Child Arrangements Order because a parent cannot apply to discharge it unless they have the permission of the court to do so, however it is less secure than an adoption order because it does not end the legal relationship between the child and his/her birth parents. The [Adoption and Children Act 2002](#) introduced Special Guardianship and Special Guardianship Orders.

### Who can apply for Special guardianship orders?

You must be over 18 years of age and you cannot be the parent of the child in question. You can make an application on your own or jointly with another person. Joint applicants do not need to be married. The following people may apply to be special guardians

- Any guardian of the child.
- You have a Child Arrangements Order or a Residence Order for the child.
- Anyone with whom the child has lived for at least three years out of the last five years.
- Anyone with the consent of the local authority if the child is in care.
- A local authority foster parent with whom the child has lived for at least one year preceding the application.
- You are a relative of the child and the child has resided with you for at least one year immediately pre-dating an application for a Special Guardianship Order
- Anyone who has the consent of those with the [parental responsibility](#).
- Anyone who has permission of the Court to make the application.

### Who cannot apply?

A parent of a child may not be appointed as the child's special guardian. The court must decide that a special guardianship order is the most appropriate order to make in the best interests of the child. The court must consider whether, in addition to the making of a special guardianship order, a Child Arrangements Order should be made and whether any existing [Section 8 Orders](#) should be varied or discharged. The court must have the benefit of the local authority report dealing with the suitability of the applicant and any other matters that the local authority consider relevant before it can make an order ([Children Act 1989, section 14A\(8\), \(9\)](#)).

### What is the effect of a special guardianship order?

This order discharges any existing care order or related [section 34 Contact Order](#). It confers parental responsibility, which can be exercised to the exclusion of any other person with parental responsibility apart from another special guardian. The special guardian has responsibility for day to day decisions relating to a child's care and upbringing. This order allows a special guardian to remove a child from the UK for up to three months without consent of others with Parental Responsibility or the leave of the court.

The court can give permission for the child to be taken out of the jurisdiction for longer than three months. On making a special guardianship order the court may give leave for the child to be known by a new surname.

In addition, it gives the child security and a long term placement. It may also help to give the young person links to their birth parents too if deemed appropriate.

### **The role of the local authority**

The regulations say that the local authority report should include certain key information about the child such as:

- Whether the child has brothers and sisters and details of both parents.
- The relationship a child has with other family members and the arrangements for the child to see or keep in touch with different family members.
- Details of the child's relationship with his/her parents.
- The parent/s' and the child's wishes and feelings.
- The prospective Guardian's family composition and circumstances
- Parenting capacity of the Guardian.
- Medical information on the child, prospective special guardian and the birth parent(s).
- An assessment of how a Special Guardianship Order would meet a child's long term interests as compared with other types of order.
- A recommendation regarding contact and Special Guardianship.
- Implications of the making of the Special Guardianship Order for all those involved.

Each local authority must make arrangements for the provision of special guardianship support services which may include:

- Financial assistance (means tested).
- Assistance with the arrangements for contact between a child, his/her parents and any relatives that the local authority consider to be beneficial.
- This assistance can include cash to help with the cost of travel, entertainment, and mediation to help resolve difficulties on contact.
- Respite care.
- Counselling, advice, information and other support services.
- Services to enable children, parents and special guardians to discuss matters, this might include setting up a support group.
- Therapeutic services for the child.

### **What happens after an assessment?**

This assessment determines whether a person has a need for special support services and whether the Local Authority can offer this service. The person should be given notice and information of the support offered and if appropriate the financial support too. It is important to seek legal advice before any provision is agreed so you are fully represented.

### **What about financial support?**

It may be possible to make an application to your Local Authority for a Special Guardianship Allowance. Local Authorities will then have to work out how much fostering allowance would have been paid had the child been fostered rather than cared for under a Special Guardianship Order. This is means tested and you can find out more information in the [Special Guardianship Regulations 2005](#) (as amended by the Special Guardianship (Amendment) Regulations 2016)