

APPLICATIONS FOR SPECIAL GUARDIANSHIP ORDERS

RELEVANT LEGISLATION

[Children Act 1989 as amended by the Adoption and Children Act 2002](#)

[The Children Leaving Care Act 2000](#)

[The Special Guardianship Regulations England 2005 2005 \(as amended by the Special Guardianship \(Amendment\) Regulations 2016\)](#)

[Special Guardianship Guidance \(Amendments 2016\)](#)

RELATED GUIDANCE

This chapter should be read in conjunction with [Permanence Planning Guidance](#) and [Care Planning Guidance](#).

AMENDMENT

This Policy was significantly revised in September 2017 and should be re-read in full.

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1. Introduction

1.1 Vision

Durham County Council aims to promote the welfare and improve the outcomes for children and young people who, because they are unable to live with their parents, are best placed with members of their extended families, friends or other people who are connected with them.

Durham County Council is committed to supporting family/friend carers ensuring arrangements are well assessed and supported and children/young people's needs are met, minimising the risk of placement breakdown.

1.2 Purpose

Special Guardianship offers an option for both permanent care outside their birth family and greater security without absolute severance from the birth family. It will address the needs of a significant group of children, who need a sense of stability and security but who do not wish to make the absolute legal break with their birth family that is associated with adoption.

It will also provide an alternative for achieving permanence in families where adoption, for cultural or religious reasons, is not an option.

A Special Guardianship Order offers greater stability and legal security to a placement than a Child Arrangement Order ([Eligibility & Provision of Financial Support CAO](#))

Special Guardians will have [Parental Responsibility](#) for the child and, whilst this will be shared with the child's parents, the Special Guardian will have the ability to exercise this responsibility without seeking permission from the parents, other than in situations where the law requires the consent of more than one person with parental responsibility.

A Special Guardianship Order made in relation to a child who is the subject of a Care Order will discharge the Care Order and the Local Authority will no longer have Parental Responsibility.

A Care Order, however, will not automatically revoke a Special Guardianship Order although the Special Guardian's exercise of Parental Responsibility will be restricted as the local authority will have primary responsibility for decision-making under the Care Order.

For further details about the Special Guardianship as a permanence option for Looked After Children, see [Permanence Planning Guidance](#) (insert revised procedure).

2. Who May Apply?

Applications for Special Guardianship may be individual or joint. Joint applicants do not need to be married. Special Guardians must be 18 or over.

The following persons may apply without having to obtain the leave of the court:

- Any guardian of the child;
- Where the child is subject of a Care Order or an Interim Care Order, any person who has the consent of the Local Authority;
- A local authority foster carer who is a relative of the child or with whom the child has lived for one year immediately preceding the application (even if the Local Authority does not consent)[1]; [Foster Carer 'Wishing to become a Special Guardian'](#)
- Anyone who is named in a Child Arrangements Order as a person with whom the child is to live;
- Anyone who has the consent of each person named in a Child Arrangements Order as a person with whom the child is to live;
- Anyone with whom the child has lived for three out of the last five years providing the child has not ceased to live with the proposed applicant more than 3 months before the making of the application;
- Anyone who has the consent of all those with Parental Responsibility for the child.
- Any other person (including the child and other than a parent) may apply for a Special Guardianship Order if he has obtained the leave of the court to make the application. ([Free-Standing Private Law Application](#))

The parents of a child may not apply to become their own child's Special Guardians.

[1] A person who is, or was at any time within the last 6 months, a local authority foster parent of a child may not apply for leave to apply for an SGO unless (s)he has the consent of the local authority, or (s)he is a relative of the child or the child has lived with him for at least one year preceding the application.

3. Parental Responsibility

The Special Guardian will have [Parental Responsibility](#) for the child and will have clear responsibility for the day-to-day decisions about caring for the child to the exclusion of anyone else who might have Parental Responsibility (apart from another Special Guardian).

The child's parents will continue to hold Parental Responsibility but their exercise of it will be limited. The parents will, however, retain the right to consent or not to the child's adoption or placement for adoption.

In addition there are certain steps in a child's life which require the consent of everyone with Parental Responsibility, for example:

- The change of surname of the child;
- The removal of the child from the United Kingdom for longer than three months;
- The sterilisation of a child;
- Marriage of a child aged between 16-18 years.

4. The Circumstances in which a Special Guardianship Order may be made

The Court may make a Special Guardianship Order in any private/public family proceedings concerning the welfare of the child. This applies even where no application has been made and includes adoption proceedings.

Arrangements may have evolved within families, or be the consequence of a sudden event. Some cases may have the consent of all with Parental Responsibility, whereas others may be contested.

Any person making an application for a Special Guardianship Order must give 3 months' written notice to their local authority of their intention to apply. If the child resides in County Durham and is not Looked After by another local authority then Children's Services will be responsible for the assessment of special guardians residing in Durham. The local authority receiving the notice will then have a duty to provide a report to the Court. In relation to a Looked After Child, the notice will go to the local authority looking after the child.

The only exception to the requirement for 3 months' notice is where the Court has granted leave to make an application and waived the notice period.

Where the local authority has received notice from an applicant or a request for a report from the Court, it should provide written information ['Becoming a Special Guardian'](#) about the steps and the necessary references and checks it proposes to take in preparing the report to the prospective Special Guardian and the parents of the child in question. This should include information about Special Guardianship support services and how to request an assessment of needs for support.

5. Assessment Process (Planning Meeting)

Once notice has been received that an application for a Special Guardianship is to be made via Private Law Application or within the Local Authority's Assessment & Care Planning process, the plan/notice should be passed to the child/young person's SW or, if the child is not previously known, arrangements must be made for the case to be allocated to a Social Worker (SW). See *Application Process flowchart (D2)*

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The allocated SW should ensure the appropriate meetings and arrangements are undertaken as soon as practicable after the notice is received, setting out steps to be taken, who will carry out the necessary assessments and who will contribute to the report for the Court. Court timescales will need to be clarified.

The SW or SWs preparing the [Court Report](#) should be suitably qualified and experienced. There are no specific requirements as to the level of qualification or experience required and it will be for the manager of the relevant social work team to ensure that the allocated worker is competent to write the report.

In all cases, there will need to be:

- An assessment of the needs of the current and likely future needs of the child (including any harm the child has suffered and any risk of future harm posed by the child's parents, relatives or any other person the local authority considers relevant);
- An assessment of the prospective Special Guardian's parenting capacity including:
 - i) Their understanding of, and ability to meet the child's current and likely future needs, particularly, any needs the child may have arising from harm that the child has suffered;
 - ii) Their understanding of, and ability to protect the child from any current or future risk of harm posed by the child's parents, relatives or any other person the local authority consider relevant, particularly in relation to contact between any such person and the child;
 - iii) Their ability and suitability to bring up the child until the child reaches the age of eighteen.

The proposed contact arrangements should be set out and the support needs of the child, parents and the prospective special guardian.

The assessment of the applicants should include their medical history, the [SG references](#) received, enhanced Disclosure and Barring Service (DBS) checks and other statutory checks undertaken for assessment. The local authority database should be checked, with any issues arising being followed up.

No less than three-months after giving notification to the local authority the applicants should make their formal application at the court which made the care order. It is important not to delay the completing of the assessment of support as the applicant has 28 days to consider this assessment and make any representation within the 3 month notice period.

5.1 Approval of Special Guardianship for Looked After Children

The recommendation to support the making of a Special Guardianship Order should be agreed at the Looked After Review, as part of the child's permanence planning arrangements.

6. Report for the Court

The social worker or social workers preparing the [Court Report](#) should be suitably qualified and experienced. Once completed, the Court Report should be first submitted by the author(s) to their line manager(s) for approval and legal services, then submitted to the SGO Panel together with the Support Plan.

A SGO **cannot** be made unless the court has a report dealing with the matters prescribed.

The court cannot make an SGO of its own motion without having first received such a report.

7. Variations or Discharge of Special Guardianship Order

A Special Guardianship Order can be varied or discharged on the application of:

- The Special Guardian;
- The local authority designated in a Care Order with respect to the child;
- Anyone named in a Child Arrangements Order as a person with whom the child was to live before the Special Guardianship Order was made;

OR

- With the leave of the court:
 - The child's parents or guardians;
 - Any step parent who has Parental Responsibility;
 - Anyone who had Parental Responsibility immediately before the Special Guardianship Order was made;
 - The child (if the court is satisfied that the child has sufficient understanding).

Where the applicant is not the child and the leave of the court is required, the court may only grant leave if there has been a significant change in circumstances since the Special Guardianship Order was made.

The court may, during any family proceedings in which a question arises about the welfare of a child who is subject to a Special Guardianship Order, vary or discharge the Order in the absence of an application.

8. SGO Panel

All Special Guardianship assessments, including the Court Report, associated Special Guardianship Support Plan and financial assessment (where applicable) must be submitted to the next appropriate monthly [SGO Panel](#). The SGO Panel acts as a quality-assurance and approval mechanism and ensures that the SGO Court Report and Support Plan are completed to the required standard within the required timescales. Exceptionally, where time does not allow for this, the designated Strategic Manager (Child Protection & Disabilities) should have sight of this and agree it in advance of submission to court.

Following changes to the Support Plan, reviews and receipt of appeals, the appropriate documentation must be submitted to Panel whereby the TM will inform the SG in writing of the outcome of the Panel's decision.

In summary the SGO Panel will have 4 main roles:

- To steer the process of completing assessments within the given timescale;
- To ensure that proposals for financial support are discussed;
- To assure the quality of the assessment and report;
- To recommend the level and type of support (if any) to be offered by Children's Services.

9. Special Guardianship Support

The local authority must make provision for a range of Special Guardianship support services (Section 14F of the amended Children Act, 1989). See 'Access to Support Services Guidance' **(D 4)**.

Special Guardianship support services are defined as:

- Financial support (Reg 3(1)(a)); (see Section? Financial Support);
- Services to enable children, Special Guardians and parents to discuss matters relating to the special guardianship (Reg 3(1)(b));
- Assistance including mediation in relation to contact between the child and their parents, relatives or significant others with whom the child has a relationship that the authority considers to be beneficial to the welfare of the child (Reg 3(1)(c));
- Therapeutic services for the child (Reg 3(1)(d));
- Assistance to ensure continuance of the relationship between the child and the Special Guardian, including training to meet any special needs of the child, respite care, and mediation (Reg 3(1)(e));
- Counselling, advice and information (Sec 14F(1)(a) of the Children Act 1989).

Special Guardianship Support will be subject to agreement of the Team Manager and approval of the SGO Panel.

The services described above may include cash assistance.

Support services should not be seen in isolation from mainstream services and it is important to ensure that families are assisted in accessing mainstream services and are aware of their entitlements to tax credits and social security benefits.

Further details of access to a range of services and support are provided in the 'Access to Support Services Guidance' (D 4). In addition, therapeutic support may be accessed from the Full Circle Team, whereby funding may be sought from the Adoption Support Fund for children who were previously in care immediately before the making of a Special Guardianship Order.

Where the child was previously Looked After, the local authority that looked after the child has responsibility for providing support (*where there is an identified need*) for the first three years after the making of a Special Guardianship Order. Thereafter the local authority where the Special Guardian lives will be responsible for the provision of any support required.

If a child is not Looked After, the local authority where the Special Guardian lives has the responsibility for Special Guardianship support where applicable.

Ongoing financial support, which has been agreed before the Special Guardianship Order was made, remains the responsibility of the local authority that agreed it so long as the family meet the criteria for payment.

10. Entitlement to Assessment for Special Guardianship Support (Reg 11)

Where the child is Looked After or was Looked After immediately prior to the making of the Special Guardianship Order, the following people **MUST** receive an assessment at their request:

- The child;
- The Special Guardian or prospective Special Guardian;
- A parent (but only in relation to their need for support with contact and/or discussion groups).

Where the child is not Looked After or was not Looked After immediately prior to the making of the Special Guardianship Order, the following people **MAY** be offered an assessment of their need for Special Guardianship support services:

- The child;
- The Special Guardian or prospective Special Guardian;
- A parent.

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In all cases, whether the Special Guardianship child is looked after or not, the following people also **MAY** be offered an assessment of their need for Special Guardianship support services:

- A child of the Special Guardian;
- Any person with a significant on-going relationship with the child.

If a local authority decides not to assess in cases where they have discretion as above, they must notify the decision in writing, including reasons for the decision, to the person making the request.

11. Assessment for Support

Most assessments will be carried out during the general assessment for the court report and should consider the following factors based on the Single Assessment (with reference to the Special Guardianship Regulations):

- The developmental needs of the child;
- The parenting capacity of the Special Guardian or prospective Special Guardian to meet the child's needs;
- Family and environmental factors that have shaped the life of for the child and the capacity of the Special Guardian or prospective Special Guardian to respond to those experiences;
- Comment on how life with the Special Guardian might be for the child;
- Any previous assessment of the child or Special Guardian that is relevant;
- The needs of the Special Guardian or prospective Special Guardian and their family;
- The impact of the Special Guardianship Order on the relationship between the child, parent and Special Guardian.

The conclusion of the assessment will be subject to agreement of the Team Manager. At the end of the assessment and once the necessary approval has been obtained, the social worker must inform the person requesting provision of its outcome which sets out the following (Reg 15):

- Information about the outcome of the assessment and the reasons for it;
- Where it relates to financial support, the basis on which this is determined;
- The services (if any) that the Local Authority proposes to provide to help meet the child's needs;
- If financial support is to be paid, the amount and conditions attached.

In a case where the local authority proposes to provide special guardianship support services and is required to prepare a plan, the notice must be accompanied by a draft of that plan. A **letter** will accompany the Support Plan informing the prospective SG of a period of 28 days to make comment/representation.

12. Urgent Cases

Where a person has an urgent need of a service, the assessment process should not delay provision and arrangements can be made for support to be provided as a matter of urgency in appropriate cases. Approval will be sought from the Team Manager/Operations Manager. Provision will be reviewed as soon as possible after the support has been provided in accordance with the procedures set out above.

13. Special Guardianship Support Plan

Where an assessment identifies the need for 'on-going' support services, a [SGO Support Plan](#) must be completed. (See [Special Guardianship Support Plan Guidance](#))

Other agencies, such as education and health, may need to be consulted about the contents of the Plan.

The Plan should be written in such a way that everyone affected can understand it and sets out:

1. The services to be provided;
2. The objectives and criteria for success;
3. Timescales for provision;
4. Procedures for review;
5. A named person to monitor the provision of services in accordance with the Plan.

The Special Guardianship Support Plan will need to be agreed by Team Manager and approval sought by the SGO Panel.

Once the necessary approval has been obtained, the SW worker must send the proposed plan to the person requesting support, and allow 28 days for that person to make representations about the proposed plan. The SW should also give information to the person concerned about who to contact to obtain independent advice and advocacy (to be signposted to Relative Experience Project).

Where representations are received, they should be referred to the Team Manager and submitted back to the SGO Panel to decide whether to amend or confirm the Plan. The allocated social worker must then write to the person concerned setting out the final Plan.

NB: Particular attention must be given to the content of the Support Plan in relation to the financial information of the SG and ensure that this confidential information is not shared with birth parents when submitted to Court.

14. Review of Special Guardianship Support Plans

Special Guardianship Support Plans must be reviewed taking into account the following:

- Any change of circumstances affecting the support;
- At whichever stage of implementation of the plan is considered most appropriate;
- In any event at least annually.

Support Plans may be reviewed as a paper exercise where there is no change or a minor change in circumstances; however, if there is a substantial change of circumstances, e.g. a serious change in the behaviour of the child, it would normally be necessary to conduct a new assessment of needs.

Where the support is only financial and being paid periodically, a review should take place annually with the completion of a financial assessment form (SS499) or sooner if there are any changes in circumstances or break of conditions. A [Terms & Conditions Agreement](#) will be signed by the Special Guardian prior to any financial payments being made. **See Financial Support below.**

Any change to the Special Guardianship Support Plan will be subject to the agreement of the Team Manager and approval of the SGO Panel.

If the local authority decides to vary or terminate the provision of support after the review, notice in writing must be given and the person concerned should be given 28 days to make representations against this decision.

15. Financial Support

Durham County Council will make financial contributions (refer to **Financial Support Policy**) to a Special Guardian, or prospective Special Guardian, in order to maintain or achieve permanence for a child or young person, via Special Guardianship. This policy applies where Special Guardianship has been assessed to be in the best interests of the child or young person.

15.1 Assessment of Financial Support (Reg 13)

Special Guardians must be helped to access any benefits to which they are entitled **(D10) proposed link to WR**. This will usually include child benefit and tax credits such as Child Tax Credit and Working Tax Credit. It may also include disability benefits for some children.

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The Local Authority must also take account of any other grant, benefit, allowance or resource available to the person in respect of his/her needs as a result of becoming a Special Guardian of a child. Financial support cannot duplicate any other payment available to the Special Guardian.

The Special Guardian's means will normally be considered when 'on-going' financial support is being considered. The Dept of Education means-test model is used to undertake a financial assessment and to determine the amount of financial support payable. Child benefit will be deduced from the allowance, only where applicable.

Once the means-test has been carried out, the completed Financial Assessment Form (SS499) will be sent to the SW, who will submit financial information to the SGO Panel as part of the Court Report/Support Plan or as part of the review of the Support Plan.

Following the approval of financial support, the appropriate financial processes (set out in **Financial Support Policy**) will need to be undertaken and a financial 'Notification of Entitlement' letter sent to the SG carer which sets out the payment of financial support as detailed below.

15.2 Payment of Financial Support (Reg 8)

Financial support may be **paid periodically** (i.e paid as a regular allowance), if it is provided to meet a need which is likely to give rise to 'recurring expenditure', otherwise it may be paid as a **single payment**, or, if the Local Authority and Special Guardians or prospective agree, in instalments. The **'Terms & Conditions' Agreement** and the **'Notification of Entitlement'** letter sent to the SG will provide the following information:

- Whether financial support is to be paid in regular instalments and if so, the frequency of payment;
- Where financial support is to be paid as a single payment, when the payment is to be made
- The amount of financial support;
- The period for which the financial support is to be paid;
- When payment will commence;
- Conditions for continuing payment and date by which conditions are to be met, i.e. returning Review Forms;
- Arrangements and procedure for review and termination.

Means **may** be disregarded in relation to:

- The initial costs of accommodating a child who has been Looked After;
- Recurring travel costs in contact arrangements;
- Any special case requiring greater expenditure due to illness, disability, emotional or behavioural difficulties or the consequences of the past abuse or neglect of a child previously looked after;
- Where the Special Guardians were previously the child's foster carers - the local authority can maintain the fostering allowance for a transitional period of two years but with discretion to extend if necessary - '**Remuneration for Former Foster Carers**'. (See Financial Support Policy)

The only circumstance when the Local Authority **MUST** disregard means is when providing financial support in respect of legal costs, including fees payable to a court in respect of a child who is Looked After where the local authority support the making of the Special Guardianship Order. ([Legal Support Guidance](#))

Where Special Guardians are in receipt of on-going financial support, a financial assessment review will be undertaken annually alongside a review of any other support services identified within the Support Plan (where support services have not already been reviewed during the preceding year).

Following the review, documentation will be submitted to the next appropriate SGO Panel, whereby the Team Manager will be informed of the Panel decision and the SG notified in writing of any changes, together with the reasons for change.

Regulation 10 provides that the local authority may set any other conditions they consider appropriate, including the timescale within which and purposes for which any payment of financial support should be utilised. Where any condition imposed is not complied with, the local authority may suspend or terminate payment of financial support and seek to recover all or part of the financial support they have paid.

16. Representations/Appeal

If the local authority proposes, as a result of the review, to reduce or terminate financial support or revise the plan, before making that decision the local authority must give the person an opportunity to make representations (allowing 28 days). For that purpose it must give the person notice of the proposed decision and the time allowed for making representations, however, the local authority may suspend financial support pending that decision, if they think it appropriate.

Where financial support is time limited and the SG carer is notified of the proposed ceasing of support the SG carer may wish to appeal against this decision. The appeal must be made in writing and sent directly to the Children Services Payment Team within 28 days of receipt of the letter, setting out with any additional information.

Receipt of the appeal letter will be acknowledged and submitted to the next appropriate SGO Panel.

17. Leaving Care Support

Children who were looked after by a Local Authority immediately before the making of a Special Guardianship Order may qualify for advice and assistance under the Children Act, 1989, as amended by the Children (Leaving Care) Act 2000 and the Adoption and Children Act, 2002, in the context of the Special Guardianship, to qualify for advice and assistance, Section 24(1A) of the Children Act 1989 provides that the child must:

- Have reached the age of 16 but is not yet 21;
- If less than 18 years old, have a Special Guardianship Order in force;
- If 18 years old or above, have had a Special Guardianship Order in force when they reached that age; and
- Have been looked after by a Local Authority before the making of a Special Guardianship Order. If those criteria are met, the child is a “Qualifying Child” within the meaning of the Act.

The relevant Authority (authority which last looked after the person) must assess their needs to establish whether they require advice and assistance. Where, following a Single Assessment the authority concludes that support will be necessary over a period of time, a plan should be drawn up with the young person, outlining the support that will be provided. In order to determine the extent of the support required, a Single Assessment may be required and the plan that follows might follow the same format as a pathway plan for a relevant or former relevant child. The plan will outline the support to be provided to the young person, including, if necessary, any financial support. The plan will be drawn up by a social worker or suitably qualified person.

18. Special Guardian Duty on the Death of the Child

If the child with respect to whom a Special Guardianship Order is in force dies, the Special Guardian must take reasonable steps to give notice of that fact to:

- Each parent of the child with Parental Responsibility; and
- Each guardian of the child.