Procedure: Special Guardianship Order Applications  
(Non Foster Carer Applications)

# Who may apply.

* + - Any guardian of the child may apply.
    - 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.
    - Any one with whom the child has lived with for 3 years out of the last 5 years.
    - Any one 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.

# Important Considerations

* 1. Any person wishing to apply for Special Guardianship Order must give 3 months’ written notice to the Local Authority of their intention to apply.   
     (A proforma letter is available to assist with this, see appendix 1).
  2. The Court may also make Special Guardianship Orders in any family proceedings concerning the welfare of a child if they consider an Order should be made, therefore the team receiving the written notification should consider whether there are other proceedings relating to this child taking place.
  3. Special Guardianship Orders are only one in a range of potential alternative legal options available. **Prospective special guardians should be advised to obtain independent legal advice.** It is therefore important to consider why those who have made the notification are seeking to obtain this particular Order and consider other alternatives. Other alternatives may include; adoption, Residence Order or the acquisition of shared parental responsibility. It may be that an Order under Section 8 of the 1989 Children Act is a more appropriate application to deal with issues such as contact or other specific issues relating to the child.
  4. Given that Special Guardianship is a relatively new concept it is possible that those having given notice of intention to make an application are unclear as to limitations of such orders:
     + The child may not be caused to be known by a different surname.
     + The child may not be removed from the United Kingdom for more than 3 months.

Both of the above two require consent of every person who has parental responsibility for the child or the leave of the Court.

Unlike Adoption Orders, Special Guardianship Orders can be varied or discharged on the application of:

* + - the Special Guardian.
    - anyone with a Residence Order in respect of the child before the special Guardianship Order was made and with the leave of 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 the child has sufficient understanding).
  1. It is important to consider the future relationships between the Special Guardian and the child’s birth parents and others holding parental responsibility. It is also important to consider the impact of the order on the child, other relatives and members of the household.
  2. Therefore for non-looked after children, applications for Special Guardianship Orders should be made in order to secure the most permanent appropriate arrangement for the child other than through adoption, where it is important that the child maintains a legal relationship with the birth parent or others with parental responsibility, but that enables the Special Guardian to limit the exercise of parental responsibility by others.
  3. Local Authorities are required to make arrangements for the provision of Special Guardianships support services and consideration should be given to what level of support services may be required if any, to support the arrangement and whether this is realistic (see below, Section 7 on Special Guardianship Support Services).

# Financial Arrangements

*Regulation 6 The Special Guardianship Regulations 2005 provides that:*

* 1. Special Guardians of non-looked after children would only be entitled to financial support in certain circumstances:

1. to facilitate arrangements for a person to become the special guardian of a child where the local authority consider such arrangements to be beneficial to the child’s welfare; or
2. to support the continuation of such arrangements after a special guardianship order is made.

But such support is payable only in the following circumstances:

1. where the local authority consider that it is necessary to ensure that the special guardian or prospective special guardian can look after the child;
2. where the local authority consider that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect;
3. where the local authority consider that it is appropriate to contribute to any legal costs, including court fees of a special guardian or prospective special guardian, as the case may be, associated with:  
   1. the making of a special guardianship order or any application to vary or discharge such an order;
   2. an application for a order under section 8 of the Act;
   3. an order for financial provision to or for the benefit of the child; or
4. where the local authority consider that it is appropriate to contribute to the expenditure necessary for the purposes of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and provision of clothing, toys and other items necessary for the purposes of looking after the child.

* 1. Advice and support should be given to the applicants in claiming available benefits, tax credits and any other financial support, including from other members of the child’s family. This should always include a welfare rights check. Applicants and prospective applicants should be offered an Assessment of Need for Special Guardianship Support Services (see section 7 below). This assessment should include consideration of the need for financial support; their entitlement to financial support will however, in the first instance, be determined by the terms of Regulation 6 (see above). **It is important that no indication is given as to whether or not financial support will be agreed.**
  2. Where it appears that financial support may be payable, then the prospective

special guardians should be offered a means tested financial assessment from the Local Authority’s Finance Department. This will be requested in exceptional circumstances by the assessing Social Worker completing the NON-LAC SGO Assessment.

* 1. Where financial support is assessed and payable by the Finance Department, then Appendix 6 (Financial Agreement) must be completed by the assessing Social Worker and signed by all the relevant parties.

# Notice of Intention to Apply for a Special Guardianship Order

* 1. Notice must be given in writing by the prospective Special Guardian, a specimen letter is available, see Appendix 1. This notice is of the intention to make an application for a Special Guardian Order and allows the Local Authority 3 months to prepare a report to the Court detailing the suitability of the prospective Special Guardians or proposing alternative means of securing permanent arrangements for the child. Where notice is given by the child, consideration should be given as to whether he/she has sufficient understanding to give informed notice. Where there is doubt as to the young person’s ability to give informed notice, this needs to be discussed with the child, the prospective Special Guardians and others with parental responsibility.
  2. The allocated social worker should discuss with legal services whether a Court date is due and that this Hearing may be used to agree timescales for the completion of the relevant assessments and reports.

# Referral and Liquid Logic

* 1. A notification of the intention to apply for a Special Guardianship Order is likely to be received either by the child’s social worker, where this may be an open family support case within a Child Care Team, or through the Duty and Assessment Service where the case is currently not open or not previously known.
  2. If the notification is received in DAS then a referral should be taken but in all cases, details should be entered on Liquid Logic.
  3. An initial visit should be undertaken within 7 days in order to discuss the proposed Special Guardianship Order application, alternative options if appropriate and suggest that the prospective applicants may wish to obtain independent legal advice. **Please note that no commitment is made to meet any part of the costs of such independent legal advice.**
  4. It is essential that delay does not occur at this stage in the process, since the Local Authority will have to complete an assessment report for the Court in a limited timescale and if requested, an assessment of Special Guardianship Support Services. It is vital that the case is allocated as soon as possible to a child care social worker in order to prepare for completion of the “Regulation 21” court report.
  5. Liaison with Legal Services should be considered where the case, or circumstances appear complex or unclear.

# Planning the Assessment and Reporting to the Court

* 1. Responsibility of competing the court report according to Regulation 21 of The Special Guardianship Regulations 2005, lies with the allocated child care social worker. A template is available for these reports, (see appendix 2).
  2. Advice, if required, in completing the report and in particular in relation to section 4 (in respect of the prospective Special Guardian) and section 6 (summary report by medical professional) may be obtained from the Team Managers in Fostering.
  3. Please note that when completing the Regulation 21 Report, three personal references are required and these must be interviewed in person.(see appendix 2A)
  4. The social worker will need to arrange for the prospective Special Guardian to complete the health declaration (see appendix 3b) early in the process to enable this to be passed to their GP for comments and from there to the fostering/adoption panel medical advisor for additional comments and summary report to be supplied with the Regulation 21 report to Court. (See also Appendix 3c).
  5. **The child care social worker should advise the prospective special guardians of their entitlement to an assessment for Special Guardianship Support Services. It should be noted that the prospective Special Guardians may request such an assessment, but that it is not mandatory for the Local Authority to provide such an assessment if it considers it is not appropriate to do so**. For example, Regulation 11(4) allows a local authority, if it considers support services may be adequately assessed by reference to a particular special guardianship support service, to carry out the assessment with reference to that particular service only. If it is decided not to provide a full Special Guardianship Support Services assessment then this should be notified to the prospective Special Guardians in writing giving the reasons why such an assessment has not been completed and providing them with opportunity to make representations. (See Section 7.4 below)

# Assessment of Need for Special Guardianship Support Services

* 1. The following persons under Section 14 F(3) of the Act can request an assessment of need for Special Guardianship Order support services:

1. A relevant child who is ‘Looked After’ by the Local Authority or was ‘Looked After’ immediately before the making of a Special Guardianship Order.
2. A prospective Special Guardian or Special Guardian of a child, as above.
3. A parent of a child, as above.
   1. In addition to the above, a written request for assessment of need could be received from:
4. A child of a Special Guardian.
5. Any person whom the Local authority consider to have a significant and ongoing relationship with a relevant child.
   1. If the decision of the Local Authority is not to carry out an assessment, they must give notice of that decision, and reasons, to the person requesting the assessment. They must allow ‘reasonable’ time/opportunity to make representations in relation to that decision (see 6.4 above).
   2. If the request from a person for Special Guardianship Support Services Assessment relates to a specific service, or if it appears a person’s needs for Special Guardianship Orders may be assessed adequately by a particular service the Local authority may carry out an assessment by reference to that service only. **Irrespective of the extent of the assessment, it is essential that this is carried out at the same time as the completion of Regulation 21 report.**
   3. Refer to Assessment of Need for Special Guardianship Support Services Proforma (Appendix 4).
   4. The outcome of the assessment of need for Special Guardianship Support Services, informs the content of the Special Guardianship Support Services Proposal, the assessment and proposal must be submitted to the Child Care Team Manager in the prescribed format (see Appendix 6). ***These should be submitted at the same time as the completed Regulation 21 Report (Proforma Appendix One) which gives background to the needs of the young person.***
   5. The Childcare Service Manager will scrutinize the proposed plan

(Appendix 7) to ensure that any recommendations made are reasonable and deliverable.

* 1. Where the proposed plan contains any element of financial support this must be indicated explicitly in the report. The social worker will need to give evidence that all relevant universal benefits have been claimed, including child tax credit, child benefit, DLA etc. **In cases where regular financial support is being considered a financial support means test must be completed.**

* 1. Where regular financial support payments are being recommended, the proposal must contain clear reasons why these are required and detail why other sources of income are insufficient to sustain the child within the proposed special guardianship placement. Reference must be made to the outcome of Welfare Rights benefit checks that will have been completed.
  2. Where the support service is in the form of one off payments or time limited payments these should be detailed in the Support Services Proposal / Plan (Appendix 6) giving reasons why such payments are required. These are not required to be subject to a formal written agreement as with regular payments. It is strongly recommended that the social worker, early on, shares with the prospective Special Guardians the terms of the Agreement for Special Guardianship Financial Support, as contained in the proforma format.

# Approving the Special Guardianship Support Services Proposal

* 1. Once the CIN Team Manager has confirmed the Special Guardianship Support Services Plan, this, together with any relevant conditions should be given to the prospective Special Guardian as a Special Guardianship Support Services Proposal, for them to consider and make representations. No timescale is specified within the regulations for representations to be made, but it is recommended that the proposal is presented to the prospective Special Guardians at least 3 weeks before the Regulation 21 report is due to be submitted to Court and it is suggested that the applicants are allowed 14 days to indicate whether or not they agree with the proposal. The prospective Special Guardian should make any representations in writing on the plan.
  2. Any counter representations received from the prospective Special Guardians should be discussed with the childcare social worker’s Team Manager and their Service Manager. It should be noted that there is no presumption that the Local Authority should comply with any counter representations made by the prospective Special Guardian, but clearly care should be taken to ensure that the Local Authority would not be regarded within the legal proceedings to have acted outside the scope of the regulations.

# Endorsement of the Special Guardianship Support Services Plan

* 1. The proposal should be submitted to the CIN Team Manager for checking before being passed to the CIN Service Manager, for endorsement. Once endorsed, the proposal becomes the Special Guardianship Support Services Plan.
  2. The following paperwork requires to be submitted to the CIN Service Manager for endorsement:

1. Special Guardianship Support Services Plan (Appendix 6) (The plan should be signed by the prospective Special Guardian or contain their written representation).
2. Assessment of need for Special Guardianship Support Services Report. (Appendix 4).
3. Regulation 21 Report (Appendix 2).
4. An SGO Means tested financial assessment

# Submitting the Report to the Court

* 1. It should be noted that financial support in the form of regular payments can only be paid if agreement has been given before the making of Special Guardianship Order. Therefore social workers completing assessments for special guardianship support, where this may include a financial element should make the prospective Special Guardians aware of this requirement. It is important therefore that prospective special Guardians do not submit their application to Court before consideration has been given as to any regular support payments proposed.
  2. The author should ensure that all parties detailed in the regulations have been consulted. Particular attention should be given to the issue of contact as the Court may make a section 8 Order alongside the Special Guardianship Order if it is not satisfied that this matter has not been robustly addressed and all parties are in agreement.
  3. The report should be submitted to Court once the prospective Special Guardians have made their application.

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