



What is a Special Guardianship Order and who can apply?

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Introduction

1. Special Guardianship is a legal status introduced by the Children Act 1989. The Adoption and Children Act 2002 provides the legal framework for special guardianship under the Children Act 1989. Section 115(1) of the 2002 Act inserted a new section 14A-F into the Children Act 1989 providing the legal framework for Special Guardianship. This legislation places duty on every local authority to establish and maintain a range of support services in their area designed to meet the needs of people impacted by Special Guardianship.
2. Special Guardianship provides an 'alternative legal status for children that offers greater security than long-term fostering but without the absolute legal severance from the birth family that stems from an adoption order'. (Special Guardianship Guidance DFES 2005).
3. It addresses 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.
4. A Special Guardianship Order can offer greater stability and legal security to a placement than a **Child Arrangements Order**.
5. Special Guardians share **Parental Responsibility** for the child with the parents but are entitled to exercise such responsibility to the exclusion of any other person with parental responsibility (apart from other special guardians). They also have the primary responsibility for day-to-day decision-making in relation to the child (Statutory Guidance for Local Authorities on the Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) regulations 2016)

The legal framework and statutory requirements for Special Guardianship

6. Section 115(1) of the Adoption and Children 2002 inserted new sections 14A-F into the Children Act 1989 which provide the legal framework for Special Guardianship. The sections cover:
- i. who may apply for a Special Guardianship Order;
 - ii. the circumstances in which a Special Guardianship Order may be made;
 - iii. the nature and effect of Special Guardianship Orders;
 - iv. support services for those affected by Special Guardianship.

Who can apply for a Special Guardianship Order

7. A Special Guardianship Order is an order appointing a person or persons to be a child's Special Guardian. Applications to become Special Guardians may be made by an individual or jointly by two or more people; joint applicants do not need to be married. Special Guardians must be aged 18 or over. The parents of a child may not become that child's Special Guardian.
8. S14A(5)CA'89 states the individuals who are entitled to apply for a special guardianship order with respect to a child are:
- i. any guardian of the child;
 - ii. any individual who is named in a child arrangement order as a person with whom the child is to live;
 - iii. any individual listed in subsection (5)(b) or (c) of section 10 (CA 89);
 - iv. a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application;
 - v. a relative with whom the child has lived for a period of at least one year immediately preceding the application.
9. The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if:
- vi. an application for the order has been made by an individual who is entitled to apply for a special guardianship order or has the court's permission to make the application (or more than one such individual jointly); or
 - vii. the court considers that a special guardianship order should be made even though no such application has been made.
10. Section 14A(7) provides that no individual may make an application for a special guardianship order unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application:
- i. if the child in question is being looked after by a local authority, to that local authority, or
 - ii. otherwise, to the local authority in whose area the individual is ordinarily resident.

11. The Court may also make a Special Guardianship Order in any family proceedings concerning the welfare of a child if it considers that an order should be made. This applies even where no application has been made and includes adoption proceedings. When considering whether to make a Special Guardianship Order, the welfare of the child is the Court's paramount consideration, and the Court will consider the Welfare Checklist in section 1(4) of the Children Act 89.
12. Any person who wishes to apply for a Special Guardianship Order must give three months' written notice to Norfolk County Council, Child Advice and Duty Service (CADS) of their intention to apply. CADS can be contacted by calling 0344 800 8020.
13. On receipt of notice of an application, or if the Court makes a request, Norfolk County Council must investigate and prepare a report to the Court about the suitability of the applicants to be Special Guardians. This requirement applies to both looked after and other children. The information to be included in the report to the Court is set out in the Schedule to Special Guardianship Regulation 2005. Norfolk County Council has, under s14A(8) (b) of CA'89 the ability to arrange for any qualified person to act on its behalf in connection with preparing a report for Court. The Court may not make a Special Guardianship Order unless it has received the report covering the suitability of the applicants. The Court still needs a report in relation to Special Guardianship when in other proceedings where Special Guardianship is being considered.
14. Before making a Special Guardianship Order, the Court must consider whether to vary or discharge any other existing order made under the Children Act 1989. The Court should also consider whether a Contact Order should be made at the same time as the Special Guardianship Order. A Contact Order may be made, for example, to require continued contact with the child's birth parents.

Effect of Special Guardianship Order

15. The Special Guardian will have parental responsibility for the child.
16. The Special Guardians Parental Responsibility can be exercised over that of the birth parents when in the child's best interest.
17. The intention is that the Special Guardian will have clear responsibility for all day-to-day decisions about caring for the child or young person and their upbringing. Unlike adoption the order preserves the child's basic legal link with its birth parents. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain the right to consent or not to the child's adoption or placement for adoption. The Special Guardian must also take reasonable steps to inform the parent/s of any significant event in the child's life such as, but not limited to, a change of carer, significant health need or if the child dies.
18. In addition, there are certain steps in a child's life which require the consent of everyone with Parental Responsibility, for example:
 - i. The change of surname of the child;
 - ii. The removal of the child from the United Kingdom for longer than three months;
 - iii. The sterilisation of a child;
 - iv. Different medical treatments – further advice can be provided upon request.

19. At the same time as making a Special Guardianship Order, the Court may also give leave for the child to be known by a new surname and give permission for the child to be removed from the United Kingdom by the Special Guardian/s for periods longer than three months (no permission is needed for periods less than this) if the Special Guardian does not have the written consent to do these things from every person with parental responsibility.

Variation and discharge

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

- i. The Special Guardian;
- ii. Any parent or guardian of the child concerned;
- iii. Any individual in whose favour a residence order is in force with respect to the child;
- iv. The child;
- v. The Local Authority.

21. Anyone who immediately before the making of the Special Guardianship Order had parental responsibility for the child.

22. The following applicants require the leave of the Court:

- i. The child's parent or guardian;
- ii. The child (determined by whether they have sufficient understanding to make the prospective application);
- iii. Anyone who had parental responsibility immediately before the Special Guardianship Order was made but no longer has.

23. NB: 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.

24. 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.