

Information leaflet

Assessment information

Special guardianship provides an increasingly popular route to permanence for children and young people who are unable to live with their birth parents.

Who can apply for special guardianship?

Special guardians must be over 18 and cannot be the parent of the child in question. People can apply individually or jointly with one or more people for a Special Guardianship Order (SGO) and couples do not need to be married or in a civil partnership to successfully apply.

The following people can apply for an SGO:

- If the child is in the care of the Local Authority, anyone who has the Local Authority's consent
- A Local Authority foster carer when the child has lived with them for at least a year immediately before making an application. They can apply whether they have the support of the LA or not
- Anyone who has a Child Arrangements Order (CAO) or Residence Order (RO) for the child or has the consent of all those who have a CAO or RO
- Anyone that the child has lived with for three out of the last five years. The child must not have stopped living with them for more than three months before the application is made
- Anyone who has the consent of all those with parental responsibility for the child
- Any guardian of the child (guardian appointed after the death of one of the child's parents)

A local authority foster carer, who has looked after the child within the last six months cannot apply for a SGO unless they have the consent from the local authority, is a relative of the child or has lived with the child for at least a year before making the application.

Anyone who does not meet the criteria would have to apply to the court for leave (permission) to apply.

Is the child's view considered?

The child's wishes and feelings will be considered and will play a part in the decision made by the court, especially if they are old enough to understand special guardianship and how it will affect them.

The court will also ask the child for their views around contact with their birth family.

How can someone apply for an SGO?

One of the people outlined above must give the local authority three months' notice before submitting their application to court.

If the child is looked after by the local authority a carer should send the written notice to the local authority that is caring for the child otherwise notice should be sent to the local authority where the special guardian lives.

The only exception to giving written notice is where another application is already being heard in court and the court itself decides that a SGO should be made.

Where an adoption application is being heard and the court allows a person to make a competing application for a SGO, written notice is still needed but the three-month period does not apply.

After the three month notification period, a carer can apply to a court for a SGO. If the child is already the subject of another Order (CAO, RO) the carer must apply to the court that made that order. Otherwise, a carer can apply to any Magistrates' Family Proceedings Court or County Court.

It is important to note that unless there is evidence of domestic violence or there are child protection concerns, those applying for an SGO need to prove that they have met with a mediator to discuss whether mediation may be able to resolve the case before making an application to the court.

Local authority assessment

Once a carer has given three months' notice and applied to the court, the local authority will prepare a report. This report will provide information on:

- The child and their wishes and feelings.
- The birth family and their views
- A carer's suitability for the role of special guardian
- Any contact plans or arrangements
- A criminal records check
- Health reports on the special guardian and the child
- Details of the support package that the local authority can offer

The report will be prepared by a social worker.

Court hearing

A court hearing will be held once the court has received the report. Once the court has considered the report and heard evidence from people involved or other witnesses a decision will be made. The court will also consider if any other orders should be made at the same time, such as contact orders.

The court can also give agreement to a SGO child's surname being changed or give permission for the child to be taken out of the country for more than three months. Note that a special guardian is not able to change the child's surname or take the child out of the country for more than three months with the specific agreement of the court.

Useful links

Coram children's Legal Centre

www.childrenslegalcentre.com

Helpline 0300 330 5480

Coram Children's Legal Centre (CCLC) specialises in law and policy affecting children and young people. Lawyers and professionals, with experience in child law give free legal information, advice and representation to children, young people, their families, carers and professionals.

Family Rights Group(FRG)

www.frg.org.uk

Helpline: 0808 801 0366

FRG work with parents in England and Wales whose children are in need, at risk or are in the care system and with members of the wider family who are raising children who are unable to remain at home. FRG can provide legal advice where a child was 'previously looked after'.

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