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Children's Law



Are you thinking about applying to become a Special Guardian for a child? This free information guide is intended to give some basic advice about Special Guardianship Orders, what they are, how you apply for them and how you may get funding to help you with your application for the child you wish to care for.

What is an SGO?

A Special Guardianship Order (SGO) gives legal recognition to a person caring for a child who is not their own, securing their role as primary carer for the child and giving them parental responsibility.

What is Parental Responsibility?

Parental Responsibility (PR) is a legal concept, which includes all the rights, responsibilities, powers and duties which a parent would normally expect to have towards their child. PR brings with it the right to have a say in the main decisions which affect the child's life. This includes for example the child's education, medical care, and religion.

Parents retain parental responsibility and their legal relationship with the child throughout the duration of any SGO. However the SGO allows the Special Guardian to exercise their parental responsibility to the exclusion of the parents.

This means that a Special Guardian can make all the major decisions about a child's upbringing and does not have to consult with a parent about these decisions but there are some limitations to this. A Special Guardian:

- Cannot change a child's surname nor take them out of the UK for a period of more than three months without the consent of everyone with parental responsibility or the permission of the court.
- Cannot override the parents' rights in relation to a child being adopted.
- Needs to obtain the consent of everyone with parental responsibility when required to by law (e.g. obtaining consent for a child to be sterilised)

Where there is a dispute about the exercise of parental responsibility the court has the power to make an order to resolve any disagreement.

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SGO, Residence Order or Adoption order?

A SGO is more secure than a Residence Order because a parent cannot apply to discharge it unless he or she has the permission of the court to do so. Additionally, he or she will have to show a significant change of circumstances to get this permission.

However a SGO is less secure than an Adoption Order because it not does end the legal relationship between the child and their birth parents. A child, who is made the subject of a SGO, will still remain a member of their birth family even though they will live permanently with their Special Guardian on a legally secure basis.

When is an SGO appropriate?

A Special Guardianship Order can be appropriate in a number of situations, examples include:

- Older children who no longer live with their parents and are in the long term care but did not want to be adopted and want to retain ties with their birth families
- When a child is living with an extended family or family friends who did not wish to adopt but would like to have a say and take responsibility for the decisions about the child
- Potential carers from minority ethnic groups who are in the position to offer the child a permanent family but have religious/cultural difficulties with the concept of a legal adoption
- Unaccompanied asylum seeking children who are in need of a permanent placement but still have attachments to their birth families

Who can apply for an SGO?

It is possible to apply for an SGO if you fall into one of the following categories of persons:

- Someone who is a Local Authority foster carer with whom the child has lived for a period of one year directly before the SGO application
- Someone who has had the child living with them for three out of the last five years
- Someone who is a guardian of the child
- Someone who has obtained leave (permission) of the court to apply for an SGO
- If the child is in the care of the Local Authority then someone who the Local Authority consents to making an SGO application
- Someone who has a residence order in respect of the child or has permission from all those who hold parental responsibility for the child.

If you do not fall into any of the above the categories you will need to apply to the court for permission to apply for a special guardianship order.

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Procedure to apply for an SGO

In order to make an application you must first give your Local Authority three months' notice in writing to inform them that you are going to apply for an SGO. If you need to get permission from the court you should do this before giving the Local Authority this notice.

You must give three months' notice unless you have been given permission from the court to make an application for a Special Guardianship Order.

The Local Authority will then produce a report with all the necessary information informing the court of the:

- Child and his/her wishes
- Child's birth family,
- Contact arrangements proposed,
- Prospect of a special guardian
- Local Authority's recommendations for whether or not an SGO should be made.

The court needs to receive this report before it can make an SGO.

The court has to address the question of the child's welfare throughout the child's life and have regards to the welfare checklist on Section 1(3) of the Children Act 1989 when considering whether to make an SGO. Ultimately when deciding this issue the welfare of the child /young person and what is in their best interests is of paramount consideration for the court.

A SGO lasts until the child reaches 18 unless it is revoked.

A SGO automatically discharges any existing Care Order on a child.

A Special guardian will be able to receive Child Benefit for the child and apply for other relevant benefits. It may also be possible for the Local Authority to provide financial support to the special guardian of the child but this will be means tested.

The Local Authority should also provide support services to special guardians including assistance with contact, therapeutic services for the child, attendance of support groups, respite care, counselling and advice as needed.

I wish to become a Special Guardian for a child. What should I do now?

Fisher Meredith's Children's Law Department has vast experience in relation to Special Guardianship Orders.

If you are planning on becoming a Special Guardian, contact our Children's Law department who will be able to help you decide whether this is the right order for you, and to help you through the application process.

Useful links

Department of Education – more advice on Special Guardianship

<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFES%202030%202005>