



Cyngor Sir
CEREDIGION
County Council

Special Guardianship Orders Policy

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1. Special Guardianship Policy - Background

1.1 Special Guardianship Orders were introduced by the Adoption and Children Act 2002. The Special Guardianship (Wales) Regulations 2005, were subsequently introduced and amended by The Special Guardianship (Wales) (Amendment) Regulations 2018 and Special Guardianship Code of Practice on the exercise of social services functions in relation to Special Guardianship orders 2018.

1.2 Special Guardianship offers greater security than long-term fostering but does not entail the absolute legal severance from the birth family that stems from an adoption order.

- A Special Guardianship Order gives the Special Guardian, subject to any other order in force with respect to the child under the Children Act 1989, the right to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another Special Guardian).
- Unlike adoption, under a Special Guardianship Order, the birth parents remain the child's legal parents and retain parental responsibility, though their ability to exercise this is extremely limited.
- The intention is that the Special Guardian will have clear responsibility for all the day-to-day decisions about caring for the child or young person and for taking any other decisions about their upbringing, for example, their education.
- A Special Guardian may exercise parental responsibility to the exclusion of others with parental responsibility, such as the parents, and without needing to consult them in all but a few circumstances.
- One major purpose of Special Guardianship is to meet the child's need for a legally secure relationship with their carer. To this end, where a Special

Guardianship Order is made, the child will no longer be considered to be looked after by a local authority.

- 1.3 Accompanying the arrangements for the Special Guardianship Order are additional responsibilities for local authorities in relation to the assessment, planning, provision and review of Special Guardianship support services, including financial support. A child who was looked after immediately before the making of a Special Guardianship Order, who would be regarded as a category 3 young person in accordance with the Social Services and Wellbeing Act (Wales) (2014) remains eligible for support as care leaver.

2. Eligibility

2.1 Before the local authority takes any steps to support an application for Special Guardianship, it must first ensure that the person(s) wishing to become Special Guardian(s) are eligible. A court may make a Special Guardianship Order in respect of a child on the application of the following persons:

- Any guardian of the child
- A local authority foster carer with whom the child has lived for one year immediately preceding the application
- Anyone who is named in a Residence or Child Arrangements Order as a person with whom the child is to live, or who has the consent of all those in whose favour a Residence or Child Arrangements Order is in force
- Anyone with whom the child has lived for three out of the last five years
- A relative of the child with whom the child has lived for a period of at least one year **immediately** preceding the application
- Where the child is in the care of a local authority, any person who has the consent of the local authority
- Anyone 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

2.2 The court may also make a Special Guardianship Order in any family proceedings concerning the welfare of the child if they consider an order should be made. This applies even when no application has been made and includes adoption proceedings.

2.3 Applications for a Special Guardianship order may be made by an individual or jointly by two or more people. Joint applicants do not need to be married or in a civil partnership with each other. Special guardians must be 18 or over. The parents or step-parent of a child may not become that child's Special Guardian.

2.4 In all circumstances, the child care social worker within the local authority will need to provide a report for the court. The court and local authority must consider the whole range of options available.

3. Applications

- 3.1 An applicant must give three months written notice to the local authority that is looking after the child, (in the case of a child who is fostered) or to the local authority where the applicant is ordinarily resident (if the child is not looked after) of their intention to apply for a Special Guardianship Order.

- 3.2 The only exception to this is where a person has the leave of the court to make a competing application for a Special Guardianship Order where an application for an Adoption Order has already been made. This is in order to prevent the competing application delaying the adoption order hearing.

4. Local authority reports to the court

- 4.1 In the three month notice period, the local authority child care social worker must complete a report as prescribed or arrange for someone else to do this on its behalf. The schedule to the Special Guardianship (Wales) Regulations 2005, The Special Guardianship (Wales) (Amendment) Regulations 2018 and Special Guardianship Code of Practice detail what the report should include.
- 4.2 A report must be prepared for the court by the local authority for both looked after and other children. The report covers all the necessary information about the child, the child's family, the wishes and feelings of the child, the prospective Special Guardian, information about the local authority that completed the report and recommendations about whether an order should be made, contact arrangements and support services proposed, including financial support.
- 4.3 There is a statutory duty to undertake Enhanced DBS checks on prospective Special Guardians and any adult members of their household in accordance with The Special Guardianship (Wales) (Amendment) Regulations 2018.
- 4.4 In order to ensure that the service complies with the standards of good practice set out in the statutory guidance, which should be referred to, the social worker who prepares the report for the court should be suitably qualified and experienced. However, where this cannot be achieved, social workers who do not have suitable experience will be supervised by someone who has.
- 4.5 When the local authority receives notice from either the applicant or court it must send written information to the prospective Special Guardian and the parents of the child, setting out the steps it proposes to take in preparing the report.

4.6 Where an application for SGO is received for a child who has an allocated Social Worker within the local authority, there must be regular meetings between the Social Workers to ensure accuracy of information and a robust analysis.

5. Special guardianship applications in the context of permanence planning for children looked after

- 5.1 When the local authority receives a notification of intention to apply for a Special Guardianship Order in relation to a child who is looked after, the Independent Reviewing Officer (IRO) should be informed at the earliest opportunity and the application discussed within the child's Looked After Review.

- 5.2 The local authority will consider notifications from eligible carers who may wish to apply for a Special Guardianship Order in the light of the welfare checklist in the Adoption and Children Act 2002. The child's welfare will be the paramount consideration. The views and wishes of the child and the carers, and the carers' suitability, including whether they fully understand their roles as Special Guardians, will be fully considered. Where a child will cease to be looked after as a result of a Special Guardianship Order being made, the applicants must fully understand how they will take responsibility for the child's upbringing, perhaps without the same level of involvement of the local authority. Permanency planning documentation and or case recordings should reflect any discussions/ agreements with the relevant Team Manager or Corporate Manager where independent legal advice has been provided to the foster parents.

- 5.4 The prospective applicants will be advised of the role of the local authority in reporting and making recommendations to the court, including their duty to consider and report on what other options the court may wish to consider.

- 5.5 For information relating to financial support for Special Guardians, please see the Ceredigion County Council SGO Financial Support Policy.

6. Special guardianship applications in the context of permanence planning for children not looked after

- 6.1 Where the child is not looked after, the local authority has the same responsibility for reporting to the court and carefully assessing its recommendations. As for a looked after child, every effort will be made to consider fully with the prospective applicants and the child the reasons for making an application, whether it is advisable to do so, and what the other options might be. The prospective applicants will be advised of the role of the local authority in reporting and making recommendations to the court, including their duty to consider and report on what other options the court may wish to consider.

7. Special Guardianship Support Services

7.1 The Local Authority has a duty to assess the need for and provide support services to support Special Guardianship arrangements. An assessment of need for a particular service (both financial and non-financial) does not automatically result in the provision of that service.

7.2 A Guide for *The Offer of Special Guardianship Support in Wales 2020* (AFA) draws together statutory guidance relating to support service requirements as outlined within The Children Act 1989, the Special Guardianship (Wales) Regulations 2005 (as amended in 2018) and the Special Guardianship Code of Practice on the exercise of social services functions in relation to Special Guardianship orders 2018. The Local Authority is required to make arrangements for the provision of the following services:

- Information, Advice and Assistance (including web-based information for child/ young person; prospective Special Guardians)
- Financial support
- A named support worker
- Contact
- Therapeutic services
- Assistance to promote relationship stability
- Mediation

7.3 The assessment may be limited to the need for a particular Special Guardianship support service if the person requesting the assessment has requested a particular service, or, it appears to the local authority that the needs of the person may be adequately assessed by reference to a particular support service. However, the assessment should be widened should it become apparent that there are additional support needs. The local authority does not need to prepare

a support services plan where special guardianship support services are being provided on a single occasion, as in this case notice will be provided will include all the necessary information.

- 7.4 It is important to acknowledge that housing, education and health may play a large part when assessing the needs of Special Guardianship families, but needs identified under these headings may not, of themselves, lead to a Special Guardianship support service.
- 7.5 The support plan for a Special Guardian is developed by the child's social worker, who knows the child, in conjunction with the assessing social worker from the Fostering Team who knows the prospective Special Guardians and has expertise in identifying the factors which promote permanence.
- 7.6 In preparing the plan, the Social Workers will consult with the intended recipient of the support services, or if the recipient is a child who is not of sufficient age and understanding, with the Special Guardian or other appropriate adult. If it is necessary for services to be provided by the Local Health Board or other partner agencies, they will also be consulted. If the recipient lives in another local authority area, that local authority may also be consulted as appropriate.
- 7.7 The completed support plan must be agreed by the social workers and team managers within both the relevant Safeguarding and Fostering Teams. The prospective Guardian must be provided with the Support Plan in writing, along with a copy of their completed assessment and given opportunity to make representation to the local authority if there are areas of disagreement. If no representations are received within 28 days (unless particular circumstance require a shorter or longer period) it will be assumed the contents are agreed. The prospective Guardian must also be provided with the opportunity to obtain independent legal advice on the assessment and support plan before any application is made.

- 7.8 Where the subject of the assessment is a child of sufficient age and understanding, they must be notified of the outcome of the assessment, unless the specific circumstances of the case mean that it would be inappropriate to do so – for example, because it would be potentially harmful to the wellbeing of the child.
- 7.9 Where the person to whom the plan relates lives in the area of another local authority, the local authority that prepared the plan must provide a copy of the plan to the area local authority, unless the authority considers it unnecessary.
- 7.10 Regulation 5 of The Special Guardianship (Wales) (Amendment) Regulations 2018 sets out the list of people who are entitled to request an assessment for Special Guardianship support services. Local authorities do not have to provide these services directly, but can arrange for them to be delivered in partnership with other agencies, as appropriate.
- 7.11 The code of practice imposes additional duties on the local authority to make those identified below aware of their entitlement to request an assessment for SGO support services at every appropriate stage i.e. when an application is made and again once the SGO is in place following the first three years. This list includes:
- a child subject to a Special Guardianship order or a parent of such a child;
 - a child in respect of whom a person has given notice to a local authority of his or her intention to apply for a Special Guardianship order or a parent of such a child;
 - a child in respect of whom the court has required a local authority report or a parent of such a child;
 - a child who is the subject of, or is named in, a local authority report for the court;

- a Special Guardian or prospective Special Guardian;
- a child of a Special Guardian or prospective Special Guardian;
- a relative of a child falling within the first three bullet points providing contact arrangements were in place before the request for an assessment.

7.12 The Local Authority will put in place arrangements to keep in touch with children where a SGO has been made, both the original Local Authority and the Local Authority where the Special Guardian and child(ren) live following the first three years via the Fostering SGO support worker. As a minimum, contact must be made with the Special Guardians at least once a year- **the financial assessment review does not count as the contact**. The Special Guardian can choose not to engage with the contact, however, the LA must evidence that the annual contact has been offered and that the Special Guardian has either accepted/declined to engage for the three years post the order being granted.

7.13 Reviews of the SGO support plan are undertaken by the Fostering Team who will then coordinate with the appropriate teams, agencies or services to meet the assessed needs of the family,

7.14 Where the Special Guardianship support is provided as part of a Care and Support Plan this Review will be subject to the reviewing requirements under SSWB (Wales) Act 2014

8. Social Services and Wellbeing (Wales) Act 2014

- 8.1 In accordance with the Part 6 Revised Code of Practice, achieving 'permanence' will be a key consideration from the time a child becomes looked after, and the Part 6 care and support plan should set out from the outset how this is to be achieved. One of the key functions of the care and support plan is to ensure that each young person has a plan for permanence by the time of the second looked after child review.
- 8.2 The Code of Practice links Special Guardianship in with the UN Convention on the Rights of the Child (UNCRC) and the Social Services and Well-being (Wales) Act 2014. A table setting out the links between UNCRC articles, national well-being outcomes and "welfare of the child" Children Act Principles is included within the code of practice.
- 8.3 Professionals must ensure advocacy duties have been met in relation to looked after children who are entering a Special Guardianship arrangement. The local authority must also ensure that the Special Guardian/s are referred to sources of independent advice and advocacy, as appropriate.
- 8.4 Where a child in a Special Guardianship arrangement has needs being assessed under Part 3 of the Act the Local Authority should also assess the need for Special Guardianship support services at the same time. Where the child has a care and support plan under Part 4 of the Act any Special Guardian support services should be included within this plan.

9. Local authority responsibility for Special Guardianship allowances

- 9.1 For looked after children, the local authority who last looked after them retains responsibility for the assessment and provision of Special Guardianship support services for three years from the date of the making of the order. In all other situations, including where the initial three year period has expired, responsibility for assessing and providing support services is with the local authority where the Special Guardian lives.
- 9.2 The provision of an allowance agreed before the Special Guardianship Order is made remains the responsibility of the authority who originally agreed it, indefinitely, regardless of where the family live.
- 9.3 When the three year period, which starts from the time of the making of the SGO, is about to expire, the original LA **must**, not later than three months before the expiry of the three years, undertake a review, notify the relevant local authority of any continuing need for services and refer the Special Guardian to relevant local information, advice and assistance. The code of practice (chapter 11) also imposes some additional duties/ guidelines in relation to the three year ruling relating to case management:
- If the child is to live in another Local Authority area from the date of the order the original Local Authority must inform that Local Authority that the SGO has been made (11.3)
 - Local Authorities should co-operate to establish which services are to be provided locally (although the original Local Authority will finance for three years) (11.4)
 - There will need to be agreement on who provides any Part 4 SSWB service (it is expected that the original Local Authority will continue to meet any ongoing

needs, including those over and above prescribed Special Guardian support services for the three years) (11.5)

10. Special Guardianship Orders and Leaving Care

10.1 Children who were looked after by a local authority immediately before the making of a Special Guardianship Order may qualify for advice, guidance and assistance under the Social Services and Well-being (Wales) Act 2014. Section 104 of the 2014 Act defines six categories of young people in respect of leaving care, and a 'category 5 young person' is defined as a person between 16 and 21 who is subject to a special guardianship order (or was when he or she turned 18), and who was looked after immediately before the Special Guardianship Order was made.

10.2 The full duties of a local authority towards a 'category 5 young person' are set out in section 114 of the 2014 Act. Further details are set out in the Code of Practice relating to Part 6 of the Act (Looked After and Accommodated Children), chapter 5 ('Leaving care').

10.3 The local authority must consider whether the young person needs support of the kind set out in section 114. If the local authority is satisfied that the person who was looking after the young person (the special guardian or former special guardian) does not have the necessary facilities for advising or befriending him or her, the local authority must advise and befriend the young person, and support him or her as necessary in the following ways:

- in kind
- contributing to expenses incurred by the young person in living near the place where he or she will be employed or seeking employment
- contributing to expenses incurred by the young person in living near the place where he or she will be receiving education or training
- making a grant to enable him or her to meet expenses connected with education or training
- providing accommodation if support may not be given in the above ways
- in cash.

10.4 Where appropriate, the local authority should provide the young person with a personal adviser.

10.5 The local authority may also give support in certain circumstances up to the age of 25, where the young person is completing a course of education or training as set out in the plan agreed with the young person.

10.6 These provisions recognise that some young people who left care under a Special Guardianship Order may be as vulnerable, and have very similar needs to, young people who left care at 16 or 18. This is particularly important because the Special Guardianship Order comes to an end when the young person turns 18. They place a duty upon local authorities to respond adequately to these young people's individual needs.

10.7 Where a local authority is satisfied that a 'category 5 young person' has a need for advice and support, it must assess his or her needs and decide how best to meet them. Where the authority concludes that the young person will need support over a period of time, it should draw up a plan in partnership with the young person, outlining the care and support to be provided. The plan should follow the same format as a 'pathway plan' for a young person preparing to leave care (as set out in chapter 5 of the Part 6 Code of Practice).

10.8 The local authority must inform young people who have left care under a Special Guardianship Order of their entitlement to an assessment for care leaver support. It is good practice to do this when the child is about to turn 16.

10.9 It should be noted that young people in special guardianship arrangements are not eligible to enter into post-18 living arrangements under section 108 of the Social Services and Well-being (Wales) Act 2014 (the 'When I am Ready' scheme), even if they are living with their former foster parents. Local

authorities must ensure that foster parents who are considering becoming special guardians, and the children and young people placed with them, are fully aware of this before a special guardianship order is made. Where appropriate, local authorities should consider alternative ways of supporting former looked after children who wish to continue living with their special guardians once they turn 18, such as supported lodgings.

10.10 Regulation 13 of The Special Guardianship (Wales) Regulations 2005 provides that the relevant local authority in relation to the provision of advice and assistance is the one that last looked after the child.

10.11 There may be times when it is not clear which authority is responsible for giving advice and assistance regarding special guardianship – for example, where the child moved between placements in different local authority areas. Regulation 13 of The Special Guardianship (Wales) Regulations 2005 states that the relevant authority shall be the local authority which last looked after the person. Similar arrangements apply to young people who were formerly looked after by a local authority in England, where the relevant authority for the purposes of providing advice and assistance will be the local authority in England which last looked after them.

11. Complaints and Representations

11.1 Complaints and representations about special guardianship support services must be handled in accordance with the local authority's complaints procedures.

11.2 Regulation 14 of The Special Guardianship (Wales) Regulations 2005 specifies that complaints and representations may particularly be made in relation to the following services:

- financial support for special guardians
- support groups for children
- assistance in relation to contact
- therapeutic services for children
- assistance to ensure the continuation of the relationship between the child and their special guardian or prospective special guardian.

11.3 Local authorities must ensure that children subject to special guardianship arrangements, special guardians and potential special guardianships, and parents, receive information on how to make complaints and representations.

12. Appendices

Appendix 1 – SGO Support Plan - First



sco-support-plan-first.pdf



sco-support-plan-w
elsh-1.pdf

Appendix 2 – SGO Support Plan - Review



sco-support-plan.pdf



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