

FASD AND SPECIAL GUARDIANSHIP ORDERS



WHAT is this Factsheet about?

A Special Guardianship Order (SGO) is a legal order made by the Family Court. It places a child or young person to live with someone permanently with the 'Special Guardian' until they turn 18 years old.

This Factsheet explains:

- what an SGO is;
- how to become a Special Guardian;
- what an SGO might mean for you and your child.

KEY POINTS:

- Special guardianships are made to keep children within the wider birth family to give the child permanency. Sometimes, a long-term foster carer will provide permanency by becoming the child's special guardian.
- Children looked after under an SGO are often placed following concerns around substance misuse. If you suspect or know your child may have been exposed to alcohol whilst in the womb you need to consider whether your child may be affected by FASD.
- If your child may be affected you will need to understand FASD to be able to seek diagnosis and support. Early intervention can make a significant difference to your child's life chances.

UNDERSTAND your rights

What is the effect of an SGO?

[The Adoption and Children Act 2002 \(s115\)](#) introduced Special Guardianship Orders into the Children Act 1989.

Unlike adoption, a Special Guardianship Order does not remove parental responsibility from the birth parent(s).

It gives the special guardian 'exclusive' parental responsibility. This means that although special guardians often consult with the birth parent(s), the special guardian has the final say and can make decisions that the birth parent(s) do not agree with. The full effect of an SGO is explained in [s14C of the Children Act 1989](#).

Who can apply for a Special Guardianship Order?

Click [HERE](#) to find out who can apply for an SGO. You can check the full legal eligibility requirements [HERE](#). If you do not fulfill the eligibility criteria you will need leave (permission) of the court and you may wish to seek legal advice.

Can I get financial help to apply for an SGO

You may be eligible for legal aid to apply for a SGO in some limited circumstances. Click [HERE](#) for the eligibility criteria. If a Local Authority (LA) supports a person's application for Special Guardianship for a

looked-after child, they must not consider the person's means when considering financial support for legal costs.

What support can I access as a Special Guardian?

The Support Plan

The court should not make an SGO without approving a support plan (see page 56 for paragraph 22, Appendix E, [Recommendations to achieve best practice in the child protection and family justice systems: SGOs](#)). The support plan should be appended to the SGO, or other order making the SGO.

The LA should produce the SGO support plan in good time so the prospective Special Guardian can consider it before an SGO is made.

Assessment for Special Guardianship Support Services

Under [regulation 11 Special Guardian Statutory Guidance](#) (see page 17), the LA must provide an assessment for Special Guardianship Support Services if a parent, special guardian or child asks for it for a looked-after child or a child who was looked after immediately prior to the making of an SGO.

If the child was in the care of a different LA immediately before the SGO was granted, you should contact the original LA as they are responsible for assessing the support needs for the three years following the SGO being made.

UNDERSTAND your rights

If the child in question is not a looked-after child, a special guardian can request an assessment from their LA for support services. The LA can decide whether to carry out an assessment and it must inform you in writing of its decision, along with reasons. You will have 28 days to respond.

Local Authority Support Services

Every LA must provide Special Guardianship support services under [section 14F](#) of the Children Act 1989 (CA 1989). (The assessment referred to previously will determine which service is most appropriate). The support services available must include:

- Counselling, giving advice and information financial support;
- Assistance and mediation services with regards to contact;
- Therapeutic services for the child;
- Assistance (for example, training) to secure the relationship between the child and the Special Guardian;
- Advice and assistance for young people aged 16 to 21 years old, who were looked-after children and aged between 16 to 18 years when the SGO was made; and
- Respite care.

Am I entitled to financial support or allowances as a Special Guardian?

Child benefit and child tax credits

Special Guardians have the same rights to child benefits and child tax credit as birth parents and the amounts will depend on your income.

Financial Support

Special guardianship financial support is governed by [regulation 6](#) of the Special Guardianship Regulations 2005.

[Regulation 3\(2\)](#) of the Special Guardianship Regulations 2005 states that a LA can provide cash to a Special Guardian, and this should not be means tested as it is being provided as part of a service rather than financial support. Examples might include money to pay for a babysitter to provide respite for an evening, or money for petrol to facilitate a contact visit.

Special Guardianship Allowance

All Special Guardians are entitled to apply to the LA for a means-tested allowance. The Special Guardian Regulations 2005 and recent case law direct LAs to how much fostering allowance would have been paid had the child been fostered rather than cared for under an SGO. Deductions may be made to take into account Child Benefit and Tax Credit.

The LA may pay an allowance to a Special Guardian to support the child's placement as a one-off cost for something specific or regular payments for an ongoing need, but this will depend on the assessment of the LA and will be reviewed annually.

If you fostered your child before becoming a special guardian, you need to update your details as you are no longer 'employed' but you may get a higher rate of Special Guardianship Allowance. This would only apply for the first two years.

The Special Guardianship Allowance is not counted as income when working out means-tested benefits.

The Adoption Support Fund (ASF)

Children placed under a SGO may have experienced difficulties leading to their placement and your child may be eligible for an assessment for therapeutic services paid for by the [Adoption Support Fund](#). There is an annual limit of £5,000 per child for therapy as well as up to £2,500 for specialist assessments.

The Adoption and Permanence Team in Children's services often lead on getting the ASF for Special Guardians. In other Local Authorities it is the Family and Friends Care designated officer. Other LAs have their own arrangements. If you are struggling to find out how to access the ASF click here for a [Template letter](#) to the LA's Director of Children's services.

How can the school support me and my child?

The school should be proactively supporting your child. Each school is legally required to have a designated member of staff who is responsible for promoting the educational achievement of previously looked-after children.

The school may be able to obtain [pupil premium plus](#) funding available for publicly funded schools to raise the attainment of children with disadvantaged backgrounds.

This leaflet gives helpful [tips for special guardians on how to work with schools](#), including: choosing schools, pupil premium, free school meals, SEN, virtual schools and where to get further support.

MYTHBUSTERS

As an SGO I am told I cannot get the Adoption Support Fund because my child wasn't in LA care first.

If you meet the eligibility criteria then you are entitled to an assessment for therapeutic services paid for by the Adoption Support Fund.

I have an older order i.e., a Residence order (RO). Is it worth swapping it to an SGO?

An SGO prevents other holders of parental responsibility from making applications to the court unless they have the courts permission. An SGO grants greater rights than rights under a RO. An SGO normally lasts until the child is 18, whereas an RO lasts until the child is 16. Under an SGO, financial support from the LA is available on a means tested basis. This is not available under an RO.

I am told my child was placed on 'private arrangements' so we are not entitled to support, but it was a social worker who called me one day and asked me to take on my grandchild - is that a private arrangement?

There are occasions where a Social Worker will support or facilitate parents to seek family members to care for a child in circumstances where the parent is struggling to meet their child's needs adequately.

The Social Worker in these circumstances supports the parent to make a safe choice for their child and should not need to remain involved for any length of time. These arrangements are often referred to as private arrangements and parental responsibility remains with parents.

My social worker is pressurising me to apply for an SGO to look after my foster child, but I get the feeling that this is motivated by saving money and not our wellbeing.

There is no legal obligation to apply for an SGO. Many LAs are promoting SGOs as it reduces support packages, funding and numbers of looked-after children. SGOs are appropriate for some families but children with complex needs, such as FASD, may need continuous access to services and looked-after status may be preferable. If considering an SGO, get legal advice and secure a robust non means tested support package until age 18 written into the court decision.

I want to change the contact arrangements

These are often set out in the SGO Agreement and courts will often make 'contact orders' setting out the contact that must be made, but some arrangements are informal. If there are disagreements about contact between birth parents and Special Guardians, you can ask a social worker to intervene or you could access the services below.

HOW can I challenge my rights?

- [The National Family Mediation Service](#) may assist with issues surrounding contact arrangements.
- [The Family Mediation Council](#) allows you to find local mediators.
- If a disagreement continues, a birth parent can challenge your contact arrangements by applying to the court. The court can order contact between a child and their birth family even if you think it is not in their best interest. [Coram Children's Legal Centre](#) may be able to assist.
- You may need to access legal advice: [Find a Solicitor - The Law Society](#)

KEY RESOURCES:

GUIDANCE

- [Special guardians: check if you're eligible for the adoption support fund - The Kinship Care Charity](#)
- [Family Action: Financial support for special guardians](#)

HELPFUL ORGANISATIONS

- [Special guardianship orders - Family Lives](#)
- [Become a special guardian - GOV.UK](#)

KEY LEGISLATION

- [Statutory Guidance on the Special Guardianship Regulations 2005 \(as amended\)](#)
- [The Adoption and Children Act 2002](#)
- [The Special Guardianship Regulations 2005](#)
- [§14C of the Children Act 1989.](#)