

# Draft Regulations and Guidance for Consultation

- Care Planning
- Special Guardianship

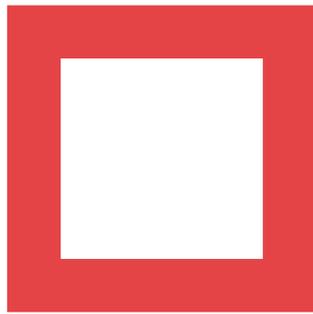
**ADOPTION AND CHILDREN ACT 2002**

department for

**education and skills**

creating opportunity, releasing potential, achieving excellence

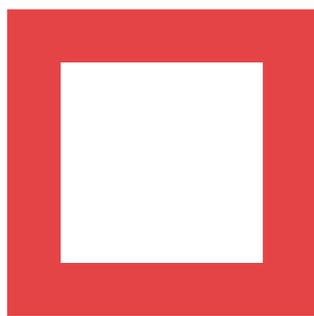
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## CONSULTATION ON CARE PLANNING AND SPECIAL GUARDIANSHIP

<b>To</b>	Local authorities in England Voluntary adoption agencies in England Independent fostering agencies in England Anyone with an interest in care planning Anyone with an interest in special guardianship
<b>Launch date</b>	26 March 2004
<b>Close date</b>	26 July 2004
<b>Reference</b>	ACA2002SG
<b>Enquiries to</b>	Helen Steele, tel: 020 7972 4295 (care planning), or Louise Bennett, tel: 020 7972 4558 (special guardianship)  Department for Education and Skills Looked After Children Division Wellington House 133-155 Waterloo Road London SE1 8UG Fax: 020 7972 4179 Email: <a href="mailto:specialguardianship.consultation@dfes.gsi.gov.uk">specialguardianship.consultation@dfes.gsi.gov.uk</a>



# Foreword by Margaret Hodge



The vast majority of children will receive safe and effective care from their parents. Other children are less fortunate and the state may need to intervene in family life. The Government's first objective for children's social services is to ensure that all children are securely attached to carers capable of providing safe and effective care for the duration of their childhood. Most children who are looked after eventually return home, and almost one in three return home within eight weeks. For children who are unable to return home quickly, timely and purposeful decisions must be made about where they will live in the future. This is a vital part of the care planning process.

I am delighted to publish this consultation document on care planning and special guardianship as part of our work to implement the Adoption and Children Act 2002. The Act completely overhauls the outdated Adoption Act 1976 and makes a number of significant amendments to the Children Act 1989. This includes creating a new private law order called special guardianship.

The Government is also working to develop the regulations and guidance to be made when the 2002 Act is implemented in full in September 2005. We are committed to developing them with the full involvement of all those with an interest. All of the regulations, court rules and guidance that will implement the core of the 2002 Act will be finalised by the end of 2004 and come into force in September 2005 after allowing time for preparation and training.

The draft Regulations and guidance in this document have taken into account:

- existing good practice
- the issues raised in Parliament while the 2002 Act was being debated, and

- the responses provided to the range of consultation exercises that have been undertaken since the publication of the Prime Minister's Review of Adoption in July 2000

The Government is committed to consulting fully on these changes. To ensure that the best outcomes are delivered for children and their families, we again need the help of service users, service providers and others with an interest in providing permanence for children.

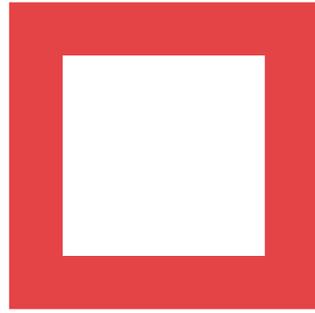
I am issuing this document today for a four month consultation period. We have asked you a number of questions, set throughout the document, about the draft Regulations and guidance and would welcome written comments on these as well as your general comments on the document as a whole.

Over the coming months we will also be arranging a number of events to discuss the issues arising from the consultation documents on the implementation of the 2002 Act. We hope that this will allow you to tell us your views.

A handwritten signature in blue ink that reads "Margaret Hodge". The signature is written in a cursive style with a large initial 'M'.

**Margaret Hodge**

Minister for Children, Young People and Families



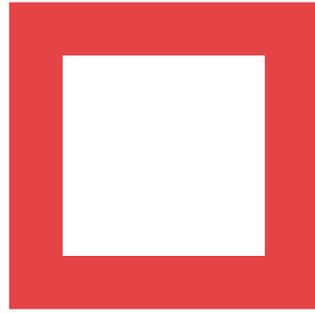
# Executive summary

**1.1** This consultation document includes draft guidance on the role of the care planning process in ensuring children are securely attached to carers capable of providing safe and effective care for the duration of their childhood. The draft guidance draws together existing guidance and covers more recent developments particularly in relation to the changes arising through the implementation of the Adoption and Children Act 2002. This should be read in conjunction with the Children Act (1989) Guidance Volume 1: Court Orders.

**1.2** The document also includes draft Regulations and accompanying guidance for the introduction of special guardianship orders, a legal route to support permanence for children who cannot live with their parents. The draft Special Guardianship (England) Regulations and accompanying guidance set out proposal for the operation of special guardianship support services and the contents of the local authority's report for the court.

**1.3** The Department for Education and Skills is continuing to work with the Department for Constitutional Affairs to develop the associated court rules that will give effect to the new arrangements in the courts.

**1.4** The feedback form includes a number of questions about specific issues as well as seeking more general comments on the proposals.



# Background and context

## CARE PLANNING

**2.1** The *Prime Minister's Review of Adoption*<sup>1</sup> highlighted that in many local authorities the planning process for looked after children does not address from the outset all the options for achieving a permanent home for the child and what the plan will be if rehabilitation with the birth family cannot be achieved. The review recommended that the Government should develop national standards for adoption services to tackle this and other issues.

**2.2** Following extensive consultation, the National Adoption Standards were published in August 2001 and introduced a requirement to agree a plan for permanence for each looked after child at the second statutory review.

**2.3** As planning to achieve permanence for looked after children is integrated in the care planning process, we will consider in the light of responses to this consultation the most appropriate vehicle for disseminating this guidance to local authorities.

**2.4** Section 8 of the Children Act 1989 sets out the orders that a court may make in relation to children in private law family proceedings. This includes a residence order settling the arrangement to be made as to the person with whom a child will live. Residence orders may be made to one or other parent or to another person, such as a grandparent. The Adoption and Children Act 2002 amends the Children Act by extending residence orders from 16 to the age of 18. Residence orders remain an important legal route to permanence for many children through private and public law proceedings as they confer parental responsibility on the holder of the residence order.

<sup>1</sup> The Prime Minister's Review of Adoption (Performance and Innovation Unit), July 2000

## SPECIAL GUARDIANSHIP

**2.5** The *Prime Minister's Review of Adoption*<sup>1</sup> identified that, while there was no clear difference in disruption rates between adoption and long-term fostering when age was taken into account, there were indications that children generally preferred the sense of security that adoption gives them over long-term foster placements. However, research indicated that there was a significant group of children, mainly older, who did not wish to make the absolute legal break with their birth family that is associated with adoption.

**2.6** The report identified the need for an intermediate legal status for children that offered greater security than long-term fostering but without the absolute legal severance from the birth family that stems from an adoption order. The report recommended that the Government consult on the details of a new legislative option for providing permanence short of adoption. This was strongly supported in the consultation on the report that followed.

**2.7** The White Paper *Adoption: a new approach*<sup>2</sup> set out a number of routes to permanence for looked after children. One of the proposed routes was a new legal status to be known as 'special guardianship'. The White Paper committed the Government to legislating to create special guardianship to provide permanence for those children for whom adoption is not appropriate. It stated that special guardianship would:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing. The child will no longer be looked after by a local authority
- provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer
- be legally secure
- preserve the basic link between the child and their birth family, and
- be accompanied by access to a full range of support services including, where appropriate, financial support

**2.8** Some minority ethnic communities have religious and cultural difficulties with adoption as it is set out in law. Unaccompanied asylum-seeking children may also need secure, permanent homes but may have strong attachments to their families abroad. The White Paper *Adoption: a new approach* set out that these children deserve the same chance to enjoy the benefits of a legally secure, stable placement and that legislating to create special guardianship would modernise the law to reflect this religious and cultural diversity.

1 The Prime Minister's Review of Adoption (Performance and Innovation Unit), July 2000

2 *Adoption: a new approach* (Department of Health), December 2000

**2.9** The Adoption and Children Act 2002<sup>3</sup> amends the Children Act 1989<sup>4</sup> to provide the legal framework for special guardianship orders. Sections 14A-F provide for who may apply for an order, the circumstances in which orders may be made, the nature and effect of special guardianship orders, and for support services for special guardians.

**2.10** Special guardianship orders are expected to be used where the relationship between the child and their carer would benefit from greater legal security, but where adoption is not suitable. This may apply most commonly to older children who do not wish to be legally separated from their birth family; children in long-term care; children who are caring for a child; and to those who have cultural and religious difficulties with adoption.

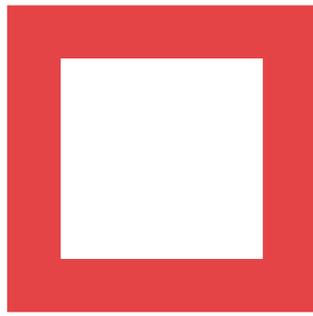
**2.11** Special guardianship is a private law order. Unlike adoption it is not a placement option and local authorities cannot place a child for special guardianship. However, local authorities may encourage existing foster carers to apply for a special guardianship order, with appropriate support, as part of a plan to achieve permanence for a looked after child.

**2.12** Section 14 A-F of the 1989 Act gives powers to make regulations with regards to special guardianship. These powers cover the provision of special guardianship support services, the assessment of needs for special guardianship support services, and the planning and review of those support services. The regulations also cover what information the local authority report to the court should include. This consultation document sets out guidance to accompany these regulations.

<sup>3</sup> 2002 c.28, section 115(1) inserts new sections 14A-F and paragraph 60(c) of Schedule 3 inserts new section 26(5)(za) into the Children Act 1989. Section 117 of the Health and Social Care (Community Health and Standards) Act 2003 inserts section 26(3c) into the 1989 Act

<sup>4</sup> 1989 c.41, sections 14A-F, 24(5)(za) and 26(3c)

# 3



## The proposals

### CARE PLANNING

**3.1** This consultation document includes draft guidance on the role of the care planning process in ensuring children are securely attached to carers capable of providing safe and effective care for the duration of their childhood. The draft guidance draws together existing guidance and covers more recent developments particularly in relation to the changes arising through the implementation of the Adoption and Children Act 2002.

**3.2** A residence order does not remove parental responsibility from a parent, but establishes with whom the child will live. The Adoption and Children Act 2002 extends the length of residence orders so they now cover children until the age of 18.

### SPECIAL GUARDIANSHIP

**3.3** The Special Guardianship (England) Regulations XXXX set out:

- the information that the local authority is required to include in its report to the court,
- the support services the local authority is required to arrange for the provision of,
- the local authorities duties in respect of the planning, provision and review of those support services
- the circumstances and procedure for assessing needs for special guardianship support services

**3.4** The local authority is required to prepare a report on the suitability of the applicant. The Schedule to the Special Guardianship (England) Regulations XXXX sets out the information that the local authority is required to include in its report. This includes background information on the child, their family, the prospective special guardian and the local authority's conclusions on the making of a special guardianship order. Local authorities will also be required to arrange for the provision in their area of special guardianship support services, namely:

- counselling, advice and information
- financial support for special guardians and prospective special guardians
- support groups for children, special guardians, prospective special guardians and parents
- assistance in relation to contact
- services related to the therapeutic needs of children
- special needs training
- respite care, and
- mediation

**3.5** Local authorities may provide these services directly or contract with another organisation to provide them on their behalf. Local authorities can contract with:

- other local authorities
- adoption support agencies
- Primary Care Trusts
- local education authorities
- voluntary adoption agencies
- independent fostering agencies

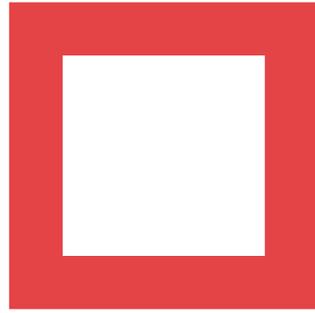
**3.6** Local authorities will be required to follow the procedure set out in the Special Guardianship (England) Regulations XXXX to assess the need for and plan and review the provision of special guardianship support services. The regulations provide that the following groups have a right to an assessment of their needs for special guardianship support services:

- a child subject to a special guardianship order
- a special guardian
- a parent of a child who is, or may shortly become, subject to a special guardianship order
- a child of a special guardian

- a person whom the local authority considers to have a significant and ongoing relationship with a child subject to a special guardianship order
- a child in respect of whom a local authority is required to prepare a report for the court
- a child named in a local authority report for the court, and
- a prospective special guardian

**3.7** Local authorities may provide financial support in prescribed circumstances and only after the financial resources of the special guardian, the financial needs and resources of the child, and the expenses involved in accommodating and maintaining the child have been taken into account. Financial support for special guardians is intended to facilitate their being able to continue looking after the child and should not replicate or replace parts of the State benefits or tax credit system. Financial support for special guardians should not include any element or remuneration or reward save that in specified circumstances allowances may be made for local authority foster carers who would otherwise be severely financially disadvantaged by applying for a special guardianship order.

# 4



## How to respond

**4.1** If you wish to comment on any aspect of this consultation document please download and complete the feedback form. A copy of the feedback form can be found at Appendix 4 and can also be downloaded from <http://www.dfes.gov.uk/consultations/>. Alternatively, you may fax or email your views to us. All responses will need to be received before **26 July 2004**.

**4.2** If you choose not to respond using the feedback form supplied, please ensure you include the following details with your response:

- Your name
- Your job title and interest in care planning, special guardianship or residence orders
- Your telephone number
- Whether your comments represent your own view, the corporate view of your organisation,<sup>5</sup> or the collective views of a group of people within your organisation
- Your specific comments on the consultation document or consultation questions set out in Appendix 4. Please quote the relevant paragraph numbers
- Any general comments you wish to make
- Whether your comments may be made available to the public when the final Regulations and guidance are published, or whether you wish your comments to remain confidential

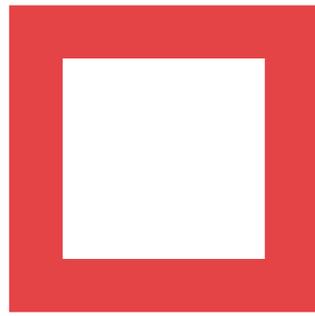
<sup>5</sup> We welcome responses from individuals and organisations. Where an organisation is considering responding to this consultation, in the context of its own policies, procedures and practice, an internal consultation exercise on these regulations and their accompanying guidance may help to involve staff usefully in shaping the corporate response.

**4.3** Please send responses to:

Consultation Unit  
Department for Education and Skills  
Castle View House  
Runcorn  
WA7 2GJ  
Email: [specialguardianship.consultation@dfes.gsi.gov.uk](mailto:specialguardianship.consultation@dfes.gsi.gov.uk)

**4.4** Remember, if you want your comments and views to be considered we will need to receive them by **26 July 2004**.

# 5



## Additional copies

**5.1** This document, the draft Regulations and the feedback form can be downloaded from <http://www.dfes.gov.uk/consultations/>.

**5.2** Further copies of this document can be ordered from:

Tel: 0845 602 2260

Fax: 0845 603 3360

Email: [dfes@prolog.uk.com](mailto:dfes@prolog.uk.com)

Prolog

PO Box 5050

Sherwood Park

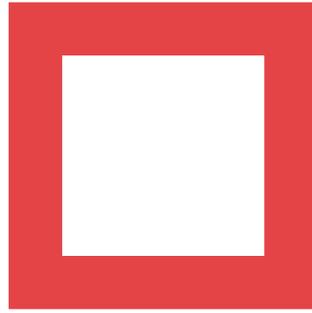
Annesley

Nottinghamshire

NG15 0DJ

**5.3** Please quote reference DfES/ACA2002SG.

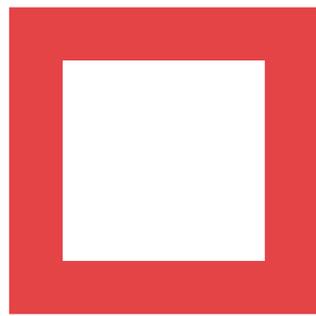
# 6



## Plans for making results public

**6.1** In accordance with the Cabinet Office code of practice,<sup>6</sup> the results of this consultation exercise will be made public on the Department's adoption website at <http://www.children.doh.gov.uk/adoption>.

Appendix 1



# Draft guidance on care planning for permanence

## CARE PLANNING FOR PERMANENCE

1. The Government wants to ensure that *all children are securely attached to carers capable of providing safe and effective care for the duration of their childhood.*<sup>7</sup>
2. Every child needs to feel secure within a loving family. They need connections with adults who are committed to them long term, who will always be there for them and who care about what happens to them. In practice this means supporting their development and their transition through childhood to adulthood. **We call the framework of emotional, physical and legal conditions that gives a child a sense of security, continuity, commitment and identity – permanence.**
3. Permanence therefore needs to be seen in the context of the whole system of services for children. Ensuring that the different elements of children's services are focused on meeting children's needs for secure attachments and wider development needs and delivering to a high standard is key to achieving appropriate permanence plans for each individual child.

### Care planning and reviews of looked after children

4. All children who are looked after are required to have a care plan which is reviewed at statutory minimum intervals (Review of Children's Cases Regulations 1991). An effective care plan will have a **plan for permanence** for the child. The plan will also set objectives for work with the child, birth family and carers in relation to the child's developmental needs.
5. Achieving permanence for the child will be a key consideration from the day that they become looked after. Whatever the particular circumstances of the case, a clearly articulated plan to achieve permanence for the child must be agreed by the second review. The child's care plan should provide details of the plan for permanence and how this plan will be achieved. Once the plan has been decided and the arrangements for carrying it out have been agreed in a review, it can only be altered by a statutory review. In some cases this may mean bringing forward the review date.
6. Planning and reviewing are dynamic processes. The review is not just a meeting, but a process of continuous monitoring and reassessment. The meeting as part of the review process is a forum where a child's plan will be considered, reconfirmed or changed, and decisions agreed and recorded in consultation with all those who have a key interest in the child's life and plans for a permanent home, in particular the child themselves.

<sup>7</sup> This is one of the Government's Objectives for Children's Social Services (*Modernising Social Services*, Department of Health, 1998)

## The Integrated Children's System

7. The Integrated Children's System<sup>8</sup> (ICS) launched for consultation in December 2002, provides a framework for assessment, planning, intervention and review which builds on the *Framework for the assessment of children in need and their families* and the Looking After Children System. The ICS brings together every process that may be needed in a local authority's work with a child. It provides exemplars designed to be used by an electronic information system, to record information on a single data entry basis as the care plan progresses.

8. The Child/Young Person's Care Plan exemplar provides a format for recording all aspects of the care plan and its delivery, including the plan for achieving permanence for the child. Further information and copies of the exemplars can be found at [www.doh.gov.uk/integratedchildrenssystem](http://www.doh.gov.uk/integratedchildrenssystem).

## Contribution of the range of placement options to achieving permanence

9. Local authorities should ensure that all relevant placement options are considered when planning for permanence for a looked after child.

10. Permanence planning may not simply be a matter of identifying the intended destination for a child – the journey can be just as important. Services may be provided and placements used as part of an agreed plan to achieve permanence, without of themselves representing permanence for the particular child, for example a short-term specialist placement to help prepare a child for family life.

11. The range of options:

### ● Reunification

Under the Children Act 1989 local authorities are required to make all reasonable efforts to reunite looked after children with their parents whenever possible unless it is clear that the child can no longer live with his/her family and the authority has evidence that further attempts at reunification are unlikely to succeed. LAC (98)20 stressed the need to achieve the right balance between efforts to reunite the child with his/her family and the importance of "child time" in achieving permanence for the child.

8 Further information is available at [www.dfes.gov.uk/integratedchildrenssystem](http://www.dfes.gov.uk/integratedchildrenssystem)

The planning for reunification will need to reflect the legal status of the child. Children who were accommodated under section 20 of the Children Act 1989 before the return home are likely to continue to require support as children in need. These cases will require a plan and a review process will be in place. The local authority will continue to share parental responsibility for children who are the subject of care orders, and the Placement of Children with Parents etc Regulations 1991 will apply. These children will continue to have the protection of the statutory review process.

- **Friends and family care**

Where children cannot live with their birth parents, the preferred option under the Children Act 1989 is to seek a home for them with their extended family, where this is consistent with the child's welfare. Existing positive relationships will contribute to provide the emotional continuity that children need. Friends and family carers will need to be approved as foster carers if children are to be placed with them while looked after by a local authority.

- **Fostering**

Fostering can provide a supportive relationship and adult attachment for a child but can also allow attachments to parents and the child's wider family to continue. Where the carer has been assessed as able to meet the child's needs for secure attachments for the remainder of their childhood, fostering is an important permanence option for some looked after children. It has proved particularly useful for older children with strong links to their birth families, who do not want or need the formality of adoption.

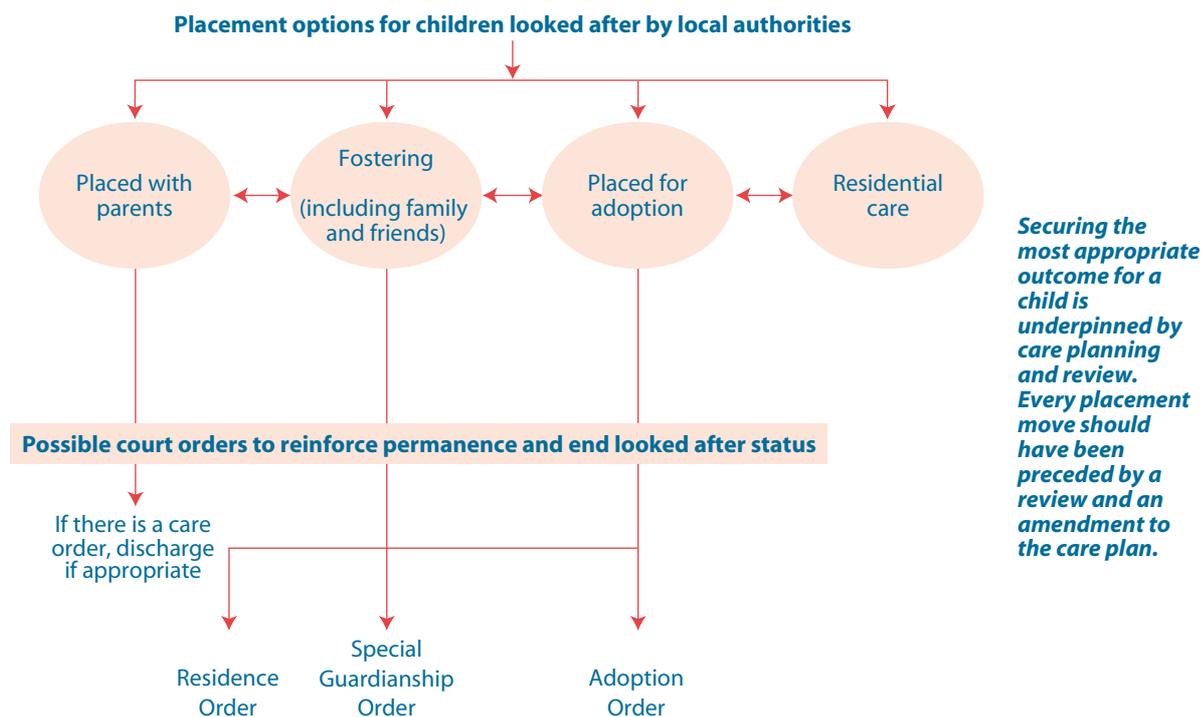
- **Adoption**

Adoption can offer children who are unable to return to their birth families a legally permanent new family to which they will belong all their lives. Adoption is therefore an important means of securing permanence for children.

- **Residential care**

For a number of children, residential placement until independence will be the placement option that best meets their needs. Where this is the identified aim of the care plan agreed at a review, the plan must address how the child/young person's need for secure attachment to significant adults will be achieved and supported.

## Legal routes to permanence



**12.** A residence order or special guardianship order may be used to increase the degree of legal permanence in a placement.

**13.** Residence orders are designed for circumstances where parents feel they have a continuing role to play in relation to the child, but cannot provide day to day care. With a residence order, as with a special guardianship order, parental responsibility is shared, but a parents ability to act independently in practice in the day to day care of the child is controlled by whomever the child lives with. A parent’s ability to exercise their parental responsibility with a residence order is less restricted than it is with a special guardianship order. A residence order can therefore be flexible enough to accommodate various shared care arrangements where a special guardianship order cannot.

**14.** For example whilst any other person with parental responsibility may not remove the child from the physical care of the person holding the Residence Order, they could take the same interest as any other parent in the child’s education, and there may be frequent contact.

**15.** Under paragraph 15 of Schedule 1 to the Children Act, a local authority may contribute ‘towards the cost of accommodation and maintenance of the child’ where a residence order is made to a person other than a parent or step-parent of the child. The Government stated its commitment in Every Child Matters to ensuring that different permanence options are chosen because they best meet the needs of the child, rather than because of any particular support arrangements available.

16. Local authorities should be mindful in fulfilling their duties under the Children Act 1989 and Adoption and Children Act 2002 that they ensure that children's options are not being inappropriately restricted solely because of considerations about access to support services, including financial support. Local authorities may wish to look at the provision of financial support and other services for residence orders in the light of the new provisions for special guardianship.

### Contingency planning

17. A recent study<sup>9</sup> found confusion among social workers about the different types of **contingency planning** that may be used as a way to avoid delay in securing a permanent family for a child where birth parents have been assessed as unlikely to make and sustain the necessary changes in their parenting abilities.

18. Where this is the case contingency plans should be made to avoid delay in securing a permanent family for the child.

19. Contingency planning should be an identified part of the agency's childcare strategy policy and procedure. It will be important to have discussions with local courts, CAFCASS and other agencies to enable them to understand these models and play their part in an informed way.

20. Birth parent/s need to be informed that the two plans (reunification and alternative permanence) are being made to meet the child's needs and prevent unnecessary delay. Clarity about which of the plans is currently being actively pursued will be essential.

21. Matching children with carers who can meet their assessed needs is a crucial part of delivering permanence plans. Work is underway to build on and develop the *Framework for the Assessment of Children in Need and their Families* so that it can be used for the assessment of carers other than birth families, in particular prospective foster carers and adopters. This work should ensure a better fit between the parenting capacity of such carers and the developmental needs of the child.

### Support for placement and permanence options

22. Local authorities should exercise their powers under the Children Act 1989 and the Adoption and Children Act 2002 to ensure that children's options are not being inappropriately restricted solely because of considerations about access to support services, including financial support. Where differences exist between the types of support that are available to children and their carers, we need to be clear that they are appropriate and not creating barriers to children being able to live in the best place for them.

9 The plan for the child: Adoption or long-term fostering, Lowe N, Murch M et al, BAAF 2002

*Impact on carers of court orders and support arrangements*

	<b>Impact</b>	<b>Support arrangements</b>
No legal order and not looked after by local authority	None	Services for children in need, their families and others under section 17 of the Children Act 1989
Placement with approved foster carers (including family and friends)	Requirement to comply with fostering regulations and standards	Fostering allowances and support provided under section 23 of the Children Act 1989
Residence order	Gives the holder parental responsibility and allows the child to live with them. Order can be varied or discharged by the Court. Adoption and Children Act 2002 allows the routine extension of orders to the age of 18	Under paragraph 15 of Schedule 1 to the Children Act 1989, a local authority may make contributions to the child's maintenance. Support under section 17 of the Children Act 1989 if child in need
Special guardianship order	Gives the holder parental responsibility without severing legal ties to the child's parents. Order can be varied or discharged by the Court and will cease to apply at the age of 18	Special guardianship support services, including financial support, will be available in accordance with regulations to be made under section 14F of the Children Act 1989 (inserted by Adoption and Children Act 2002)
Adoption order	Severs all legal ties between a child and his/her birth family. Adopted person is treated in law as if born as the child of the adoptive parent/s	Adoption support services, including financial support, will be available in accordance with regulations that came into effect on 31 October 2003

**Further reading**

HMSO: The Children Act 1989 Guidance and Regulations, Volume 3, Family Placements

LAC (99)29: Care Plans and Care Proceedings under the Children Act 1989

Adoption and Permanence Taskforce: Permanence Planning: Notes for Practitioners

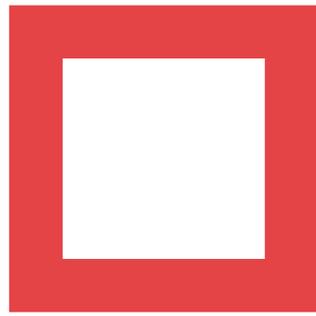
**Consultation question**

Is the draft guidance clear and helpful?

Please give details of any changes that you would make, including your reasons.

Please use the enclosed feedback form to give us your views

## Appendix 2



# Draft accompanying guidance for the Special Guardianship (England) Regulations XXXX

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## PREFACE

1. This guidance is issued by the Department for Education and Skills. It is designed to support the introduction of special guardianship orders introduced under the Children Act 1989 and to provide guidance on the interpretation of the Special Guardianship (England) Regulations XXXX. This guidance is not a complete statement of the law and should be read in conjunction with the Special Guardianship (England) Regulations XXXX and the Children Act 1989 as amended by the Adoption and Children Act 2002.

2. This document is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services responsibilities to act under the general guidance of the Secretary of State. As such this document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation.

## INTRODUCTION

3. The *Prime Minister's Review of Adoption* identified that, while there was no clear difference in disruption rates between adoption and long-term fostering when age was taken into account, there were indications that children generally preferred the sense of security that adoption gives them over long-term foster placements. However, research indicated that there was a significant group of children, mainly older, who did not wish to make the absolute legal break with their birth family that is associated with adoption.

4. The report identified the need for an intermediate legal status for children that offered greater security than long-term fostering but without the absolute legal severance from the birth family that stems from an adoption order. The report recommended that the Government consult on the details of a new legislative option for providing permanence short of adoption. This was strongly supported in the consultation on the report that followed.

5. The White Paper *Adoption: a new approach* set out a number of routes to permanence for looked after children. One of these proposed routes was a new legal status to be known as special guardianship. The White Paper committed the Government to legislating to create special guardianship to provide legal permanence for those children for whom adoption is not appropriate. It stated that special guardianship would:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing. The child will no longer be looked after by a local authority
- provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer
- be legally secure
- preserve the basic link between the child and their birth family

- be accompanied by access to a full range of support services including, where appropriate, financial support
6. Some minority ethnic communities have religious and cultural difficulties with adoption as it is set out in law. Unaccompanied asylum-seeking children may also need secure, permanent homes, but have strong attachments to their families abroad. The White Paper reaffirmed that these children deserve the same chance to enjoy the benefits of a legally secure, stable relationship and that legislating to create special guardianship would modernise the law to reflect this religious and cultural diversity.

#### **THE LEGAL FRAMEWORK FOR SPECIAL GUARDIANSHIP**

7. 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 inserts new sections 14A-F into the Children Act 1989. The new sections provide for:

- who may apply for a special guardianship order
- the circumstances in which a special guardianship order may be made
- the nature and effect of special guardianship orders
- local authority support services for special guardians

8. A special guardianship order is an order appointing a person or persons to be a child's special guardian. Applications may be made by an individual or jointly by two or more people to become special guardians. Joint applicants do not need to be married. Special guardians must be 18 or over. The parents of a child may not become that child's special guardian. A court may make a special guardianship order in respect of the child on the application of:

- 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 holds a residence order with respect to the child, or who has the consent of all those in whose favour a residence order is in force
- anyone with whom the child has lived for three out of the last five years
- where the child is in the care of a local authority, anyone with 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

**9.** The court may also make a special guardianship order in any family proceedings concerning the welfare of a child if they consider 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 welfare checklist in section 1 of the Children Act 1989 applies.

**10.** On receipt of notice of an application or if the court makes a request, the local authority must investigate and prepare a report to the court about the suitability of the applicants to be special guardians and any such matters as are prescribed in regulations. Regulation 2 and the Schedule set out the prescribed information to be included in the report to the court. The local authority may arrange for someone else to carry out the investigation or prepare the report on their behalf. The court may not make a special guardianship order unless it has received the report covering the suitability of the applicants.

**11.** Any person who wishes to apply for a special guardianship order must give three months' written notice to the local authority of their intention to apply. 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 and an application for an adoption order has been made. This is in order to prevent the competing application delaying the adoption order hearing.

**12.** Before making a special guardianship order, the court must consider whether to vary or discharge any other existing order made under section 8 of the Children Act 1989. This could include a contact order or a residence order. 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 enable continued contact with the child's parents. 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 taken out of the UK for periods longer than three months.

**13.** The special guardian will have parental responsibility for the child. Subject to any other order in respect of the child under the Children Act, the special guardian may exercise parental responsibility to the exclusion of others with parental responsibility apart from another special guardian. An exception applies in circumstances where the law provides that the consent of more than one person with parental responsibility is required (for example, the sterilisation of a child). 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 his upbringing. Unlike adoption the order retains the basic legal link with the 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 parents if the child dies.

**14.** While a special guardianship order is in force written parental consent of every person who has parental responsibility for the child or the leave of the court must be given:

- to cause the child to be known by a different surname
- to remove the child from the United Kingdom for longer than three months

**15.** Unlike adoption orders, special guardianship orders can be varied or discharged on the application of :

- the special guardian
- the local authority in whose name a care order was in force with respect to the child before the special guardianship order was made
- anyone with a residence order in respect to the child
- with the leave of the court:
  - the child's parents or guardians
  - any step parent who has parental responsibility
  - anyone who had parental responsibility before the special guardianship order was made
  - the child (the court may only grant leave if it is satisfied that the child has sufficient understanding)

**16.** 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.

**17.** 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.

**18.** The Act provides for regulations to be made to set out the information that the local authority is required to include in its report to the court. Regulations may also provide for the provision of special guardianship support services, including financial support, the assessment of needs for special guardianship support services and the planning and reviewing of the provision of those support services.

**19.** Children who were looked after by a local authority immediately before the making of a special guardianship order may qualify for advice and assistance under the Children Act 1989, as amended by the Children (Leaving Care) Act 2000 and the Adoption and Children Act 2002. In the context of special guardianship, to qualify for advice and assistance, section 24 (1A) of the Children Act provides that the child must:

- have reached the age of 16, but not the age of 21

- if less than eighteen years old, have a special guardianship order in force
- if eighteen years old or above, have had a special guardianship order in force when they reached that age, and
- have been looked after by a local authority immediately before the making of the special guardianship order

**20.** The relevant local authority should make arrangements for children who meet these criteria to receive advice and assistance in the same way as for any other child who qualifies for advice and assistance under the Children Act 1989, as amended. Regulation 13 (Relevant authority for the purposes of section 24(5)(za) of the Act) provides that the relevant local authority is the one that last looked after the child.

## PREPARATION OF THE REPORT FOR THE COURT

- 21.** Where a person intends to apply for a special guardianship order they must give three months written notice to the local authority. If the child in question is being looked after by a local authority then the applicant must give the written notice to that local authority. If the child is not looked after by a local authority the applicant must give written notice to the local authority in whose area the applicant is ordinarily resident. Upon receipt of written notice the local authority is required to investigate and prepare a report on the applicant's suitability to be a special guardian and on matters prescribed in Regulations and on any other matter the local authority considers relevant.
- 22.** Where there is no application the court may consider that a special guardianship order should be made and ask the appropriate local authority to prepare a report on a person's suitability to be a special guardian. The information required for the local authority report is the same whether there is an application or the court has asked the local authority to prepare a report. The court may not make a special guardianship order unless it has received the report from the local authority on the matters set out in paragraph 21 above.
- 23.** The making of a special guardianship order should not be unnecessarily delayed by the absence of the report for the court.
- 24.** Under section 14A(10) of the Children Act 1989, local authorities are able to make such arrangements as they see fit for any person to act on their behalf in connection with conducting an investigation or preparing the report for the court. Local authorities should consider how best to exercise this power to facilitate the investigation and timely preparation of the report to the court.
- 25.** Section 14A(7) of the Children Act 1989 is clear which local authority is required to prepare the report for the court in the circumstances set out above. During the local authority's investigation and preparation of their report it may become necessary for another local authority to supply information. For example, where the local authority is preparing a report in respect of a child it is looking after and the prospective special guardian is normally resident in the area of another local authority. Local authorities are expected to co-operate fully, where necessary, in the investigation and preparation of the report for the court.
- 26.** Where the local authority has received notice from an applicant or a request from the court it should send written information about the steps it proposes to undertake in preparing the report to the prospective special guardian and the parents of the child in question. This should include information about special guardianship support services and how to request an assessment of needs. Local authorities should also consider offering the child, the prospective special guardian or the child's parents an assessment of support needs during its investigation if this appears to be appropriate.

27. The local authority report for the court is required to cover the suitability of the prospective special guardian, matters prescribed by the Regulations and any other information the local authority considers to be relevant. The Schedule to the Regulations sets out the prescribed matters for the report. These cover:

- information about the child who is the subject of the application
- information about the child's family
- information about the prospective special guardian
- information about the local authority which compiled the report
- Conclusions

28. Local authorities are expected to ensure that the social worker who conducts the investigation and prepares the report to the court is suitably qualified and experienced. In conducting the investigation, the person preparing the report should analyse and consider the information they ascertain from and about the prospective special guardian. The approach should be objective and inquiring. Information should be evaluated and its accuracy and consistency checked. The safety of the child is of paramount concern and it is vital that the background of prospective special guardians is checked rigorously.

#### **Consultation question**

Is the required information in the local authority report to the court on the suitability of a prospective special guardian:

- too much
- about right
- not enough
- no view

What, if anything, should also be included in the local authority report for the court on the suitability of a prospective special guardian?

Thinking about the required information set out in the Regulations, what, if anything, should not be required in the local authority report for the court on the suitability of a prospective special guardian?

Please use the enclosed feedback form to give us your views.

## PROVISION OF SPECIAL GUARDIANSHIP SUPPORT SERVICES

**29.** Under section 14F of the Children Act 1989 local authorities are responsible for arranging for the provision of special guardianship support services. However, this does not mean that a local authority is required to provide a service itself. For example, a child with communication impairment may require the help of a NHS speech therapist and additional classroom support at school rather than any specialist social services. As for any other child, these services would be provided by the responsible health or education agency.

**30.** The voluntary and independent sectors may also have an important role to play in providing special guardianship support services. In developing special guardianship support services, local authorities are encouraged to work with existing non-statutory providers of high quality support services to take advantage of the expertise that they have in this area and avoid duplication of service provision. The types of providers that local authorities may contract with is set out in paragraph 28 below.

**31.** When considering special guardianship support services, local authorities should take into account the delivery of similar services, such as adoption support services, and plan the provision of support services accordingly.

**32.** Section 14F(1) requires local authorities to make arrangements to provide counselling, advice and information and such other services that are prescribed in regulations in relation to special guardianship. Regulation 3(1) sets out the special guardianship support services that local authorities must make arrangements to provide. These services are:

- financial support for special guardians and prospective special guardians
- support groups for children, their parents and special guardians, who are, or may shortly become, involved in special guardianship arrangements to discuss matters relating to special guardianship
- assistance for contact between children who are, or may soon become involved in special guardianship arrangements and a parent or relative or any person with whom the child has a relationship which appears to be beneficial to the welfare of the child
- services provided in relation to the therapeutic needs of children who are, or may shortly become involved in special guardianship arrangements
- assistance to ensure the continuance of the relationship between a child who is, or may shortly become involved in special guardianship arrangements and their special guardian or prospective special guardian. This should include but is not limited to:
  - training for the special guardian or prospective special guardian to meet any special needs of the child
  - respite care
  - mediation in relation to matters arising from special guardianship. This may include, for example, issues around contact between the child and his parents

### Consultation question

The Regulations set out the support services that local authorities must make arrangements to provide. Are there any other support services that local authorities should be required to provide as part of special guardianship support services?

Thinking about the range of special guardianship support services set out in the Regulations, should the provision of any of these services not be a requirement?

Please use the enclosed feedback form to give us your views.

**33.** Local authorities are required to make arrangements for all of these services to be available, regardless of whether a local authority has decided to provide any service to any person.

**34.** Regulation 3(5) sets out the range of providers which local authorities may delegate or contract out provision of the services set out in regulation 3(1) to:

- another local authority
- an adoption support agency
- a Primary Care Trust
- a local education authority
- a voluntary adoption agency
- an independent fostering agency

### Consultation question

The Regulations set out which types of service provider can provide special guardianship support services on behalf of local authorities. If a type of provider is not specified in the Regulations they will not be permitted to provide special guardianship support services. Are there any other types of support services provider who should be able to provide special guardianship support services?

Thinking about the types of service provider set out in the Regulations, should any of these service providers not be able to provide special guardianship support services?

Please use the enclosed feedback form to give us your views.

**35.** Special guardianship support services should not be seen in isolation from mainstream services. It is vital to ensure that children and families involved in special guardianship arrangements are assisted in accessing mainstream services. They may also need to be helped to negotiate their way through the benefits system. There are many other services that are typically provided to children and families in need or adoptive families from which those involved in special guardianship arrangements may also derive great benefit.

**36.** Mainstream services are currently provided to children, young people, and families with particular needs through a variety of routes. For example:

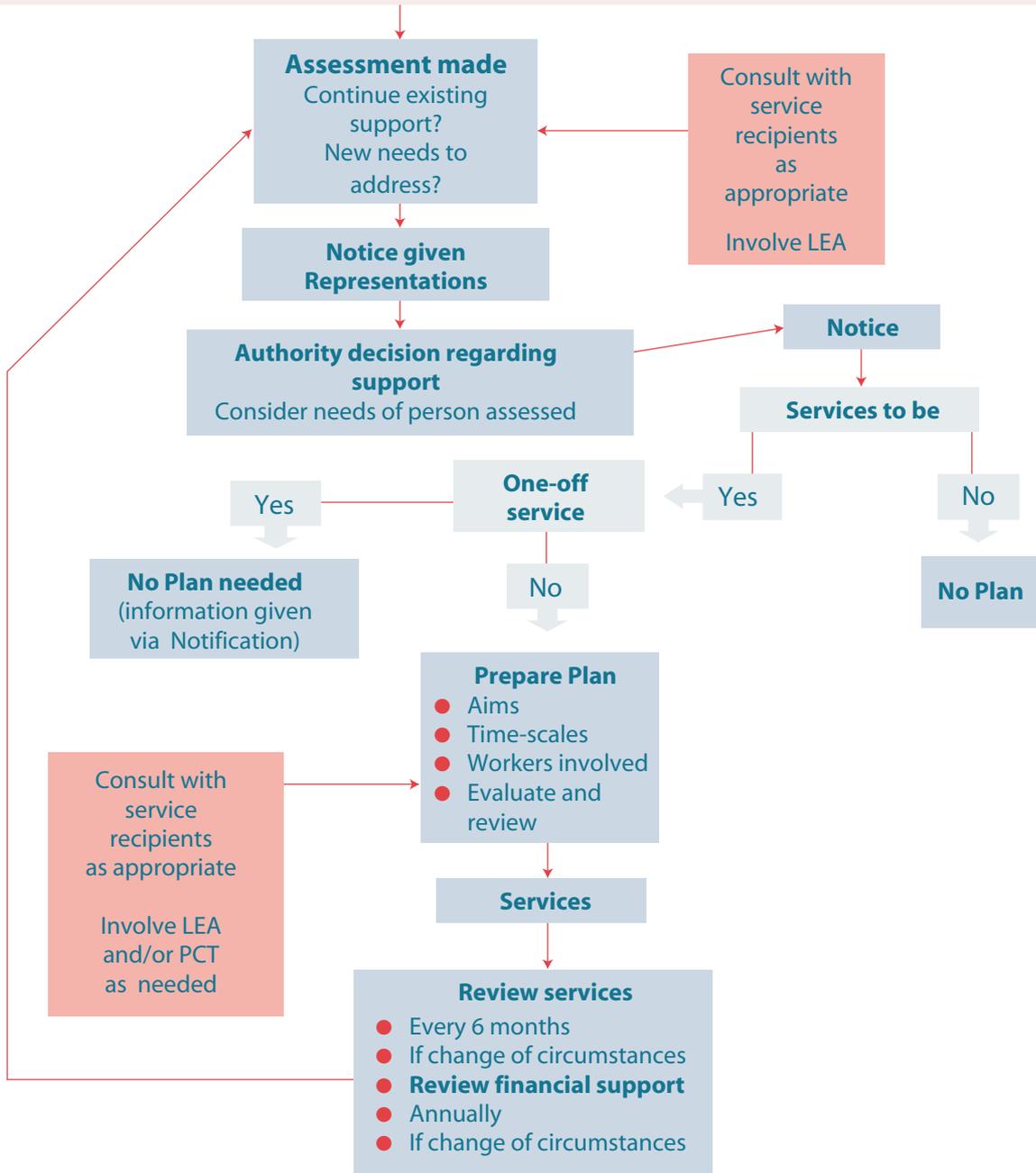
- health services, including child and adolescent mental health services (CAMHS)
- local education authorities, particularly to meet special educational needs
- Connexions
- Sure Start
- the Children's Fund
- the benefits and tax credits system
- housing services
- local authority family centres
- voluntary sector parenting support organisations funded by the Family Support Grant

**37.** It is important in planning the provision of such services that the potential needs of children, special guardians and families involved in special guardianship arrangements are not overlooked.

## The process for support services

### Request from eligible person

- a child subject to a special guardianship order
- a child who is subject to an application for a special guardianship order. This includes a child with respect to whom notice under section 14A(7) has been given or a court has asked a local authority to prepare a report under section 14A(9)
- a special guardian
- a prospective special guardian
- a parent of a child who is subject to a special guardianship order
- a child of a special guardian



**Possible specific difficulties for children placed for special guardianship**

- Recovering from abuse:
  - physical
  - sexual
  - emotional
  - neglect
- Attachment difficulties
- Learning disabilities
- Behaviour problems
- Depression
- Coping with loss and separation

**GENERAL CONSIDERATIONS**

Reactions/coping mechanisms of different children to early life experiences will vary.

Because a significant number of children involved in special guardianship are likely to have been looked after, their needs are likely to have been assessed- perhaps several times.

It will be important to ensure that the learning from these earlier assessments is included in assessment of need for special guardianship services.

**Menu of services**

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**MAINSTREAM SERVICES**

- Health services including CAMHS
- LEAs, particularly to meet SEN
- Connexions
- Sure Start
- Children’s Fund
- The benefits and tax system
- Housing services
- LA family centres
- Voluntary sector parenting support organisations funded by the Family Support Grant

**SPECIAL GUARDIANSHIP SUPPORT SERVICES REQUIRED UNDER XXXX REGS**

- Counselling, advice and information
- Financial support
- Support groups for adoptive families
- Assistance with contact arrangements
- Therapeutic services for children involved in special guardianship
- Service to ensure the continuance of special guardianship relationships

**OTHER POSSIBLE SPECIAL GUARDIANSHIP-SPECIFIC SERVICES**

- Support groups for others affected by special guardianship
- Intermediary services

**Issues for local authorities to consider**

- Child and special guardian’s needs should be assessed on ongoing basis, when requested by the special guardian and/or the child.
- Consider access routes into special guardianship support services-how will these be organised and communicated to special guardians locally?
- Importance of linking in with the universal and existing specialist services.
- Need to raise the profile of children and families involved in special guardianship arrangements as potential users of these services.
- Children needing special guardianship are likely to be receiving services-these services should continue post the order being made.
- Importance of discussing child’s early experiences with special guardian and identifying possible sources of support early.
- Importance of identifying needs of special guardian’s family (including siblings) as well as those of child under special guardianship order.
- Services can come from a variety of sources. The importance of multi-agency multi-disciplinary approach.
- Role of social services is to organise and commission, but not necessarily to provide support services.
- Not all children will need all services but it is important that services exist and are known about to prevent any unnecessary stress and avoidable disruptions.

## ASSESSMENT OF NEEDS FOR SPECIAL GUARDIANSHIP SUPPORT SERVICES

**38.** Regulation 5 (Assessment of needs for special guardianship support services) sets out that the following people are entitled, upon request, to an assessment of their needs for special guardianship support services:

- a child subject to a special guardianship order
- a child in respect of whom a person has given notice to a local authority of his intention to apply for a special guardianship order
- a child who is the subject of, or is named in, a local authority report for the court
- a special guardian
- a prospective special guardian
- a parent of a child who is subject to a special guardianship order
- a child of a special guardian
- a person whom the local authority considers has a significant and ongoing relationship with a child who is, or may soon become, subject to a special guardianship order

**39.** Local authorities may choose to provide assessments of need to other groups of people. Where they do so, they should follow the same processes as apply to those who are entitled through these Regulations to receive an assessment.

**40.** Regulation 6 (Procedure for assessment) applies where a local authority undertakes an assessment of a person's needs for special guardianship support services. During an assessment of needs the local authority must have regard to the following considerations if they are relevant to the person being assessed:

- the developmental needs of the child
- the parenting capacity of the special guardian or prospective special guardian
- the family and environmental factors that have shaped the child's life
- any previous assessments of need undertaken with respect to the child, special guardian or prospective special guardian
- what the child's life might be like with the special guardian or prospective special guardian
- the support needs of the special guardian or prospective special guardian and their family
- where it appears to the local authority that there is a pre-existing relationship between the child's parent and the special guardian or prospective special guardian (for example, where the child's special guardian is a relative), the likely impact of the special guardianship order on the relationships between the child, the parent and the special guardian or prospective special guardian

**41.** Where the local authority consider it appropriate to do so they may interview the person whose needs for special guardianship support services are being assessed. If the person is a child and it does not appear to the local authority to be appropriate to interview them, the local authority may interview the child's special guardian or, where the child has no special guardian, the adult who appears to the local authority to be most appropriate.

**42.** Where it appears to a local authority that there may be a need for services to be provided by a primary care trust or a local education authority the local authority should consult that primary care trust or local education authority.

**43.** The *Framework for the Assessment of Children in Need and their Families*<sup>10</sup> provides a systematic way of analysing, understanding and recording what is happening to children and young people within their families and the wider context of the community in which they live. From such an understanding of what are inevitably complex issues and inter-relationships, clear professional judgements can be made about the child's needs and subsequent planning. The primary purpose of the Assessment Framework is to improve outcomes for children. It is also designed to assist local authorities to meet one of the Government's objectives for social services – to ensure that referral and assessment processes discriminate effectively between different types and levels of need, and produce a timely service response.

**44.** Assessments for special guardianship support services should follow the guidance set out in and use the domains of the Assessment Framework. This takes into account the child's developmental needs, the parenting capacity of the special guardians and consideration of the family and environmental factors that together help to explain the child's life so far and what life might be like with the new family. Taking this approach means that past assessments for the child who has previously been a child in need or looked after by a local authority, can inform the assessment of special guardianship support needs.

**45.** Professionals and other staff who will be involved in undertaking assessments for special guardianship support will need to be familiar with the Assessment Framework. A range of additional linked publications has been produced to inform practitioners and their managers about the most up-to-date knowledge from research and practice. These include the practice guidance (Department of Health, 2000) with specific chapters on assessing disabled children and minority ethnic children and their families, and a training pack *The Child's World*<sup>11</sup> consisting of a training video, guide and reader.

The Department for Education and Skills has commissioned practice guidance on the use of the Assessment Framework in assessing needs for adoption and special guardianship support services. This will be published for consultation shortly. It will provide detailed guidance to assist practitioners undertaking and recording these assessments.

<sup>10</sup> Department of Health et al, 2000

<sup>11</sup> NSPCC and University of Sheffield, 2000

**46.** The families seeking help from local authorities will have differing levels of need. Many will be helped by advice, practical services or short-term interventions. A smaller proportion will have problems of such complexity and seriousness that they require more detailed assessment, involving contributions from other agencies and leading to appropriate plans and interventions.

**47.** In their assessment of whether the child has special guardianship support needs, and in considering how to respond to those needs, a local authority also has to take into account the needs of the special guardians and other children in the family. The general circumstances of the parents and relatives of the child will also be relevant. Providing services that meet the needs of the special guardians may be the most effective means of benefiting the child. The assessment process envisaged is a flexible one and should not delay the provision of appropriate services.

**48.** In many cases, families are likely to be clear about their problems but may not be sure where to turn or how to obtain services. With advice and information, they will be able to take appropriate action. Providing this advice and information may be all that is required of a local authority in a majority of cases.

**49.** Where there is a question about whether the child has special guardianship support needs and therefore whether special guardianship support services are necessary, an assessment is required. The processes set out in the Assessment Framework for an initial assessment and, where appropriate a core assessment, should be followed. For some families, the process of assessment is likely to be a therapeutic intervention in itself. Being able to look at problems in a constructive manner with a professional who is willing to listen and who helps family members to reflect on what is happening, may be enough to help them find their own solutions. During the assessment process it may emerge that families will be best helped by agencies other than social services. Armed with this information, families may wish to refer themselves to a particular agency direct; others may wish to have help in gaining access to other agencies or services.

**50.** The initial and core assessment recording forms and the child's plan and review (*The Exemplar Records for the Integrated Children's System*<sup>12</sup>) have been designed to assist in the analysis of the child and family's circumstances and in the development and reviewing of a plan of action.

**51.** When carrying out an assessment of a looked after child available information recorded on the *Integrated Children's System* (Department of Health, 2002) or its local equivalent should be used to consider what kinds of special guardianship support services will be needed. This would include information available from the Core Assessment and, for children looked after for longer than 10 months, the Assessment and Progress Record and associated plans (including health and education plans) and reviews. Use of this information should mean that the last assessment could be updated rather than an entirely new assessment prepared.

**52.** After undertaking an assessment of need for special guardianship support services, the local authority should prepare a written report of the assessment.

12 Department of Health, 2003

## PROPOSAL TO PROVIDE SPECIAL GUARDIANSHIP SUPPORT SERVICES

**53.** Regulation 8 (Notification of assessment) provides that, after carrying out an assessment of needs for special guardianship support services, the local authority must supply the specified information and give notice to the person assessed. Regulation 8(2) sets out that the specified information the local authority is required to supply to the person assessed is:

- a statement of the needs for special guardianship support services of the person whose needs were assessed
- whether the local authority proposes to provide special guardianship support services to that person
- the services, if any, which the local authority proposes to provide
- where the assessment relates to that person's needs for financial support
  - the basis on which the financial support is determined
  - the proposed amount which would be payable
  - the conditions, if any, which the local authority proposes to impose on the provision of financial support
- details in relation to the rights to make representations

**54.** Regulation 8(3) provides that the person shall have a right to make representations to the local authority regarding the proposals to provide special guardianship support services. The notice should set out the time period during which the person may consider the local authority's proposals and make any representations to the local authority. The local authority may not make a decision as to provide special guardianship support services until representations have been made or the time period has expired. It is suggested that local authorities should allow 28 days for making representations.

**55.** As a result of the right to make representations, the applicants will be given an opportunity to ensure that all the relevant circumstances have been taken into account by the local authority.

**56.** In order to ensure that there is no delay in the provision of services, regulation 8(4) provides that the local authority does not need to wait until the end of the period of representations before making a decision. A decision may be made sooner if the person tells the local authority that they are satisfied with the proposal or makes representations before the end of the period.

## DECISION AS TO SPECIAL GUARDIANSHIP SUPPORT SERVICES

**57.** After considering any representations received and having regard to the assessment of needs, the local authority must decide whether to provide any special guardianship support services. Regulation 9 (Decision as to special guardianship support services) provides that in coming to their decision, the local authority must:

- Consider whether the person whose needs have been assessed has needs for special guardianship support services, and
- Decide whether to provide any special guardianship support services to that person.

**58.** After making their decision, the local authority is then required to give notice of that decision in writing, including the reasons for the decision. This notice must be given in accordance with regulation 10 (Notices). Where the assessment of needs is related to the provision of information only the local authority is not required to give notice if this appears not to be appropriate.

**59.** Where a local authority has decided to provide financial support to a special guardian or prospective special guardian it must provide information in writing to the special guardian or prospective special guardian in accordance with regulation 10 (Notices). The information to be included is as follows:

- the amount of financial support to be paid
- the conditions, if any, which are to be imposed on the provision or use of that financial support
- the date, if any, by which any conditions must be met
- the consequences of not meeting any conditions
- where financial support is to be paid as a single payment, the date on which the payment is to be made
- where the financial support is to be paid in instalments or periodically
  - the frequency of the payment
  - the date of the first payment, and
  - the date, if any, on which the payment will cease

**60.** The notice shall also include information in writing that sets out:

- the method used to determine the amount of financial support
- the arrangements for reviewing, varying or terminating the financial support
- the responsibility of the local authority under regulation 12 (Review of the provision of special guardianship support services) to review the provision of financial support

- the responsibility of the special guardian or prospective special guardian under regulation 4(2) to inform the local authority if:
  - they change their address
  - the child no longer has a home with them
  - the child dies
  - there is any change in their financial circumstances or the financial needs and resources of the child
- the responsibility of the special guardian or prospective special guardian under regulation 4(2) to supply the local authority with a written, completed annual statement regarding:
  - their financial circumstances
  - their address
  - the financial needs and resources of the child
  - whether the child still has a home with them or, where there is more than one special guardian, with one of them

**61.** It is expected that financial support shall be made as a single payment. However, where financial support is intended to meet any needs which are likely to require repeated expenditure, the local authority may make payments in instalments or periodically. Where financial support is paid in instalments or periodically the local authority may specify the dates on which and until which payments will be made. This may be relevant where the child has special needs that can be met in whole or in part by financial support.

**62.** Financial support may also be paid in instalments or periodically where the person who is receiving the financial support and the local authority agree to such an arrangement. Where financial support is paid in instalments or periodically the local authority may specify the dates on which and until which payments will be made.

**63.** Local authorities may impose such conditions as they consider appropriate on the provision of financial support, which could include the timescale and purpose that the financial support should be used for.

## NOTICES AS TO SPECIAL GUARDIANSHIP SUPPORT SERVICES

64. Regulation 10 (Notices) provides for the giving of written notices under regulations 8, 9 and 12. A child who is of sufficient age and understanding will always be given written notice 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 welfare of the child. Similarly, where the person is a child, the special guardian will always be given written notice 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 welfare of the child.

65. The following people should receive notice:

- where the recipient is an adult – the adult
- where the recipient is a child and the following conditions are satisfied:
  - (i) the child is of sufficient age and understanding
  - (ii) it does not appear inappropriate to give him noticethe child in all cases, and the special guardian or other appropriate adult, unless it appears to the local authority inappropriate to give notice to the special guardian or other appropriate adult
- where the recipient is a child and the above two conditions are not both satisfied, the special guardian or other appropriate adult.

## PLANS FOR SPECIAL GUARDIANSHIP SUPPORT SERVICES

**66.** Once a person has had their needs for special guardianship support services assessed and the local authority has informed that person of their decision about the provision of those services the local authority will prepare a plan of the special guardianship support services to be provided. This is known as the support services plan.

**67.** The preparation of a support services plan is essential to ensure the co-ordination of the provision of those services. The requirement for local authorities to prepare a support services plan is intended to help promote certainty for special guardians. It will also make clear where responsibilities for provision lie to help manage the provision of services which have been agreed.

### **When should a plan be prepared?**

**68.** Section 14F(6) of the Act combined with regulation 11(1) (Special guardianship support services plan) sets out that where special guardianship support services are to be provided the local authority must prepare a support services plan in accordance with which the services are to be provided. However, a support services plan will not be required where special guardianship support services are being provided on a single occasion since, in this case, the notice provided should include all the necessary information. The support services plan should build on any information already known to the local authority.

### **Who should be involved in the preparation of the plan?**

**69.** Regulation 11(3) requires local authorities to consult the intended recipient of special guardianship support services during the preparation of the support services plan. If the recipient is a child and it appears inappropriate to the local authority to consult them the local authority should consult the child's special guardian, if there is one, or an appropriate adult.

**70.** The specific requirements for consultation during the preparation of the support services plan are as follows:

- where the recipient of the services is an adult, that person should always be consulted
- where the recipient of the services is a child who is not of sufficient age and understanding, the special guardian or appropriate adult must be consulted
- where the recipient of the services is a child who is of sufficient age and understanding the child must be consulted unless it appears to the local authority inappropriate to do so.

**71.** The general assumption is that a child who is of sufficient age and understanding will always be consulted, 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 welfare of the child. Similarly, where the recipient is a child, the assumption is that the special guardian or appropriate adult will always be consulted 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 welfare of the child.

**72.** During the course of the preparation of the plan for special guardian support needs it may become apparent that it is necessary for services to be provided by a Primary Care Trust or local education authority. Where the local authority considers that this may be the case it is required by regulation 11(4) to consult the Primary Care Trust or local education authority. Where the person to whom the plan relates lives in the area of another local authority, that local authority should also be consulted if this appears to be appropriate.

**73.** The result of this process of preparation and consultation should be that social workers, other professionals and the recipient of the services (or the appropriate adult) will be clear what the support services plan is. The plan should be set out in writing in a way that everybody affected can understand.

#### **What should the plan contain?**

**74.** The plan should set out clearly:

- the objectives of the plan
- the key services to be provided
- the timescale for achieving the plan
- the individual worker who will be responsible for co-ordinating and monitoring the delivery of the services in the plan
- the respective roles of others responsible for implementing the plan
- the criteria that will be used to evaluate the success of the plan
- the procedures for the review of the plan

**75.** This will provide a clear picture for all those involved in the provision of the services and the person to receive the services, what should be provided, when, by whom and how the success of the services will be measured and reviewed. One of the workers already involved in delivering services in the plan will be responsible for overseeing the delivery of the plan, and will be the first point of contact for the service recipient. This will provide a sound foundation for the provision of the services.

### **How often should the plan be reviewed?**

**76.** It is expected that the person preparing the support services plan will discuss with the recipient (or the special guardian or appropriate adult) what, if any, arrangements should be put in place to review the provision of the special guardianship support services. The agreed review process should not be too burdensome or intrusive and should reflect whether the services are being provided on a short term or ongoing basis. If the services are to meet a need that is likely to last until the child is 18, for example, it may be necessary to review the provision of the service only occasionally. Where the services are due to last a matter of weeks it may be appropriate to review the provision of those services at the end of the course. As a guide to good practice it is suggested that plans, other than those relating solely to ongoing financial support, should be reviewed at least every 6 months.

**77.** Regular review of the services would enable the local authority and the service user to review the effectiveness of the service against the criteria set out in the support services plan and consider whether it is appropriate to continue that service or alter the provision in any way.

**78.** Where it is decided following the review that the services to be provided should be changed, the support services plan should also be reviewed. If the need for services is unchanged there is no need to revise the plan.

### **Who should receive copies of the plan?**

**79.** Once the plan has been agreed the local authority should send a copy of the plan to the recipient of the special guardianship support services (or the special guardian or appropriate adult) in accordance with regulation 10 (Notices). Where it appears to the local authority that a Primary Care Trust or local education authority may be involved in the delivery of the plan they must provide a copy of the plan to that Primary Care Trust or local education authority. Where the person to whom the plan relates to lives in the area of another local authority, the local authority that prepared the plan must provide a copy of the plan to that local authority.

## REVIEWING THE SPECIAL GUARDIANSHIP SUPPORT SERVICES PLAN

**80.** Regulation 12 (Review of the provision of special guardianship support services) sets out that the provision of special guardianship support services should be reviewed if it comes to the attention of the local authority that there has been a relevant change in the circumstances of the person receiving support. Local authorities shall also review the provision of special guardianship support services from time to time.

**81.** Where ongoing financial support is provided local authorities are required to review the provision of financial support if it comes to their attention that there has been a relevant change in the circumstances of the person receiving support. Local authorities are also required to review the provision of financial support annually upon receiving a statement from a special guardian giving information about their financial circumstances, the child's financial needs and resources, their address, and whether the child still has his home with them. Local authorities are expected to review the provision of financial support at least once per year, having first complied with the requirements of regulation 12(7) if required (see paragraph 94).

**82.** Reviewing the provision of special guardianship support services is clearly a very important process for the local authority, the special guardian and the child. The local authority needs to be sure that services being provided on an ongoing basis are effective. The special guardian and child need the reassurance that should their needs change there will be a process that allows those needs to be reviewed and acknowledged and the appropriate services to be provided.

### The review

**83.** The provision of special guardianship support services should be reviewed having regard to the procedures set out in the plan prepared in accordance with regulation 11 (Special guardianship support services plan). The provision of services should also be reviewed if it comes to the attention of the local authority that there has been a relevant change in the circumstances of the special guardianship support service user. The expectation is that the review should take place within four weeks of the change of circumstances coming to the attention of the local authority.

### How should the review be conducted?

**84.** The format and content of the review will vary depending on the circumstances of the case. Where the change of circumstances is relevant only to one service the review may be carried out with reference only to that service. Where the change of circumstances is relatively minor the review might be limited to an exchange of correspondence. However, where the change of circumstances is substantial, such as a serious change in the behaviour of the child, it may be appropriate to conduct a new assessment of needs for special guardianship support services.

**85.** Notification of changes of circumstances and any review of the provision of special guardianship support services need not normally necessitate direct contact in person between the local authority and the special guardians. In particular, the annual review of financial support will generally be based on an exchange of correspondence between the local authority and the special guardian.

**86.** Visits to the special guardian's home, by agreement between the special guardian and the local authority, may be beneficial in certain circumstances, for example where a complex package of special guardianship support services is being provided. Some special guardians may welcome an opportunity for contact with the local authority. Local authorities may wish to give special guardians the option of a home visit so that the special guardian and local authority have an opportunity to discuss and evaluate recent experiences. This may be helpful before completion of the annual statement where financial support is in payment.

**87.** The person who conducted the original assessment should preferably conduct the review, although this is unlikely to be possible where services are being delivered over a period of several years. The review should enable the full participation of the person receiving special guardianship support services and any other person who was involved in the original assessment or provision of the services which are being reviewed.

**88.** In carrying out a review of the special guardianship support services the local authority should work within the provisions of regulations 6 to 8 as they would apply to an assessment. The review should:

- take the same issues into consideration (see paragraph 34)
- have regard to available information about the needs of the person receiving support services and his family
- where appropriate, involve an interview and result in a written report

**89.** Local authorities should demonstrate flexibility in responding to changes of circumstance and at the annual review of financial support. Financial support may increase or decrease as appropriate in an individual case. For example, a change of address involving higher housing costs may arise from a move to a home which is more appropriate to the needs of the child. In other cases it may have no connection with the child's needs. A deterioration in the child's condition leading to extra expenditure for the special guardians may necessitate additional financial assistance. Conversely, a change in circumstance may result in a reduction in financial support or may result in financial support being suspended until further review. In such a case, payment may recommence if circumstances again require the need for financial support.

90. The local authority will need to operate with sensitivity in determining how far changes in financial circumstances or needs affect the provision of financial support. It may, for example, be inappropriate to offset the cost of living earnings increases against the financial support provided although marked increases may be taken into consideration.

91. The special guardian is required to complete and submit to the local authority an annual statement of their circumstances. If they fail to do so, the local authority may not take any steps to review, cease payment or recover any financial support until they have sent a written reminder of the requirement to provide the annual statement and allowed 28 days for the special guardian to provide the statement. If the annual statement is not provided after 28 days has elapsed the local authority may review the financial support or suspend or cease payment. Local authorities should ensure that special guardians are made aware of this provision by including it in the formal notification to special guardians about financial support and prompt them each year to provide the necessary information in advance of each annual review. If the local authority suspends payment, it can reinstate it if and when the annual statement is received.

92. The local authority shall terminate financial support with effect from the date that they become aware of any of the following circumstances:

- the special guardianship order has ceased to have effect (e.g. because the child has attained the age of 18) or has been revoked by the court
- the child ceases to have a home with the special guardian. This applies where the child's departure from the special guardian's home is considered to be permanent. It does not apply to periods of temporary absence away from the special guardian's home, for example, in connection with education, respite care or hospitalisation
- the child is in receipt of income support or jobseeker's allowance, or
- the child has begun full-time paid employment

#### **What action should be taken following the review?**

93. Once the review has been conducted the local authority must decide whether to vary the provision of special guardianship support services to that person. When making that decision the local authority must act reasonably. The local authority should then notify the person receiving support services or appropriate adult in the same way as described above in relation to notification about the services to be provided after the original assessment under regulations 6 to 8. This includes an initial notice of services to be provided, allowing time for representations to be received and considered, before the local authority decide whether to vary the provision of special guardianship support services.

94. If the review of the special guardianship support services to be provided results in a decision to vary the services provided the support services plan should also be reviewed. If the review does not result in a variation of the services the plan does not need to be revised.

### Consultation question

Is the process for assessing, planning and reviewing special guardianship support services sufficient?

Please use the enclosed feedback form to give us your views.

## FINANCIAL SUPPORT FOR SPECIAL GUARDIANS

### Summary

**95.** Financial barriers should not be the sole reason for a special guardianship arrangement failing to survive, or to go ahead where this would be in the best interests of the child. The central principle therefore remains that financial support may be payable to help secure a suitable special guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle. The local authority should:

- ensure that the prospective special guardian or special guardian and their family are aware of, and taking advantage of, all benefits and tax credits available to them
- consider the impact of special guardianship on the prospective special guardian or special guardian's family, and whether any lump sum payments are required to secure the success of the arrangement, e.g. settling in costs, home adaptations/extension, costs of course of therapeutic treatment, etc
- consider the residual ongoing impact of special guardianship which might necessitate regular payments
- consider any special circumstances that apply to the child and (prospective) special guardian, e.g. where foster carers wish to become a special guardian to a child who they are currently caring for

**96.** The local authority may begin providing financial support when:

- a special guardianship order is made
- after the court has asked the local authority for a report on the suitability of the prospective special guardian, or
- upon receipt of notice of a prospective special guardian's notice of intention to make an application for a special guardianship order.

**97.** The Regulations set out the circumstances in which financial support may be paid (regulation 4) and factors governing the amount of the financial support (regulation 7). Regulations 8, 9 and 12 also make specific provisions regarding financial support.

**98.** The term "financial support" is intended to apply to:

- a single lump sum payment to meet a specific assessed need
- a series of lump sum payments to meet a specific assessed need

- a periodic or regular payment payable at intervals to be determined by the local authority to meet a specific assessed ongoing need

**99.** The presumption is that financial support to meet a one-off cost will usually be paid as a single lump sum. The local authority also has the flexibility to pay financial support as a series of payments or regular payments in specified circumstances. Firstly it may be appropriate to provide financial support in multiple payments where this is what the recipients would prefer or where the financial support is provided to meet needs that will result in recurring costs for the family. For example, ongoing needs arising out of a serious disability or illness of the child. Secondly, where the payment is to meet needs which are likely to give rise to expenditure which is likely to be recurring.

### **The benefits and tax credits system**

**100.** It is important to ensure that families involved in special guardianship arrangements are helped to access benefits to which they are entitled. Local authorities should ensure that the special guardian is aware of, and taking advantage of, all benefits and tax credits available to them.

**101.** Local authorities may wish to join the DWP Publicity Register where they will have access to leaflets and products from other government departments (see catalogue for details). Once they have joined the register a quarterly magazine is issued with a mini guide to benefits and services. To join call: 0845 602 44 44 (9:00 am to 6:00 pm, Monday to Friday), fax: 0870 241 26 34, E-mail at: [Publicity-Register@dwp.gsi.gov.uk](mailto:Publicity-Register@dwp.gsi.gov.uk) or write to: The Publicity Register, Freepost, NWW 1853, Manchester M2 9LU.

**102.** The Benefits Agency produces the leaflet *BC1 Babies and children* which is a general guide for parents on the benefits and tax credits they may be able to get. The leaflet is available in large print, Braille, on audio cassette and in the following languages: Welsh, Arabic, Bengali, Chinese, Gujarati, Punjabi, Somali, Urdu and Vietnamese. The minimum order is 1 unit: this equals 50 leaflets in English or Welsh and 10 leaflets in other languages.

**103.** Local authorities are encouraged to obtain sufficient stocks of the BC1 leaflet to provide copies to all special guardians that they work with. For those who are not members of the Publicity Register information about benefits and access to leaflets can be obtained from:

DWP  
CDI Customer Services  
Room 108  
Norcross  
Blackpool  
FY5 3TA  
Tel: 01253 332 921

**104.** Financial support that local authorities pay to special guardians under the Regulations must complement and not duplicate financial support available through the benefits and tax credits system. In determining the amount of financial support for special guardians to pay, local authorities are required to take fully into account income which is payable in the form of benefits and tax credits.

**105.** Child Benefit can be paid to a person who is bringing up a child aged under 16 or a child aged under 19 and studying full-time up to A level, Advanced Vocational Certificate of Education or equivalent. Special guardians may claim child benefit when a special guardianship order is made. This is irrespective of whether or not payments are being made under the Regulations. They may also be eligible to claim child benefit before the special guardianship order is made. Special guardians should contact the Child Benefit Office for further information or to make a claim. Child Benefit Office (GB), PO Box 1, Newcastle-upon-Tyne NE88 1AA, tel: 0845 302 1444 or email: Child.Benefit@ir.gsi.gov.uk.

#### **Circumstances in which financial support may be paid**

**106.** In order to determine whether a special guardianship arrangement is, or is not, practicable unless financial support is provided, the local authority will need to consider all the child's circumstances in relation to those of the special guardian, with particular reference to regulation 7 in each case.

**107.** Regulation 4(1) sets out that financial support may only be provided to a special guardian or prospective special guardian and only where one or more of the following circumstances exists:

- the child lives with their special guardian and the local authority considers that financial support is necessary to ensure that the special guardian can continue to look after the child (regulation 4(1)(a))
- the child lives with their prospective special guardian and the local authority considers that financial support is necessary to ensure that the prospective special guardian can continue to look after the child. This only applies where the local authority supports the making of a special guardianship order (regulation 4(1)(b))
- the local authority considers
  - that a special guardianship order or financial relief order under schedule 1 of the Children Act 1989 would be beneficial to the interests of the child, and
  - it is appropriate to contribute to or meet any legal costs, including court fees, incurred by a special guardian or prospective special guardian when seeking such an order (regulation 4(1)(c))
- to meet the special needs of the child who is, or may shortly become, involved in special guardianship arrangements (regulation 4(1)(d))

## Looking after the child

**108.** Regulation 4(1)(a) provides for financial support to be considered where a child is the subject of a special guardianship order. If the local authority decides that the long-term success of the child's relationship with the special guardian is in doubt without provision of financial support, they will be able to decide whether the special guardian is eligible to receive financial support.

**109.** The circumstances outlined in regulation 4(1)(b) provides for financial support to be considered where a child is not yet the subject of a special guardianship order but notice of intention to make an application has been made or a court is considering whether to make an order and has requested a report from the local authority. If the local authority considers that the long-term success of the child's relationship with the prospective special guardian is in doubt without provision of financial support and they support the making of a special guardianship order, they can decide whether the prospective special guardian is eligible to receive financial support.

## Legal costs

**110.** Regulation 4(1)(c) allows local authorities to provide financial support for help with any legal costs, including court fees, incurred by the special guardian or prospective special guardian associated with obtaining a special guardianship order. Local authorities may only consider providing financial support under regulation 4(1)(c) if they consider it would be appropriate to do so. The cost of obtaining a special guardianship order to the special guardian or prospective special guardian should not be the only obstacle to an order being made. Local authorities will need to consider whether the best interests of the child would be served by the making of a special guardianship order when deciding whether to provide financial support under regulation 4(1)(c).

**111.** Regulation 4(1)(c) also allows local authorities to provide financial support for help with any legal costs, including court fees, incurred by the special guardian or prospective special guardian associated with obtaining a financial relief order to or for the benefit of the child under Schedule 1 of the Children Act 1989. It is thought to be unlikely that the parents of a child who is, or may shortly become, subject to a special guardianship order will be in a position to make a financial contribution to the upbringing of the child. However, there may be some circumstances where a financial relief order that is made to the benefit of the child is a practical solution. Local authorities will need to give careful consideration to the likely impact on the relationships between the child, the parents and the special guardian or prospective special guardian to determine whether providing financial support in respect of the costs of seeking such an order would be appropriate.

## Special needs

**112.** Regulation 4(1)(d) applies where the child is identified as having an illness, disability, emotional or behavioural difficulties or suffering from the continuing consequences of past abuse or neglect, and, as a result of the condition, the child requires a special degree of care which necessitates extra expenditure.

**113.** In cases to which regulation 4(1)(d) applies, the role of medical and other professionals will usually be of special value in evaluating the degree of the child's condition and in providing advice to the local authority who will in turn notify the special guardian. The local authority would be expected to seek specialist medical advice where appropriate.

**114.** Payment of financial support under regulation 4(1)(d) is intended to be made where the child's condition is serious and long-term. For example, where the child needs a special diet or where items such as shoes, clothing or bedding need to be replaced at a higher rate than would normally be the case with a child of similar age who was unaffected by the particular condition. Specialist assistance may be needed to facilitate, for example, regular attendance at a nursery, possibly with special ancillary assistance, or visits to a clinic or consultations with a paediatrician, which may result in unforeseen expenses for the special guardian.

## Foster carers who become special guardians

**115.** For some foster carers who have been receiving a fostering allowance, which may include a fee, loss of this allowance as part of the family income may be a barrier to pursuing a special guardianship order. The special guardian or prospective special guardian's financial circumstances in relation to the child's needs will be included in the assessment of support needs. In some cases financial support will not be payable where, after assessment, the local authority decides that the special guardian is able to afford the additional cost of caring for the child as a permanent member of the family.

**116.** Financial support for special guardians cannot generally include the 'reward element'. This is the professional foster care fees which may be payable to foster parents as part of a fostering allowance in recognition of the service which the foster parent provides to a local authority in caring for a child who is the responsibility of the authority. However, the Regulations do allow for financial support to be paid above the usual level in specified circumstances. Regulations 7(4)-(6) allow the payment of a 'reward element' where the local authority considers that this is necessary to ease the transition for special guardians who have previously been in receipt of a fostering allowance for the child they are now looking after under a special guardianship order. Such transitional additional payments may generally be paid for a period up to two years after the making of the special guardianship order. Exceptionally, where the circumstances in regulation 4(1)(a), (b), or (d) are also satisfied at the time when the local authority decides to pay ongoing financial support, additional payments may be paid for a longer period.

## Conditions

**117.** Regulation 4(2) sets out conditions relating to changes of circumstance and annual review. These conditions must be agreed by the special guardian or prospective special guardian before financial support is provided. The special guardian or prospective special guardian should be notified of these conditions as part of the written notification about financial support required under regulation 9.

**118.** The special guardian or prospective special guardian is required to inform the local authority immediately if:

- the family move, so that the local authority can continue to issue payments to the correct address and also because there may be a need to reassess the level of financial support
- the child ceases to have his home with the special guardian and the child's departure from the family home is regarded by the special guardian as a permanent departure. Temporary absences – for example, for respite care, hospitalisation or attendance at a boarding school – do not apply because the child's permanent residence remains with the special guardian's family
- the child dies, or
- there is any change in their financial circumstances or in the child's financial needs or resources

**119.** Regulation 4(2) specifies that the special guardian should agree to complete and supply to the local authority an annual statement of their financial circumstances and the child's financial circumstances, including financial needs, the special guardian's address and whether the child still has his home with the special guardian.

### Consultation question

Local authorities will only be able to pay financial support in the circumstances set out in the Regulations. Are the circumstances in the Regulations:

- Too wide
- About right
- Too narrow
- No view

Are there any other circumstances where local authorities should be able to provide financial support? Are there any circumstances in the Regulations where they should not be able to provide financial support?

Please use the enclosed feedback form to give us your views.

## Amount of financial support

**120.** Regulation 7 sets out the factors to be taken into account by the local authority in determining the amount of financial support payable. The Regulations set broad parameters within which an assessment should be made. However, the amount of financial support provided in individual cases is a matter for the local authority to determine, taking account of all the relevant factors set out in regulation 7(2). Assessment of the various factors calls for careful and sensitive judgement. In assessing the amount of financial support the aim is to facilitate a successful relationship between the child and their special guardian and to enhance the child's wellbeing in the special guardian's home. In undertaking its assessment the local authority will need to project forward and consider all the financial circumstances which are likely to apply when the child is living in the special guardian's home.

**121.** Specific factors to be taken into account, and set out in regulation 7(2), are:

- the financial resources available to the special guardian or prospective special guardian
- the amount needed by the special guardian or prospective special guardian in respect of reasonable outgoings and commitments, save those relating to the child
- the financial needs and resources of the child
- legal costs, including court fees, involved in obtaining the special guardianship order or an order for financial provision to be made to, or for the benefit of, the child
- the costs involved in facilitating the child to have their home with the special guardian. This means the costs of accommodating the child, including:
  - furniture
  - domestic equipment
  - alterations to and adaptations of the home
  - providing a means of transport
  - clothing, toys and any other items necessary to look after the child
- the costs associated with any special educational or behavioural needs of the child, including:
  - equipment for meeting any special needs of the child
  - rectifying damage in the home where the child lives, where these costs arise from the child's special behavioural difficulties
  - placing the child in a boarding school, where that is necessary to meet the child's special educational needs
  - the cost of meeting any special needs of the child
- the cost of travel for the purposes of the child visiting a parent or relative

## **Financial resources available to special guardian**

**122.** The assessment of any financial support must take account of the financial resources available to the special guardian. Factors will also include any projected earnings available to the special guardian. Significant income from capital investments may also be taken into account. However, the value of the special guardian's home should not be included. Any known financial benefit – such as social security benefits or tax credits – which the child will bring to the special guardian's home, should also be considered.

## **Amount needed by special guardian**

**123.** The amount needed by the special guardian in respect of their reasonable outgoings and commitments needs to be assessed. This should not include the outgoings in respect of the child.

**124.** The assessment should take into consideration expenses and outgoings which are familiar and accepted items of family expenditure. The aim of the assessment is to assist the local authority to determine the additional cost to the special guardian of caring for the child. Factors for consideration will include housing and daily living expenses, transport costs, expenses related to children who are already part of the special guardian's home, family outings and holidays. Special guardians should be encouraged to give as many details as possible in respect of their outgoings.

## **Financial needs and resources of the child**

**125.** The financial needs and resources of the child should also be taken into account. The local authority should consider all factors, including everyday financial needs, as well as any special needs and expenses related to the child's individual circumstances. Examples of special needs (though these are by no means exhaustive) would include special diet, replacement bedding and clothing, transport costs associated with medical treatment or transport costs to school, not otherwise available from the local education authority.

**126.** Occasionally, there will be circumstances in which the child has his own financial resources other than social security benefits payable in respect of him. This might, for example, include income arising from a capital investment or trust fund and would be considered by the local authority as part of its assessment. Where a financial relief order under Schedule 1 of the Children Act 1989 is in force for the benefit of the child, the local authority should take this into consideration.

**127.** Local authorities will have to exercise care and sensitivity in having regard to the standard of living of the family which the child is to join and which they will, of course, be expected to share. Regulation 7(4) specifies that the amount of financial support provided must not (other than in specific circumstances for former foster carers) include any element of remuneration for the care of the child by the special guardian. The financial support should be governed by costs arising from any additional needs related to the child's circumstances.

**128.** In respect of former foster carers, in determining the amount of any ongoing financial support, the local authority may have regard to the amount of the fostering allowance which would have been payable if the child continued to be fostered by the special guardian. In determining the amount, the local authority should have regard to variations in the level of its fostering allowances in relation to the child's age. Enhanced allowances which would be payable solely in respect of the child (i.e. not remuneration or reward elements) if the child were fostered, should form part of the local authority's consideration. For example, where the child's needs are such that he would qualify for a specific rate of enhanced fostering allowance payable by the local authority if he were fostered, the same enhanced rate should be payable in the financial support for the special guardian. Financial support must exclude any element of remuneration payable to foster carers (other than in specific circumstances for former foster carers).

### **Expenditure to facilitate the child having a home with the special guardian**

**129.** Regulation 7(2)(d)-(g) lists a broad range of potential expenditure that may be required to facilitate the child having their home with the special guardian or prospective special guardian. Local authorities are required to take expenditure on the items listed into account. The regulation does not require the local authority to pay financial support to meet expenditure on the items listed. For example, the cost of placing the child in a boarding school where the placement is necessary to meet the special needs of the child would be subject to the usual joint funding arrangements between social services and education services.

### **Court fees and costs**

**130.** Local authorities are expected to pay the court fees when an application for a special guardianship order is made in respect of a looked after child and the local authority supports the application. The local authority is expected to consider the need for help with legal costs to be provided by means of financial support where they support an application for a special guardianship order in respect of a looked after child. Where the application for a special guardianship order is contested the local authority is expected to meet the special guardian's reasonable legal costs. Where the application is unopposed, there should not usually be any legal costs other than the court fees. Nevertheless there may be uncontested cases where the local authority decide it is justified for them to provide help with legal costs to prospective special guardians to enable them to seek legal advice.

**131.** Where the local authority does not support an application for a special guardianship order in respect of a looked after child, the prospective special guardian may be able to obtain help with legal costs from the Legal Services Commission. For more details see *A Practical Guide to Community Legal Service Funding* by the Legal Services Commission available from the LSC Leafletline on 0845 3000343, email [LCSLeafletline@direct.st-ives.co.uk](mailto:LCSLeafletline@direct.st-ives.co.uk), fax 01732 860 270.

**Consultation question**

Are there any other comments you would like to make on the provision of financial support?

Please use the enclosed feedback form to give us your views.

**Consultation question**

We are intending to consult on a standard means test for financial support payable to adopters. If a standard means test is part of adoption support services should it also be put in place for special guardianship support services?

Please use the enclosed feedback form to give us your views.

## COMPLAINTS ABOUT SPECIAL GUARDIANSHIP SUPPORT SERVICES

132. Representations (including complaints) about special guardianship support services should be handled in accordance with standard local authority complaints procedures. Regulation 14 provides that complaints about any of the following special guardianship support services should be handled under the Children Act 1989 complaints procedure:

- financial support for special guardians
- support groups for children
- assistance in relation to contact
- therapeutic services for children falling within regulation 1(3)
- assistance to ensure the continuation of the relationship between the child and their special guardian or prospective special guardian

### Consultation question

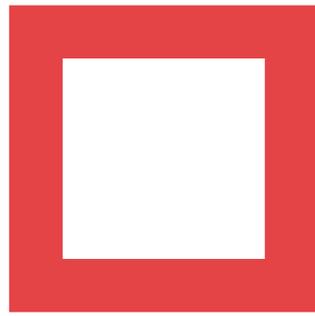
Overall, in assisting you in interpreting the requirements set out in the Regulations do you find the guidance:

- Very helpful
- Helpful
- Not very helpful
- Not at all helpful

How could we make the guidance more helpful and accessible?

Please use the enclosed feedback form to give us your views.

Appendix 3



# Partial Regulatory Impact Assessment for the draft Special Guardianship (England) Regulations

## PARTIAL REGULATORY IMPACT ASSESSMENT

### 1. Title of proposed regulation

The Special Guardianship (England) Regulations.

### 2. Purpose and intended effect of measure

#### *(i) Background*

The Prime Minister's Review of Adoption (July 2000) identified that there was a significant group of children, mainly older, who did not wish to make the absolute legal break with their birth family that is associated with adoption. The Review suggested that, although planned long-term fostering might suit some children, it lacked security and a proper sense of permanence in a family. The report identified the need for an intermediate legal status between adoption and residence orders that offered greater legal security but without absolute legal severance from the child's birth family. The report recommended providing a new legal option for providing permanence short of adoption. This was strongly supported in the public consultation that followed.

In the White Paper *Adoption: a new approach* (December 2000), the Government committed to creating a new private law order called special guardianship that would provide legal permanence short of adoption. The White Paper stated that special guardianship orders would:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing
- provide a firm foundation on which to build a lifelong, permanent relationship between the child and their carer
- be legally secure
- preserve the basic link between the child and their birth family, and
- be accompanied by proper access to a full range of support services including, where appropriate, financial support

The Adoption & Children Act 2002 (the 2002 Act) overhauls the outdated Adoption Act 1976, modernises the whole existing legal framework for adoption and makes significant amendments to the Children Act 1989, including the provision of the legal framework for special guardianship orders and special guardianship support services. The provisions on special guardianship are expected to come into force in September 2005.

### *(ii) Issue*

Section 14F of the Children Act 1989 as inserted by the Adoption and Children Act 2002 provides for the provision of special guardianship support services. Section 14F(1) requires local authorities to make arrangements for the provision of special guardianship support services in their area. The decision whether to provide special guardianship support services to any person rests with the local authority. Although local authorities are required to make arrangements to provide special guardianship support services they do not have to provide services directly and may contract the provision of services to other prescribed organisations (section 14F(9)).

Special guardianship support services are defined as counselling, advice and information and any other services prescribed by Regulations. Section 14F(2) states that this power is to be exercised so as to secure that local authorities provide financial support to special guardians. The explanatory notes to the 2002 Act state that it is intended to use these powers to make Regulations to ensure that local authorities put in place a range of support services to be available where appropriate for special guardians and children subject to special guardianship orders, their parents and, where appropriate, to others, which could include members of the child's family.

Ministers announced in 2002 that local authorities will be allocated £70m in the form of a ringfenced grant to fund the development of adoption and special guardianship support services over the period 2003-04 to 2005-06.

The draft Special Guardianship (England) Regulations use the power in section 14F(1)(b) to prescribe the range of special guardianship support services that local authorities are required to provide.

### *(iii) Objective*

To bring forward Regulations that require local authorities to put in place an appropriate range of services to encourage the use of special guardianship orders and to support children looked after in arrangements supported by a special guardianship order, as well as meeting commitments made in the White Paper and during the passage of the 2002 Act.

### 3. Risk Assessment

It is expected that special guardianship orders will be an option for children who would benefit from a permanent, legally secure relationship with their carer but where it is desirable to retain the basic legal link between the child and their birth family. Special guardianship support services are intended to support and encourage the use of special guardianship orders as well as helping special guardianship arrangements to continue where they may otherwise disrupt. The provisions relating solely to special guardianship orders could be brought into force without the accompanying provisions on special guardianship support services. However, special guardianship support services are expected to play a central role in making special guardianship orders workable, particularly in enabling foster carers to undertake the long term care for children who would otherwise be looked after. The key risk is that, without them, the special guardianship provisions cannot be brought into effect as intended and their benefits will be greatly reduced or lost entirely.

An inadequate range of special guardianship support services increases the risk of special guardianship arrangements breaking down where access to sufficient support may have allowed them to continue. An arrangement that breaks down will mean a lack of stability and permanence for the child and could result in the child being taken into local authority care. Where a special guardianship order may be in a child's best interests the unavailability of appropriate support services could prevent an order being pursued.

A decision between adoption or special guardianship should be made in the best interests of the child. If the scope for special guardianship support services were to be significantly narrower than the current range of adoption support services introduced through Regulations in October 2003, this could risk creating an incentive to pursue adoption rather than special guardianship even where this was not in the child's best interests. Equally, a much broader range of special guardianship support services might create an unhelpful incentive.

### 4. Options

- **Option 1** – to do nothing (i.e. to not bring section 14F into force) and rely on existing family support services provided by local authorities.
- **Option 2** – to bring forward Regulations to require that local authorities provide financial support to special guardians.
- **Option 3** – to bring forward Regulations to require that local authorities provide financial support to special guardians and recommend in guidance that local authorities should provide a full range of support services as a matter of good practice.
- **Option 4** – to bring forward the Special Guardianship (England) Regulations 2004 to require that local authorities make arrangements to provide a full range of support services, including financial support.

## 5. Costs and benefits

### *(i) Benefits*

- **Option 1** – no perceived benefits in terms of encouraging the use of special guardianship orders or supporting children and special guardians. This option does not meet the objective.
- **Option 2** – this option would partially meet the objective of supporting and encouraging the use of special guardianship orders. It would also meet the commitment in the 2002 Act to ensure that local authorities provide financial support for special guardians. However, it would not take any account of the wider needs of those who may request support services, which may not be addressed by financial support alone. Although local authorities would be able to offer financial support to those affected by special guardianship to allow them to buy support services this is likely to have a negative impact on access to support services.
- **Option 3** – this option would partially meet the objective of supporting and encouraging the use of special guardianship orders. It would also meet the commitment in the 2002 Act to ensure that local authorities provide financial support for special guardians. However, guidance is likely to be interpreted and implemented differently in each local authority, possibly leading to widely differing approaches between local authorities. This could result in substantial regional variations in the provision of special guardianship support services.
- **Option 4** – this option would recognise that the range of support needed by children and their special guardians and others affected by special guardianship may well extend beyond financial support. Requiring local authorities to make arrangements for the provision of a specific range of services should also ensure that each local authority takes a consistent approach to the range of support services that they provide. This option is the most effective way of meeting the objective.

### *(ii) Costs*

- **Option 1** – no direct costs to local authorities but, as set out above, this option would not meet the objective to encourage the use of special guardianship orders. This option may also risk a greater number of special guardianship arrangements breaking down and increase the possibility of children having to be taken into local authority care. This could increase costs to local authorities substantially.

- **Option 2** – special guardianship orders are not yet available and so the potential numbers of orders and the cost of providing special guardianship support services is difficult to estimate with any degree of accuracy. The costs to local authorities should be able to be met from their existing allocated funds. Local authorities have received an overall 41.5% increase in children’s social services funding since 1997. Furthermore, an extra £70m for adoption support and special guardianship support services for the period 2003/04 to 2005/06 has been ring-fenced and is intended to contribute towards new support service demands on local authorities. It is also important to consider that many children becoming the subject of special guardianship orders will previously have been cared for by foster parents as part of the looked after system, and the some of the savings that local authorities make from this transition should be redirected towards special guardianship support services. The relative direct costs of this option are not expected to be significantly different from options 3 and 4. However, the narrow range of services may decrease the opportunities for children to leave local authority care via a special guardianship order. The absence of support services could also increase the risk of children being taken into care at a potentially much greater cost to the local authority.
- **Option 3** – the costs of this option are not expected to be significantly different from options 2 and 4. However, the likely differences in approach between local authorities to providing special guardianship support services may decrease the opportunities for children to leave local authority care via a special guardianship order. The absence of support services in some local authorities could also increase the risk of children being taken into care at a potentially much greater cost to the local authority.
- **Option 4** – the costs of this option are not expected to be significantly different from options 2 and 3. The wider range of support services that local authorities would be required to arrange for the provision of and the uniformity between all local authorities under this option is the most effective way of encouraging and supporting the use of special guardianship orders, as well as minimising the number of relationships that may break down without access to appropriate support.

## 6. Small Firms Impact Test

There is no impact on small businesses. The Special Guardianship (England) Regulations will impact solely upon the 150 local authorities with social services responsibilities in England.

## 7. Enforcement and sanctions

Local authorities will be required to comply with the Special Guardianship (England) Regulations.

Complaints from service users about special guardianship support services will be heard in the first instance through local authority complaints procedures which may be the child-specific Children Act complaints procedure, if applicable. If a complaint is not resolved within the local authority the complainant will be able to request an independent review from the Commission for Social Care Inspection.

## **8. Consultation**

The Department for Education and Skills has consulted with other key Government interests including the Department for Constitutional Affairs in the development of the draft Regulations.

The draft Special Guardianship (England) Regulations and accompanying guidance will be issued for full public consultation in Spring 2004. The consultation period will be conducted in accordance with the revised Cabinet Office code of practice and will last for approximately four months. A number of consultation events are planned with practitioners, potential service users and stakeholder groups.

## **9. Monitoring and review**

The Department for Education and Skills is currently considering the most suitable way of gathering information on maintaining the use of special guardianship orders and the provision of special guardianship support services.

## **10. Summary and recommendation**

Special guardianship orders will provide a new legal route to permanence for children where adoption is not suitable and facilitate children to leave local authority care. The new orders will allow special guardians greater responsibility for decisions concerning the child's day-to-day life. An appropriate range of special guardianship support services will support and encourage the use of special guardianship orders and contribute to minimising the risk of relationships breaking down. The Government has indicated its intention to bring forward Regulations to require local authorities to arrange for special guardianship support services. We recommend bringing forward the Special Guardianship (England) Regulations (option 4) as the most effective way to achieve the objective.

## 11. Ministerial declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

*Signed by the responsible Minister:*

Date:

Contact point: Looked After Children Division  
Department for Education and Skills  
Area 121, Wellington House  
133-155 Waterloo Road  
London SE1 8UG  
Tel: 020 7972 4454  
Fax: 020 7972 4179  
Email: [specialguardianship.consultation@dfes.gsi.gov.uk](mailto:specialguardianship.consultation@dfes.gsi.gov.uk)

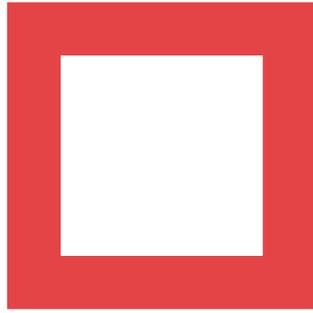
### **Consultation question**

Do you agree with the assessment made on the likely impact of the draft Regulations?

Do you agree with the assessment of the benefits of the Regulations?

Please use the enclosed feedback form to give us your views.

Appendix 4



# Feedback form

## Consultation on Care Planning and Special Guardianship

**CONSULTATION RESPONSE FORM**

The closing date for this consultation is 26 July 2004

Your comments must reach us by that date

**Note when completing electronically:** Use: – **mouse** to access hyperlink and to access input boxes;  
– **scroll** bar to navigate the form.

The information you send to us may need to be passed to colleagues within the Department for Education and Skills and/or published in a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation’s IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

**Please insert ‘X’ if you want us to keep your response confidential**

Name \_\_\_\_\_

Organisation (if applicable) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Return completed forms to Consultation Unit  
Department for Education and Skills  
Area 2A, Castle View House  
East Lane  
Runcorn  
Cheshire WA7 2GJ

Telephone: 020 7972 4014

Fax: 01928 794311

email: specialguardianship.consultation@dfes.gsi.gov.uk

Please insert ‘X’ in **one** of the following boxes to indicate whether you are responding:

As an individual       On behalf of an organisation

Please insert 'X' in **one** of the following boxes that best describes you as a respondent.

Local authority

Social worker

Representative group

Carer

Academic

Support services provider

Other (please specify) \_\_\_\_\_

#### APPENDIX 1 – DRAFT GUIDANCE ON CARE PLANNING

##### Question 1

Is the draft guidance clear and helpful?

Yes

No

##### Question 2

Please give details of any changes that you would make, including your reasons.

Comment:

**APPENDIX 2 – DRAFT GUIDANCE ON THE SPECIAL GUARDIANSHIP (ENGLAND) REGULATIONS**

**Question 3**

Is the required information in the local authority report to the court on the suitability of a prospective special guardian:

- Too much       About right       Not enough       No view

What, if anything, should also be included in the local authority report for the court on the suitability of a prospective special guardian?

Comment:

Thinking about the required information as set out in the Regulations, what, if anything, should not be provided in the local authority report for the court on the suitability of a prospective special guardian?

Comment:

**Question 4 – The range of special guardianship support services**

The Regulations set out the support services that local authorities must make arrangements to provide. Are there any other support services that local authorities should be required to provide? If yes, please specify below and give brief reasons why.

Comment:

Thinking about the range of special guardianship support services set out in the Regulations, should the provision of any of these services not be a requirement?

- |   |  |
|---|--|
| <input type="checkbox"/> Financial support                    | <input type="checkbox"/> Support groups for children               |
| <input type="checkbox"/> Support groups for special guardians | <input type="checkbox"/> Support groups for parents                |
| <input type="checkbox"/> Assistance for contact               | <input type="checkbox"/> Services in relation to therapeutic needs |
| <input type="checkbox"/> Special needs training               | <input type="checkbox"/> Respite care                              |
| <input type="checkbox"/> Mediation                            |  |

If you ticked any of the boxes above please give your reasons below:

Comment:

#### Question 5 – The providers of special guardianship support services

The Regulations set out which types of service provider can provide special guardianship support services on behalf of local authorities. If a type of provider is not specified in the Regulations they will not be permitted to provide special guardianship support services. Are there any other types of support services provider who should be able to provide special guardianship support services? If yes, please specify below and give brief reasons why.

Comment:

Thinking about the types of service provider set out in the Regulations, should any of these service providers not be able to provide special guardianship support services?

- |   |  |
|---|--|
| <input type="checkbox"/> Adoption support agencies      | <input type="checkbox"/> Primary Care Trusts         |
| <input type="checkbox"/> Local education authorities    | <input type="checkbox"/> Voluntary adoption agencies |
| <input type="checkbox"/> Independent fostering agencies |  |

If you ticked any of the boxes above please give your reasons below:

Comment:

**Question 6 – Assessing needs for special guardianship support services**

Is the process for assessing, planning and reviewing special guardianship support services sufficient?

- Too complicated       About right       Too simplistic       No view

Comment:

**Question 7 – Circumstances for paying financial support**

Local authorities will only be able to pay financial support in the circumstances set out in the Regulations. Are the circumstances in the Regulations:

- Too wide       About right       Too narrow       No view

Are there any other circumstances where local authorities should be able to provide financial support? Are there any circumstances in the Regulations where they should not be able to provide financial support?

Comment:

### Question 8 – Financial support

Are there any other comments you would like to make on the provision of financial support?

Comment:

### Question 9 – Means testing for financial support

We are intending to consult on a standard means test for financial support payable to adopters. If a standard means test is part of adoption support services should it also be put in place for special guardianship support services?

Yes       No       No view

### Question 10 – Overall detail

Overall, is the level of detail provided by the Regulations and guidance:

Too much       About right       Too little       No view

What, if any, additional issues need to be covered?

Comment:

### Question 11 – Overall view of the guidance

Overall, in assisting you in interpreting the requirements set out in the Regulations do you find the guidance:

Very helpful       Helpful       Not very helpful       Not at all helpful

How could we make the guidance more helpful and accessible?

Comment:

**APPENDIX 3- PARTIAL RIA**

**Question 12 – Impact of the Regulations**

Do you agree with the assessment made on the likely impact of the Regulations?

- Yes    No, assessment too high    No, assessment too low    No view

Comment:

**Question 13 – Benefits of the Regulations**

Do you agree with the assessment of the benefits of the Regulations:

- Yes    No, too positive    No, too negative    No view

Comment:

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