



Department  
for Education

# **Special guardianship guidance**

**Statutory guidance for local authorities  
on the Special Guardianship Regulations  
2005 (as amended by the Special  
Guardianship (Amendment) Regulations  
2016)**

**January 2017**

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## Summary

### About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating to the provision of assessing and supporting special guardianship.

This guidance replaces former statutory guidance issued by the Department for Education and Skills in 2005.

### Expiry or review date

This guidance will next be reviewed in 2018.

### What legislation does this guidance refer to?

- The Children Act 1989 and associated regulations
- The Adoption and Children Act 2002

### Who is this guidance for?

This guidance is for:

- Local authorities

### Main points

- These regulations have been revised to amend the Schedule to the Special Guardianship Regulations (2005) (the 2005 Regulations) which prescribes the matters to be dealt with by local authorities in reports they prepare for the court in applications for special guardianship orders.
- Regulation 4 amends paragraph 1 of the Schedule to the 2005 Regulations. It requires the report to deal with any harm which the child has suffered and any risk

of future harm to the child posed by their parents, relatives or any other person considered relevant. This might include, for example, a partner of the parent.

- Regulation 4 also amends the provision relating to the child's needs to ensure that both their current needs and their likely future needs are dealt with in the report.
- Regulation 5 amends paragraph 4 of the Schedule to the 2005 Regulations. It replaces the provision relating to the prospective special guardian's relationship with the child with a more detailed provision requiring an assessment of the nature of the child's relationship with the prospective special guardian both at the time of the assessment and in the past.
- Regulation 5 also substitutes a new and more detailed provision relating to the parenting capacity of the prospective special guardian.

## Background to special guardianship

1. 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. The report identified the need for an alternative 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.

3. The *White Paper Adoption: a new approach*<sup>2</sup> 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

4. 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

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<sup>1</sup> [http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH\\_4005024](http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4005024)

<sup>2</sup> <https://www.gov.uk/government/publications/adoption-a-new-approach>

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**

5. 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 inserted new sections 14A-F into the Children Act 1989. The new sections provided 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
- support services for those affected by special guardians

6. 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, any person who has the consent of the local authority
- anyone who has the consent of all those with parental responsibility for the child
- any person, including the child, who has the leave of the court to apply

7. 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.

8. 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 where an application for an adoption order has already been made. This is in order to prevent the competing application delaying the adoption order hearing.

9. 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. The information to be included in the report to the court is set out in regulation 21 and the Schedule. 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.

10. 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 require continued contact with the child's parents.

11. 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.

12. The special guardian will have parental responsibility for the child. Subject to any later order, the special guardian may exercise parental responsibility to the exclusion of all 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.

13. While a special guardianship order is in force written 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

14. 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 of the child before the special guardianship order was made
- with the leave of the court:
  - the child's parents or guardians
  - any step-parent who has parental responsibility
  - anyone who had parental responsibility immediately before the special guardianship order was made
  - the child (if the court is satisfied that the child has sufficient understanding)

15. 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.

16. 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.

### **Support for Special Guardians**

17. Local authorities are required to make arrangements for the provision of special guardianship support services. These include counselling, advice, information and such other services (including financial support) as are prescribed in the Regulations. The Regulations also provide for the assessment of needs for special guardianship support services, and the planning and the reviewing of those support services.

18. 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 1989 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

19. 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 Act, as amended. Regulation 22 provides that the relevant local authority is the one that last looked after the child.

20. In addition to the support provided by local authorities outlined above, in May 2015, the government launched the Adoption Support Fund in England to reduce the gap between adoptive children needing therapeutic services and receiving them, ultimately to improve outcomes for young people and families. In April 2016, the Fund was extended to cover therapeutic support for children, living in England, who were previously in care immediately before the making of a Special Guardianship Order. Based on the assessment of needs, local authorities can apply for funding from the Adoption Support Fund and further information is available at: <http://www.adoptionsupportfund.co.uk> .

21. Advice aimed at helping special guardians to access the Adoption Support Fund is now available via the Family Rights Group website via: <https://www.frg.org.uk/need-help-or-advice/family-and-friends-carers/the-adoption-support-fund-and-special-guardians>. The Family Rights Group provides independent advice to families involved with Children's Services about the care and protection of their children. They operate a Freephone service: 0808 801 0366, Monday to Friday, 9.30am to 3pm and also have a range of information on their website at: <https://www.frg.org.uk>.

# The Regulations

## Regulation 1: Citation, commencement and application

22. Regulation 1 provides that the Special Guardianship Regulations 2005 (the Regulations) will have effect from 30th December 2005 and apply to England only.

## Regulation 2: Interpretation

23. Regulation 2 defines certain terminology used in the Regulations. Where the Regulations or this guidance refer to 'the Act' this means the Children Act 1989.

## Regulation 3: Provision of special guardianship support services

24. Under section 14F of the Act, as amended, the local authority must make arrangements for the provision of special guardianship support services. Local authorities are required to make a range of support services available in their area to meet the needs of people affected by special guardianship. Special guardianship support services are defined as:

- financial support (regulation 3(1)(a))
- services to enable groups of children for whom a special guardianship order is in force or in respect of whom is being formally considered, special guardians and prospective special guardians, and parents of the child to discuss matters relating to special guardianship (regulation 3(1)(b))
- assistance, including mediation services, in relation to contact between the child and their parents or relatives or any other person with whom the child has a relationship that the local authority considers to be beneficial to the welfare of the child (regulation 3(1)(c))
- therapeutic services for the child (regulation 3(1)(d))
- assistance for the purpose of ensuring the continuance of the relationship between the child and his special guardian or prospective special guardian, including training for the special guardian or prospective special guardian to meet any special needs of the child; respite care; and mediation in relation to matters relating to special guardianship orders (regulation 3(1)(e)), and
- counselling, advice and information (section 14F(1)(a) of the Act)

25. The local authority should take into account the similar services already being delivered in their area, such as adoption support services, and plan the provision of special guardianship support services accordingly.

26. 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 and are aware of their entitlement to social security benefits and tax credits as appropriate.

Other requirements regarding provision of services

27. Regulation 3(2) provides that the provision of any services other than counselling, advice and information may include the local authority giving a person assistance in cash where the local authority considers this appropriate. For example, giving a special guardian cash to pay a babysitter so they can have a break for an evening or money for petrol where a contact visit has been arranged. When cash is provided in this way it should not be means tested as it is being provided as part of a service rather than as financial support (see page 17 for further guidance on the consideration of means in relation to the payment of financial support).

28. Regulation 3(3) requires that, if respite care consists of the provision of accommodation, this must be accommodation provided by or on behalf of a local authority under section 23 of the Act (accommodation of looked after children) or by a voluntary organisation under section 59 of the Act. This means that arrangements by a local authority for respite care must involve the child being looked after for the duration of the period of respite care. This requires that appropriate safeguards are in place during the respite care and that any foster parent providing respite care has been approved under the Fostering Services Regulations 2002.

## **Regulation 4: Securing the provision of services**

29. Section 14F(9)(b) of the Act enables the local authority to arrange for special guardianship support services to be provided by another body. This enables the local authority to delegate or contract out provision of these services to a third party who will provide services on its behalf. The Act states that the local authority may provide special guardianship support services by securing their provision through another local authority. Regulation 4 extends this provision to registered adoption societies, registered adoption support agencies, registered fostering agencies, Primary Care Trusts (PCTs) or Local Health Boards (LHBs) in Wales and local authorities (LAs).

30. This enables the local authority to contract with a neighbouring authority and/or with an independent registered provider to ensure that the service is provided. This may be appropriate where there is a low demand for a particular special guardianship support service in an area or to avoid duplication where an existing service provided by one of the prescribed bodies can be developed and maintained as appropriate.

## **Regulation 5: Services for persons outside the area**

31. The local authority where the special guardian lives is responsible for undertaking an assessment of need and provision of any special guardianship support services in response to that assessment. The only exception to this is where a child was looked after before the special guardianship order was made.

First three years after an order is made when the child was previously looked after

32. It is important to ensure continuity for the child and family in the early stages of the currency of the order. Regulation 5 provides that the assessment and provision of services for the child, the special guardian and any children of the special guardian all remain the responsibility of the local authority where the child was last looked after for three years from the date of the order. This rule applies wherever the family live during this period. If the family do move during the three years or there is any other significant change in their circumstances, the local authority may wish to undertake a reassessment and alter the support plan accordingly, including any contact arrangements that are part of the plan.

Any time after the first three years from the date of an order when the child was previously looked after.

33. When the three year period from the making of the special guardianship order has expired, the local authority where the special guardian lives is responsible for assessing and providing support services.

Where the child who is the subject of the order was not previously looked after

34. In these cases the local authority where the special guardian lives is always responsible for assessment and support. This includes assessment and any support that is needed by the child's relatives who may live elsewhere. If the special guardian and his family move, then the responsibility passes to the new local authority. The local authority where the special guardian previously lived should cooperate as needed to ensure a smooth transition for the child.

Ongoing Financial Support

35. A distinction is made between ongoing financial support (financial support that is paid on a regular basis) which was agreed before the special guardianship order was made and other support services. The assessment and provision of such financial support will remain the responsibility of the local authority who originally agreed it for as long as the family in question qualify for payments. This distinction has been made because financial support can be paid without direct contact.

36. Regulation 5 also provides that the local authority may provide services to people outside their area in other circumstances where the authority considers it appropriate. For example, transitional arrangements by the originating authority where a family move to allow time for the new authority to review the family's existing plan without a break in service provision.

## **Regulation 6: Provision of financial support**

37. Financial issues should not be the sole reason for a special guardianship arrangement failing to survive. The central principle is that financial support should be payable in accordance with the Regulations to help secure a suitable special guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle. Regulation 6 provides that financial support is payable to facilitate arrangements for a person to become the child's special guardian, where this is considered to be beneficial to the child's welfare, and to support the continuation of these arrangements after the order has been made.

38. Regulation 6 sets out the circumstances in which financial support may be paid to a special guardian or prospective special guardian. These are:

- (a) where it is necessary to ensure that the special guardian or prospective special guardian can look after the child
- (b) where the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties or the consequences of past abuse or neglect
- (c) where the local authority consider that it is appropriate to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian associated with:
  - (i) the making of a special guardianship order or any application to vary or discharge such an order
  - (ii) an application for an order under section 8 of the Act (a contact order, a prohibited steps order, a residence order or a specific issue order)
  - (iii) an order for financial provision to be made to or for the benefit of the child
- (d) where the local authority consider it appropriate to make a contribution to the expenditure necessary for the purpose of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to

and adaptations of the home, provision of means of transport, and provision of clothing, toys and other items necessary for the purpose of looking after the child.

39. Payment of financial support under (b) is intended where the child's condition is serious and long-term. For example, where a 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.

40. Financial support paid under (c) is payable so that the local authority may contribute to initial legal costs where appropriate but also any future legal costs that are associated with the order, to continue to support the existence of the order, again, where the local authority consider this to be appropriate.

41. In many special guardianship arrangements, contact between the child and their relatives or others with whom the local authority consider the child to have a beneficial relationship is very important. Where assistance with travel costs is required this may either be given in cash under regulation 3(1)(b) or, if such costs are on a recurring basis, as part of any financial support provided under regulation 6(2)(b) to support the arrangements for ensuring the special guardian can look after the child.

## **Regulation 7: Remuneration for former foster parent**

42. Financial support cannot normally include the payment of remuneration to the special guardian or prospective special guardian for care of the child. Regulation 7 provides, however, that where the special guardian or prospective special guardian previously fostered the child and they received an element of remuneration in the financial support paid to them as the child's foster parent that the local authority may continue to pay that element of remuneration for two years from the date of the special guardianship order. These payments can continue for longer than two years if the local authority considers this appropriate.

43. The purpose of the two year transitional provision is to enable local authorities to maintain payments to foster carers who become special guardians, at the same rate as they received when they were fostering the child. This should give the family time to adjust to their new circumstances.

## **Regulation 8: Payment of financial support**

44. Regulation 8 provides that financial support may be paid periodically (i.e. paid as a regular allowance), if it is provided to meet a need which is likely to give rise to recurring expenditure; otherwise it may be paid as a single payment, or, if the local authority and special guardians or prospective special guardians agree, in instalments.

## **Regulation 9: Cessation of financial support**

45. Regulation 9 provides that financial support ceases to be payable to a special guardian or prospective special guardian if:

- (a) the child ceases to have a home with him
- (b) the child ceases full-time education or training and commences employment
- (c) the child qualifies for Income Support or Jobseeker's Allowance in his own right, or
- (d) the child attains the age of 18 unless he continues in full-time education or training, when it may continue until the end of the course or training he is then undertaking.

## **Regulation 10: Conditions of financial support paid periodically**

46. Regulation 10 provides that financial support that is to be paid periodically is not payable until the special guardian or prospective special guardian agrees to the following conditions:

- (a) that he will inform the local authority immediately if:
  - he changes his address
  - the child dies
  - any of the changes mentioned in regulation 9 (cessation of financial support, see page 15 occur; or
  - there is a change in his financial circumstances or the financial needs or resources of the child which may affect the amount of financial support payable to him and,
  - where the information is given orally, that he will confirm it in writing within seven days
- (b) that he will complete and supply the local authority with an annual statement as to the following matters:
  - his financial circumstances
  - the financial needs and resources of the child
  - his address and whether the child still has a home with him

47. The local authority should be prepared to provide advice and assistance on completing the forms, on request where necessary.

48. Regulation 10 provides that the local authority may set any other conditions they consider appropriate, including the timescale within which and purposes for which any payment of financial support should be utilised. Where any condition imposed is not complied with, the local authority may suspend or terminate payment of financial support and seek to recover all or part of the financial support they have paid.

49. However, where the condition not complied with is a failure to provide an annual statement, regulation 10 requires that the local authority may not take any steps to suspend, terminate or seek to recover financial support until they have sent to the person who entered into the agreement a written reminder of the need to provide an annual statement; and 28 days have expired since the date on which the notice was sent.

## **Regulation 11: Assessment for special guardianship support services**

50. Regulation 11 provides that the following people must receive an assessment at their request, in cases involving looked after children or children who were looked after immediately prior to the making of a special guardianship order:

- the child
- the special guardian or prospective special guardian
- a parent

51. It is important that children who are not (or were not) looked after are not unfairly disadvantaged by this approach. In many cases the only reason that the child is not looked after is that relatives stepped in quickly to take on the responsibility for the child when a parent could no longer do so.

52. Regulation 11 also provides that the following people may be offered an assessment of their need for special guardianship support services:

- the child (where not looked after)
- the special guardian or prospective special guardian (where the child is not looked after)
- a parent (where the child is not looked after)
- a child of a special guardian (whether the special guardianship child is looked after or not)
- any person whom the local authority considers to have a significant and ongoing relationship with a child (whether the child is looked after or not)

53. If the local authority decides not to carry out an assessment where they have discretion, as above, they must give the person notice of the proposed decision in writing



including reasons for the decision. The person who requested the assessment must be allowed at least 28 days to make representations in relation to the decision.

54. Local authorities have discretion under section 14F of the Act to undertake an assessment of other people in relation to special guardianship support services. If they do so, then they should follow the same procedure as they would use where people have an entitlement to an assessment.

55. It will not always be necessary to undertake an assessment before providing information, advice or counselling services. However, if the local authority is considering providing any of the services set out in regulation 3, then an assessment should be carried out in line with regulations 11-13. Regulation 11(4) provides that where a request relates to a particular service or where it is clear that a particular service is what is required, then the assessment process can be limited to looking at the need for that service.

## **Regulation 12: Procedure for assessment**

56. Regulation 12 requires that assessments consider (as far as relevant to the particular assessment):

- the developmental needs of the child
- the parenting capacity of the special guardian or prospective special guardian
- the family and environmental factors which have shaped the life of the child
- what the life of the child might be like with the special guardian
- any previous assessment undertaken in respect of the child or the special guardian or prospective special guardian
- the 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 special guardian or prospective special guardian and the parents of the child, the likely impact of the special guardianship order on the relationship between that person, that child and that parent

57. These factors reflect those which are considered in assessments carried out under the Framework for the Assessment of Children in Need and their Families<sup>3</sup>.

58. Assessments for special guardianship support services should follow the guidance set out in, and use the domains of, the Assessment Framework, recognising that the context is different from that for birth families. This takes into account the child's

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<sup>3</sup> Department of Health et al, 2000, available at <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/Framework%20for%20the%20assessment%20of%20children%20in%20need%20and%20their%20families.pdf>

developmental needs, the parenting capacity of the special guardian 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 a 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. These should be updated as appropriate. Professionals and other staff who will be involved in undertaking assessments for special guardianship support services will need to be familiar with the Assessment Framework.

59. Section 14F(10) of the Act gives local authorities the power to assess special guardianship support service needs at the same time as undertaking another assessment, so that local authorities can avoid the need for a number of different assessments.

60. Regulation 12 requires that the local authority consults the relevant PCT (or LHB) or LEA during the course of the assessment, if needs identified relate to services provided by bodies other than social services, and it appears that there may be service implications for health or education services.

61. Regulation 12 also provides that the person whose needs are being assessed should be interviewed unless the assessment relates only to information and advice or unless it is not appropriate to interview a child. In this case the child's actual or prospective special guardian may be interviewed.

62. Regulation 12(4) requires that after an assessment has been undertaken, the local authority must prepare a written report of the assessment. The assessment process should be a flexible one and should not delay the provision of appropriate services.

### **Regulation 13: Assessment for financial support**

63. It is important to ensure that special guardians are helped to access benefits to which they are entitled. Local authorities should therefore endeavour to ensure that the special guardian or prospective special guardian is aware of, and taking advantage of, all benefits and tax credits available to them. Financial support paid under these Regulations cannot duplicate any other payment available to the special guardian or prospective special guardian and regulation 13 provides that in determining the amount of any financial support, the local authority must take account of any other grant, benefit, allowance or resource which is available to the person in respect of his needs as a result of becoming a special guardian of the child.

64. When considering providing financial support the local authority will normally consider the special guardian or prospective special guardian's means and regulation 13 requires that the local authority consider:

(a) the special guardian or prospective special guardian's financial resources (which should include significant income from any investments, but not their home) including any tax credit or benefit, which would be available to him if the child lived with him. This is consistent with the fact that financial support for special guardians is disregarded for the purpose of calculating income related benefits and tax credits

(b) the amount required by the special guardian or prospective special guardian in respect of his reasonable outgoings and commitments, e.g. housing and transport costs, and daily living expenses (but not outgoings in respect of the child)

(c) the financial needs that relate to the child (e.g. because of special diet or need for replacement bedding) and the resources of the child (e.g. a trust fund)

65. In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. The local authority's core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family. Any means test carried out as appropriate to the circumstances would use this maximum payment as a basis.

66. Regulation 13 provides for when the local authority has discretion to disregard means and for when they must disregard them.

67. The local authority may disregard means where they are considering providing financial support in respect of:

- the initial costs of accommodating a child who has been looked after by the local authority— where a payment made is of the nature of a 'settling-in grant'. It is not expected that this payment would be means tested, but local authorities might, for example, want to means test any contribution to an adaptation to the home
- recurring costs in respect of travel for the purpose of visits between the child and a related person with whom they have contact (or would have contact but for prohibitive travel costs) – so that, for example, where the local authority wants to underline the value of and facilitate contact for the child with a sibling, they can achieve this by not means testing payments to support this
- any special care referred to in regulation 6(2)(b) which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties, or the consequences of his past abuse or neglect in relation to a child who has previously been looked after by the local authority. This will allow local authorities to provide a financial package for a particular child to facilitate the making of a special guardianship order

- where they are considering including an element of remuneration in financial support payments to ex-foster carers – so that local authorities can maintain the amount paid to a foster carer who goes on to become a special guardian for the transitional period

68. The only circumstance in which the local authority must disregard means is when they are considering providing financial support in respect of legal costs, including fees payable to a court. This applies where a special guardianship order is applied for in respect of a child who is looked after by the local authority, and the authority support the making of that order, or an application is made to vary or discharge a special guardianship order in respect of that child.

69. Local authorities are not expected to meet the legal costs of a special guardianship order where they oppose an application in respect of a child they previously looked after or in a non-looked after case. Local authorities may wish to advise prospective special guardians in these circumstances that they may be able to obtain help with legal costs from the Legal Aid Agency<sup>4</sup>.

## Regulation 14: The Plan

70. Regulation 14 requires that a plan must be prepared if the local authority proposes to provide special guardianship support services to a person on more than one occasion, and the services are not limited to the provision of advice or information. Where it appears to the local authority that the person may have a need for services from a PCT, LHB or LEA, it must consult those agencies before preparing the plan. It must also nominate a person to monitor the provision of the services in accordance with the plan. The plan should set out:

- the services to be provided
- the objectives and criteria for evaluating success
- time-scales for provision
- procedures for review
- the name of the person nominated to monitor the provision of services in accordance with the plan.

71. 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)

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<sup>4</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/572927/paying-for-your-civil-legal-aid-leaflet.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/572927/paying-for-your-civil-legal-aid-leaflet.pdf)

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.

## **Regulation 15: Post assessment – notice of outcome of assessment**

72. When, as a result of an assessment, a local authority decides that a person has needs for special guardianship support services they must decide whether to provide such services. Before making this decision they must allow the person the opportunity to make representations. Regulation 15 requires that the notice (see page 25 for general requirements under the regulations in relation to notices) must contain the following information:

- a statement as to the outcome of the assessment of the person's needs for special guardianship support services
- where the assessment relates to his need for financial support, the basis upon which financial support is determined
- whether the local authority proposes to provide him with special guardianship support services
- the services (if any) that the local authority proposes are provided to him
- if financial support is to be paid to him, the proposed amount that would be payable, and
- any conditions attached to the payment.

73. In a case where the local authority proposes to provide special guardianship support services and is required to prepare a plan (see page 20), the notice must be accompanied by a draft of that plan.

74. When providing the person with the outcome of the written assessment, the local authority should refer the person to sources of independent advice and advocacy.

75. The Regulations do not specify a period of time to be allowed for representations. It is suggested that local authorities should allow a period of 28 days from the time the proposed decision is sent to the applicants.

76. After considering any representations received, the local authority must then decide whether to provide any services to the person who has been assessed, taking into account the individual circumstances of the case and the resources that are available locally. The local authority cannot make a decision until the person has made representations or has notified the authority that he is satisfied with the proposed

decision and, where applicable, the draft plan; or the period of time for making representations has expired.

## **Regulation 16: Notification of decision regarding special guardianship support services**

77. Having made a decision about what service to provide, if any, the local authority is then required by regulation 16 to give notice of that decision, including the reasons for it.

78. Where the local authority is required to prepare a plan under section 14F(6) of the Act, the notice must include details of that plan and the name of the person nominated under regulation 14(4) to monitor the provision of services in accordance with the plan.

79. If the local authority decides that financial support is to be provided, regulation 16 requires that the notice of this decision must include the following information:

- (a) the method of the determination of the amount of financial support
- (b) where financial support is to be paid in instalments or periodically:
  - the amount of financial support
  - the frequency with which the payment will be made
  - the period for which financial support is to be paid
  - when payment will commence
- (c) where financial support is to be paid as a single payment, when the payment is to be made
- (d) where financial support is to be paid subject to any conditions, those conditions, the date (if any) by which the conditions are to be met and the consequences of failing to meet the conditions
- (e) the arrangements and procedure for review, variation and termination of financial support
- (f) the responsibilities of:
  - the local authority in relation to reviews; and
  - the special guardian or prospective special guardian pursuant to any conditions for payment of periodic financial support agreed under regulation 10.

80. Where service providers other than social services have been involved in the assessment of support needs, the local authority should try wherever possible to ensure that decisions made by those service providers follow the same timetable as decisions made under this regulation. These should then be covered in a single notification and

plan sent out by the local authority which encapsulates decisions for the whole service package wherever possible.

## **Regulation 17: Reviews**

81. Regular reviews enable the local authority and the service user to review the effectiveness of any services provided and consider whether it is appropriate to continue that service or change the provision in some way.

82. Regulation 17 requires that where the local authority provides special guardianship support services for a person, other than financial support payable periodically, it must review the provision of such services:

- if any change in the person's circumstances which may affect the provision of special guardianship support services comes to their notice
- at such stage in the implementation of the plan as they consider appropriate
- in any event, at least annually.

83. Regulation 17 prescribes that where services are being reviewed, the same procedure for assessment set out in regulations 12 and 13 must be followed in reviews as they are in a first assessment.

84. If the local authority proposes to vary or terminate the provision of special guardianship support services to any person, before making any decision as a result of the review, it must give the person an opportunity to make representations and for that purpose it must give him notice of the proposed decision and the time allowed for making representations.

85. The notice must contain the same information as the notification of the outcome of a first assessment, following the requirements in regulation 15, and if the local authority proposes to revise the plan, a draft of the revised plan. The local authority must then decide whether to vary or terminate the provision of special guardianship support services for the person; and where appropriate, revise the plan, having regard to the review and after considering any representations received within the period specified in the notice. The local authority must give the person notice of their decision (including the reasons for it) and, if applicable, details of the revised plan.

86. The format and content of the review will vary depending on the circumstances of the case. Notification of changes of circumstances and any review of the provision of support services need not always necessitate direct contact between the local authority and the special guardian. Where the change of circumstances is relatively minor the review might be limited to an exchange of correspondence. In particular, the annual review of financial support might be achieved by exchange of correspondence between the local authority and the special guardian. Where the change of circumstances is

relevant only to one service the review may be carried out with reference only to that service. However, where the change of circumstances is substantial, for example, a serious change in the behaviour of the child, it will normally be appropriate to conduct a new assessment of needs.

## **Regulation 18: Review of financial support paid periodically**

87. Regulation 18 requires that where the local authority provides financial support payable periodically it must review the financial support:

- on receipt of the annual statement from the special guardian required under regulation 10
- if there is any relevant change of circumstances that the special guardian agreed to notify in accordance with regulation 10, or any breach of a condition made under regulation 10 comes to the local authority's notice
- at any (other) stage in the implementation of the plan that the local authority considers appropriate

88. The procedure for assessment set out in regulations 12 and 13 applies equally to a review of financial support as to first assessments for financial support. If the local authority proposes, as a result of the review, to reduce or terminate financial support or revise the plan, before making that decision the local authority must give the person an opportunity to make representations. For that purpose it must give the person notice of the proposed decision and the time allowed for making representations, but the local authority may suspend financial support pending that decision if they think it appropriate.

89. The notice must contain the same information as the notification of the outcome of the first assessment following the requirements of regulation 15.

90. The local authority must, having regard to the review, and after considering any representations received within the period specified in the notice, then decide whether to vary or terminate payment of the financial support or whether to seek to recover all or part of any financial support that has been paid; and where appropriate, revise the plan.

91. The local authority must give the person notice of their decision including the reasons for it and, if applicable, the revised plan.

## **Regulation 19: Urgent cases**

92. It is important that the assessment process and follow up does not unnecessarily delay provision where a person has an urgent need for a service. Regulation 19 therefore provides that where any requirement under the Regulations in relation to an assessment, preparing a plan or giving notice would delay provision in a case of urgency, that requirement does not apply. The local authority will need to review provision as soon as



possible after support has been provided, in accordance with the procedures set out above.

## **Regulation 20: Notices**

93. Regulation 20 provides that any notice required to be given under these Regulations must be given in writing. Where the person to whom notice is to be given is a child, and it appears to the local authority that the child is not of sufficient age and understanding for it to be appropriate to give him such notice; or in all the circumstances it is not appropriate to give him such notice, the notice must be given to his special guardian, or prospective special guardian, or to the adult that the local authority consider most appropriate.

## **Regulation 21: Court report**

94. Section 14A(8) of the Act prescribes that on receipt of a notice of an application for a special guardianship order the local authority must investigate the matter and prepare a report for the court dealing with the suitability of the applicant to be a special guardian. The Special Guardianship (Amendment) Regulations 2016 amend the Schedule to the 2005 Regulations which prescribes the matters to be dealt with by local authorities in preparing these reports (see page 26).

## **Regulation 22: Relevant authority for the purposes of leaving care provision**

95. Time spent under a special guardianship order is relevant when considering the child's entitlement to leaving care services. Section 24(2) of the Act defines "a person qualifying for advice and assistance". This includes a young person aged 16 to 20 who, immediately before becoming subject to a special guardianship order, was looked after by a local authority.

96. Regulation 22 provides that for the purposes of providing advice and assistance, the relevant authority shall be the local authority which last looked after the person. Depending on the service required, it may be more appropriate for the young person to seek support locally, where he is now resident (i.e. health care).

## **Schedule: Matters to be dealt with in the report for the court**

97. 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 he has his home. 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, on matters prescribed in the Schedule and on any other matter the local authority considers relevant.

98. Even where there is no application, in certain circumstances the court may consider that a special guardianship order should be made and ask the relevant 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.

99. The making of a special guardianship order should not be unnecessarily delayed by the absence of the report for the court.

100. Under section 14A(10) of the Act, 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.

101. Section 14A(7) of the Act specifies which local authority is required to prepare the report for the court. 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 lives in the area of another local authority. Local authorities should co-operate fully, where necessary, in the investigation and preparation of the report for the court.

102. 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.

103. In all cases it is important to accurately ascertain and report on the child's wishes and feelings. This will be especially important for the local authority preparing the report to consider in cases where there is no children's guardian appointed by the court.

104. The Schedule to the 2005 Regulations as amended by the 2016 Regulations sets out in full the prescribed matters for the report in respect of both the child and the child's family. These amendments cover:

- information about the child who is the subject of the application including their current and likely future needs, and any harm they have previously suffered
- information about the child's family including any likely risk of future harm posed by the child's parent or other relevant person
- the wishes and feelings of the child and others
- information about the prospective special guardian including the nature of their current and previous relationship with the child and, their ability and suitability to bring up the child until the child reaches the age of 18
- information about the local authority which compiled the report
- a summary prepared by a medical professional
- implications of the making of a special guardianship order for those involved
- relative merits of special guardianship and other orders
- a recommendation regarding special guardianship
- a recommendation regarding contact.

105. 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 the prospective special guardian is checked rigorously. The special guardian (with an appropriate support package) should be considered able to meet the child's needs at the time of the making of the order and in the future.

## Further information

### Other relevant departmental advice and statutory guidance

The Special Guardianship Regulations 2005

<http://www.legislation.gov.uk/uksi/2005/1109/contents/made>

The Special Guardianship (Amendment) Regulations 2016

<http://www.legislation.gov.uk/uksi/2016/111/made>

Explanatory Memorandum and the Amendment Regulations

<http://www.legislation.gov.uk/id/uksi/2016/111>



Department  
for Education

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write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

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Reference: DFE-00054-2016



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