

# SPECIAL GUARDIANSHIP ORDERS

## A BRIEF GUIDE



## **What is a Special Guardianship Order?**

A Special Guardianship Order is a new order introduced by The Adoption and Children's Act 2002. It provides for an alternative to a Residence Order or Adoption Order which allows for both security and permanence without extinguishing the rights of the birth parents.

The creation of the Special Guardianship Orders came about following government investigations revealing the need for there to be a new kind of order which would meet the needs of certain carers and specific children such as older children who want to keep a legal link to their birth family or unaccompanied asylum-seeking children who require secure and permanent homes but also have strong family attachments.

In practice a Special Guardianship Order grants legal parental responsibility for the child to the Special Guardian to the exclusion of any other person with parental responsibility (apart from another special guardian). The parental responsibility is expected to last until the child is 18 or beyond if in full time education (for more information on Parental Responsibility please refer to our Guide to Parental Responsibility).

It should however be noted that although parental responsibility is granted to the Special Guardian, the birth parents retain some semblance of parental responsibility in that they can consent or not to the child's adoption or placement for adoption. In addition written consent from all those who have parental responsibility or the Court's permission is required for:

- ∞ The child's surname to be changed
- ∞ The child to be removed from the jurisdiction for a period of over 3 months.

## **How does it work?**

A Special Guardianship Order appoints one or more people to be a child's Special Guardian.

As a Special Guardian you have the day-to-day responsibility of all aspects of caring for that child but also most major decisions about their upbringing including education and health treatment – Parental Responsibility.

If the child was looked after by the local authority prior to the granting of a Special Guardianship Order the local authorities' role as carer ends once the order is made. There is however support which can be sought from the local authority including:

- ∞ Counselling, advice and information
- ∞ Financial support
- ∞ Support groups for children, parents and Special Guardians or prospective Special Guardians
- ∞ Assistance with contact between the child and their parents or relatives
- ∞ Therapy services for the child
- ∞ Training for the Special Guardian to meet the needs of the child
- ∞ Respite care
- ∞ Mediation relating to Special Guardianship Orders

## **Who can apply to be a Special Guardian?**

You can apply to be the child's Special Guardian either on an individual basis or jointly as a couple including same sex couples or with others. You need not be married but you must be over 18 years of age.

You can apply to the Court to be a Special Guardian if:

- ∞ You are the Guardian of the child
- ∞ You have a Residence Order in respect of that child
- ∞ You are a Local Authority Foster Carer with whom the child has lived with for at least one year prior to the application being made
- ∞ The child has lived for three out of the last five years with you
- ∞ The child is in the care of the Local Authority and you have their consent to apply
- ∞ You are the child concerned; or
- ∞ You are any other person with permission of the Court to apply.

## **Applying for a Special Guardianship Order?**

If you qualify to apply to be a Special Guardian you must:

- ∞ Give the Local Authority 3 months written notice of your intention to apply for an order.

The notice given to the local authority will trigger their statutory obligation to report to the Court on the following:

- ∞ The suitability of the prospective Special Guardian(s)
- ∞ The child in respect of which the order is sought
- ∞ The child's feelings and wishes
- ∞ The child's birth family
- ∞ Contact arrangements

The report will also give recommendations as to whether or not an order should be made. It is open to the local authority to arrange for an other suitable organisation to prepare the report. The Court cannot make a decision without such a report.

## **The Courts and Parental Responsibility**

In all circumstances the child's welfare shall be the court's paramount consideration. The Court must consider the whole range of options available before making a Special Guardianship Order including:

- ∞ Whether to vary or discharge any other existing orders i.e. a residence order or care order relating to that child
- ∞ Whether to make a contact order in respect of that child

The Court may also consider changing the child's surname or granting permission for the child to be removed from the country for a period of over 3 months.

It is also within the Court's power to make a Special Guardianship Order with respect to a child's welfare in any family proceedings even if no application by any party has been made.

### **Termination or Variation**

An application for variation or termination of a Special Guardianship Order can be made to the Court by any of the following people:

1. The Special Guardian;
2. The Local Authority with a care order; or
3. The holder of a Residence Order if still valid or someone who had one before the Special Guardianship Order was made.

If the child, parent, step-parent, guardian, or anyone with parental responsibility wishes to vary or terminate the existing Special Guardianship Order, they will need to:

1. First get the permission of the court; and
2. Secondly show a change of circumstance since the making of the Special Guardianship Order.

### **Note:**

This is only a brief introduction to the law relating to Special Guardianship Orders and is not a substitute for detailed legal advice. If you wish to know more, it would be appropriate to seek legal advice. You may be eligible for Public Funding (formerly Legal Aid) to assist you.

Should you require any further advice please do not hesitate to contact either Sarah Palmer or Kirti Patel on telephone number 01329 823322.