

# Caring for somebody else's child

## Parental responsibility and Special Guardianship

### Parental responsibility

Most children are cared for by their birth parents. However, things may happen in families, such as illness, death or family crisis, which means that children are cared for by other adults known to them – either permanently or for a period of time.

Adoption is the most well known of the different forms of care, but there is a range of options for caring for children in other families already known to them.

These include:

- Private Fostering
- Care by Close Family
- Special Guardianship
- Residence Order
- Foster Care / Family and Friends Care

This guide is intended to provide some general advice on these options and the financial and other support that may be available. The range of support available may vary between authorities and entitlement to financial support in particular will be determined by individual circumstances. This is not intended to be a definitive guide to the various options available and further advice should be sought from, for example, care professionals, and where appropriate, the local Jobcentre Plus.

### What Is Parental Responsibility (PR)?

Parental Responsibility is a legal term that means 'all the rights, duties, powers, responsibilities and authority which a parent of a child has in relation to the child and his property'. This includes:

- Providing a home
- Having contact
- Protecting and looking after the child
- Consenting to medical treatment
- Appointing a guardian for the child
- Discipline
- Deciding on and providing for the child's education
- Supporting a child's religion
- Naming the child or agreeing a name change
- Consenting to adoption and marriage

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When a child is born, parental responsibility is automatically assigned to each married parent or to the unmarried birth mother. The unmarried birth father can acquire parental responsibility in a variety of ways. But, if a child is looked after in a different family, the ability of the person looking after the child to make decisions about the child (i.e. to exercise parental responsibility) is set by a legal framework applying to the child's care.

## Special Guardianship

Special Guardianship is an alternative legal status to adoption. It establishes a permanent lifelong relationship between the child and the carer without cutting the legal ties with the birth family, as happens with adoption, as long as the SGO remains in force.

Under Special Guardianship, parental responsibility is shared between the person holding the Special Guardianship Order and the birth parents. However the Special Guardian is given sole responsibility for caring for the child and for making decisions about their upbringing. The holders of the SGO can exercise parental responsibility to the exclusion of anyone else save another Special Guardian. However, Special Guardians do not have the power to agree to the child's adoption or agree where the law requires the consent of all parties with parental responsibility eg. sterilization.

The Local Authority (LA) will not make welfare visits or carry out reviews for the child nor be involved in any decision-making.

How do I become a Special Guardian?

If you are eligible to apply to be a Special Guardian, you must apply to court and give the council three months written notice of your intention to apply for a SGO (those requiring leave – or permission- to apply cannot give 3 months notice until leave has been granted).

*The following people (over 18) can apply:*

- Any guardian of the child
- A Local Authority foster carer that the child has lived with continuously for one year just before the application is made
- Anyone with a residence order for a child or who has the permission of all those in whose favour a residence order is in force
- Anyone who the child has lived with for three out of the last five years
- Anyone who has the permission of the Local Authority (looked after children only)
- Anyone who has the permission of all those with parental responsibility for the child
- Any person, including the child, who has the leave (permission) of the court to apply

The Local Authority will then investigate the matter and prepare a report for the Court about whether you are suitable to be a Special Guardian. A SGO cannot be made without a Local Authority report.

How long does Special Guardianship last?

A Special Guardianship Order lasts until a child is 18 years of age, unless revoked. It is harder to revoke a Residence Order as parents have to get the leave of the court to make an application. This means a SGO gives more security than a RO.

### Will I get any help?

If the child was previously in the Local Authority's care, the council must assess and may provide a range of support services which may include:

- Counselling, advice and information
- Financial support
- Support groups
- Help in contact between a child under special guardianship and a birth parent/sibling/guardian (or person with whom the child has a positive relationship)
- Therapy services
- Training
- Mediation in matters concerning the Special Guardianship Order
- Short Breaks - this is particularly likely where the child has significant physical or learning difficulties

If the child was not previously in the Local Authority's care, you can ask the council to decide whether you could receive support services. The council will carry out an assessment upon a written request. They will try to make sure that these children are treated the same as those who were looked after by the council. If they decide not to complete an assessment you would be given the reason in writing and you would then have 28 days to appeal against the decision.

### Will I get any financial help?

Financial support may only be considered:

- for children who were looked after by the Local Authority just before the Special Guardianship Order was made
- for children who were made subject to a Special Guardianship Order as part of a care plan in care proceedings
- in very exceptional circumstances at the discretion of the council.

You may be paid a regular allowance or a one off payment where one or more of the following circumstances exist:

- the child has a serious long-term condition needing ongoing additional payments
- the child has emotional or behavioural difficulties needing additional resources
- the child is suffering serious consequences from past abuse or neglect
- to help with arrangements for a person to become the Special Guardian of a child, and to help these arrangements after the order has been made
- to make sure that the Special Guardian or potential Special Guardian can look after the child
- where the Local Authority considers that it is appropriate to contribute to the costs needed to accommodate and maintain the child
- where the Local Authority thinks it is appropriate to help towards (or meet fully) any legal costs, including court fees, incurred by a Special Guardian.

Where agreed, payment of a regular allowance will be means tested and a financial assessment will be completed. This looks at all your income, balanced against your

outgoings, to decide how much you can be paid. Any agreed allowance will then be paid from the date of the Special Guardianship Order and will be reviewed on a yearly basis or when there is a notified change in circumstances.

If agreed, the maximum allowance payable will be the same as the basic rate paid to Family and Friends Carers and will be less the amount paid in child benefit. Rates may be adjusted annually in line with the annual increase in fostering allowances. One off payments are not subject to means testing.

Special Guardianship allowances are not usually treated as income for benefit purposes and therefore should not affect your entitlement to state benefits. However this may depend on the amount of the allowance being paid and on whether you were previously a foster carer for the child and were receiving a professional fee on top of an allowance for caring for the child. Advice should be obtained from your local Jobcentre Plus. When claiming benefits, the child will be treated as a member of the family.

SGO allowances are non-taxable.

If the child was looked after by the Local Authority, prior to becoming the subject of a SGO, they will be eligible to receive services from the Independence Support Service (ISS) when they reach 18.

**This factsheet is part of a series which focuses on children who are unable to be cared for by their parents – either permanently or temporarily - and what arrangements can be made to care for them. Please ensure you read the other factsheets which cover:**

- **Parental responsibility and Special Guardianship**
- **Residence Orders**
- **Foster care**
- **Friends and Family Care, Private Fostering and Close Family Care**

For more information please contact 0300 123 4043 or visit [www.hertsdirect.org](http://www.hertsdirect.org)

This information can be made available on request in other formats, including large print, Braille, audio and other languages.