



Llywodraeth Cymru  
Welsh Government

# Special Guardianship

Code of Practice on the exercise of social services  
functions in relation to special guardianship orders

Draft for consultation  
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## **Contents**

- 1. Preamble**
- 2. Assessment of suitability and reports to the court**
- 3. Provision of support services**
- 4. Assessment for support services**
- 5. Financial support**
- 6. Post-assessment: Notice of outcome**
- 7. Post-assessment: Notification of decision**
- 8. Notices**
- 9. Support services plan**
- 10. Review of support services**
- 11. Looked after children: services outside of area**
- 12. Leaving care**
- 13. Complaints and representations**

## **Preamble**

- 1.1. This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act'), which gives the Welsh Ministers the power to issue codes on the exercise of social services functions. Local authorities, when exercising their social services functions in respect of special guardianship orders, must act in accordance with the requirements contained in this code. Section 147 of the Act (departure from requirements in codes) does not apply to any requirements contained in this code, so this code must be followed in full.
- 1.2. In this code, a requirement is expressed as 'must' or 'must not'. Guidelines are expressed as 'may' and 'may not' or 'should' and 'should not'.
- 1.3. This code of practice replaces the statutory guidance on special guardianship issued by the Welsh Government in April 2006.
- 1.4. The Welsh Government undertook a review of special guardianship orders in Wales during 2016-17. This code of practice is one of the products of that review. The Welsh Government would like to thank the members of the Technical Group on Special Guardianship who assisted the Welsh Government in undertaking this review.

### The legal framework for special guardianship

- 1.5. A special guardianship order is a court order appointing a person or persons to be a child's special guardian. It grants the special guardian a high degree of parental responsibility for virtually all decisions affecting the child, and limits the rights of birth parents to intervene or challenge the order without leave of a the court. Special guardianship provides a legal status that offers greater security than long term fostering, but without the absolute legal break with the child's birth family that is associated with adoption.
- 1.6. Special guardianship orders were introduced in England and Wales in December 2005, as a new permanence option for children. A new legal order was considered necessary to meet the needs of a significant number of children who could not be brought up by their parents: these included older children who had become separated from their birth families; children already settled with a relative or foster carer; children from minority ethnic groups which have cultural difficulties with adoption; and unaccompanied asylum seeking children who may need a secure legal basis without breaking the strong attachment they may have with their family abroad. Over time there has been a gradual shift in the use of special guardianship

orders. For example, there has been an increase in the number of special guardianship orders being awarded in relation to much younger children, and an increase in the number of special guardianship orders awarded together with a supervision order. This has had implications for the way local authorities assess the suitability and viability of special guardianship arrangements, with local authority assessments placing more emphasis on the capacity of special guardians to care for the child over the longer term, and on managing the potential risk of harm.

### **Primary and secondary legislation**

- 1.7. Special guardianship orders were introduced into the Children Act 1989 by the Adoption and Children Act 2002. Section 115(1) of the 2002 Act inserted new sections 14A-F into the Children Act 1989. The new sections set out:
  - 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;
  - the variation and discharge of special guardianship orders; and
  - support services for those affected by special guardianship.
  
- 1.8. These sections of the Children Act 1989 came into force on 30 December 2005, and remain the legal basis for special guardianship orders in Wales.
  
- 1.9. The Special Guardianship (Wales) Regulations 2005 ('the Regulations') make the following provisions about special guardianship:
  - the matters a local authority must deal with in a report to the court when the authority (a) receives notice of a person's application for a special guardianship order, or (b) has been requested by a court to conduct an investigation and prepare a report
  - provision of special guardianship support services
  - the circumstances in which financial support can be paid
  - the persons who are entitled to an assessment of their needs for special guardianship support services, and the procedure for an assessment
  - determining the amount of financial support
  - the support services they propose to provide following an assessment
  - special guardianship support services plan
  - review of provision of special guardianship support services.
  
- 1.10. The Regulations will be amended from 1 July 2018 by the Special Guardianship (Wales) (Amendment) Regulations 2018. The main amendments are as follows.

- Additional matters have been added to the list of matters which must be considered and included in the local authority's report to the court about the proposed special guardianship arrangement. These give a more holistic assessment of the proposed arrangement, including any risk factors and how these will be addressed, to reinforce the aim of ensuring that the arrangement effectively supports the child up to the age of 18.
- Where a child was looked after immediately before a special guardianship order was made, the local authority which looked after the child will now remain responsible for meeting any special guardianship support needs for a period of three years after the order is made, regardless of where that child is living. The authority will also have to notify the authority for the area where the child is living of any continuing support needs as that period comes to a close.

This code of practice also places a new requirement upon local authorities to make certain categories of people aware of their entitlement to request an assessment of their need for special guardianship support services. These include special guardians, prospective special guardians, children subject to special guardianship arrangements, and children of special guardians.

### **An overview of special guardianship orders**

- 1.11. A family court may make a special guardianship order in respect of a child on the application of a person or persons who fall within the categories set out in section 14F of the Children Act 1989 (see chapter 1 of this code).
- 1.12. 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.
- 1.13. 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.
- 1.14. On receipt 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 the schedule of the

Regulations. The court may not make a special guardianship order unless it has received the report covering the suitability of the applicants.

### **Care, contact and residence / child arrangements orders**

- 1.15. Where a child who is the subject of a care order or interim care order subsequently becomes the subject of a special guardianship order, the care order will be discharged. Where a care order is made in relation to a child who is already the subject of a special guardianship order, both orders will remain in place.
- 1.16. 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 and child arrangements order. The court should also consider whether a contact order should be made at the same time as the special guardianship order. Contact orders may be made, for example, to require continued contact with the child's parents.
- 1.17. When making the 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.

### **Parental responsibility**

- 1.18. The special guardian will have parental responsibility for the child. Subject to any later order in respect of the child under the Children Act 1989, the special guardian may exercise parental responsibility to the exclusion of others with parental responsibility apart from another named 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 their 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 parent if the child dies.
- 1.19. While a special guardianship order is in force, parental consent of every person who has parental responsibility for the child or the leave of court must be given to cause the child to be known by a different surname, or to remove the child from the United Kingdom for longer than three months.

## **Variation or discharge of a special guardianship order**

- 1.20. Unlike adoption orders, special guardianship orders can be varied or discharged either on the application of:
- the special guardian
  - 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 / child arrangement order in respect of the child before the special guardianship order was made.
- 1.21. With the leave of the court, the order may also be varied or discharged on application by:
- the child's parents or guardians
  - any step-parent with 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).
- 1.22. 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.
- 1.23. 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.
- 1.24. An application for a special guardianship order would not compromise specified proceedings for the purposes of representation of the child under section 41 of the Children Act 1989, but the court may require a welfare report to be prepared under section 7.

## **Support services**

- 1.25. 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 (see chapter 2 of this code). The Regulations also provide for the assessment of needs for special guardianship support services, and the planning and reviewing of those support services.

## Children’s rights

- 1.26. When considering whether to make a special guardianship order, the welfare of the child is the court’s paramount consideration and the checklist in section 1(3) of the Children Act 1989 applies.
- 1.27. When exercising their social services functions in respect of special guardianship, local authorities must have regard to their overarching duties to have due regard to Part 1 of the United Nations Convention on the Rights of the Child (UNCRC). They must also promote the well-being of children and special guardians in line with the national well-being outcomes framework published in 2016. (Well-being in this context includes ‘welfare’ as that word is interpreted in the Children Act 1989.)
- 1.28. The table that follows sets out the rights-based outcomes that should be achieved for children subject to special guardianship orders, linked to the relevant UNCRC articles. These are also linked to the national well-being outcomes defined in section 2 of the 2014 Act and which form the basis of the national outcomes framework. The table also shows the welfare ‘checklist’ included in the Children Act 1989 – the matters the family court must have regard to when deciding whether to make a special guardianship or any other order in respect of a child.
- 1.29. **In implementing this code of practice, local authorities must ensure that they strive to achieve these outcomes and measure the success of their special guardianship policies and procedures against them.**

| <b>Rights-based outcomes</b><br><i>Relevant UNCRC Article</i>   | <b>National well-being outcomes</b><br><i>‘What well-being means’ definitions from Section 2 of the Social Services and Well-being (Wales) Act 2014)</i> | <b>Welfare of the child</b><br><i>Section 1 of the Children Act 1989, including matters a court shall have regard in particular to</i>                             |
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| SGOs are applied for and made in the best interests of the child or young person. The child’s best interests are the paramount concern when assessments are made. <b>Article 18</b> | My individual circumstances are considered.<br><i>Securing rights and entitlements</i>   | When a court determines any question with respect to the upbringing of a child ... the child’s welfare shall be the court’s paramount concern. <b>Section 1(1)</b> |
| Special Guardians (and birth parents) fully understand how the SGO promotes and contributes to the child’s upbringing and development, and understand their role and                | I get the support I need to grow up and be independent.<br><i>Social and economic well-being</i><br><br>I live in a home that best                       |  |



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| responsibilities in promoting the child's best interests.<br><b>Article 18</b>   | supports me to achieve my well-being.<br><i>Suitability of living accommodation</i>  |  |
| The child or young person is supported by their Special Guardian to maintain family ties, including personal relations and direct contact with their birth parents (subject to any restrictions imposed by the courts).<br><b>Articles 8 and 9</b> | I belong.<br><br>I contribute to and enjoy safe and healthy relationships.<br><i>Domestic, family and personal relationships</i>   |  |
| Special Guardians are supported in safely promoting and supervising contact between the child and their birth parents, including support with managing relationships and potential conflict.<br><b>Articles 8 and 9</b>                            | I belong.<br><br>I contribute to and enjoy safe and healthy relationships.<br><i>Domestic, family and personal relationships</i>   |  |
| So far as possible, the Special Guardianship arrangement provides the child or young person with a degree of continuity in their upbringing, in line with their ethnic, cultural and linguistic background.<br><b>Article 20</b>                   | My individual circumstances are considered.<br><i>Securing rights and entitlements</i>   | The court shall have particular regard to the likely effect on the child of any change in his or her circumstances.<br><b>Section 1(3)(c)</b><br><br>The court shall have particular regard to the child's age, sex, background and any characteristics of his which the court considers relevant.<br><b>Section 1(3)(d)</b> |
| A child or young person in whose best interests a SGO is made experiences continuity of care up to the age of 18.<br><b>Article 20</b>   | I belong.<br><i>Domestic, family and personal relationships</i><br><br>I get the support I need to grow up and be independent.<br><i>Social and economic well-being</i>                            |  |
| The child or young person is able to freely express their views at every stage, including local authority assessments and the court process, and is supported in making their views known.<br><b>Article 12</b>                                    | My voice is heard and listened to.<br><br>I speak for myself and contribute to the decisions that affect my life, or have someone who can do it for me.<br><i>Securing rights and entitlements</i> | The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).<br><b>Section 1(3)(a)</b>   |

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| <p>The child or young person's views are given due weight when decisions are made.<br/><b>Article 12</b></p>   | <p>My voice is heard and listened to.<br/><i>Securing rights and entitlements</i></p>   | <p>The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).<br/><b>Section 1(3)(a)</b></p> |
| <p>The child or young person receives appropriate information about the proposed Special Guardianship arrangement, suitable to their age and level of understanding, including:</p> <ul style="list-style-type: none"> <li>- the reason why they cannot continue living with their parents</li> <li>- the long-term nature of the arrangement (up to age 18)</li> <li>- the practical implications of such an arrangement (e.g. on parental responsibility)</li> <li>- contact arrangements with birth parents and how this will be facilitated</li> <li>- the support that will be available.</li> </ul> <p><b>Article 13</b></p> | <p>I know and understand what care, support and opportunities are available and use these to help me achieve my well-being.</p> <p>I can access the right information, when I need it, in the way I want it and use this to manage and improve my well-being.<br/><i>Securing rights and entitlements</i></p> |  |
| <p>Special Guardians receive the support, facilities and services they need in caring for the child or young person.<br/><b>Article 18</b></p>   | <p>I get the right care and support, as early as possible.<br/><i>Physical and mental health and emotional well-being</i></p> <p>I know and understand what care, support and opportunities are available and use these to help me achieve my well-being.<br/><i>Securing rights and entitlements</i></p>     |  |
| <p>Children and young people who have suffered abuse or neglect, and their Special Guardians, receive the support they need, and appropriate measures are in place to manage risk and ensure the child is brought up in a safe and secure environment.</p>   | <p>I am safe and protected from abuse and neglect.</p> <p>I [the Special Guardian] am supported to protect the people that matter to me from abuse and neglect.</p>   | <p>The court shall have particular regard to any harm the child has suffered or is at risk of suffering.<br/><b>Section 1(3)(e)</b></p>                |

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| <p><b>Article 19</b></p>  | <p>I am informed about how to make my concerns known.<br/><i>Protection from abuse and neglect</i></p>                        |  |
| <p>Children who have suffered any form of neglect, exploitation or abuse receive appropriate support to promote their physical and psychological recovery, and the SGO arrangement provides the child with an environment which fosters their health, self-respect and dignity.<br/><b>Article 39</b></p> | <p>I get the right care and support, as early as possible.<br/><i>Physical and mental health and emotional well-being</i></p> | <p>The court shall have particular regard to the child's physical, emotional and educational needs.<br/><b>Section 1(3)(b)</b></p> <p>The court shall have particular regard to any harm the child has suffered or is at risk of suffering.<br/><b>Section 1(3)(e)</b></p> |
| <p>Special Guardians receive appropriate financial support, including allowances and support to claim any welfare benefits to which they are entitled, to support the child's upbringing and development.<br/><b>Articles 26 and 27</b></p>   | <p>I do not live in poverty.<br/><i>Social and economic well-being</i></p>  |  |
| <p>SGOs arrangements, including support to the child and the Special Guardian, are subject to periodic review, especially where the child or young person was formerly looked after (or would have become looked after if the SGO had not been made).<br/><b>Article 25</b></p>                           | <p>My individual circumstances are considered.<br/><i>Securing rights and entitlements</i></p>                                |  |

## **2. Assessment of suitability and reports to the court**

- 2.1. A local authority has a duty to investigate the suitability of an individual to be a special guardian, and prepare a report for the family court, on receipt of notice of an application or if requested to by the court. This chapter sets out a local authority's responsibilities in respect of assessments of suitability and what must be included in the report.

### Applications for special guardianship orders

- 2.2. Applications for a special guardianship order may be made by an individual or jointly by two or more people. Joint applicants do not need to be married to or in a civil partnership with each other. Special guardians must be 18 or over. The parents or step-parent of a child may not become that child's special guardian.
- 2.3. 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 is named in a residence or child arrangements order as a person with whom the child is to live, or who has the consent of all those in whose favour such a residence or child arrangements 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 who has the leave of the court to apply.
- 2.4. 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.
- 2.5. If the child is being looked after by a local authority, the applicant must give the written notice to the authority that is looking after the child (i.e. the child's corporate parent). 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.

- 2.6. 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.

#### Assessment of suitability

- 2.7. On receipt 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.
- 2.8. Where there is no application, the court may consider that a special guardianship order should be made, and direct the appropriate local authority to prepare a report on a person's suitability to be a special guardian within a specified timeframe.
- 2.9. 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 covering the suitability of the applicants.
- 2.10. Responsibility for preparing the report rests with the authority to which the application is made – i.e. in the case of a looked after child, this will be the authority which is looking after the child (the child's corporate parent); and in any other case, the local authority where the applicant is ordinarily resident (regardless of where the child is currently living).
- 2.11. As part of its investigation and preparation of the report, the responsible local authority may need to seek information from another authority – 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 must co-operate fully, where necessary, in the investigation and preparation of the report for the court. It may also be necessary for the local authority to contact local health services in order to prepare a comprehensive report.
- 2.12. When a local authority receives notice from an applicant or a request from the court, it must send written information to the prospective special guardian and the parents of the child, setting out the steps it proposes to take in preparing the report.

- 2.13. In all cases, the local authority must make arrangements to accurately ascertain and report on the child's wishes or feelings about the proposed special guardianship arrangement. This will be especially important in cases where there is no children's guardian appointed by the court.
- 2.14. Under section 14A(1) of the Children Act 1989, local authorities are able to make such arrangements as they see fit for any person to act on its behalf in connection with conducting an investigation or preparing the report for the court. Local authorities must consider how best to exercise this power to facilitate the investigation and timely preparation of the report to the court.
- 2.15. The local authority may arrange for someone else to carry out the investigation or prepare the report on its behalf. Local authorities must ensure that the person who conducts the investigation and prepares the report to the court is suitably qualified and experienced, or is supervised by someone who is.
- 2.16. The assessment of suitability must be robust, objective and inquiring. Information received from and about the prospective special guardian must be analysed and evaluated carefully, and its accuracy and consistency checked. The welfare of the child must be the paramount consideration, and it is vital that the background of prospective special guardians is checked thoroughly. As special guardianship orders are a permanence option, expected to remain in place until the child turns 18, it is vital that the assessment considers the ability of the prospective special guardian to meet the child's needs at the time of the order is made and in the future (with an appropriate support package, as required).
- 2.17. The report to the court must also contain the results of any assessment for special guardianship support services.
- 2.18. Special guardianship arrangements do not provide for a settling in period, as happens in cases of adoption, reflecting the expectation that the child and special guardian already have an established relationship and know each other well. However, the changing use of special guardianship orders, especially for younger children or where children would otherwise be taken into care, means that this is not always the case. The local authority must therefore give careful consideration to the nature of the existing relationship between the child and prospective special guardian, and what support might need to put in place to help consolidate and build up the relationship. Where the child is not already living with the prospective special guardian, the local authority must consider how it can best support the child to make the transition to his or her new home and

family environment. The needs of other family members, such as the prospective special guardian's own children, must also be taken into account when helping the family make the transition to the new arrangement. Assessments must also consider wider family relationships and the nature of the child's contact with his or her birth parents, grandparents and siblings, and the ability of the prospective special guardian to manage these (with support, as necessary).

- 2.19. Local authorities must wherever possible ensure that they allow sufficient time to undertake robust and reflective quality assessments. Many relatives who are put forward or who emerge as potential special guardians during court proceedings do not have sufficient knowledge of what special guardianship involves, and have not had enough time or support to consider the demands of being a special guardian and the level of commitment required over many years. Many will never have considered taking on (or taking on again) a parenting role. In addition, prospective special guardians may not have been aware of the harm suffered by the children and may need time to fully come to terms with this and the protective actions that may be needed in future in any contact with the child's parents.
- 2.20. Early intervention and identification of potential kinship carers will help ensure that local authorities have sufficient time to fully explore these issues and undertake quality assessments. Local authorities must, wherever possible, engage with families at an early stage, to agree what permanency options may be available, and ensure that families fully understood the need to nominate alternative carers within the family. Family meetings at this stage can help families begin to address the complexities of managing contact and the financial and practical support that might be needed. This can prevent delays later on when legal proceedings are instigated. Local authorities must ensure they have arrangements in place to facilitate family meetings at an appropriate stage.

#### Content of reports

- 2.21. The local authority report must cover:
- the suitability of the prospective special guardian
  - matters prescribed by the Regulations
  - any other information the local authority considers to be relevant
  - (where appropriate) support needs and how they will be met.
- 2.22. **The prescribed matters are set out in full in the Schedule to the Regulations as amended by the 2018 Regulations, and local**

**authorities must refer to this when undertaking assessments and preparing their reports.**

The prescribed matters include:

- information about the child, including:
  - ✓ personal background, including any harm suffered and risk of future harm
  - ✓ details of any orders made by a court with respect to the child, and any care history including placements
  - ✓ any harm the child has suffered, and the risk of future harm current or likely future needs related to the child's physical, social, emotional or behavioural development
  - ✓ health history and description
  - ✓ extent of contact with other family members
  - ✓ educational attainment (including additional learning needs) and nurseries / schools attended
  - ✓ wishes and feelings about the proposed special guardianship arrangement, contact, and religious and cultural upbringing
  - ✓ description of personality, social development, emotional and behavioural development and any related needs
  - ✓ interests, likes and dislikes.
  
- information about the child's family, including:
  - ✓ parents and family background and relationships, including health history, personality and relationships
  - ✓ care arrangements and any court orders made with respect to any siblings
  - ✓ views of parents on the application
  
- information on the prospective special guardian/s and their household, including:
  - ✓ background including the stability of relationship with partner
  - ✓ health, educational attainment, occupation, personality and interests
  - ✓ home, including income and standard of living
  - ✓ current and previous experience of caring for children
  - ✓ any past assessments as a prospective adopter, foster parent or special guardian
  - ✓ any current or past concerns about care of other children
  - ✓ parenting capacity
  - ✓ capacity to keep the child safe
  - ✓ details of any previous family court proceedings involved in



- ✓ motivation for applying for a special guardianship order, understanding of what is involved, and hopes and expectations for the child's future
  - ✓ the nature of their current and past relationship with the child
  - ✓ understanding and ability to meet the child's current and likely future needs (particularly any needs arising from any harm the child has suffered) , and to protect the child from current or future harm
  - ✓ ability, suitability and commitment to bring up the child until the age of 18
  - ✓ details of proposed living arrangements for the child, if these are intended to change after a special guardianship order is made
  - ✓ the views of other adults and children in the household
  - ✓ views of significant members of the extended family
  - ✓ past and current relationship with birth parents, where relevant
  - ✓ wishes and feelings in relation to contact with the child's relatives and other relevant people.
- information on the local authority, including:
    - ✓ details of any past involvement of the local authority with the prospective special guardian, including any past preparation for that person to be a foster parent or adoptive parent
    - ✓ any assessment for special guardianship support services (and, where the authority has decided not to provide services, the reasons why)
    - ✓ details of discussions with another local authority where the child is to live in another area
    - ✓ a recommendation about contact arrangements with parents, siblings and any other significant person in the child's life
    - ✓ the local authority's opinion as to whether the prospective special guardian would or would not be suitable.

2.23. The report must also include, in respect of the prospective special guardian and any other member of the special guardian's household who is aged 18 or over an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children.

2.24. The local authority's conclusions must include the following considerations:

- a summary prepared by a medical practitioner on the health of the child and the prospective special guardian

- the implications of the making of a special guardianship order for the child
- how any special health needs of the child will be met
- whether the making of a special guardianship order would be in the best long-term interests of the child
- how any emotional, behavioural and educational needs of the child may be met
- the effect of making a special guardianship order on the child's parents, the prospective special guardian, his or her family, or other relevant persons
- a recommendation about contact arrangements to be put in place with relatives and other relevant people
- if appropriate, the merits of making any other type of order in respect of the child.

### **3. Provision of support services**

- 3.1. This chapter sets out the special guardianship support services that local authorities must make arrangements to provide. Provision of these services to any individual will be subject to an assessment of need (see chapter 4 of this code).

#### Information, advice and assistance

- 3.2. Many special guardians will simply need information or advice to help them care for the child in their care, or signposting to other sources of advice and assistance. Local authorities in Wales have a duty to secure an information, advice and assistance service that provides local people with accessible information, advice and assistance to enable them to make plans to meet their care and / or support needs now and in the future. This includes the types of care and support available, and how individuals can access them.
- 3.3. When securing their information, advice and assistance service local authorities should consider the needs of special guardians and prospective special guardians. Local authorities must provide accessible and publically available information about special guardianship (including easily accessible web-based material) for children and young people, special guardians and prospective special guardians. The information, advice and assistance service must also be able to signpost them to accessible and independent sources of information and advice.

#### Support services to be provided

- 3.4. The Regulations prescribe the specific support services which local authorities must make arrangements to provide to special guardians, children and other people involved in special guardianship arrangements. Local authorities do not have to provide these services direct, but can arrange for them to be delivered in partnership with other agencies, as appropriate. The prescribed services are listed below.

#### **Financial support**

- (a) Financial support for special guardians and those who wish to be special guardians. See chapter 5 of this code for the circumstances in which financial support may be paid.

## **Support groups**

- (b) Services to enable children, their parents and special guardians (or prospective special guardians), who are or may shortly become involved in special guardianship arrangements, to discuss matters relating to special guardianship. These services can include support groups, social media groups and newsletters.

## **Contact**

- (c) Assistance in relation to contact between children who are, or may soon be involved in special guardianship arrangements and a parent or relative or any person with whom the child has had an important relationship.

Because special guardianship orders do not break the relationship between the birth parents and the child, special guardians have to know how to manage contact arrangements between the child and his or her family, and may need training and support in how to deal with any issues or conflict that may arise.

## **Therapeutic services**

- (d) Services provided for the therapeutic needs of children who are, or may shortly become involved in, special guardianship arrangements. Arrangements to provide this type of support are likely to be made with NHS or other providers.

## **Assistance**

- (e) 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).

The legislation particularly mentions training for the (prospective) special guardian, and short breaks. Training may include parenting classes, or courses aimed at understanding and dealing with particular behavioral or developmental issues pertinent to the particular child. A short break may be necessary to give the child an opportunity to have a short break for educational or recreational purposes, or to give the child's carer a break from caring. The assistance provided will depend

on the nature of the assessed need and the particular circumstances of the child and special guardian.

## **Mediation**

- (f) Where the relationship between a child and a special guardian is in danger of breaking down, assistance to prevent that occurring, including:
- mediation – for example, around issues of contact between the child and birth parents or other family members
  - meetings between appropriate persons to address the relationship difficulties.

## Planning and arranging provision

- 3.5. Special guardianship support services must not be seen in isolation from mainstream services. 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.
- 3.6. Local authorities must ensure that the needs of special guardians, and children and families involved in special guardianship arrangements, are included in the planning and provision of mainstream services provided for children, young people and families with particular needs. These include health services, including child and adolescent mental health services; education provision, including those to meet additional learning needs; housing; and information, advice and assistance.
- 3.7. In planning special guardianship support services, local authorities must bear in mind that the children subject to the special guardianship orders, although not looked after children, share many of the same characteristics as the looked after population. Some will be former looked after children, others will have been on the edge of care or come from families in crisis, and many will have experienced adverse childhood experiences, often related to abuse or neglect. Local authorities must ensure that special guardians and the children they care are involved in the planning of local care and support services.
- 3.8. Although local authorities are responsible for arranging provision of special guardianship support services, the local authority does not have to provide the service itself. The Regulations set out the range of providers that local authorities may delegate or contract out provision of special guardianship services to:

- another local authority
- an adoption support agency
- a Local Health Board, National Health Service Trust or (in England) clinical commissioning groups and the NHS Commissioning Board
- a voluntary adoption agency
- an independent fostering agency.

3.9. The voluntary and independent sectors may also have an important role to play in providing special guardianship support services. In developing 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 supplying a service to the same person twice.

## 4. Assessment for support services

- 4.1. This chapter sets out the arrangements for assessing the needs of children, special guardians and prospective special guardians, and other family members, for special guardianship support services.

### People entitled to an assessment

- 4.2. The following people are entitled to request an assessment of their needs for special guardianship support services (in public or private law cases):
- a child subject to a special guardianship order or a parent of such a child;
  - a child in respect of whom a person has given notice to a local authority of his or her intention to apply for a special guardianship order or a parent of such a child;
  - a child in respect of whom the court has required a local authority report or a parent of such a child;
  - a child who is the subject of, or is named in, a local authority report for the court;
  - a special guardian or prospective special guardian;
  - a child of a special guardian or prospective special guardian;
  - a relative of a child falling within the first three bullet points providing contact arrangements were in place before the request for an assessment.
- 4.3. A local authority must make all of the above aware of their entitlement to request an assessment for special guardianship support services at every appropriate stage (i.e. when an application is made, and again once the special guardianship order is in place).
- 4.4. Not all prospective special guardians or families will want an assessment – for example, where the child is already living with the family member of with a foster carer who is seeking to become the child’s special guardian – but the local authority must always make them aware of their entitlement as soon as they receive an application.
- 4.5. . Ensuring that the support needs of the child and / or prospective special guardian are fully understood and will be met will be an important consideration when making a recommendation about the suitability and likely success of the special guardianship arrangement.

- 4.6. Where an assessment is not requested, the local authority must record this fact in the report to the court and give the reasons. Where no assessment has been requested, and a special guardianship order is subsequently made, the local authority must inform the child and special guardian of their entitlement to ask for an assessment should their circumstances change. This will be particularly important in the case of younger children where the special guardianship order may last for several years up to the age of 18. It allows these children, their special guardians and other family members to request an additional assessment for additional support as their relationships or family circumstances develop or change over time.
- 4.7. The regulations allow the local authority to limit the assessment to the need for a particular special guardianship support service if:
- the person requesting the assessment has requested a particular special guardianship support service, or
  - it appears to the local authority that the person's needs may be adequately assessed by reference only to a particular support service.
- 4.8. However, local authorities should take a flexible and holistic approach to assessment. If it becomes clear, during the assessment for a particular service, that the child or special guardian has other support needs, the local authority should take the necessary steps to ensure that the person's needs are appropriately assessed and met. This may involve referring the person to the local authority's Information, Advice and Assistance Service, widening the assessment to include the need for other special guardianship support services, and / or assessing the person's needs for care and support needs under Part 3 of the Social Services and Well-being (Wales) Act 2014. Where a looked after child becomes subject to a special guardianship arrangement, the relevant parts of the child's Part 6 care and support plan will usually be converted into a Part 4 care and support plan, which will include any arrangements for delivering any special guardianship support services.

#### Responsible local authority

- 4.9. Where an assessment for support is undertaken alongside the assessment of suitability and preparation of the report for the court, the responsible local authority is the authority to which the special guardianship application was made. In the case of a looked after child, this will be the authority which is looking after the child; and in any other case, the local authority where the applicant is ordinarily resident (regardless of where the child is currently living).



- 4.10. Once the special guardianship order has been made, the local authority responsible for carrying out any subsequent assessment for special guardianship support will be:
- where the child was looked after prior to the special guardianship order being made, the local authority which was formerly looking after the child, for the first three years after the order is made
  - in all other cases (including where the three year period has expired), the local authority where the child and special guardian are ordinarily resident.

#### Assessment procedure

- 4.11. A local authority must ensure that an assessment of a person's needs for special guardianship support services is carried out by, or under the supervision of, an individual who has suitable qualifications, experience and skills for that purpose. The assessment must be co-ordinated to ensure that all relevant agencies and individuals are included.
- 4.12. Section 14F of the Children Act 1989 provides for a local authority to carry out an assessment for special guardianship support at the same time as an assessment of need is carried out under other legislation. This will be particularly important where it is clear that the child has wider care and support needs, or where the guardian (or prospective special guardian) has support needs, under the Social Services and Well-being (Wales) Act 2014 (see the section on 'levels of support' below).
- 4.13. During the needs assessment, the local authority must have regard to the following, if relevant:
- the needs of the person being assessed and how these might be met
  - the needs of the relevant child and the family members of any special guardian or prospective special guardian
  - the circumstances that led up to the making of a special guardianship order
  - any special needs of the child subject to the special guardianship order arising from the fact that
    - ✓ the child has been looked after by the local authority
    - ✓ the child has been habitually resident outside the British Isles
    - ✓ the special guardian is a relative of the child
    - ✓ the assessment relates to financial support.
- 4.14. The local authority must interview the person whose needs for special guardianship support services are being assessed, and where that person is a child, must also interview the special guardian or prospective special guardian. Where a child's needs are being assessed, the local authority

must ensure that the child is interviewed in a way that appropriate to their age and level of understanding, so that the child's views, wishes and feelings are appropriately ascertained and taken into account. A looked after child must be informed of his or her entitlement to independent advocacy.

- 4.15. If 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 assessment must also take into account the likely impact of the special guardianship order on the relationships between the child, the parent and the special guardian or prospective special guardian.
- 4.16. Assessments for special guardianship support services must take 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. Past assessments for a child who has previously been looked after by a local authority can help inform the assessment of special guardianship support needs.
- 4.17. After undertaking an assessment of need for special guardianship support services, the local authority must prepare a written report of the assessment.

#### Meeting care and support needs

- 4.18. Families will have differing levels of need. All families are likely to need information and advice about what special guardianship entails, and signposting to other sources of information, advice and support such as support groups and mainstream services. Providing this advice and information may be all that is required of a local authority in a majority of cases. This will especially be the case where the special guardianship arrangement consolidates an existing well-established relationship (for example, with a kinship carer or a former foster carer), and where the child has no particular care and support needs over and above the parenting that the special guardian provides.
- 4.19. It is vital to ensure that children and those 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. Local authorities must inform special guardians how to access support should circumstances change and additional needs arise, and must also ensure that the child or young

person knows how to access appropriate support. Arrangements for keeping in touch with children and special guardians, and for providing them with up-to-date information, are discussed in chapter 9 of this code (review of support services).

- 4.20. Some families will have problems of a more complex or serious nature that require a more detailed assessment, involving contributions from other agencies and leading to appropriate plans and interventions. Some children in special guardianship arrangements will have additional care and support needs, and some special guardians may have support needs arising from their role in caring for the child (for example, if the child is disabled or has particular behavioural or emotional needs). In such circumstances, care and support will usually be provided under the Social Services and Well-being (Wales) Act 2014. The codes of practice relating to Parts 3 and 4 of that Act set out the framework for assessing and meeting people's care and support needs, and the support needs of carers. In most cases, a child in a special guardianship arrangement who has care and support needs will also be entitled to an assessment under Part 3 of the 2014 Act, and to a care and support plan under Part 4 of that Act. The special guardian may also be entitled to an assessment for support under the Act.
- 4.21. The local authority must ensure that, where appropriate, assessments for special guardianship support services are undertaken as part of the assessment for care and support under Part 3 of the Social Services and Well-being (Wales) Act. Where the child has a care and support plan (or the special guardian has a support plan) under Part 4 of that Act, the local authority should include the special guardianship support services plan within the overall care and support plan (or carer's support plan), as appropriate. However, the local authority must ensure that it still meets all its legal obligations under the Regulations, including the provisions in relation to notification and representations (see chapters 5, 6 and 7).

## 5. Financial support

- 5.1. This chapter sets out the circumstances in which financial support can be paid to special guardians or prospective special guardians, and the factors a local authority must take into account when determining the amount of any financial support.

### Circumstances in which financial support can be paid

- 5.2. Local authorities must consider, assess, pay and monitor financial support for special guardianship families in accordance with the Regulations. These provisions are intended to give local authorities greater flexibility to respond to the individual needs of a child and his or her circumstances.
- 5.3. Financial support can only be paid to a special guardian or prospective special guardian in the following circumstances.

- (a) A child subject to a special guardianship order is living with the special guardian and the local authority consider that financial support is necessary to ensure the guardian can continue to look after the child.
- (b) A child in respect of whom a special guardianship order is sought, or in respect of whom a court has required a report, lives with a prospective special guardian and the local authority considers that:
- it would be beneficial for the child for a special guardianship order to be made
  - financial support is necessary to ensure the prospective special guardian can continue to look after the child pending the court's decision.

This provision allows for financial support where the local authority supports the making of a special guardianship order, but considers that the long-term success of the child's relationship with the prospective special guardian is in doubt without the provision of such support while the application is still being considered.

- (c) The local authority considers that:
- the making of a special guardianship order, or of an order for financial provision to be made to or for the benefit of a child, would be beneficial for a relevant child
  - it is appropriate to contribute to or meet any legal costs, including

court fees, of a prospective special guardian or special guardian associated with seeking a special guardianship order or an order for financial provision.

(d) A child lives with a special guardian (or prospective special guardian) and the local authority considers the child needs special care which requires greater financial expenditure, due to illness, disability, emotional or behavioural problems that arise due to the consequences of past abuse or neglect.

- 5.4. Before financial support is payable, the special guardians (or prospective special guardians) must agree to inform the authority immediately if they change their address, the child's home is no longer with them, the child dies or their financial circumstances change.
- 5.5. The local authority must 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 (for example, 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
  - the child is in receipt of income support or jobseeker's allowance
  - the child has begun full-time paid employment.
- 5.6. Occasional or short periods of temporary absence away from the special guardian's home must not be taken into account: for example, in connection with education, short breaks ('respite' care) or hospitalisation. Termination of financial support must only happen where the child's departure from the special guardian's home is considered to be permanent.
- 5.7. A local authority must review the provision of financial support at least once a year (see chapter 10 of this code). It must also undertake a review if it comes to its attention that there has been a relevant change in the circumstances of the person receiving support. In addition, the special guardians must inform the local authority if their financial circumstances have changed or the financial needs or resources of the child have changed.

### Determining the amount of financial support

- 5.8. The Regulations set out the factors the local authority must take into account in determining the amount of financial support to be awarded. These are listed below.
- (a) The financial resources available to the special guardian or prospective special guardian.
  - (b) The amount required by the special guardian or prospective special guardian in respect of reasonable out goings and commitments other than in respect of the relevant child.
  - (c) The needs and resources of the relevant child.
  - (d) Necessary expenditure on legal costs, including court fees relating to the special guardianship order or an application for financial provision for the relevant child.
  - (e) The costs involved in facilitating the child moving into his or her home with the special guardian. This means the costs of accommodating the child, including:
    - furniture
    - domestic equipment
    - alterations and adaptations to the home
    - providing a means of transport
    - clothing, toys and any other items necessary to look after the child.
  - (f) The costs associated with any additional learning needs or behavioural needs of the child, including:
    - equipment for meeting any special needs
    - rectifying damage in the home caused by the child, where these costs arise from the child's additional learning needs or behavioural difficulties
    - placing the child in a boarding school, where that is necessary to meet the child's special educational needs
    - any other costs of meeting any special needs of the child
  - (g) The cost of meeting reasonable travel costs for the purposes of the child visiting a parent or relative.
- 5.9. A child who has an illness, disability, emotional or behavioural difficulties, or who is suffering from the continuing consequences of past abuse or neglect, may require a degree of care and support which necessitates extra expenditure. In these cases, medical and other

professionals will have a role in evaluating the effect of the child's condition and in providing advice to the local authority who will in turn notify the special guardian. The local authority is expected to seek specialist medical advice where appropriate.

- 5.10. Payment of financial support in these cases 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 not affected by the particular condition. Specialist assistance may be needed to help with, for example, regular attendance at a nursery, possibly with special ancillary assistance, or visits to a clinic or consultations with a paediatrician, that may result in unexpected expenses for the special guardian.
- 5.11. **No special guardianship arrangement should fail, or fail to go ahead, solely because of financial barriers.** To help ensure that financial barriers are overcome, local authorities must:
- ensure that the special guardian or prospective special guardian and their family are aware and taking advantage of all benefits and tax credits available to them
  - consider the impact of special guardianship on the special guardian or special guardian's (or prospective special guardian's) family, and whether any lump sum payments are required to secure the success of the arrangement (for example, settling in costs, home adaptations).
  - consider the residual ongoing impact of special guardianship that might necessitate regular payments
  - consider any special circumstances that apply to the child and (prospective) special guardian (for example, where foster carers wish to become a special guardian to a child for whom they are currently caring).
- 5.12. The local authority may begin providing financial support, as appropriate, when:
- a special guardianship order is made, or
  - after the court has asked the local authority for a report on the suitability of the prospective special guardian, or
  - upon receipt of a prospective special guardian's notice of intention to make an application for a special guardianship order.

### **What is meant by financial support?**

- 5.13. 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.
- 5.14. The Regulations state that financial support must not include any element of remuneration for the care of the child (but see below for special arrangements for foster carers who become special guardians).
- 5.15. 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 special guardians may receive, local authorities must take into account income that is payable in the form of benefits and tax credits.
- 5.16. The Regulations specify that financial support must be paid as a single payment except where the local authority and the recipient agree that it will be paid in instalments or periodically, or where the local authority decides that the needs are likely to give rise to recurring expenditure. In these cases, the local authority may specify the dates on which and until which payments will be made.
- 5.17. Local authorities may impose conditions that they consider to be appropriate when providing financial support. This could include the timescale and purpose that the financial support should be used for.

#### Foster carers who become special guardians

- 5.18. Foster carers who apply to become special guardians for a child they have fostered may potentially lose out financially, especially if they have been receiving a fee element as part of their fostering allowance. This may be a barrier to applying for a special guardianship order, and the Regulations allow local authorities to take this into account when setting the level of financial support for foster carers who become special guardians.
- 5.19. Fostering fees are given in recognition of the service the foster parent provides to a local authority in caring for a child who is looked after by that authority, or in recognition of particular skills or experience the foster carer may have. As the fostered child will cease to be looked after once the special guardianship order is made, and financial support for special guardians cannot include any element of remuneration, foster carers will



lose their entitlement to this 'reward' element once they become the child's special guardian.

- 5.20. However, Regulation 7(4) allows local authorities to provide financial support above the usual level where the special guardian was the child's foster carer. This is not an automatic entitlement. The prospective special guardian's financial circumstances will be considered in relation to the child's needs when the local authority carries out its assessment of support needs. In some cases the local authority will decide that the prospective special guardian is able to meet the additional costs of caring for the child as a permanent member of the family without the payment of any additional payment. In other cases the local authority will decide that a higher level of financial support should be payable to ease the transition from being a foster carer to being a special guardian for the child.
- 5.21. The local authority must decide to pay this financial support to the former foster carer before the special guardianship order is made, and the additional payments must cease after two years unless the local authority considers that the payments are necessary because of exceptional circumstances.
- 5.22. 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.

## 6. Post-assessment: Notice of outcome

- 6.1. This chapter sets out the procedure for notifying a special guardian or prospective special guardian of the outcome of an assessment for support services, and the opportunity for making representations.

### Information that must be given

- 6.2. Regulation 8 specifies that that, after carrying out an assessment for special guardianship support services, the local authority must supply the following information to the person who was assessed:
- the authority's provisional view as to the person's needs for special guardianship support services
  - whether the local authority proposes to provide special guardianship support services to that person
  - details of the services, if any, that it is proposed will be provided
  - where the assessment relates to that person's needs for financial support, the basis on which the financial support is determined, the proposed amount that would be payable, and any conditions the local authority propose to impose.
- 6.3. The local authority must also give the person who was assessed notice of his or her right to make representations. The notice must set out the time period within which the person must make any representation.
- 6.4. When providing the person with the outcome of the assessment, the local authority must refer the person to sources of independent advice and advocacy.
- 6.5. Notices must be given in writing. Specific requirements regarding the person to whom the notice must be given are set out in chapter 7 of this code.

### Representations

- 6.6. The person who has been notified has the right to make representations to the local authority regarding the proposals to provide (or not to provide) special guardianship support services, within the period specified in the notice. The right to make representations gives applicants an opportunity to ensure that all the relevant circumstances have been taken into account by the local authority.

- 6.7. Local authorities must specify a period of 28 days from the time the proposed decision is sent to the applicants unless the particular circumstances require a shorter or longer period.
- 6.8. Regulation 8(4) specifies that the local authority must not make a decision as to the provision of special guardianship support services until representations have been made or the time period for making representations has expired. However, the regulation also allows a local authority the flexibility to make a decision before the period of representations expires, if the person who has been assessed tells the authority that they are satisfied with the proposal, or if the person makes representations in writing before the end of the period. This flexibility should ensure that there is no delay in the provision of services where these are necessary to make the special guardianship arrangement work.

## 7. Post-assessment: Notification of decision

- 7.1. This chapter deals with a local authority's decision about what special guardianship support to provide to a person following an assessment.

### Making a decision

- 7.2. 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. In coming to its 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.

### Notification

- 7.3. After making its decision, the local authority is required to give notice of that decision, including the reasons for the decision.
- 7.4. Where the assessment of needs is related only to the provision of **information** the local authority is not required to give notice if this appears not to be appropriate.
- 7.5. Notices must be given in writing. Specific requirements regarding the person to whom the notice must be given are set out in chapter 7 of this code.
- 7.6. Where a local authority has decided to provide **financial support** to a special guardian or prospective special guardian, it must provide the following information to that person in writing:
- the amount of financial support to be paid
  - the conditions, if any, that 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, date of the first payment, and the date (if any) on which the payment will cease.

- 7.7. The notice must 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 to review the provision of financial support (see chapter 9 of this code).
- 7.8. Also, where the special guardian or prospective special guardian is to receive financial support, the notice must include the responsibilities of the special guardian (or prospective special guardian) to inform the local authority:
- if they change their address
  - if the child no longer has a home with them
  - if the child dies
  - if there is any change in their financial circumstances or the financial needs and resources of the child;
- and to supply the local authority with a written, completed annual statement regarding their financial circumstances and the child's financial needs and resources.
- 7.9. 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 can then be covered in a single notification and plan sent out by the local authority, setting out decisions for the whole package of support.

## 8. Notices

- 8.1. This chapter sets out specific requirements regarding the giving of information and notices. It covers information and notices which local authorities are required to supply in relation to the outcome of assessments and the right to representation (chapter 5 of this code), notification of decisions regarding special guardianship support services (chapter 6), support services plans (chapter 8) and information regarding reviews (chapter 9).
- 8.2. Information and notices must be given in writing, although additional formats may also be necessary in specific circumstances.

### People who must be notified

- 8.3. Notices must be given to the person who has been assessed for special guardianship support services, including financial support, and to other persons as specified below.
- 8.4. Where the person is an adult, the notice must be given to that person.
- 8.5. Where the person is a child of sufficient age and understanding, the notice must be given to that child, 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 wellbeing of the child. Except where it appears inappropriate to the local authority to do so, the notice must also be given to the child's special guardian or prospective special guardian. Where the child does not have a special guardian or prospective special guardian, the notice must be given to the adult the local authority considers most appropriate.
- 8.6. When providing information or notices to a child, the local authority must ensure that the information is given in a way that is appropriate to the child's age and understanding. In some circumstances, the information may need to be given verbally as well as in written form, to ensure that the child fully understands the decisions the local authority has made or is proposing to make. The local authority must ensure that the child and the special guardian are referred to sources of independent advice and advocacy, as appropriate.
- 8.7. Where it is not appropriate to give the notice to a child, or the child is not of sufficient age or understanding, the local authority must give the notice

to the child's special guardian or prospective special guardian, or where there is none, to the most appropriate adult.

## 9. Support services plan

- 9.1. 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 must prepare a plan of the special guardianship support services to be provided. This is known as the support services plan. This chapter sets out how plans must be prepared, what they must contain, and how often they must be reviewed.

### When should a plan be prepared?

- 9.2. The preparation of a support services plan is essential to ensure the co-ordinated provision of services, and clarify who will be responsible for providing what.
- 9.3. The support services plan should build on any information already known to the local authority. Where the child has a care and support plan under Part 4 of the Social Services and Well-being (Wales) Act 2014 (or the special guardian has a support plan), the special guardianship support services plan for the child and / or the adult should be integrated into that person's Part 4 plan.
- 9.4. The local authority does not need to prepare a support services plan where special guardianship support services are being provided on a single occasion, as in this case the notice provided will include all the necessary information.
- 9.5. Even where there is no need for a support services plan, the local authority must ensure that the child and the special guardians knows who the local authority's special guardianship contact is, and how to access advice and support if needed.
- 9.6. Support plans must, where possible, be agreed with the prospective special guardian before the special guardianship order is made. The prospective special guardian and the child may need independent advice and support before they can make an informed decision about the proposed support. Where appropriate the local authority should consider arranging family meetings to discuss the support arrangements.

### Who needs to be involved?



- 9.7. If the local authority considers it appropriate, they must consult the following people during the preparation of the support services plan:
- the person whose needs for special guardianship support services have been assessed (whether an adult or a child of sufficient age and understanding)
  - in the case of a child, the special guardian or prospective special guardian (except where it appears inappropriate to the local authority to do so).
  - .
- 9.8. Local authorities must ensure that consultation with a child or young person is undertaken appropriately, and that where appropriate the child is supported during the consultation by an appropriate person. A child who is looked after when an application for a special guardianship order is made, has a statutory right to advocacy under the Social Services and Well-being (Wales) Act 2014.
- 9.9. When the support services plan is being prepared, it may become apparent that some services need to be provided by a local health board, an NHS Trust, a clinical commissioning group, the NHS Commissioning Board or another local authority.. Where the local authority considers that this may be the case it is required by regulation 11(3) to consult the relevant Board, Trust, group or authority..
- 9.10. 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 must be set out in writing in a way that everybody affected can understand.

#### What must the plan contain?

- 9.11. The plan must set out clearly:
- the objectives of the plan
  - the key services to be provided
  - the timescales for achieving the plan
  - the individual 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.

- 9.12. Where the assessment for support has raised any concerns or identified any risks, the support services plan must set out fully how these are to be addressed or managed.
- 9.13. This plan must provide a clear picture for all those involved in the provision of the services, and the person receiving those services, of what will be provided, when and by whom, and how the success of the services will be measured and reviewed. The local authority must also inform the person receiving the services who their first point of contact will be should the person have any queries or concerns about the plan.

Who must receive copies of the plan?

- 9.14. Once the plan has been agreed the local authority must send a copy to the recipient of the special guardianship support services (and / or the special guardian or appropriate adult) in accordance with Regulation 10 (see chapter 7 of this code).
- 9.15. Where it appears to the local authority that a local health board, an NHS Trust, a clinical commissioning group or the NHS Commissioning Board may be involved in the delivery of the plan, the authority must provide a copy of the plan to that board, Trust or group. Where the person to whom the plan relates lives in the area of another local authority, the local authority that prepared the plan must provide a copy of the plan to the area local authority, unless the authority considers it unnecessary.

## 10. Review of support services

- 10.1. This chapter sets out the requirements on local authorities to review special guardianship support services plans, including arrangements to review financial support where there has been a change of circumstances.

### Keeping in touch

- 10.2. Local authorities must have arrangements in place to keep in touch with special guardians (a) where the special guardianship order was made in their area, and (b) where the special guardian lives in another area but the child was formerly looked after by that authority. When the special guardian and child have an established and settled relationship, and the special guardianship arrangement is working well, a phone call once a year may be all that is needed to establish that all is well, and that no further information, advice or assistance is needed. As a minimum, local authorities must make contact with special guardians at least once a year.
- 10.3. Local authorities must also ensure that they contact special guardians about changes affecting special guardianship support arrangements locally (for example, changes of contact details), so that all special guardians know where to go for advice and support should the need arise. Newsletters or e-mail bulletins may be useful in this regard; or information could be included in the annual financial assessment.

### Reviewing support services plans

- 10.4. 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 provided.
- 10.5. The format and content of the review will vary depending on the circumstances of the case. Where a 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. Sometimes it may be appropriate to carry out an assessment of care and support needs under Part 3 of the Social Services and Well-being (Wales) Act 2014.

- 10.6. Notification of changes of circumstances and any review of the provision of special guardianship support services need not require 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.
- 10.7. 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.
- 10.8. In conducting a review, the local authority must take into account the same considerations as for the original assessment (see chapter 3 of this code).

#### Timescales for review

- 10.9. When preparing the support services plan, the local authority must discuss with the recipient (and / or the special guardian or appropriate adult) the arrangements for reviewing the provision of support services, if it considers this appropriate. The review arrangements must be written into the plan.
- 10.10. The 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, 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.
- 10.11. Wherever possible a review must take place within four weeks of a

change of circumstances coming to the attention of the local authority.

### Reviewing financial support

- 10.12. Where ongoing financial support is provided, a local authority must review the provision of financial support if it comes to its attention that there has been a relevant change in the circumstances of the person receiving support. **Local authorities must review the provision of financial support at least once per year.**
- 10.13. 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. 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.
- 10.14. 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 cost of living earnings increases against the financial support provided, although marked increases may be taken into consideration.
- 10.15. Special guardians must complete and submit to the local authority an annual statement of their circumstances. If the special guardian fails to do so, the local authority must not take any steps to review, cease payment or recover any financial support until they have sent a written reminder and allowed 28 days for the special guardian to provide the statement. If the annual statement is not provided after 28 days, the local authority may review the financial support or suspend or cease payment. Local authorities can also seek to recover all or part of the financial support they have paid. Local authorities must ensure that special guardians are made aware of these provisions by including them in the formal notification 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.
- 10.16. The local authority should be prepared to provide advice and assistance on completing the forms, on request where necessary.
- 10.17. The local authority must terminate financial support with effect from the date that it becomes aware of any of the following circumstances:

- the special guardianship order has ceased to have effect or has been revoked by the court
- the child ceases to have a home with the special guardian or prospective special guardian (excepting periods of temporary absence away from the special guardian's or prospective special guardian's home, for example, in connection with education, short breaks or hospitalisation)
- the child is in receipt of income support or jobseeker's allowance
- the child has begun full-time paid employment
- the child dies.

#### Action to be taken following the review

10.18. Once the review has been conducted the local authority must decide whether to vary or terminate the provision of special guardianship support services to that person. When making this decision the local authority must act reasonably.

10.19. If the local authority decides to vary or terminate the provision of support services, or to revise the support services plan, the local authority must give notice of their decision in accordance with Regulation 10 (notices – see chapter 7 of this code). This notification must include the reasons for the decision.

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

## **11. Former looked after children: services outside of area**

- 11.1. This chapter sets out which local authority is responsible for providing special guardianship support services to a child who was a looked after child immediately before the special guardianship order was made.
- 11.2. The Regulations specify that the local authority which looked after a child immediately before a special guardianship order was made should continue to meet any identified support needs for special guardianship support services for a period of three years after the special guardianship order is made, regardless of where the child is living. This brings special guardianship support services into line with the arrangements for adoption support.
- 11.3. The local authority which was looking after the child must notify the area authority where the child and special guardian will be living as soon as the special guardianship order has been made. This will help with transitional arrangements once the three year period comes to an end, and will be especially important when there are additional needs for care and support.
- 11.4. Where a child has additional care and support needs over and above the prescribed special guardianship support services, these will be identified in the child's care and support plan under Part 4 of the 2014 Act. In these circumstances, the local authority which looked after the child and the local authority where the child will be resident will need to agree which authority will be responsible for meeting these additional needs. In most cases it is expected that the authority which previously looked after the child will continue to meet any ongoing support needs (including those over and above the prescribed special guardianship support services) for three years after the making of the special guardianship order. If any additional needs arise during the three year period, the two authorities will need to determine which authority meets those additional needs.
- 11.5. After these three years, responsibility for meeting the need for special guardianship support services transfers to the local authority where the child is living. As the three year period comes to an end, the local authority which is providing the support must notify the local authority where the child is living of any continuing support needs. This notification must be made early enough for the area local authority to discuss those support needs with the family, carry out a reassessment if necessary, and make arrangements to continue providing support services. Both local authorities have a responsibility to ensure that there is no break in

provision, and that the transition to any new model of service delivery is managed smoothly and in the best interests of the child and his or her family.

- 11.6. The local authority which has been providing services must at this stage also provide the child and special guardian with details of the information, advice and assistance service in their home area, and inform them of their entitlement to request a reassessment of their special guardianship support needs if their circumstances change.
- 11.7. On receiving notification that the three year period is coming to an end, the local authority where the child and special guardian are ordinarily resident must contact the child and special guardian to discuss their needs for support services and how these will be met in future. The local authority may decide, after this discussion, to undertake a reassessment of the child's or special guardian's needs for support services, or may even decide that a fuller assessment for care and support under Part 3 of the Social Services and Well-being (Wales) Act is in needed.



## **12. Special guardianship orders and leaving care**

- 12.1. Children who were looked after by a local authority immediately before the making of a special guardianship order may qualify for advice, guidance and assistance under the Social Services and Well-being (Wales) Act 2014. Section 104 of the 2014 Act defines six categories of young people in respect of leaving care, and a 'category 5 young person' is defined as a person between 16 and 21 who is subject to a special guardianship order (or was when he or she turned 18), and who was looked after immediately before the special guardianship order was made.
- 12.2. The full duties of a local authority towards a 'category 5 young person' are set out in section 114 of the 2014 Act. Further details are set out in the Code of Practice relating to Part 6 of the Act (Looked After and Accommodated Children), chapter 5 ('Leaving care').
- 12.3. The local authority must consider whether the young person needs support of the kind set out in section 114. If the local authority is satisfied that the person who was looking after the young person (the special guardian or former special guardian) does not have the necessary facilities for advising or befriending him or her, the local authority must advise and befriend the young person, and support him or her as necessary in the following ways:
- in kind
  - by contributing to expenses incurred by the young person in living near the place where he or she will be employed or seeking employment
  - by contributing to expenses incurred by the young person in living near the place where he or she will be receiving education or training
  - by making a grant to enable him or her to meet expenses connected with education or training
  - by providing accommodation if support may not be given in the above ways
  - in cash.
- 12.4. The local authority may also give support in certain circumstances up to the age of 25, where the young person is completing a course of education or training as set out in the plan agreed with the young person.
- 12.5. These provisions recognise that some young people who left care under a special guardianship order may be as vulnerable, and have very similar

needs to, young people who left care at 16 or 18. This is particularly important because the special guardianship order comes to an end when the young person turns 18. They place a duty upon local authorities to respond adequately to these young people's individual needs.

- 12.6. Where a local authority is satisfied that a 'category 5 young person' has a need for advice and support, it must assess his or her needs and decide how best to meet them. Where the authority concludes that the young person will need support over a period of time, it should draw up a plan in partnership with the young person, outlining the care and support to be provided. The plan should follow the same format as a 'pathway plan' for a young person preparing to leave care (as set out in chapter 5 of the Part 6 Code of Practice).
- 12.7. The local authority must inform young people who have left care under a special guardianship order of their entitlement to an assessment for care leaver support. It is good practice to do this when the child is about to turn 16.
- 12.8. Regulation 13 provides that the relevant local authority in relation to the provision of advice and assistance is the one that last looked after the child.
- 12.9. There may be times when it is not clear which authority is responsible for giving advice and assistance regarding special guardianship - the child may have moved around the country from one foster home to another. Regulation 13 states that the relevant authority shall be the local authority which last looked after the person.

### **13. Complaints and representations**

Complaints and representations about special guardianship support services must be handled in accordance with the local authority's complaints procedures.

- 13.1. Regulation 14 specifies that complaints and representations may particularly be made in relation to the following services:
  - financial support for special guardians
  - support groups for children
  - assistance in relation to contact
  - therapeutic services for children
  - assistance to ensure the continuation of the relationship between the child and their special guardian or prospective special guardian.
  
- 13.2. Local authorities must ensure that children subject to special guardianship arrangements, special guardians and potential special guardianships, and parents, receive information on how to make complaints and representations.