

Briefing Note: Children: Special Guardianship – Frequently Asked Questions

Introduction

This guide provides a general introduction to the law regarding Special Guardianship, including frequently asked questions. This guide should not be relied upon as legal advice, and you should contact us for advice on your specific circumstances.

Special Guardianship was introduced by the Adoption and Children Act 2002 and creates what might be thought of as a halfway house to adoption.

1. What is “Special Guardianship”?

A Special Guardianship Order confers parental responsibility on the Special Guardian and (subject to any other Order) entitles the Special Guardian to exercise parental responsibility to the exclusion of every other person with parental responsibility. Essentially, it might be thought of as “super parental responsibility”.

It was originally thought that this sort of Order would primarily be used on occasions when a child was going to live with another member of his/her family (e.g. a grandparent or aunt), but adoption was not the appropriate course. However, Special Guardianship Orders can be made in much wider circumstances than this.

2. Who can apply for a Special Guardianship Order?

There are certain people who are automatically entitled to apply for a Special Guardianship Order. Others can apply for a Special Guardianship Order, but would first need leave (permission) of the Court to do so.

A biological parent of a child cannot apply for a Special Guardianship Order. A Special Guardianship Order cannot be made in favour of anyone who is under 18 years of age.

3. How can a Special Guardianship application be made?

An application can either be made in existing proceedings (and the Court can make an Order without an application being before it) or by a formal application being made to the Court. If the latter course is being followed then the Local Authority must be given notice of the intention to apply for an Order not less than 3 months before the application is made. Before an Order is made it will be necessary for the Local Authority to investigate, and to prepare a report which, amongst other things, will consider the suitability of the applicant to be a Special Guardian.

4. What sort of things does the Court take into account?

The court's paramount consideration is what is in “the best interests of the child” (the paramountcy principle).

The court must have in mind a “Welfare Checklist” (section 1(3) Children Act 1989) and must have regard to:-

The ascertainable wishes and feeling of the child concerned (considered in the light of his/her age and understanding);

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- His/her physical, emotional and educational needs;
- The likely effect on him/her of any change in his/her circumstances;
- His/her age, sex, background and any characteristics of his/hers which the court considers relevant
- Any harm which he/she has suffered or is at risk of suffering;
- How capable each of his/her parents, and another person in relation to him/her the court considers the question to be relevant, is of meeting his/her needs;
- The range of powers available to the court under the Children Act 1989 in the proceedings in question.

5. Is any financial support available?

The Local Authority has a duty to consider what support should be made available for Special Guardians. This is not only practical support, but can include financial support – subject to a means test.

6. How long does an Order last?

A Special Guardianship Order will last until the child reaches the age of 18 years, assuming that it is not brought to an end by an earlier Order.

The Order can be varied or discharged.

7. What is the procedure if proceedings are necessary?

The initial application is made on a form prescribed by the regulations, namely Form "C1". When the application is made, the Family Court will fix date for a preliminary hearing at which the parties and their solicitors must attend.

If agreement is reached, the court may make an order (by consent) where an order is deemed to be necessary or decide that in the light of the agreement, such need not be made.

If the dispute cannot be resolved at the initial appointment/hearing, the judge will give formal "directions" for the future conduct of the case, including provision, more often than not, for the filing of statements from the parties.

If you would like to know more about this topic or our other legal services, please contact:

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