



Fosterline Wales Factsheet Special Guardianship Orders (Wales)

Introduction

This is a brief overview of the Special Guardianship Order (SGO) for foster carers who are thinking about becoming a Special Guardian and its regulations in Wales.

Please note – the law, regulations and guidance in Wales differs to the law applicable in the other nations of the UK.

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What is a Special Guardianship Order?

A Special Guardianship Order is a court order appointing a person or persons to be a child's special guardian until they reach adulthood at aged 18.

An SGO retains the child's basic legal link with their birth parents but limits their parental responsibility. In addition, relatives who are kinship foster carers may want to offer more stability to the child.

The order grants the special guardian 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 the court. Special guardianship provides a legal status, offering permanency without the absolute legal break with the child's birth family, that is associated with adoption. The SGO normally lasts until the young person's 18th birthday confirming permanency, giving the child or young person a lasting experience of a family life.

What is parental responsibility?

If you have parental responsibility, your most important roles are to provide a home, protect and maintain the child. This also includes setting boundaries, education, health and support financially. Read more [here](#).

The potential positive benefits of an SGO

- A child who is fostered and cannot return to the care of their parents, but for whom adoption is inappropriate, needs to feel secure. Consideration of an SGO gives the option of offering them greater stability and security.
- It provides an alternative legal status to being 'looked after' as they are no longer in the care of the local authority.
- The special guardian will have parental responsibility, which means, with a few exceptions, they can make all decisions about the child.
- For many children, the stigma of being 'in care' will be eliminated.
- There will be one annual review meeting with social services to revise and update the support plan and the financial support.
- Provides a legal basis to the permanency between the child and the special guardians.

The potential negative implications of an SGO

- The special guardian carries full responsibility for the child.
- The special guardian may need to respond to further court proceedings, for instance, if there was challenge from a parent.
- The special guardian would have to meet the costs of additional legal representation, unless Legal Aid was available or social services were prepared to assist financially.
- Special guardianship support services will be available for a period of three years after the special guardianship order is made.
- The SGO may have to deal directly with family members regarding contact arrangements.
- Following the end of the three-year period, the local authority must contact the child and special guardian to discuss their needs for support services, how these will be met in future and may decide to undertake a reassessment of the child's or special guardian's needs for support services.

- A child under an SGO would not be able to enter the [When I am Ready](#) scheme, post 18.
- See financial support below.

Special Guardianship and Permanency

The aim of permanency is to give a child or young person a lasting experience of a family that gives them the opportunity to attach to adults and to experience loving family life. The key elements of permanence are security, wellbeing and family membership through a shared history and identity, which endure into adulthood. For more information click [here](#).

The Welsh Government Code of Practice 6, Looked After Children, confirms three key aspects to permanence:

- Emotional permanence (attachment).
- Physical permanence (stability).
- Legal permanence (the carer has parental responsibility).

Code of Practice 6 confirms the need to confirm a permanency plan, included with the care and support plan, providing the underpinning framework as to how to promote a child's sense of security, continuity, commitment and identity.

While long-term foster care can enable the intrinsic qualities of belonging and emotional permanence, as well as physical stability, it cannot achieve the third aspect because foster carers do not have parental responsibility. Special guardianship offers a legal framework that can combine and potentially secure all three key aspects of permanency.

Many foster carers will come to hear about an SGO for the first time at a LAC review or from the child's social worker, in considering options for securing permanency for the child. The SGO is a valuable permanency option in evaluating the child's long-term interests.

Foster carers will need to consider very carefully, including accessing independent advice, the legal, parenting and financial implications of applying for an SGO and whether they wish to continue as foster carers with other placements.

What other options are there for achieving permanence?

The Fostering Network strongly believes in the importance of foster care as an option in permanence planning for children in care. There should be no hierarchy of placement type. Long-term foster care should have equal consideration alongside other options, such as kinship (connected persons), Child Arrangement Orders, an SGO or adoption. What is best for each child or young person will depend on many individual factors, including the voice of the child.

Frequently asked questions

Can a foster carer apply for an SGO?

Yes. A foster carer with whom the child/young person has lived for one year immediately preceding the application can apply for a Special Guardianship Order.

Also, if within care proceedings, a Special Guardianship Order to a foster carer may be made - but this is usually in relation to Family and Friends foster carers.

An application for an SGO may be made by an individual, or jointly by two persons. They do not need to be married but must be 18 or over.

What are the implications if you obtain an SGO for a child that you currently foster?

With the award of an SGO the legal basis of the child's relationship with you will change.

You will be given parental responsibility as a special guardian and the child will no longer be 'looked-after' by the local authority. You will have clear responsibility for all day-to-day decisions about caring for the child, until they reach 18.

You will no longer receive fostering allowances. An SGO will replace the Care and Support Plan and fostering allowances, with a special guardianship support services plan and financial support, that is reviewed annually.

This is a significant responsibility and one that is not to be taken lightly by all concerned. It is really important that any prospective special guardian seeks legal advice to ensure that this is the right decision and that the local authority have done the SGO assessment and report as the Code of Practice requires.

Will the child/young person in my care still be entitled to leaving care services?

If the child meets the Category 5 (see [Code of Practice 6](#), pg. 77) criteria of young people leaving care, they will be able to call upon the care leaving statutory obligations of the local authority, however, they will not meet the eligibility for the [When I Am Ready](#) scheme.

Applying to be a special guardian

What does the application process of a special guardian involve?

If you are interested in exploring the possibility of an SGO then you should start by having a conversation with the child, where their age and understanding are sufficient. Then you should initiate discussions with the child's social worker and inform your fostering supervising social worker.

The SGO [Code of Practice](#) states:

2.7... 'the local authority must ensure that the foster parents receive appropriate information and advice to help them make a decision'.

You should not be put under pressure to agree to an application for an SGO and fear that the placement would be terminated, if you don't oblige.

Am I entitled to free legal advice when making my decision?

- [Members](#) of The Fostering Network, as part of their membership package, can access the 24/7 confidential and free legal advice line **01384 88 57 34** or can ask the local authority to pay for initial independent legal consultations.
- If deciding to proceed with the application, foster carers will also need to receive in advance, written confirmation that the local authority will reimburse a legal firm fully for the costs in representing the foster carers in their SGO application to the court.

Additional considerations

You need to be confident that you have all the relevant information and that you feel able to accept legal, parenting and financial responsibilities of being a special guardian, before you decide to apply.

These additional pointers may be helpful

- Any person who wishes to apply for an SGO must give three months' written notice to the local authority of their intention to apply.
- A decision to proceed with an application should be made after careful consideration of all the permanency options at the LAC Review and confirmed in the care and support plan.
- The Welsh Government SGO Code of Practice sets out the local authority assessment process and responsibilities in their SGO submission to the court, for both a support package and also the financial support, which is reviewed on an annual basis and is means tested.
- When providing the person with the outcome of the SGO assessment, the local authority must refer the person to sources of independent advice and advocacy.
- To ensure that the recommendation is satisfactory as to the arrangements that should be put in place for contact between the child and the child's relatives or any other person the local authority considers relevant.
- If the foster carer is awarded an SGO for a child(ren), the person can, of course, consider continuing to remain an approved foster carer with placements.
- Foster carers who are considering this option should take independent legal advice on this significant legal and financial change both to the child and the foster carers.

Special Guardian Support

What support would I get as a special guardian?

Chapter three of the Welsh Government's SGO Code of Practice sets out the 'Provision of Support Services'.

Once a person has had their needs for special guardianship support services

assessed (see below), and the local authority has informed that person of their decision, the local authority must prepare a plan of the special guardianship support services to be provided (including financial support) for three years, to be reviewed annually. The financial assessment is means tested.

What factors need to be considered as part of an SGO support service package for a child/young person?

- Assessment of the child/young person's current and future need.
- Any therapeutic services to be provided to support the placement – currently or in the future.
- Clarity about leaving care entitlement – including higher education supplement.
- Proposed support package to foster carer – taking into account whether or not they will continue to foster other children/young people.
- Learning and development opportunities for the foster carer and peer support.
- Financial allowances.
- Contact with birth family and any support needs in this regard.

Finances

What about financial support for special guardians who are former foster carers?

The assessment for financial support required of the local authority is set out in Chapter 5 of the Code of Practice including, specifically for foster carers.

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'.

5.20... 'Regulation 7(4) allows local authorities to provide financial support above the usual level, where the special guardian was the child's foster carer'.

The Code of Practice also confirms regulations:

'are intended to give local authorities greater flexibility to respond to the individual needs of a child and his or her circumstances, and to ensure that 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'.

See Code of Practice for:

- Para 5.3 pg. 23 sets out the circumstances of financial support
- Para 5.8 pg. 24 confirms how financial support is determined

What SGO financial support will be paid?

SGO financial support is means tested subject to Annual review. Like fostering allowances, they are not regarded as family income for the calculation of means tested benefits

Benefits considerations

In considering any benefit implications, you could consider putting any questions to [Turn 2 Us](#) or [Citizen's Advice](#).

Tax considerations

Although the awarding of an SGO will change the legal position with the child, the tax status of the special guardian will not change, including self-employed status.

'If you have a special guardianship order or a child arrangement order (formerly residence order) and you are not the child's parent or stepparent, you are treated in a similar way to those who have adopted a child and received an adoption allowance. These payments are exempt from tax under the 'qualifying guardians' exemption.

The tax exemption applies to payments you receive from the child's parents or payments by, or on behalf of, the local authority/trust which are made in relation to a special guardianship order or a child arrangement/residence order. These payments are not treated as income from self-employment and you do not need to declare them on a self-assessment tax return. Any payments you get from the local authority/trust because you have a child arrangement/residence order or special guardianship order will also be ignored.'

Special Guardians are able to apply for Child Benefit and Child Tax Credit, if applicable. See page 29 of The Fostering Network's booklet '[Income Tax and National Insurance](#)'.

Additional Resources.

- [Welsh Government SGO Code of Practice](#) - instructions as of May 2019 to local authorities as to how they must carry out their SGO responsibilities.
- [Welsh Government Code of Practice 6 Looked After Children](#)
- Afa Cymru.
[A guide for the offer of special guardianship support in Wales](#)
This guide has been commissioned by Welsh Government, in order to build upon its existing work in the field of special guardianship.
- [The Family Rights Group](#) are a charity who work with parents in England and Wales, whose children are in need, at risk or are in care. We offer advice to parents, grandparents and other relatives and friends, about their rights and

options when social workers or courts make decisions about their children's welfare. We actively campaign for families to have their voices heard. There are two SGO guidance notes:

- [DIY Special Guardianship Orders – information for family and friends carers](#)
- [Special Guardianship: what does it mean for birth parents?](#)
- [Cafcass Cymru](#) is an organisation in the Welsh Government that provides a voice for any child in Wales that is involved with the Family Justice system.
- [Kinship](#) (formerly Grandparents Plus) is the national kinship care charity. There are 200,000 children in the UK being raised by relatives or friends because their parents can no longer look after them. More information on SGOs can be found [here](#).
- [CORAMBAAF](#) Special Guardianship: an agenda for change. This information results from research and an agenda for change in Special Guardianship Orders (SGOs).

How The Fostering Network can help

The Fostering Network offers advice, information and support. Our expertise and knowledge are always up-to-date and available through our vital member helplines, publications, training and consultancy.

Advice

[Fosterline Wales](#) is run by The Fostering Network and funded by the Welsh Government. It is an independent and confidential advice line for the public on all matters related to fostering.

Examples of the key issues you can discuss with Fosterline Wales team include:

- Talk through the issues with the Fosterline Wales team, in particular, the importance of being clear about the financial and legal implications of being a special guardian.
- The Fostering Network Legal Advice line is available to provide free confidential legal advice.
- If they are awarded an SGO, the options for going forward as a foster carer. Becoming a special guardian should not preclude someone from continuing to foster per se, therefore, special guardians may continue to take other placements where this is possible and appropriate.
- Once you have read through the information, Fosterline Wales continues to be available for further discussions/support as you proceed through your SGO application.
- Will there be contact with the birth family and, if there is, can this be arranged without causing problems?

- In case I need to take legal advice, will I be given details of the support package in place, in writing?
- Do I feel pressurised into this decision, what are the reasons for special guardianship to be considered as an option?
- Is this going to be the right option, not only for the child/children concerned, but also for me and my family?
- Will the local authority cover any legal fees that may be incurred?
- What financial support will be available to me if I become a special guardian? Also, how long will any financial help last? I will need to be sure I can afford to commit to it.
- I will need to know that I have all the information I need to be able to make such an important decision.

Call Fosterline Wales on 0800 316 7664 from 9.30am - 12.30pm Monday to Friday. If you call outside this time, please leave a message and someone will call you within 48 hours on weekdays

You can email us at:
fosterlinewales@fostering.net

Support and resources

Our website is an essential source of information, while our online community brings together foster carers for peer support and advice. You can login to share your experience and get advice from other foster carers. Our [online community](#) is a safe and secure area to discuss foster care matters.

Publications

The Fostering Network supports foster carers with a range of training and publications, which are tailored to meet their needs.

All our [publications](#) have been developed using our experience of working with foster carers and fostering services for over 45 years, including our flagship pre-approval training, The Skills to Foster™. We continually update and develop our materials based on feedback and to reflect external changes.

Publications include:

- Our [All You Need to Know](#) series
- Our popular [Signposts](#) series - including Income Tax and National Insurance

To order any of our publications please [visit our bookshop](#) or phone 0844 335 1892.

Training and consultancy

Wherever you are in your fostering career, as a foster carer, social worker or manager, The Fostering Network has a range of training designed to meet your development needs.

For more information contact our learning and development manager, Sarah Mobedji at sarah.mobedji@fostering.net

About The Fostering Network

The Fostering Network is the UK's leading fostering charity, bringing together everyone who is involved in the lives of fostered children to make foster care the very best it can be.

Contact

To find out more about our work in Wales, please contact:

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