



Legal Aid
Agency

Special Guardianship Orders

Provider guidance

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order 2023 (which can be found [here](#)) sets out that from the 1 May 2023 changes were made to family legal aid to bring back into scope Special Guardianship Order (SGO) in private family law proceedings. They were in scope pre-LASPO but were removed from scope in April 2013.

One of the major changes is that no domestic abuse or child abuse evidence is required to bring the proceedings into scope.

This work is in scope for both Controlled Work and Representation.

Definition of a parental guardian

Regulation 2 of the merits criteria regulations has been amended to introduce the definition of a 'parental guardianship case' within special guardianship order proceedings.

The meaning of a parental guardianship case is where the client is the parent of or has parental responsibility for the child who is or would be the subject of the order and opposes the application for the Special Guardianship Order.

Merits test

A parental guardianship case is now a public law matter and Regulation 66 of the merits criteria regulations applies to those applications.

If the applicant does not fall within the definition of a parental guardian such as an extended family member, then those proceedings are still private law children matters and merits regulations 34, 36 and 68 still apply.

Financial eligibility changes

Regulation 5 of the financial resources regulations now makes a parental guardianship case non-means tested. Persons who do not meet the definition of a parental guardianship case remain means tested.

CCMS changes

Despite Regulation 2 defining these proceedings as ‘public law’ for the purposes of the merits criteria regulations, for CCMS purposes, the proceedings will continue to be processed under the private law Miscellaneous Children matter type

New wording codes and proceedings have been produced for both parental and non-parental guardianship cases.

‘CM029 Special guardianship order - parent/PR’ which will route them away from the means assessment questions.

‘CM031 Special guardianship order - non-parental party’

Children joined in the proceedings will continue to use the current means and merits tested CM022 wording code - Special Guardianship Order-Misc Children. Separate changes are being made as part of the Means Test Review to automatically exempt under 18s from means testing in any proceedings, but they have not been brought in yet.

Similarly, anyone applying to be joined in the proceedings will have to use the current means and merits tested proceeding. Although it is extremely rare that we see joined parties.

Additional proceedings

In parental guardianship cases, the changes also apply to the variation or discharge of SGOs and enforcement of SGOs. The changes do not apply to appeals against final orders, which would require a separate means and merits tested application, but no evidence would be required to bring the proceedings into scope.

New wording codes have also been produced for enforcement proceedings for both parental and non parental SGO cases:

‘CM029e Special guardianship order - parent/PR – enforcement’

‘CM031e Special guardianship order - non-parental party – enforcement non parental guardianship cases’

A new wording code has been produced for appeals against final orders and the new proceeding applies to both parental and non parental SGO cases

‘CM038a Special guardianship order - appeal (post 01/05/23)’

At this time, there is no new proceeding for variation or discharge of an SGO so if a provider intends to make such an application, they will have to submit using the main SGO proceeding and limit to ‘Hearing’ and free type appropriate text.

Special Children Act proceedings

There may be circumstances when an application for a Special Guardianship Order is being considered as part of Special Children Act (SCA) proceedings.

In accordance with paragraph 1(2) of Part 1 to Schedule 1 of LASPO, civil legal services may be provided in cases which are being heard as an alternative to, or together with, proceedings in paragraph 1(1). Where these services are being provided with SCA cases these civil legal services will also be non-means tested and an application for an amendment should be made to the SCA certificate where civil legal services are required in the proceedings.

Proceedings will be ‘heard together’ where they are dealt with together or immediately after the outcome of the principal proceedings as part of the same hearing, including any adjournment (paragraph 1(2)(b) of Part 1 of Schedule 1). An order will be ‘sought as an alternative’ when it is intended to make an order under ss.31, 43, 44 or 45 unnecessary – this will extend to, for example, an application for a Special Guardianship Order in care or supervision proceedings.

Special Guardianship Orders heard in public law proceedings but not covered by the Special Children Act (SCA) definition

These can be separated into two categories:

- non-parental parties
- parental parties

The application process for legal aid for non-parental parties in public law proceedings that are not covered by the SCA definition remains unchanged. Applications for legal aid are considered on a means and merits tested basis. Certificates can be amended where multiple applications are being considered by the court as part of the same set of proceedings.

However, the process has changed for parental parties who seek to oppose an application for a Special Guardianship Order that is made within public law proceedings not covered by the SCA definition. The parental party is entitled to non-means tested funding to oppose the application for a Special Guardianship Order, but their means will need to be assessed for the other public law proceedings.

In these circumstances, the applicant is required to make 2 applications for legal aid. Firstly, an application should be made selecting the relevant proceedings under the Public Law – Family matter type in CCMS.

A separate application will need to be submitted under the Children – Miscellaneous matter type using the following proceeding:

‘CM029 Special guardianship order - parent/PR’ which will route them away from the means assessment questions.

The LAA will issue 2 separate legal aid certificates provided the relevant criteria are satisfied. You should create a ‘legal link’ with the Public Law – Family application, as this will help us to identify that the 2 applications are linked to the same set of proceedings.

Claim costs in public law proceedings for parental parties where 2 certificates are issued

Create a ‘Summary Level’ submission under the special guardianship certificate for the work completed at Public Law Table 9a rates and Other Public Law FAS.

This can be done by completing the following steps:

1. Draw and calculate your costs for the work under the special guardianship certificate at public law rates table 9a and Other Public Law FAS.
2. When accessing CCMS, answer all the standard billing questions.
3. Answer ‘Yes’ to the Disbursements question and ‘No’ to FAS.
4. When you reach the PFLRS fixed fee page click ‘remove’ and ‘next’.
5. Within the Disbursements page, select ‘Profit Costs (Summary)’ and enter hourly rates profit costs from the dropdown.
6. You should then click ‘Add’ and select ‘Advocacy (Summary)’ and enter a summary total for your FAS work calculated at Other Public Law rates.
7. Any other disbursements can be added as normal and broken down individually.
8. Post submission of the bill, documentation should be uploaded showing the breakdown of profit costs and advocacy at the correct rates with the usual FAS evidence included.

Submit your claim for the costs incurred under the separate certificate covering the remainder of the public law proceedings in the normal way. This should take into account any costs that have been apportioned and claimed against the special guardianship certificate.