

Guardianship Contents:

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Overview:

The status of a child's care arrangements will help to determine if their carer can be deemed to be a Person with Care or if they fall into an excluded category.

The terminology used for children's care arrangements varies and the legal status of these arrangements may not be immediately clear.

Caseworkers should ensure that they have investigated the circumstances of the care arrangements in place to determine if a carer can be deemed to be a Person with Care and fully record their decisions.

NOTE: For cases with more than one child, each child could have different care arrangements in place. This could mean that the children's carer could be considered as a Person with Care for one child and not for another. Each child's care arrangements must be investigated separately.

In this document where it says "Local Authority" read "Authority" for Northern Ireland.

[2012/2677](#) Regulation 78 Child Support (Maintenance Calculations) Regulations 2012

[2012/427](#) Regulation 77 Child Support (Maintenance Calculation) Regulations (Northern Ireland) 2012

The following categories of person cannot be treated as a person with care for the purposes of the Child Support Act:

- Local Authorities;
- A person with whom a child who is 'looked after' by a Local Authority has been placed by that Local Authority (except where that person is a parent of the child and the Local Authority allows the child to live with that parent under Ss.22C(2) & S.23(5) of the Children Act 1989 (Article 27(5) of the Children Order, in NI);

- In Scotland, a family or relative with whom a child is placed by a Local Authority.

NOTE: The [Advice and Guidance Team](#) may be contacted if caseworkers remain uncertain of what decision to make, having read the guidance here.

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[Decision Making Guidance: Local Authority Caring for the Child](#)

[2012/2677](#) Regulation 78 Child Support (Maintenance Calculations) Regulations 2012

[2012/427](#) Regulation 77 Child Support (Maintenance Calculation) Regulations (Northern Ireland) 2012

Local Authority Caring for the Child

The Local Authority cannot be regarded as a Person with Care.

If a case already exists for a qualifying child who is now partially or fully in the care of a Local Authority, the caseworker will need to establish if the care is shared with an existing Parent or Person with Care, and if that person is still the primary provider of care (i.e still the PWC or PeWC). Link to Shared Care: Decision Making Guidance: Care provided in part by a Local Authority (Special Cases)

Caseworkers may also have to determine if another person could be considered to be a Parent/Person with Care.

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[Decision Making Guidance: Foster Carer is caring for the Child](#)

Fostering through Local Authority or Fostering Agency

Fostering a Child is normally done through a Local Authority or through a fostering agency that works with the Local Authority.

If a person looks after a foster child on behalf of the Local Authority that person is not treated as providing day-to-day care of the child. In these cases the local authority is regarded as having day to day care.

Therefore Local Authority or Fostering Agency foster parents cannot be regarded as a Person with Care.

Private Fostering

Private fostering is when a child under the age of 16 (or under 18 if the child is disabled) becomes cared for by someone who is not their parent or a close relative through a private agreement made between their parent and a carer for 28 days or more.

Close relative is defined as step-parent, grandparent, brother, sister, uncle or aunt (whether of full-blood, half-blood or by marriage)

[2005/1533 Regulation 3 The Children \(Private Arrangements for Fostering\) Regulations 2005](#)

A private foster carer can be a Person With Care (PeWC) and evidence of the Local Authority's acceptance of them as a private foster carer can be used as evidence of them being the principle provider of care.

If the child is not under the care of the Local Authority and is privately fostered then the caseworker will need to determine if the child's private foster carer has become the PeWC or whether the child's parent (or guardian) would remain the PWC (or PeWC). This will depend upon which of them provides a home for the child and the majority of the day-to-day care. Link back to who is a PWC.

If the caseworker decides that the private foster parent does satisfy the conditions of S.3(3) Child Support Act 1991 then they can be considered a Person with Care.

The [Advice and Guidance Team](#) should be contacted in any instance where you require further guidance to make decisions around Fostering.

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[Decision Making Guidance: Special Guardian caring for the Child](#)

Special Guardian is caring for the Child

A Special Guardian is created when the court issues a Special Guardianship Order for a child to an individual or to a couple.

Special Guardianship Orders are similar to adoption but without the absolute legal severance from a child's birth family i.e. the birth parents retain some parental rights.

Children for whom a Special Guardianship Order is in place are **not** deemed to be 'looked after' by the Local Authority.

Therefore the Special Guardian can be considered a Person with Care if they satisfy the conditions of S.3(3) of the Child Support Act 1991.

Note: If guardianship is awarded to a couple who subsequently separate, but one of them retains care of the child(ren), they cannot make a claim for maintenance against the other (now former) guardian. Any claim would need to be made (or continue) against the biological parent(s).

Special Guardianship Allowance

Allowances to assist with the care of a child may be paid to Special Guardians by the Local Authority. These payments do not prevent an application for Child Maintenance but the Special Guardian(s) should be advised to inform the Local Authority that they have claimed statutory maintenance, as this may impact the amount of their Special Guardianship allowance.

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[Decision Making Guidance: Kinship Carer caring for the Child](#)

In Scotland children who are cared for by people such as grandparents, aunts, uncles and family friends can be referred to as being in Kinship Care.

The legal status of Kinship Care arrangements need to be established to identify if the Kinship Carer can be considered as a 'Person with Care'.

Some children in Kinship care are formally 'looked after' by the Local Authority and some are not. Evidence of the 'looked after' status of children in Kinship care is required (see below).

Looked After

A child may become 'Looked After' as a result of being taken into care by a Local Authority under a formal court order, or as a result of the Local Authority providing accommodation for the child for a continuous period of more than 24 hours in exercise of its social services functions. A child may be taken into care where a court is satisfied that he/she is suffering, or is likely to suffer, significant harm. A child may be accommodated by a Local Authority at the request of the child's parent; where there is no person with parental responsibility for the child; where a child is lost or abandoned; and where a person who is providing accommodation for a child is prevented from doing so.

The Local Authority can place a 'looked after' child with a relative or family friend in a Kinship Care Arrangement. If the child is still deemed to be 'looked after' by the Local Authority though, the Kinship Carer cannot be regarded as a 'Person with Care'.

Remember: If a child is deemed to be 'looked after' they are in Local Authority care and therefore another person cannot be the 'Person with Care'

Evidence

Evidence of the 'looked after' status of the child/ren in Kinship Care is required.

The carer of the child/ren must be asked to provide;

- A copy of the court direction; or
- Written confirmation of the 'looked after' status from the social work/children's services department.

Not 'Looked After'

Where a relative or family friend acts as a Kinship Carer for a child whose status is not 'looked after' they can be regarded as a 'Person with Care' provided they satisfy the conditions of S.3(3) of the Child Support Act 1991.

The caseworker will have to make a decision if the Kinship Carer is a PWC. Link back to [who is a person with care](#)

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