

Check the applicant is responsible for the child

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Introduction

1. This guidance is for case managers. Read this guidance to find out how to check the applicant has parental rights and responsibilities for the child they applied for. For the purpose of this guidance, 'acting on behalf of a child' includes receiving assistance on the child's behalf. The term 'applicant' means a person who applies for Child Disability Payment (CDP) on behalf of a child.

Reason for the check

2. A child is someone who is under 16 years old. Children cannot receive CDP directly. Social Security Scotland will pay assistance to an adult on the child's behalf. This adult must have authority to act on behalf of the child. Most parents have this authority. This is because the law already gives them a set of rights and legal duties¹. These are called parental rights and responsibilities. One of these parental rights is the right to act on the child's behalf in connection with the child's right to social security assistance. Parental rights and responsibilities apply until the child is 16 years of age. The only exception to this is the responsibility to provide guidance to the child which exists until the child reaches 18 years of age.

1 The Children (Scotland) Act 1995, s1 and s2.

3. If an applicant does not have parental rights and responsibilities for a child, then they cannot act on behalf of a child unless we appoint them to act. We can only appoint a person on behalf of a child if there is no person who meets each of the following criteria:
 - has parental rights and responsibilities for the child,
 - lives with, and looks after, the child,

- is practically 'able and willing' to act on behalf of the child.

If the answer to any of these questions is no, then a person may not be 'able and willing' to manage the child's entitlement to assistance:

- Are they capable of arranging for the assistance to be spent in the child's interests?
- Are they capable of appealing decisions if this is required?
- If Social Security Scotland made an error when determining the child's entitlement to assistance, would the person notice?
- If the child's circumstances changed, would they notice and tell Social Security Scotland?
- Are they willing to manage the child's entitlement to assistance?

Who gains parental rights and responsibilities for a child

4. A child's mother gains parental rights and responsibilities when the child is born¹.

1 Children (Scotland) Act 1995, Section 3(1)(a)

5. A child's father gains parental rights and responsibilities when the child is born, if he was married to the child's mother when the child was conceived or after. It does not matter if the marital relationship between the mother and father has now ended.
6. Fathers can alternatively gain parental rights and responsibilities by either of the following methods:
 - being registered as the child's father on the child's birth certificate on or after 4 May 2006
 - both mother and father agreeing that the father is to have parental rights and responsibilities and the mother enters into a formal agreement with the father called a Parental Responsibilities and Parental Rights Agreement
 - getting an order from the court giving him parental rights and responsibilities.
7. A women can become a child's second female parent if they :
 - are in a civil partnership or in a same-sex marriage with a woman at the time they have the egg donation, embryo transfer or donor insemination treatment which produces a child,
 - are the partner of a woman undergoing egg donation, embryo transfer or donor insemination treatment, and the mother has agreed that her partner should be the child's second parent and her partner is registered as the child's parent,

- apply to the court for an order giving the second female parental rights and responsibilities.
8. Where a couple used surrogacy they can apply for a court order treating them as the child's parents after the child is born. The woman who bore the child remains the mother until the court order is granted. This is only possible where the gametes of at least one of the couple have been used.
9. Other people with an interest in the welfare of the child such as:
- grandparents
 - step parents
 - aunts
 - uncles

can apply to the Court for an order giving them one or all parental rights and responsibilities. The Court will make the decision about who should have parental rights and responsibilities based on what is in the child's best interests.

Checking the application form

10. When an applicant applies for CDP they'll be asked to state whether or not they have parental rights and responsibilities. In order to assist applicants with answering this question, the applicants will be asked to select the category that applies to them.
11. The case manager will check that the applicant has parental rights and responsibilities for the child. *[Link to the operational guidance which will cover that they need to check the address matches and for other relationships.]*
12. If the applicant has either:
- answered that they do not have parental rights and responsibilities
 - left the question unanswered

the case manager will need to make further enquires with the applicant. Before doing this, the case manager will check that the applicant's address matches the child's and check for other recorded relationships (see next section of this guidance). The purpose of this check is to assist the case manager with making further enquiries with the applicant.

Check the applicant's address matches the child's and for other recorded relationships

13. The case manager will check that the applicant's address matches the child's.
14. The case manager will also check to see if Social Security Scotland or the Department for Work and Pensions have a record of any other person being responsible for the child. The operational guidance explains more but what to look for when completing this part of the check.

15. The child responsibility check is complete if both:
- the address matches and there are no other recorded relationships
 - the applicant has stated on the application form that they have parental rights and responsibilities.
15. The case manager must also make further enquiries if either:
- the address of the child and the applicant do not match
 - there is a record of another person being responsible for the child (see next section of this guidance).

If there is no record of anyone, including the applicant, being responsible for the child, this is not a reason to make further enquiries with the applicant.

The case manager makes further enquiries – general guidance

16. The purpose of making further enquiries is so that the case manager can be satisfied ‘on the balance of probabilities’ that the applicant does have parental rights and responsibilities for the child. ‘On the balance of probabilities’ means, based on all the information that we know about the child and the applicant, it appears more likely than not that the applicant has parental rights and responsibilities for the child.
17. Making further enquiries with the applicant can involve asking the applicant:
- questions
 - to send documents as supporting information.
18. The case manager’s approach to making further enquiries will depend on the reasons for the further enquiries. The reasons for the further enquiries could be any or all of the following:
- because the applicant has stated that they do not have parental rights or responsibilities or has left the question unanswered
 - because the applicant’s address does not match the child’s
 - Social Security Scotland or the Department for Work and Pensions have a record of someone else being responsible for the child.

Any of these are referred to as ‘reasons for making further enquiries’.

19. The approach by case managers to making further enquiries should be ‘proportionate’ and ‘targeted’.
20. ‘Proportionate’ means not asking for more information than is necessary to satisfy the case manager that on the balance of probabilities the applicant has parental rights and responsibilities. Generally case managers should ask the applicant questions and only ask the applicant to send supporting information if this is needed. Supporting information is needed if, without it, it appears that on the balance of probabilities that the applicant does not have parental rights and responsibilities.

21. 'Targeted' means that the questions that the case managers asks should be about the reason for making the further enquiry. The aim of a question is to see if the applicant has a reasonable explanation. If they do, then this should usually be enough for the case manager to be satisfied on the balance of probabilities that the applicant has parental rights and responsibilities. This means the child responsibility check will be complete.
22. If the applicant has already submitted supporting information about the child as part of the application, then the case manager can look at this for the purpose of satisfying themselves on the balance of the probabilities that the applicant has parental rights and responsibilities for the child.

Example: a case manager uses supporting information from the application form

Mary applies for CDP on behalf of 9 year-old Liam. She states on the application form that she acquired parental rights and responsibilities through being the child's mother. After checking, the case manager sees that there is no record of anyone else being responsible for the child. However, the address of Mary and the child do not match. The case manager must make further enquiries. As part of the application, Mary submitted a letter from an NHS consultant which refers to her as the child's mother. The case manager decides that, taking this supporting information into account, they are satisfied on the balance of probabilities that Mary has parental rights and responsibilities for the child. The check is complete without the case manager needing to contact Mary.

What supporting information case managers can ask for

22. The information the case manager asks for will depend on what answer the applicant gave about how they gained parental rights and responsibilities. There is no need for an applicant to send original copies of any documents. Scans or photographs of documents is preferred.
23. If the applicant states that either they're the child's:
 - birth mother
 - biological father and the child is born on or after 04 May 2006then the case manager should ask to see a copy of the child's birth certificate.
24. A biological father can also gain parental rights and responsibilities by being married to the child's mother. The marriage can have happened at any time on or after the child was conceived. The case manager should ask to see a copy of the marriage certificate between the applicant and the child's mother. The case manager may also need to see a copy of the child's birth certificate in order to check that the person who the father is married to is the child's mother.

25. If an applicant states that they are a member of a same-sex couple and they have parental rights and responsibilities, case managers should ask to see any official documents that confirm this. This may be a birth certificate, court order, or something else.
26. Other supporting information that would be appropriate to ask for, depending on what is stated in the application form, could be:
 - a court order
 - a Parental Rights and Responsibilities Agreement.
27. If the applicant does not have official documents, case managers should accept any document from a public authority that refers to the applicant as the child's:
 - mother
 - father
 - person with parental rights and responsibilities
 - legal guardian.

Case managers should seek advice if they're unsure whether to accept a piece of supporting information.

Further enquiries after the applicant has stated that they do not have parental rights and responsibilities or has left the question unanswered

28. If the applicant stated that they do not have parental rights and responsibilities, or they left the question unanswered, then the case manager must contact them to confirm:
 - they understood the question
 - their answer to the question.
29. If the applicant's answer is that they do not have parental rights and responsibilities for the child, then the case manager should follow the section of the guidance titled 'the applicant does not appear to have parental rights and responsibilities' [LINK].
30. If, after discussing the question with the case manager, the applicant's answer is that they do have parental rights and responsibilities, the case manager must decide if they can be satisfied on the balance of probabilities that the applicant has parental rights and responsibilities. If the case manager is satisfied then the child responsibility check is complete. If the case manager is not satisfied, then they must ask the applicant for supporting information.

Example: the case manager makes further enquiries and completes the check

Toni applies for CDP on behalf of Otis, who is six years old. They state on the application form that they do not have parental rights and responsibilities for

Otis. After doing the checks, the case manager sees that the address of Toni and Otis do match and there is a record of Toni receiving a Best Start Grant for Otis. The case manager contacts Toni to discuss their relationship to the child and why Toni has stated that they do not have parental rights and responsibilities. Toni explains that they are the child's parent, but they did not know if they had parental rights or responsibilities and they filled in that part of the application in a hurry. After speaking with Toni, the case manager is satisfied on the balance of probabilities that Toni has parental rights and responsibilities. The case manager does not ask to see supporting information. The child responsibility check is complete.

The applicant does not appear to have parental rights and responsibilities

31. The guidance in this section applies if, after making further enquiries with the applicant,
 - the case manager is not satisfied on the balance of probabilities that the applicant has parental rights and responsibilities
 - the applicant confirms with the case manager that they do not have parental rights and responsibilities.

32. The case manager will need to explain to the applicant that there is not enough supporting information to confirm that they have parental rights and responsibilities for the child. There is no right of appeal if the applicant disagrees with this. At this stage, case managers should not discuss the possibility of the applicant being appointed to act on the child's behalf until it is established that there is no other person who meets all of the following criteria:
 - has parental rights and responsibilities for the child
 - lives with, and looks after, the child
 - is 'willing and able' to act on the child's behalf in place of the applicant.

A person does not need to live with, and look after, the child all of the time so long as they are willing and practicably able to act on the child's behalf.

33. The case manager must enquire with the applicant to see if there is another person who meets all the criteria described in the previous paragraph. If there is, then the case manager cannot appoint the applicant or anyone else. The case manager should follow the guidance in the next section titled "another person with parental rights and responsibilities lives with, and looks after the child and is able and willing to act". If either the applicant advises that there is no person who meets all of these criteria or the applicant refuses to disclose information about this, the case manager should follow the guidance below in the section titled 'no person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act'.

Another person with parental rights and responsibilities lives with, and looks after the child and is able and willing to act

34. If, after making enquiries with the applicant, it appears that another person with parental rights and responsibilities lives with, and looks after the child, and is 'able and willing' to act on the child's behalf, the case manager should ask the applicant for this person's contact details. The case manager should then contact this person to confirm that they're willing to act on the child's behalf. If the new applicant is willing to act on the child's behalf, they'll take over responsibility for the accuracy of the information contained in the application. Because of this, the new applicant must be given an opportunity to review this information and make changes if they do not agree with any part. The steps that the case manager should take to do this are set out in operational guidance. [Link].

Case managers should follow the guidance in the next section if after contacting the person with parental rights and responsibilities it appears that they are either not willing to act for the child or do not live with, and look after the child.

35. If the applicant refuses to give the contact details of anyone who may meet the criteria, then that does not change the fact that there is not enough supporting information to confirm that they have parental rights and responsibilities for the child. Case managers can explain to the client that they have the right to request that they are appointed on behalf of the child. However, case managers should explain the process that Social Security Scotland will follow when considering the appointment. This is so that the applicant can make an informed decision. This process is explained in the section below titled 'no person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act'.

No person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act

36. The applicant may explain that there is no other person who meets all of the criteria below:
- has parental rights and responsibilities for the child
 - looks after the child
 - is willing and able to act on the child's behalf in place of the applicant.
37. If this is the case, the case manager should explain, at this stage, that Social Security Scotland may appoint the applicant to act on behalf of the child. The following should be explained to the applicant in order for the applicant to make an informed decision about whether they would like to ask to be appointed on the child's behalf:
- Social Security Scotland may only appoint a person on behalf of a child if there is no person who meets all of the following:
 - parental rights and responsibilities for the child

- lives with, and looks after, the child
 - is willing and able to act on behalf of the child in place of an appointee
- Insofar as possible, Social Security Scotland must seek the views of the following people before making the appointment:
 - the child
 - persons with parental rights and responsibilities for the child
 - any adults who live with, and look after, the child anyone who appears to have interest in the welfare of the child, including any social worker who is currently allocated to the child, the lead professional in the child's plan (if the child has a child's plan),
 - the requirement to seek these people's views "insofar as possible" means Social Security Scotland will not seek the views of a person if doing so would put anyone at risk of harm or the person would find it very distressing. Social Security Scotland will not seek the views of a child if Social Security Scotland thinks this would worry, upset or confuse the child.
38. After this has been explained to the applicant, the case manager should ask the applicant if they would like to request that they are appointed on behalf of the child. In exceptional circumstances, it might be the case that there is no one who meets all of three of the criteria above but there is someone who has parental rights and is willing and able to act for the child but does not actually living with the child and / or looking after the child. In which case, instead of the applicant requesting an appointment, the applicant may decide to arrange for that person to take over responsibility for the application. In which case, the case manager should follow the guidance in paragraph 36 of the chapter.

When to seek advice

39. Case managers should seek advice if-
- Social Security Scotland is not aware of any adult with parental rights and responsibilities who is willing and able to act for the child and
 - the applicant does not request that they are appointed.