

Client representative guidelines

Part 2: Parents and legal guardians of children

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Introduction

1. When Social Security Scotland refer to a 'Parent / Legal Guardian' of a child or a 'person with parental rights' for a child, it means a person with 'Parental Rights and Responsibilities' for a child.
2. This part of the guidelines explains:
 - what are Parental Rights and Responsibilities,
 - who has them,
 - what to do if you would like to manage a child's entitlement to assistance and you do not have them.

What are Parental Rights and Responsibilities?

3. Parental rights and responsibilities are a set of rights and duties which are contained in legislation¹. The legislation states who automatically gains parental rights and responsibilities and who can gain them through a Parental Responsibilities and Parental Rights Agreement or a court order.
4. Social Security Scotland is interested in who has parental rights and responsibilities because one of the parental rights is the right to act as the child's legal representative. This right includes the right to manage a child's entitlement to social security assistance. This right stops when a child turns 16 years old.
5. If a person does not have parental rights and responsibilities, then they cannot manage a child's entitlement to Child Disability Payment on their behalf. The exception to this rule is if Social Security Scotland appoint them to manage a child's entitlement².

Who has Parental Rights and Responsibilities?

6. A child's mother gains Parental Rights and Responsibilities when the child is born.
7. 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 subsequently after. It does not matter if the marital relationship between the child's mother and father has now ended.
8. Fathers can also gain Parental Rights and Responsibilities by:
 - being registered as the child's father on the birth certificate on or after 4 May 2006
 - both mother and father agreeing that the father is to have parental rights and responsibilities and entering a formal agreement called a Parental Responsibilities and Parental Rights Agreement
 - getting a court order under section 11 of the Children (Scotland) Act 1995 giving them Parental Rights and Responsibilities.
9. Second female parents can also gain Parental Rights and Responsibilities if they:

¹ [Children \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1995/34)

² [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/10)

- 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 parent rights and responsibilities.

10. Other people with an interest in the welfare of the child such as:

- grandparents
- step parents
- aunts
- uncles
- the local authority

can apply to the court for an order, either under section 11 of the Children (Scotland) Act 1995, or for a Permanence Order under section 80 or the Adoption and Children (Scotland) Act 2007, giving them all or some 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.

11. The court can also take away or restrict a person's Parental Rights and Responsibilities.

Applying to manage a child's entitlement to assistance when you do not have Parental Rights and Responsibilities

12. If someone looks after a child, and does not have parental rights and responsibilities for that child, they can ask Social Security Scotland to appoint them to manage the child's entitlement to assistance. This can be done as part of the child's application for assistance.

13. Social Security Scotland may only appoint a person to act as appointee on behalf of the child if there is no other person who meets all three of these conditions:

- has Parental Rights or Responsibilities or other legal authority to act on the child's behalf
- lives with, and looks after, the child
- is willing and able to act on behalf of the child in place of an appointee.

14. Part 5.1 of the Client Representative Guidelines "Appointees for Children - Interim Guidelines" explains the steps that Social Security Scotland will take when considering whether to make or terminate an appointment.