



Home Office

# Parental responsibility: court orders, testamentary guardianship and loco parentis

Version 3.0

This guidance tells His Majesty's Passport Office staff how to check if a person has parental responsibility for a child or young adult, through a court order, testamentary guardianship or by acting in place of a parent (loco parentis)

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# About: Parental responsibility: court orders, testamentary guardianship and loco parentis

This guidance tells His Majesty's Passport Office staff dealing with applications from customers living in the UK or overseas and what to do if there is no one with automatic parental responsibility. It includes:

- information about court orders that grant parental responsibility (PR) to a person who does not have automatic PR
- how to deal with an application where the person consenting is named in a will as a testamentary guardian
- if the person consenting to the application does not have parental responsibility automatically or through a court order but is acting in loco parentis (in place of a parent)
- what to record as a case note if someone has legal guardianship through a court order, testamentary guardianship or is acting in loco parentis

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email HM Passport Office's Guidance team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email HM Passport Office's Guidance team.

## Publication

Below is information on when this version of the guidance was published:

- version **3.0**
- published for Home Office staff on **04 November 2024**

## Changes from last version of this guidance

This guidance has been updated to make it clear how parental responsibility is granted through child arrangement orders.

### Related content

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## Parental responsibility and legal guardianship

This section tells His Majesty's Passport Office examiners how to decide who a legal guardian is

A legal guardian is a person who is legally authorised to take care of a child and make decisions for them if their parents cannot. Legal guardians can be named in a:

- parent's will (testamentary guardianship)
- a court order

If it's in the child's best interests, the UK or overseas court will grant legal guardianship of a child to a third party. Third parties can include family members who are looking after the child (in the absence of a parent with parental responsibility), including fathers who do not have parental responsibility.

You must:

- ask the customer to send court orders, that:
  - relate to restrictions on a child's movement
  - give (or restrict) parental responsibility (unless the child is in the [care of local authorities](#))
- refer to:
  - [UK court orders granting legal guardianship](#) if the court order was made in the UK
  - [Overseas court orders granting legal guardianship](#), if the customer sends an overseas court order that grants guardianship, custody, care and control of a child resident in their jurisdiction (unless there are UK court orders that contradict the foreign order)

For passport purposes, the child will not need consent from someone with parental responsibility when they are aged 16 years or over, unless:

- there is a court order, valid until the child is aged 18 years (the court order will show when it expires)
- the parent or guardian sends us evidence that a young adult cannot make decisions for themselves
- we need additional consent, for example, for a change of name or change in gender (before you ask for additional consent you must consider if the customer has raised any safeguarding concerns around asking for additional consent)

## What a court order must confirm

Where there is a court order granting legal guardianship, the court must name the person they are referring to, it must not refer to them as the 'applicant' or 'aunt' for example.

We cannot accept a court order that does not name the person they are granting legal guardianship to. You must tell the customer to get an amended court order which includes the names of all parties (using system letter 150).

If they cannot get an amended court order because of court delays, the customer must send us confirmation from the court of the delay, and we will either:

- exceptionally accept the original order if the customer also sends us a signed and dated letter on headed paper from a representative of the local authority confirming the situation.
- be unable to issue the passport If there has been no Children's Services involvement until an amended court order is received

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# Parental responsibility: Wards of court

This section tells HM Passport Office staff how to deal with an application when the child is a ward of court

When the intended passport holder is a child or young adult (under the age of 18 years) and is a Ward of court, you must not issue a passport. This includes where the person is a ward of a foreign court.

Only a court can authorise a passport for a Ward of court. You must refer all passport applications for a Ward of court to Child Protection and Safeguarding team (CPST) through your local Counter Fraud team.

See Authorisation and consent for more information about Wards of court.

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# Parental responsibility: UK court orders

This section tells HM Passport Office examiners about court orders in the UK that grant parental responsibility and how to confirm the court order

For all child applications (including renewals and replacements) you can accept the person consenting to the application has parental responsibility (PR), if all the following points apply:

- we have the court order naming the person consenting to the passport application and it confirms they have parental responsibility
- they have not changed their name from the one on the court order
- the court order is in date and has not been replaced
- there's is no information on the application, system or documents or other evidence to suggest they do not have parental responsibility

You must ask for more information, if:

- the [court order does not specifically name the person](#) it is issued to
- the name of the person consenting to the application has changed since the court order was issued (for example, change of name evidence)
- the customer does not send in the court order confirming they have PR (this is needed for all application types including renewals and replacement)
- there's evidence to suggest:
  - the person consenting to the application no longer has parental responsibility
  - someone else has parental responsibility

## Recording your decision: UK court orders

You must add a case note to the application to record your decision when you confirm the person consenting to the application has PR or you needed additional consent to issue the passport.

You must

1. Add a case note as described in Authorisation and consent, to show the actions and decisions you made; and include:
  - the type of court order and where it was issued
  - the person or persons named on any court order giving parental responsibility
  - the date the order was issued and expiry date if there is one
  - the person consenting to the application has parental responsibility through a court order
2. Add a case note to record the name and place of birth of the parents, if their details are included on the full birth certificate but not on the application (you must not request a full birth certificate for a renewal or replacement application solely to case note these details)

3. Scan the document that confirms parental responsibility (PR) if the How to keep scans of supporting documents guidance tells you to.

## UK court orders that grant legal guardianship

The UK courts can grant parental responsibility and legal guardianship using the following court orders.

### Special guardianship orders

The holder of a special guardianship order must give consent to the issue of a child's passport, regardless of where the child lives (unless there is a recent court order that changes the conditions of the order).

If there's more than 1 guardian named on the order, you can accept consent from any of them, but you will need the consent of all those with parental responsibility to change a child's:

- name
- gender

### Parental responsibility orders

Parental responsibility orders are court orders issued in England, Wales or Northern Ireland to someone connected to a child (for example, a father, step-parent or second female parent) who does not already have parental responsibility.

In Scotland, there are separate rules covered under [ordinary cause procedures](#).

Customers in the UK cannot apply for a parental responsibility order if they use a surrogate to have a child. They will need to apply for a parental order.

If you receive a parental responsibility order you can accept the person named on the order has parental responsibility.

### Residence orders

Residence orders issued in [Northern Ireland](#) or those issued in England and Wales before 22 April 2014 (when they changed to Child arrangement orders):

- state who a child will live with
- remain valid until the child's 16th birthday
- grant temporary shared parental responsibility to anyone named in the residence order, for the life of the order

You must make sure there is nothing in the residence order that stops us from issuing a passport.

If you have any doubts, you must refer the application to the Counter Fraud team (CFT).

## Child arrangement orders

Child arrangement orders replaced residence orders and contact orders in England and Wales on 22 April 2014. People who already hold residence or contact orders do not need to re-apply for a child arrangement order.

A child arrangements order decides:

- where the child lives
- when the child spends time with each parent or person named in the order
- when and what other types of contact take place (phone calls, for example)

The child's mother, father or anyone with parental responsibility can apply for a court order. Other people, like grandparents, can apply but they need permission from the courts first. The court can grant a child arrangement order to more than one person, regardless of if they live together or not.

## Child arrangement order: parental responsibility

Unlike previous English and Welsh residence orders, child arrangement orders (CAO) do not automatically grant parental responsibility to everyone named in the order.

If the people named in the order do not already have parental responsibility (PR) for the child, they will:

- be granted PR automatically and for the duration of the CAO, if it says the child must live with them (the child's main residence)
- not be granted PR if the CAO says the child will spend time with that person, unless the order specifically says PR is granted to this person

Child arrangement orders stay in force, until the:

- court makes another order (be aware this may remove PR from non-parents, depending on the conditions of the new order)
- child reaches the age of 16 (unless the CAO specifically extends the order to 18 years)

The court may not order the removal of parental responsibility from a father or parent who the child lives with.

You must make sure there is nothing in the child arrangement order that stops us from issuing a passport. If the CAO has expired, you must ask for a new order.

If you have any doubts, you must refer the application to the CFT.

## Child arrangement orders: changing a child's name

Every person with parental responsibility must consent to a child's change of name when a child arrangement order is in force. Where consent from everyone with PR cannot or will not be given the court may give consent through a specific issue order (see Child Change of Name).

## Step-parent parental responsibility agreements

A step-parent can get parental responsibility in the UK by completing a [step-parent parental responsibility agreement](#) (under section 4A(1)(a) of [the Children Act 1989](#)).

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# Parental responsibility: overseas court orders

This section tells HM Passport Office examiners about overseas court orders that grant legal guardianship

We may also receive court orders issued by courts overseas granting legal guardianship. If the overseas court order is not in English, the customer must send a translation (see [acceptable translators for overseas customers](#)).

We accept consent from third parties who have an overseas court order that grant them guardianship, custody, care and control of a child who lives in their jurisdiction, unless there's a UK court order that contradicts the overseas order.

Hague convention countries can transfer the jurisdiction (authority) of UK court orders relating to parental responsibility, guardianship, and child protection, to any Hague convention country (under the terms of the Hague Convention).

If you see a Hague convention order from a different country to where the child currently lives, you can accept this for parental responsibility unless you have child safeguarding (protection) concerns, as long as both countries signed up to the Hague convention.

## How to check an overseas court order

You must check the details on the overseas court order gives legal guardianship and allows travel. You must check if the court order is from a [Hague Convention country](#) or a country that is not part of the Convention.

As we reserve the right to withhold passport facilities, you must:

- check the [court order specifically names the person giving consent](#) to the passport application; and
  - they have not changed their name from the one on the court order
  - the court order is in date and has not been replaced
  - there's is no information on the application, system or documents or other evidence to suggest they do not have parental responsibility (for example, a caveat)
- check the court order (and translation) to make sure there's nothing in the order that restricts:
  - the removal of a child from the country of residence
  - parental responsibility
- consider, if:
  - the child is habitually resident in the country where the order was issued
  - there's more than 1 court order
  - there are any contradictions between a UK and overseas court order

- the parents are in dispute about the court order

If a child lives overseas, you must check the Knowledge Base for information relating to:

- parental responsibility
- the granting of court orders in the country of residence

If an adult temporarily (or permanently) takes a child to live in another country without the consent of those with parental responsibility, the child's habitual residence may not be the country they currently live in. You must carefully check the circumstances in the court order.

You must ask for more information, if:

- the [court order does not specifically name the person](#) it is issued to
- the name of the person consenting to the application has changed since the court order was issued (for example, change of name evidence)
- the customer does not send in the court order confirming they have PR (this is needed for all application types including renewals and replacement)
- there's evidence to suggest:
  - the person consenting to the application no longer has parental responsibility
  - someone else has parental responsibility

## Asking for advice about an overseas court order

You must follow the guidance referral process if:

- you are unclear about the overseas court order
- there's evidence a dispute between the parents
- the customer disputes the Hague Convention order
- you receive a court order relating to parental responsibility that is not covered in this guidance

You must refer the application to the Counter Fraud team for onward referral to the Child Protection and Safeguarding team if you have concerns (see Safeguarding: consent issues guidance), if the:

- child has been taken to live in another country without the consent of those with PR
- details in a court order have been broken

## Recording your decision: overseas court orders

You must add a case note to the application to record your decision when you confirm the person consenting to the application has PR or you needed additional consent to issue the passport.

You must:

1. Add a case note as described in Authorisation and consent, to show the actions and decisions you made; and include:
  - the type of court order and where it was issued
  - the person or persons named on any court order giving parental responsibility
  - the date the order was issued and expiry date if there is one
  - the person consenting to the application has parental responsibility through a court order
2. Add a case note to record the name and place of birth of the parents, if their details are included on the full birth certificate but not on the application (you must not request a full birth certificate for a renewal or replacement application solely to case note these details).
3. Scan the document that confirms parental responsibility (PR) if the How to keep scans of supporting documents guidance tells you to.

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# Parental responsibility: testamentary guardianship

This section tells HM Passport Office staff what testamentary guardianship is and what evidence they need to confirm someone is a testamentary guardian

A testamentary guardian is a person named in a parent's will, who will take legal responsibility for a child after their parent's death. Testamentary guardians will have parental responsibility in:

- England, Wales or Northern Ireland (if there is no one else with parental responsibility)
- Scotland, on the death of a parent (even if there is another parent with parental responsibility)

If the parent(s) died without leaving a will and there's no court orders giving parental responsibility (PR) to anyone else, you (the examiner) must deal with the application using the [loco parentis](#) guidance.

## Evidence to prove testamentary guardianship

You must ask the guardian to send:

- the child's full birth certificate to confirm who had parental responsibility
- the parent's will, to show the testamentary guardian
- a probate certificate (if the customer has one)
- the parent's death certificate
- a signed letter confirming there's no court or parental responsibility orders in force
- a signed letter confirming there's no one else with parental responsibility (if the child is habitually resident in England, Wales or Northern Ireland)

## Recording your decision: testamentary guardians

You must add a case note to the application to record your decision when you have confirmed the testamentary guardian has PR.

You must:

1. Add a case note as described in Authorisation and consent, to show the actions and decisions you made; and include:
  - who had parental responsibility on the birth certificate
  - who the will names as a guardian
  - if there is anyone else with PR
  - if there are any court orders affecting the child



- the person consenting to the application has parental responsibility by testamentary guardianship
- 2. Add a case note to record the name and place of birth of the parents, if their details are included on the full birth certificate but not on the application (you must not request a full birth certificate for a renewal or replacement application solely to case note these details).
- 3. Scan the document that confirms parental responsibility (PR) if the How to keep scans of supporting documents guidance tells you to.

You must refer the application to your OTL before passing the application for issue if a testamentary guardian consents to the passport application, as the OTL must case note that they agree with your decision. When you get the application back from the OTL, you, the examiner, must deal with the application in line with current guidance.

## Confirming testamentary guardianship: operational team leaders

You, the OTL, must:

1. Check the documents and the examiner's decision (as shown in the case notes).
2. Decide if you can accept the customer's consent.
3. Add a case note to confirm whether you agree with the examiner's decision.
4. Refer the application back to the examiner.

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# Parental responsibility: loco parentis

This section tells His Majesty's Passport Office examiners how to deal with a child application when a parent with automatic parental responsibility is unable to give consent (for example, because they are missing or have died) and there are no court orders in force and the child is not subject to a care order.

When considering any type of child application, the security and protection of the child must always come first. There may be many reasons why a person with parental responsibility (PR) is unable to give consent to a child's passport and PR or legal guardianship is given to someone else (for example, to a local authority or through a court order or will).

There may also be occasions where PR has not been formalised and the person looking after the child does not have legal guardianship or parental responsibility for them. This can happen when:

- the child's parents are deceased or missing, and the child is living permanently with the person making the application ([in loco parentis](#))
- the child's mother is deceased or missing, and the child is living with the father (who does not have parental responsibility)

Customers who look after children without having parental responsibility or legal guardianship, are generally:

- the child's father (who does not have automatic parental responsibility)
- family members (for example, grandparents, aunts and uncles)
- close family friends

You must deal with these applications sensitively, as the issue of consent may upset the customer. However, as we have a duty to safeguard (protect) children, we must make sure the customer sends evidence to prove they are looking after the child, in the absence of someone with parental responsibility or legal guardianship.

## What 'in loco parentis' means

The term 'in loco parentis' is Latin for 'in the place of a parent'. Loco parentis refers to:

- a person who does not have parental responsibility but who is caring for a child in the absence (or death) of a parent or guardian
- the legal responsibilities taken by the person who supplies a parenting role in a child's life

[Legal guardians](#) do not act 'in loco parentis'. You must check the customer does not have legal guardianship before you ask for evidence they are acting in loco parentis.

If the parent(s) are deceased and their will names the person consenting as guardian, you must deal with the application as a [testamentary guardian](#).

## How to confirm 'in loco parentis'

Where the customer is acting 'in loco parentis' for a child we must have evidence to confirm the situation every time they apply (including renewal and replacements). You must ask the customer, for:

- evidence of their own identity (see Authorisation and consent)
- a legally binding [statutory declaration](#) to confirm they are acting in place of a parent
- evidence they are [acting 'in loco parentis'](#)

## Evidence of 'in loco parentis': statutory declarations

The customer's statutory declaration, must show:

- the customer's name
- the child's full name and date of birth
- they are looking after the child in the absence of any person with parental responsibility
- the reasons why they are looking after a child
- why they are the correct person to apply for the child's passport
- the date they started looking after the child
- if there are any others with parental responsibility
- details of attempts to find (or contact) a parent with parental responsibility
- the whereabouts (if known) of the child's parents and why they are unable to give consent
- if the parents are aware of the passport application and if they are not, why
- any objections raised by the parents or anyone else with parental responsibility

The statutory declaration must follow the format described in the [Statutory Declarations Act 1835](#) (an example statutory declaration is available in the UK legal guardianship documents). The customer (or a solicitor) can draft the statutory declaration, but it must be legalised by an authorised witness (for example, at a Magistrates court).

## Evidence of 'in loco parentis': third party evidence

The customer must send:

- the child's full birth certificate (to confirm who originally held parental responsibility)
- the parent's death certificate (if the parent has died)
- at least 3 pieces of evidence from third parties to confirm they are acting in loco parentis

You need to see at least 3 pieces of evidence in this list to confirm the person consenting is acting in loco parentis:

- a letter from Child Benefit Office confirming child benefit
- written confirmation of a guardian's allowance payment
- a signed and dated letter from child's head teacher or doctor, who personally knows the:
  - customer
  - child
  - circumstances
- signed and dated letters from the child's relatives (related to the parent who held parental responsibility) confirming:
  - they are unaware of the parent's whereabouts (if the parent is missing)
  - they are aware of the child's circumstances and agree the customer is the correct person to apply for the passport
- a signed and dated letter from a local authority confirming they are aware of the circumstances

## How to check evidence of loco parentis

You must check the documents the customer gives, to make sure they are:

- in the correct format
- appear genuine

The documents the customer gives us will depend on the circumstances of their case. If a customer is unable to give the necessary evidence, you must refer the application to your operational team leader (OTL) who must look at the case under balance of probabilities and see if other documents can be requested.

You must refer the application to the Counter Fraud team if you have doubts about the:

- application
- authenticity of the documents
- customer's claim to be looking after the child in the absence of parents or legal guardians

## Recording your decision: 'in loco parentis'

You must add a case note to the application to record your decision when you have confirmed the person acting in loco parentis has PR.

You must:

1. Add a case note as described in Authorisation and consent, to show the actions and decisions you made; and include:
  - the details included in the statutory declaration
  - the 3 pieces of evidence you have seen

- if you intend to accept or reject the customer's consent
- that the person consenting to the application is acting in loco parentis
- 2. Add a case note to record the name and place of birth of the parents, if their details are included on the full birth certificate but not on the application (you must not request a full birth certificate for a renewal or replacement application solely to case note these details).
- 3. Scan the document that confirms parental responsibility (PR) if the How to keep scans of supporting documents guidance tells you to.

All 'in loco parentis' cases must be referred to your OTL before passing the application for issue as the OTL must case note that they agree with your decision. When you get the application back from the OTL, you, the examiner, must deal with the application in line with current guidance.

## Confirming loco parentis: operational team leaders

You, the OTL, must:

1. Check the documents and the examiner's decision (as shown in the case notes).
2. Decide if you can accept the customer's consent.
3. Add a case note to confirm whether you agree with the examiner's decision.
4. Refer the application back to the examiner.

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