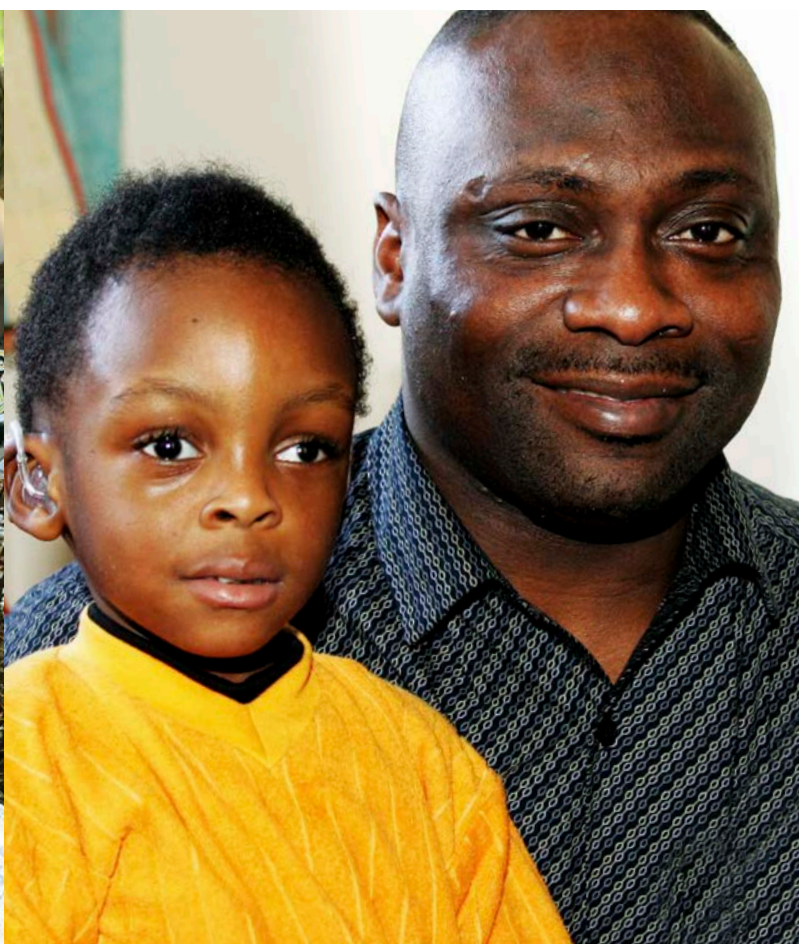


Know your rights: Getting support from your local authority in Scotland



Our vision is a world
without barriers for
every deaf child.

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We use the term ‘deaf’ to refer to all types of hearing loss from mild to profound. This includes deafness in one ear or temporary hearing loss such as glue ear.

We use the term ‘parent’ to refer to all parents and carers of children.

Please note that, at the time of writing, the Scottish Government is making some changes to how some key rights will be implemented. This follows a Supreme Court ruling in July 2016. More information about this can be found on page 15.

Introduction

This resource looks at the legal rights you and your deaf child might have to practical help with things like equipment and communication support from your local authority.

Support from your local authority can involve anything that will help meet the 'eligible needs' of your child and family (for more information on eligibility go to page 9). For example:

- technology to help keep your child safe and independent at home – such as vibrating smoke alarms/doorbells or a pager system
- financial help to communicate with your child, such as learning sign language
- a communication support worker who can support your child in the community
- information on local services that are accessible to disabled children and their families.

For more information on what your local authority offers disabled children, go to its website (www.cosla.gov.uk) and search for 'disabled children' or 'children's social care'.

If you're looking for information on rights in other areas such as health or education please visit www.ndcs.org.uk or call our Freephone Helpline on 0808 800 8880.

This resource is for families living in Scotland. If you live in England, Wales or Northern Ireland, please read our equivalent resource for your nation.

Local authorities – key duties

The law (see page 14) says that all local authorities must provide certain services (known as key duties) for disabled, including deaf, children and their families. These key duties include:

- Making sure disabled children can use all the services that the local authority provides for all children.
- Providing information about services in their area that may benefit disabled children and their families.
- Providing services which “minimise the effect on disabled children within their areas of their disabilities” and support them to “lead lives as normal as possible”.
- Offering people who are assessed as needing care and support a choice in how this support is provided.
- Assessing the needs of parents of disabled children who ask for an assessment.

How do I get help?

Before you can get help from your local authority you will usually need to have an assessment. An assessment will look at how your child's deafness affects them and the rest of your family, and if they meet the threshold for being offered support. Where possible a worker will speak to your child to get their views.

Early intervention support

Early intervention support for children in Scotland is based on providing support early on and involving those professionals who are needed to get the right support in place.

A 'named person' (a health visitor for pre-school children or a teacher for school-age children) will be identified for each child until they're 18. This professional acts as a first point of contact for children and parents if additional support is needed for the child and their family. Following a Supreme Court ruling in July 2016, duties on local authorities to provide a Named Person and produce Child Plans have not yet been formally introduced. However, many authorities are already using this model, or are expected to be working towards it. At the time of writing, the Scottish Government expects this duty to become law in August 2017.

Where a child needs ongoing support from two or more professionals then a 'lead professional' may be appointed to make sure the different professionals involved act as a team and offer the right support to the child and family. In some cases it will be easier for the named person to be the lead professional.

The named person or lead professional should have an understanding of deafness and what impact this can have on children and families. If you have concerns about the deaf awareness of professionals working with your child you can contact our helpline for advice.

Working with parents and the child the lead professional will carry out an assessment and produce an Integrated Assessment and Child Plan which will outline the support your child needs, who will provide this support and what outcomes or benefits are expected.

This approach is voluntary – you can refuse or end it at any time and instead ask for a statutory assessment.

Statutory assessments

For help with equipment or technology at home, or additional support for your child with communication outside school, a statutory assessment will probably be needed.

You're entitled to ask for a statutory assessment under the Children (Scotland) Act 1995. These assessments are supported by the law, and there is government guidance on how they should be carried out¹.

Statutory assessments are usually carried out by a worker from the disabled children's team. The assessment should involve all professionals who are working with the child or family. Statutory assessments will also be integrated and if required, lead to a Child's Plan. This will detail any support needs and any services which may be provided.

¹ Guidance related to Getting it Right for Every Child (GIRFEC), available at www.gov.scot/Topics/People/Young-People/gettingitright/publications.

Carer's assessments

Parents have a legal right to ask for their own assessment of need (carer's assessment) under the Community Care and Health (Scotland) Act 2002. This assessment must consider your health and welfare, your ability to carry out the caring role and any wishes you may have to return to work, study and take part in leisure opportunities. For more information on carer's assessments contact Carers UK (0808 808 7777, www.carersuk.org).

Do I have a right to help?

The Children (Scotland) Act 1995 places a general duty on local authorities to provide services to promote the welfare of 'children in need' in their area.

'Children in need' includes 'disabled children', which includes deaf children.

However, local authorities are allowed to set criteria to help them target support to children and families who they think need it most. This means that your child may not receive support if they don't meet the local eligibility criteria (see page 9).

So whether you have a right to help will depend on what your local criteria says.

We would always advise you to ask the local authority for help and for an assessment of your needs if you think it would help you and your child (see below).

How do I ask for an assessment of my child's needs?

You can contact your local authority (www.cosla.gov.uk) yourself and ask for an assessment – contact details should be available on its website. If you want to make your request more formal you could use our template letter on page 17.

You could also ask a professional such as a GP or a Teacher of the Deaf to contact the local authority for you and refer your child for an assessment.

What if they refuse to assess my child's needs?

If the local authority refuses to assess your child's needs, explain that your child is disabled and legally entitled to have an assessment. If you haven't already, you can formally request an assessment in writing (see our template letter on page 17).

How can I prepare for an assessment?

Have you been given information on the aims of the assessment? If not ask for it.

Does the person doing the assessment have the right experience and communication skills to properly assess your deaf child and family? If your child uses British Sign Language (BSL) as their first language it would be reasonable to expect the worker to have an SCQF Level 6 BSL qualification or to provide a qualified sign language interpreter for the visit.

Make sure your child knows that the person doing the assessment might want to talk to them on their own (if your child is old enough). Help them prepare for this and think about what they want to say.

You could read our guide, *Social Care for Deaf Children and Young People* (see page 18). It's aimed at professionals but will help you get ready for the assessment and get the most out of it. You could also give a copy to the person doing the assessment (either before or at the assessment).

Write down any questions you have beforehand to make sure you don't forget anything.

Have you used our Technology Test Drive service* and found a piece of equipment that works well for your child? Make sure you have the details ready so you can ask for it at the assessment.

* Technology Test Drive allows your child to try out different types of equipment to see what works best for them. For more information visit www.ndcs.org.uk/technology or call our helpline.

How long will it take?

Government guidance related to Getting it Right for Every Child (GIRFEC)² doesn't say how long it should take to complete an assessment, but each local authority should have its own timescales – ask your named person or lead professional about this or whoever is leading the assessment.

What happens during an assessment?

Assessments usually take place in your own home, and should be led by a worker from your local authority's children with disabilities team.

The worker will ask you, and your child (if appropriate), some questions about their development, any extra help they need because of their deafness, and the impact this has on them and their family.

The assessment should focus on what the local authority can do to meet your child's needs, not what existing services might suit your child.

Family members and other professionals who work with your child may be asked to contribute to the assessment to get a full picture of your child's needs. However, the worker must get your, and possibly your child's, permission before involving them.

You and your child should be given the opportunity to comment on the completed assessment, and your views should be included in the final version – including any areas of disagreement.



² Available at www.gov.scot/Topics/People/Young-People/gettingitright/publications.

Top tips to get the most out of an assessment



Will I be offered help?

Local authorities are allowed to use eligibility criteria to help them target support to children and families who the local authority think need it most. You can ask your named contact for a copy of the local authority's eligibility criteria.

Local authorities only have a duty to provide a service to a child who is assessed as having needs that meet their eligibility criteria. This may mean your local authority doesn't meet any, or only meets some, of the needs identified in your child's assessment.

Each local authority must explain their eligibility criteria clearly and must take into account the impact of disability on individual children and families. Eligibility shouldn't be based only on a simple rule of how severe a child's disability is, such as their level of deafness.

If your child meets the eligibility criteria of your local authority, the agreed support may be summarised in a Child's Plan which outlines your child's (and family's) needs and the services that the local authority will provide.

If your child doesn't meet the eligibility criteria you should still be given information about community services that might be able to help. If you are unsatisfied that your child does not meet eligibility criteria you can also follow a complaints process, outlined on page 11.

How is help given?

If your local authority agrees your child has needs that meet its eligibility criteria, they can:

1. provide the service or equipment from within the local authority
2. arrange for another organisation outside the local authority to provide the service or equipment
3. give you the money through a direct payment so you can find and buy the service or equipment yourself.
4. provide some combination of the above three options

Direct payments

A direct payment is money paid to parents to give them greater choice and flexibility in how they access goods and services. Deaf 16 or 17-year-olds may be eligible for a direct payment in their own right.

Whether you take up the offer of a direct payment is up to you. If you decide you would like to, you'll have to follow certain rules to make sure the direct payments are spent on meeting your child's assessed needs, but you (or your child) should be offered help to manage this.

Direct payments don't affect any welfare benefits you may be receiving.

Individual budgets

The local authority may allocate a fixed amount of money to cover the costs it has estimated to meet your child's eligible needs. This is called an 'individual budget' or 'Individual Service Fund'. The local authority can manage this for you or you can get support from an independent organisation to do this. Parents or young people aged 16–17 can choose one or more of the three options above for how they use their individual budget.

Will I be charged?

Local authorities can charge for any services they provide from their children with disabilities team but they must take into account the income and circumstances of parents (or young people aged 16 or 17) before doing so.

In practice, most local authorities don't charge parents or children for the assessed services they provide. If you disagree with your local authority's decision to charge you for a particular service and/or you feel the cost is too much, you can make a complaint – see page 11.

How are services reviewed?

The local authority has a duty to review your child's Child's Plan to check that it's meeting the needs identified in the assessment. An initial review should take place within 12 weeks. After that, how regularly the plan will be reviewed should be agreed between you, the child and the local authority but should be at least every 12 months. A review meeting isn't usually needed if only equipment has been provided.

The local authority should contact you to arrange the review, but you can ask for a review at any time if you feel your child's needs have changed significantly.

A service can only be stopped or reduced if a re-assessment of your child's needs has found that their needs have changed. A re-assessment should include talking to you, your child and all relevant professionals.

Transitions: planning for adulthood

Under the Education (Additional Support for Learning) (Scotland) Act 2004, authorities have a duty to support deaf young people who are moving on from school. For example, no later than 12 months before a young person is expected to leave school, authorities must request and consider information from relevant agencies (such as colleges) about how they will support the young person. If your child is receiving services from the children with disabilities team and has additional support needs, a professional from the team should be invited to your child's Year 12 (age 13–14) review meeting (called a transition meeting). This transition meeting is an opportunity for the local authority to start planning for the future support your child may need from adult services.

What if I want to make a complaint?

Most local authorities have a four stage complaints process.

1. Contact the worker from the children with disabilities team who did your child's assessment, or their manager, and explain what you're not happy about. You can complain by phone, letter or email.
2. If you aren't satisfied with their response, tell them you want to make a formal complaint. You should be given help and information on how to do this. Your complaint will be investigated by a specially designated person not directly involved in the service you're complaining about.
3. If you aren't satisfied with the outcome of stage two, you can take your complaint to a Complaints Review Committee, which is chaired by an independent person.
4. If you're still unhappy, you can make a complaint to the Scottish Public Services Ombudsman (SPSO) (0800 377 7330, www.spsso.org.uk). The SPSO can investigate if local authorities have followed the correct procedures in reaching their decisions. However, it can't investigate a complaint where the local authority has made a decision that follows its rules but which you disagree with.

Other ways to complain

You can talk about your complaint with a local authority, Member of the Scottish Parliament and/or get legal advice at any time.

The Children and Young People's Commissioner (0800 019 1179, www.cypcs.org.uk) can give advice and help to children who are receiving a service from their local children with disabilities team.

In some situations local authorities may offer an advocate to children and young people who wish to make a complaint about an assessment/service/worker from their local authority. An advocate is a specialist worker independent from the local authority whose role is to help children and young people express their views.

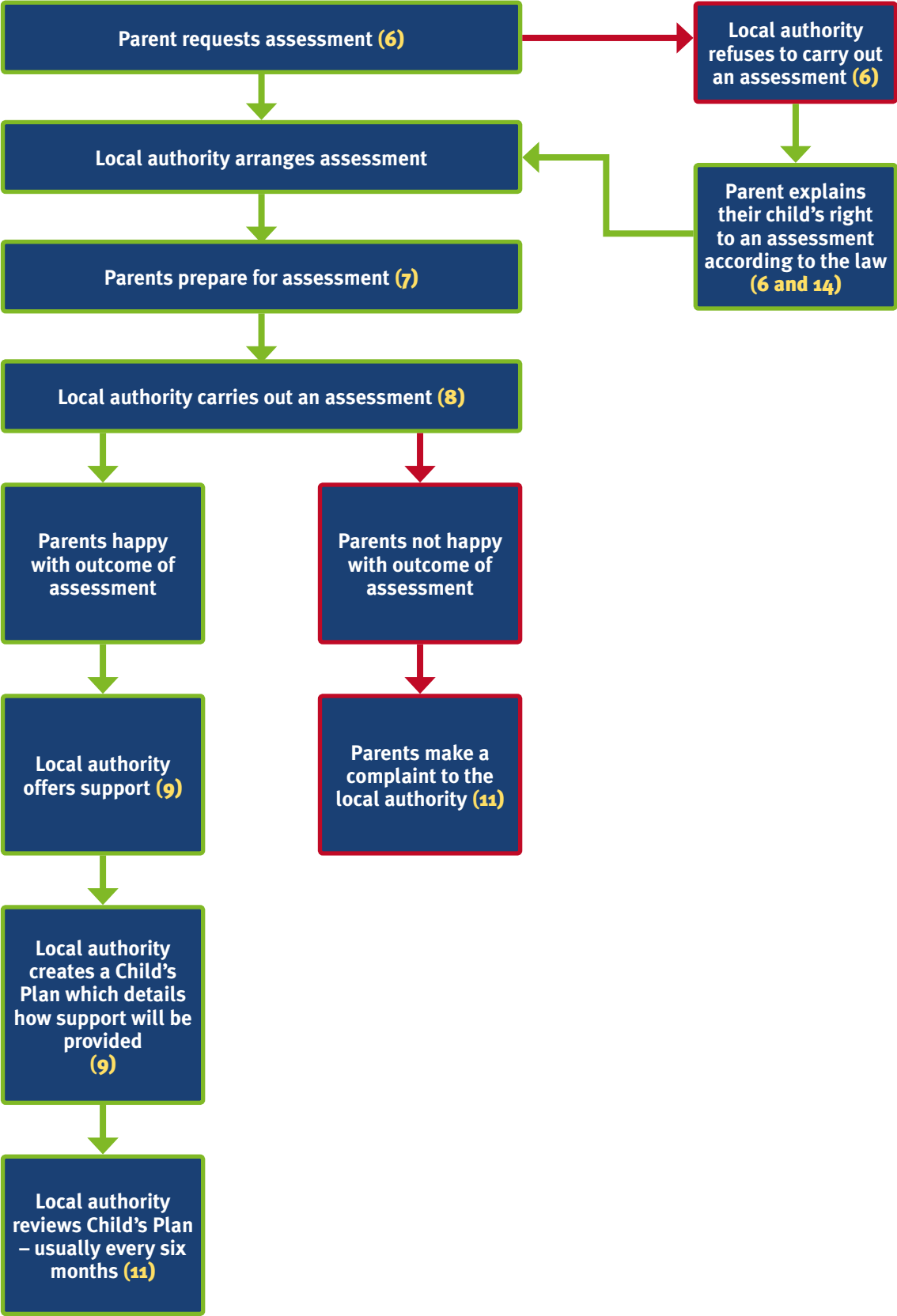
Where it's felt that a local authority has made a decision which is wrong in law (not just a decision you disagree with) then this can be legally challenged in the courts. In urgent cases you may not need to go through the local authority's usual complaints procedure before making a legal challenge.

This isn't an exhaustive list of different ways that you can complain. If you'd like more information or support on what to do if you're not happy with a local authority decision, contact our helpline.



Statutory assessments – key stages

(X) = page number with more detail on the key stage



Deaf children and the law

It's important to be aware of the laws giving your deaf child a right to support from their local authority so that you know what your child is entitled to.

You might also want to reference the law in discussions or complaints with your local authority. Sometimes just showing that you're aware of your legal rights may mean that the local authority will take you more seriously.

Scottish law

Social Work (Scotland) Act 1968

- Creates the duty (under section 12) for local authorities to 'promote social welfare' by identifying persons in need and providing support and assistance to them.

The Chronically Sick and Disabled Persons (Scotland) Act 1972

- Lists services local authorities can provide to disabled people to support them to live independently and access recreational and community activities enjoyed by all.
- Services can include the provision of meals, transport, holidays, home or community-based short breaks (such as playschemes, holiday clubs and after school clubs) and home adaptations.

Children (Scotland) Act 1995

- Local authorities have a general duty to provide services to 'children in need'.
- Children in need are defined as those who it's felt would be unable to reach or maintain a reasonable standard of health or development without services.
- Disabled children are recognised as children in need and deaf children are specifically mentioned within the definition of a disabled child.
- Local authorities have a general duty to provide services to support disabled children with their disability and for them to lead lives as enjoyed by all other children.
- In principle, following an assessment almost any service can be provided to the child and their family if it's felt this is needed to promote the welfare of the child or young person.

Social Care (Self-directed Support) (Scotland) Act 2013

- Local authorities must offer individuals who are assessed as needing care and support a range of options in how this support is provided.
- Local authorities must make sure that information on these options is accessible to children so that they can make informed decisions about how they'd like to receive support.

Child and Young People (Scotland) Act 2014

- All public services should follow the Getting it Right for Every Child framework to help children and families who need extra support.
- Every child under 18 must have a 'named person' to be able to go to if they need extra help or support.

Please note: Following a Supreme Court ruling in July 2016, Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 Act did not take effect as planned on 31 August 2016. These Parts refer to the provision of the Named Person and Child's Plans. The ruling relates specifically to the way that information about children and young people could be shared between different bodies, and does not mean that current practice under Getting It Right For Every Child (GIRFEC) policy will change.

As a result of the ruling, the Scottish Government paused implementation of the Act so that they could take steps to make the necessary changes. In the meantime, duties within the Act that refer to the Named Person and Child's Plan are not enforceable, however there is a strong expectation from Scottish Government that authorities will continue to plan for implementation, which at the time of writing, we understand will be in August 2017.

To the best of our knowledge, the content in this resource reflects current policy at the time of writing.

More information about GIRFEC is available from the ALLIANCE Getting to know GIRFEC Project.³

UK law

Equality Act 2010

- All permanently deaf children will be recognised as disabled and protected under this law.
- All public (including local authorities) and private organisations must make 'reasonable adjustments' so that disabled children can access all the facilities and services that are enjoyed by all people.
- All local authority provision for children such as children's centres, play and leisure activities should be accessible to deaf children unless there are good reasons why this isn't possible.

All these laws can be found online at www.legislation.gov.uk.

³ Available at www.alliance-scotland.org.uk/download/library/lib_5822fccdd7231

International law

United Nations (UN) Convention on the Rights of the Child

UN Convention on the Rights of Persons with Disabilities

- Disabled children should be supported to reach their full potential by supporting them to express their views, socialise with their peers and fully participate in cultural, recreational and leisure activities enjoyed by all children.

Both these conventions can be found at www.un.org.

European Convention on Human Rights 1998 (Article 8)

- Sets out rights to a 'family life' and a 'private life'.
- Gives disabled children the right to 'function socially' and they therefore have the right to receive services that enable them to do this.

This convention can be found at www.echr.coe.int.

Template letter to request an assessment of need for your deaf child

(Italics indicate where you should delete and/or insert text as appropriate)

Your name

Your address

Your contact number

Your email address

Date you wrote/sent letter

Director of children's services

Address – check your local authority's website

Dear Sir/Madam

Re: Request for an assessment of need

My *(son/daughter)* *(insert your child's name and date of birth)* is deaf *(add in details of any other needs e.g. cerebral palsy)* and is therefore entitled to a statutory assessment of their needs under section 23 of the Children (Scotland) Act 1995 and may be entitled to services under section 2 of the Chronically Sick and Disabled Persons (Scotland) Act 1972. I know that there are lots of ways that special equipment, technology and communication support could make my deaf child's life easier.

I would like an assessment to consider what social care support *(insert your child's name)* could be given to help *(him/her)* to be more independent. I would also like the local authority to consider if there is any support that *(I/we)* as parent *(carer/s)* can access to help meet *(insert your child's name)*'s needs.

I look forward to your reply.

Yours faithfully

Signature

Print name

How we can help

For more information and practical support on issues related to your child's deafness visit our website (www.ndcs.org.uk) or contact our Freephone Helpline:

- 0808 800 8880
- helpline@ndcs.org.uk
- www.ndcs.org.uk/livechat.

If you prefer to speak a language other than English, you can call our helpline and tell us your preferred language and phone number (in English) and we'll call you back with an interpreter within minutes.

Useful resources

Social Care for Deaf Children and Young People
www.ndcs.org.uk/socialcareresources

How Technology Can Help
www.ndcs.org.uk/technology

National Deaf Children's Society's *Social Care Position Statement for Services in the UK*
www.ndcs.org.uk/statements

You can also request copies of all these resources from our helpline.

The National Deaf Children's Society is the leading charity dedicated to creating a world without barriers for deaf children and young people.

Freephone Helpline: 0808 800 8880 (voice and text)

helpline@ndcs.org.uk

www.ndcs.org.uk/livechat

www.ndcs.org.uk



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