

Briefing Note: Children – Frequently Asked Questions

Introduction

This guide provides a general introduction to the law as it affects children on the breakdown of a relationship, including frequently asked questions. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

The arrangements for the care and wellbeing of any children upon the breakdown of a relationship are of paramount importance, and are seen as such by the courts and lawyers alike.

In the majority of cases, decisions concerning arrangements for children are made on an amicable basis without the need for formal court intervention.

In other circumstances where the parents are not married or decide initially to separate (rather than divorce) there is no need to formally record any agreement reached. In the absence of agreement, application can be made to a court for Child Arrangements, Prohibited Steps, or Specific Issue Orders under section 8 of the Children Act 1989 (as amended). (Child Arrangements Orders were previously known as Residence and Contact Orders).

1. What is “Parental Responsibility”?

Parental Responsibility (PR) is defined in section 3 of The Children Act 1989 as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

Essentially it confers a right to make important decisions relating to a child (e.g. schooling, religion), which is held jointly with anyone else with whom PR is shared. In some situations, decisions about a child should not be taken without the consent of every person with PR.

If more than one person has PR for a child (see below) and there is no agreement on an important issue (e.g. as to which school the child should attend), then the dispute can be resolved by making an application to the court under the Children Act 1989. Such an application should only be brought if all other methods of dispute resolution have failed (e.g. negotiation, mediation).

2. Who has Parental Responsibility?

If a child's mother and father were married to each other at the time of the birth, each automatically acquires PR by operation of law. If they marry subsequent to the child's birth, then the father will, once again, acquire parental responsibility.

Where the child's parents are not married at the time of his/her birth, only the mother has PR automatically. However, for registration of births on or after 1 December 2003, the father will acquire PR if he is named as the father upon registration of the birth.

If a father does not automatically acquire PR by operation of law he may either:-

- Enter into a formal Parental Responsibility Agreement with the mother; or if not possible;
- Make an application to the court for a Parental Responsibility Order (section 4 Children Act 1989).

An unmarried father without PR will acquire PR automatically if a Child Arrangements Order is made confirming that the child is to live with him.

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Summary:

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In certain circumstances, step-parents and other third parties (including other family members) may be able to acquire parental responsibility.

3. Does divorce affect Parental Responsibility?

If the parents are married, they will both retain parental responsibility notwithstanding being divorced.

4. Can Parental Responsibility be removed from a parent?

In the event of an adoption (other than a step-parent adoption) both parents will lose parental responsibility.

An unmarried father can have parental responsibility removed from him upon an application to the court, although such applications are rare.

5. What sort of orders can a court make?

Under section 8 of the Children Act 1989, a court can make a number of orders in respect of children as follows:-

- A "Child Arrangements Order" which sets out with whom a child is to live, spend time or otherwise have contact
- A "Child Arrangements Order" which sets out when a child is to live, spend time or otherwise have contact with any person
- A "Prohibited Steps Order" which prohibits a named person from taking certain decisions or action without permission of the court (a typical example would be an order preventing someone from removing a child from the care of another);
- A "Specific Issue Order" which settles disputes over certain issues which arise in connection with the exercise of parental responsibility. An example would be an order identifying the school a child school attend.

6. What sort of things does the court take into account?

The court's paramount consideration is what is in "the best interests of the child" (the paramountcy principle).

It is presumed, unless the contrary is shown, that the involvement of both parents in the child's life will further his welfare. This does not automatically mean that that involvement will be direct, nor that there will be a particular division of the child's time.

The court must have in mind a "Welfare Checklist" (section 1(3) Children Act 1989) and must have regard to:-

- The ascertainable wishes and feeling of the child concerned (considered in the light of his/her age and understanding);
- His/her physical, emotional and educational needs;
- The likely effect on him/her of any change in his/her circumstances;
- His/her age, sex, background and any characteristics of his/hers which the court considers relevant
- Any harm which he/she has suffered or is at risk of suffering;
- How capable each of his/her parents, and another person in relation to him/her the court considers the question to be relevant, is of meeting his/her needs;
- The range of powers available to the court under the Children Act 1989 in the proceedings in question.

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7. What is the procedure if proceedings are necessary?

The initial application is made on a form prescribed by the regulations, namely Form "C100". When the application is made, the Family Court will fix date for a preliminary hearing at which both parties and solicitors must attend.

In common with other family proceedings, it is important that all avenues of potential settlement are explored before the matter escalates. With that in mind, an appointment is made with The Children and Family Court Advisory and Support Service ("CAFCASS"), normally immediately before the more formal hearing in front of the judge. The idea is to enable each party to discuss the issues informally with an experienced CAFCASS (formerly Court Welfare) Officer.

If, after the discussion, agreement is reached, the court may make an order (by consent) where an order is deemed to be necessary or decide that in the light of the agreement, such need not be made.

If the dispute cannot be resolved at the initial appointment/hearing, the judge will give formal "directions" for the future conduct of the case, including provision, more often than not, for the filing of statements from the parties and the preparation of a formal written report by a CAFCASS Officer.

8. What if I need to move fast?

If you have concerns that a child may be in danger or that there are other circumstances requiring urgent attention, it is possible to make emergency applications to the court. In considering such applications (e.g. for the return of an abducted child) the judge would have regard to the Welfare Checklist (see above), making orders in the best interests of the child (very often seeking to restore the "status quo" pending a more thorough investigation at a later date).

9. What is a Parenting Plan?

A Parenting Plan is a written agreement between parents (and sometimes other members of the family) setting out arrangements (which might not just be the arrangements for contact) for a child. Whilst not formally approved by a court, it can sometimes be helpful to note these arrangements down, and can provide good evidence of the intentions of the parents if an application ever has to be made to a court at a later date.

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