

Briefing Note: Children

An Introduction to the Guide

This guide 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 "Residence" and "Contact" are made on an amicable basis without the need for formal court intervention. Unless the arrangements are unworkable or manifestly unreasonable, the court will usually approve them (in divorce cases) without the need to attend a hearing. "The Statement of Arrangements for Children" Form (D8A) accompanying the divorce Petition will give broad details of any such arrangements.

Section 41 of the Matrimonial Causes Act 1973 requires the court in any proceedings for a decree of divorce (or judicial separation) to certify whether or not there is a child of the family and, if so, to consider the arrangements which have been, or are proposed to be, made for the upbringing and welfare of that child.

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 orders under section 8 of the Children Act 1989 (see below).

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 right must be exercised jointly with anyone else with whom PR is shared.

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.

Where the child's parents are not married at the time of his/her birth, only the mother has PR. However, for 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:-

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- 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).

3. 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 "Residence Order" - determines where a child is to live;
- A "Contact Order" - defines the time a child is to spend with the parent with whom he/she does not live;
- A "Prohibited Steps Order" - 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" - 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.

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

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 affect 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.

In reaching the decision, the court must have regard: to "the best interests of the child".

5. What is the procedure if proceedings are necessary?

The initial application is made on a form prescribed by the regulations, namely Form "C1". When the application is made, the County Court (or Family Proceedings 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.

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6. 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).

If you would like to know more about this topic or our other legal services, please contact:

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