



# Parental Responsibility Information and Frequently Asked Questions



## **What is parental responsibility?**

Parental responsibility is defined in Section 3(1) *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”. In general terms, this means the power to make important decisions in relation to a child - for example, decisions about where a child is to live, whether a child can receive medical treatment, what religion they follow and which school they attend.

## **What does it mean to have parental responsibility?**

When a decision has to be taken about a child, all those with parental responsibility for the child are allowed to have a say in that decision.

## **When do parents have parental responsibility?**

- **Birth mothers** automatically have parental responsibility.
- **Married birth fathers** automatically have parental responsibility and do not lose it, even on divorce.
- **Unmarried birth fathers** do not have automatic parental responsibility, but may obtain it by:
  - marrying the birth mother;
  - having their name registered or re-registered on the birth certificate (see below);
  - making a Parental Responsibility Agreement with the mother;
  - obtaining a Parental Responsibility Order from the court;
  - obtaining a Residence Order from the court (which also determines that the child is to live with the holder of the order); or
  - becoming the child's guardian.

**Unmarried birth fathers** have, since December 2003, had automatic parental responsibility for their children **if they have registered as the father\*** [*Children Act 1989, s. 4 and Births and Deaths Registration Act 1953, s. 10*]. If a child was born before 2003, and the father was not named on the birth certificate, that child can be re-registered and the father named. Once this has been done, the father will automatically have Parental Responsibility.

\* Registration or re-registration requires both mother and unmarried birth father to be physically present at the registry office and sign the birth register. If one party cannot attend, they must complete and sign a Statutory Declaration confirming their absence. A Statutory Declaration is a formal document that must be signed by a commissioner, a solicitor or the courts.

## **What options are available to a person if they want to secure parental responsibility for a child?**

If you are looking after someone else's child or plan to look after someone else's child you need to consider obtaining legal security for such an arrangement. There are various legal arrangements available through the local courts which are explained further below.

### **Parental Responsibility Agreement (section 4, Children Act 1989)**

This is a consensual arrangement made by the mother and the unmarried birth father acting together. It is a legal document and means that the parents have agreed to share parental responsibility. A step-parent married to a birth parent may obtain parental responsibility in this way if all those with parental responsibility give consent to the agreement.

### **Parental Responsibility Order (section 4, Children Act 1989)**

This is a court order that specifies that a named person has parental responsibility for a child. Parental responsibility is then shared between the holder and any birth parent who already has parental responsibility. An unmarried birth father can apply for parental responsibility this way. A married step parent can also apply for parental responsibility this way if it has not been possible to get all parties to consent to a parental responsibility agreement (see above).

### **Residence Order (section 8, Children Act 1989)**

This is a court order that specifies the name of the person or persons with whom a child is to live. The named persons automatically acquire parental responsibility for the child and this is shared with anyone else who has parental responsibility for the child (usually birth parents). The order lasts until the child reaches the age of 16 or 18 depending on the particular arrangement with the court

### **Emergency Protection Order (section 44-45, Children Act 1989)**

A local authority may apply to a court for an emergency protection order which lasts a maximum of 8 days if they feel a child is at risk of significant harm. This enables a local authority to share parental responsibility with anyone else who already has parental responsibility.



### **Special Guardianship Order (section 14, Children Act 1989)**

This court order gives the holder a more permanent arrangement but it is not lifelong like an adoption order (see below). A carer secures parental responsibility for the child which enables them to make decisions for the child up to a child's 18th birthday. Birth parents who have parental responsibility retain residual parental responsibility so the family link is maintained. There may be several persons sharing special guardianship status (not necessarily all living in the household of the child). Anyone considering special guardianship is required to notify the local authority\* in writing at least 3 months before they apply to court: this enables the local authority to commence necessary checks and interviews with the significant family members and ensure the child is being cared for appropriately.

### **Care Order (section 31 and section 38, Children Act 1989)**

A local authority may apply to a court for a care order if they feel a child is at risk of significant harm. This enables a local authority to share parental responsibility with anyone else who already has parental responsibility. The local authority may make plans to provide accommodation for the child with alternative family carers or foster carers.

### **Placement Order (section 21, Adoption and Children Act 2002)**

If a local authority regards that a child needs to be placed permanently with an alternative family, they may apply to the court for a placement order which then gives the local authority permission to place a child for adoption.

### **Adoption Order (section 46, Adoption and Children Act 2002)**

The carer secures a lifelong relationship with a child throughout their lives when a child is adopted. The family line is legally changed so the child belongs to another family. The adopters acquire parental responsibility. Birth parents (and any other person) lose parental responsibility.

Anyone considering the adoption of a specific child who has not been placed with them by an adoption agency for the purposes of adoption (including step-parent adoption), must notify their local authority\* in writing at least 3 months before they to apply to court: this enables the local authority to commence necessary checks and interviews with the significant family members and ensure the child is being cared for appropriately.

\*You can contact Hampshire County Council Children's Services Department by writing to County Adoption Team, Hamble Cottage, Glen Road, Swanwick, Southampton, SO31 7HD or via the website [www.hants.gov.uk](http://www.hants.gov.uk) .

## **What is a guardian?**

A guardian is someone who has been named by a parent as someone who could look after a child in the event of the death of a parent. The named guardian would only have parental responsibility if all other persons with parental responsibility were deceased.

## **How do I apply for parental responsibility through the courts?**

You need to complete the appropriate application form for your order which you can obtain from any court. You can download application forms and guidance information from the courts website [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

## **Do I need to instruct a solicitor?**

You may want to seek legal advice before you apply to court although this is not absolutely necessary. You can obtain advice from Citizens Advice Bureau and some other voluntary organisations. The website [www.lawsociety.org.uk](http://www.lawsociety.org.uk) may be useful to you if you are looking for a solicitor.

## **Which court do I apply to?**

The Family Proceedings Court (part of the Magistrates Court) can deal with straightforward cases. If you believe the case is likely to be complex or contested you may prefer to apply to a County Court.

## **Is there a cost?**

The current fee for private applications to court is £140 per application. In certain circumstances the fee can be waived: ask your local court office for details if you think this may apply to you.

## **What happens in court?**

The court will set aside time for one or more hearings. A social worker – from the local authority, CAFCASS, or both – will be required to investigate the circumstances of the child and report to the court. The judge (or magistrate) will hear from the applicant, birth parents, any other persons with parental responsibility, the child (where appropriate) and the social worker to ensure any decision made is in the best interests of the child. The judge (or magistrate) may suggest an alternative order to the one applied for.

## **What is CAFCASS?**

CAFCASS is the Children and Family Court Advisory and Support Service, a non departmental public body accountable to the Secretary of State for Children, Schools and Families in the Department for Children, Schools and Families. It is independent of the courts, social services, education and health. Social workers from this public body look after the interests of children involved in family proceedings: they work with children and their families and then advise the courts on what they consider to be in the best interests of the individual children.

## **What is the court's main consideration in any decision about the child?**

The court has the welfare and the best interests of the child as the central consideration of all decisions made regarding children and families.

## **What alternatives are there to going to court?**

You may be able to resolve family issues without applying to court. The Family Mediation Helpline is 0845 6026627 and [www.familymediationhelpline.co.uk](http://www.familymediationhelpline.co.uk)

## **If I have parental responsibility can I make decisions about the child on my own?**

In most cases, day to day decisions can be taken by one parental responsibility holder alone.

With regard to major decisions, e.g., which school a child should attend or consent to treatment for a serious medical condition, it is advisable for all those with parental responsibility to agree for the sake of the child. However, it is not legally necessary to seek the consent of other parental responsibility holders, except in relation to change of name, emigration and adoption.

## **Can parental responsibility be taken away?**

Only when adoption takes place, can a birth mother lose parental responsibility. If the father was married to the mother when the child was born and subsequently divorced her, he does not lose parental responsibility (unless the child is adopted).

If a father acquired parental responsibility via a Residence Order, he will not lose it on its expiry, unless a specific order discharges it.

## **When does parental responsibility end?**

Parental responsibility ends:

- when a young person reaches adulthood, at the age of 18;
- when a young person between the age of 16 and 18 marries;
- when a child or young person is adopted (parental responsibility is transferred from the biological parents to the adoptive parents);
- where parental responsibility has been acquired via a residence order or special guardianship order which is discharged or expires (NB: a residence order lasts until age 16 but can be to age 18 if specifically requested);
- where parental responsibility has been granted under a parental responsibility order or a parental responsibility agreement, a child or any other person with parental responsibility can make an application to the court to have it terminated. In order for a child to make such an application, they will need to acquire the permission of the court first.

## **Can I change my child's surname?**

If all parental responsibility holders consent to the change of name this can be done by deed poll. If the parental responsibility holders do not agree, the parent seeking to change the name needs to obtain a court order permitting the change, a Specific Issue Order [*Children Act 1989*, s. 13(1)(a)].

For further information about changing a name by deed poll see:

[www.deedpoll.org.uk](http://www.deedpoll.org.uk) or call 0800 7833048

## **Can I take my child abroad?**

Any person in whose favour a Residence Order has been made can remove a child from the country for up to one month without the consent of any other Parental Responsibility holders. However, if they wish to remove a child for longer than this, or permanently, such consent is required [*Children Act 1989*, s. 13(1)(a)]. Any person in whose favour a Special Guardianship Order has been made can remove a child from the UK for up to three months without the consent of the birth parent/s.

## **Do grandparents have special parental rights?**

With regards to parental responsibility, grandparents are treated the same as any other person seeking to have their relationship with the child recognised legally. If grandparents are caring for a grandchild on a long term basis, they may be advised to apply for a Residence Order or a Special Guardianship Order. This will allow them to make day to day decisions concerning the child.

## **What is private fostering?**

Private fostering is an arrangement between a child's parents and another adult who is not directly related\* and is not a legal guardian with parental responsibility. Children and teenagers who are under 16 (18 if disabled) are considered to be privately fostered if they live with someone for 28 days or more. Examples of private fostering would be: if you are helping out a friend by having her/his child(ren) to stay; if a relative or friend from outside the UK has sent their child to live with you; if you have you had one of your teenager's friends sofa-surfing with you for a while. If this has been the case for more than 4 weeks, then this is private fostering.

Where arrangements are made to privately foster a child in advance, then you should **inform the Children's Services Department of your local authority** at least six weeks in advance. If the arrangement is made in an emergency, then notification must be made within 48 hours or as soon as feasibly possible. The Children's Services contact in Hampshire is Rosie Smith who can be contacted on 01962 847173.

*\*Direct relatives are grandparents, the siblings of parents, brothers or sisters*

## Where to find further information:

### Websites

**British Association for Adoption and Fostering** – [www.baaf.org.uk](http://www.baaf.org.uk)

**Citizens Advice Bureau** – [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

**Children and Family Court Advisory and Support Service** -  
[www.cafcass.gov.uk](http://www.cafcass.gov.uk)

**Court Service - Forms and Information** - [www.hmcourtsservice.gov.uk](http://www.hmcourtsservice.gov.uk)

**Family Rights Group** – [www.frg.org.uk](http://www.frg.org.uk)

**Families Need Fathers** – [www.fnf.org.uk](http://www.fnf.org.uk)

**Grandparents Association - Helpline 01279 444 964 - Benefits Advice 01279 412 963** - [www.grandparents-association.org.uk](http://www.grandparents-association.org.uk)

**National Family and Parenting Institute** - [www.nfpi.org](http://www.nfpi.org)

**Parentline** - [www.parentlineplus.org.uk](http://www.parentlineplus.org.uk)

**The Law Society** (to find a solicitor) – [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

### Legislation

**Adoption and Children Act 2002 and Children Act 2004**  
[www.everychildmatters.gov.uk/adoption](http://www.everychildmatters.gov.uk/adoption)

**Children Act 1989** - [www.opsi.gov.uk](http://www.opsi.gov.uk)

### Books

**Child Care Law: A summary of the law in England and Wales**, by Cullen and Lane (British Association for Adoption and Fostering, 5th Edition, 2006)

**Making Sense of the New Adoption Law**, by Nick Allen  
(Russell House Publishers, 2<sup>nd</sup> edition, 2007)

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**Hampshire**  
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