

2

Parental Responsibility

References

ACA: Adoption and Children Act 2002
CA: Children Act 1989 (as amended)
CAA: Child Abduction Act 1984
HFEA: Human Fertilisation and Embryology Act 2000
FLRA: Family Law Reform Act 1987

Introduction

Parental responsibility is a legal term introduced by the Children Act 1989 which replaced the term “custody”.

Parents and others who acquire parental responsibility are responsible for the child’s upbringing. In this advice sheet we explain what it means to have parental responsibility, who has it and how others can acquire.

What is parental responsibility?

Parental responsibility (PR) is defined in law as, ‘All the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child and the administration of his/her property’.

Section 3 CA

This means that a person with parental responsibility is responsible for the care and well-being of their child and, unless a court order says something different, that person can make important decisions about the child’s life (subject to some important exceptions set out below), for example:

- Providing a home for the child
- Protecting and caring for the child
- Consenting to the child’s medical/dental treatment
- Taking the child outside the jurisdiction of the UK and consenting to the child’s emigration.

Who has parental responsibility?

- a) **Mothers** have parental responsibility from the moment of her child's birth. Section 2 CA
- b) A **father** has parental responsibility if:
- He is married to the mother at the time of the child's birth or they marry after the birth; or Section 4 CA
 - He is registered as the child's father on the birth certificate if the registration took place **after 1st December 2003**; or
 - If he was not on the birth certificate but then re-registers the child's birth after 1st December 2003 either jointly with the mother or alone provided the mother signs a statutory declaration that he is the child's father (see: <http://www.gro.gov.uk/gro/content/births>); or
 - The mother and father have both signed an authorised agreement giving the father parental responsibility; or
 - There is an order of the Court giving the father parental responsibility. Section 4 CA
- c) **Second female 'parent'** –
- A second female parent is a woman in a civil partnership at time of the placing of the embryo, egg and sperm or artificial insemination; **OR** one who agreed to the 'female parenthood conditions' (consent from both parties to being treated as a parent, given to the person carrying out the treatment) at the time of **the fertility treatment**. Fertility treatment must be provided in the UK by a person under licence. s42 and 43 HFEA 2008
 - A second female parent will automatically acquire parental responsibility provided the child is **legitimate**. s44 HFEA 2008
 - **The child is legitimate** if either the parents were in a civil partnership at the time of conception, or have subsequently entered into a civil partnership between conception and birth. s17 HFEA 1990
 - **Where the child is not legitimate**, second female parent can acquire parental responsibility by being registered as a parent on the child's birth certificate, by agreement with the birth mother or by order of the court s2(1)(1A) CA 89
s1(3) FLRA 1987
- d) **Step-parents** have PR if they have made an authorised agreement with both parents with PR or court order. s4ZA CA 89
- Section 4A CA

e) **Other people** (for example relatives of friends caring for a child) have PR if they have a residence order, special guardianship order or even an adoption order in their favour on the child.

Section 12(2) & s.14C
CA and Section 25
ACA

f) **The local authority** if the child is subject to a Care Order, Interim Care Order or Emergency Protection Order.

Section 33(3)&
Section 44(4) CA

g) **Prospective adopters** who have a child formally placed with them for adoption by an adoption agency and the adoption agency has PR throughout the time that a child is authorised to be placed for adoption.

Section 25, Section
19 and Section 21
ACA 2002

h) **Guardians** have PR if they have been formally appointed by a parent who has PR or guardian or special guardian of the child **and** the appointment has taken effect.

Note:

Section 5 CA

- A parent can appoint a guardian to look after their child (up to the age of 18) after they are dead, provided they have parental responsibility for that child. A guardian or special guardian can also appoint a guardian for the child.
- An appointment of a guardian is only valid if it is in writing, signed in the presence of two witnesses and dated.
- The appointment of a guardian takes effect immediately on the death of the person who made the appointment except where there is a surviving parent with PR or special guardian – in these circumstances it will only take effect on the death of the surviving parent or special guardian unless the person who made the appointment was a parent with a residence order or sole special guardian before they died.

Note:

When a child is accommodated by agreement: The parents (and others with PR) retain their PR, and the local authority does not acquire it, throughout the time the child is in accommodation;

When a child is in care cases under a care or emergency protection order: The parents (and others with PR) retain PR, but the local authority also acquires it, and can override the parent's (or other's) exercise of their PR throughout the time the order is in force.

Section 33(3)(b) CA

Does a person with parental responsibility have to consult anyone else with PR before making decisions about a child?

Each parent who has parental responsibility is entitled to make day to day decisions about the child independently of the other, particularly if they have a residence order, but they should consult each other about important decisions such as immunisations, medical treatment, change of school, change of surname etc.

See for example: Re: PC (Change of Surname) [1997] 2 FLR 730; Dawson v- Wearmouth [1999] 1 FLR 1167

Can someone with parental responsibility take the child abroad?

A person with PR can only remove a child from the jurisdiction of the UK if they have the consent of every person with PR, or the permission of the court. This applies no matter how short the trip may be (s.1 CAA 1984) and if they do not have this consent they may commit an offence. However,

- A person with a residence order may remove the child from the UK for up to one month without such consent
- A person with a special guardianship order can remove the child from the jurisdiction for up to three months from the UK without such consent (s.14C CA 1989).

Section 13 CA & section.1(4)(a) CAA; Re: B (A Child) CA (Civ Div) 24/7/2007)Section 14C (4) CA & section.1(4)(b) CAA

Can the exercise of PR be restricted?

If one person with parental responsibility does something which another person with parental responsibility objects to, and this cannot be resolved by negotiation between them, it is possible for either party to apply to the court for a prohibited steps order or a specific issue order to resolve the issue in question.

In addition,

- **A special guardian** can exercise his or her PR to the exclusion of anyone else with PR. *Section.14C (1)(b)
CA*
- **If a child is in care under a care or emergency protection order**, the parent retains their PR but the local authority also has it and may determine the extent to which the parent may exercise their PR. *Section 33(1)(b) CA*
- **When a child is placed for adoption** the parent and the prospective adopters have PR but the adoption agency can determine the extent to which either may exercise their PR. *Section 25 (4) ACA
2002*

Can parental responsibility be taken away?

Parents and others do not lose parental responsibility by separating or being divorced or the arrangements for the child changing. Therefore they should continue to consult each other about big issues in the child's life even if they no longer live together unless the court says otherwise.

However, parents and others with parental responsibility can only lose parental responsibility by:

- In the case of parents, their child being adopted;
- Where the person has acquired parental responsibility by a court order (for example a father with a s.4 order, a relative/carer with a residence or special guardianship order) by the court revoking that order;
- In the case of a local authority with a care order, by the court discharging the care order;
- In the case of a guardian, by the court revoking the appointment of that person as guardian.

Options if you are a father/ step parent or second female parent without parental responsibility

If the child's mother (or in the case of a step parent, both the mother and the father) consents to you having parental responsibility then you could acquire parental responsibility through an authorised agreement. If not then you can apply to the court for a parental responsibility order.

S4, 4A, 4AZ CA

Making a Parental Responsibility Agreement

If your child's mother agrees to you having parental responsibility, then you need to obtain the relevant form. You can get it from your local court office by asking the court staff for a section 4 parental responsibility agreement form. Alternatively the form can be downloaded from the court service website

Mother & father :- [http://www.hmcourts-service.gov.uk/courtfinder/forms/c\(pra1\)_e.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/c(pra1)_e.pdf)

Mother and second female parent:- [http://www.hmcourts-service.gov.uk/courtfinder/forms/c\(pra3\)_e.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/c(pra3)_e.pdf)

- The child must be resident in England or Wales.
- A separate form must be filled in for each child.
- When filling in the form use black ink.
- The signatures must be witnessed by a court official.

Once you filled in the form, then BOTH parents must go to a Family Proceedings Court, County Court, or the Principal Registry of the Family Division. A Justice of the Peace, Justices' Clerk or a court official who is authorised by the judge to administer oaths will witness the signatures and sign the certificate of the witness.

You must also take:

- The child's full birth certificate
- Evidence of identity of each parent (with photograph and signature)

When the certificate has been signed and witnessed, make two copies of the Agreement and send the original and both copies

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group

to:

The Principal Registry of the Family Division
First Avenue House
42-49 High Holborn
London WC1V 6NP

The Principal Registry will record the Agreement and keep the original. The copies will be stamped and returned to each parent at the addresses given on the Agreement. The Agreement will not take effect until it has been recorded at the Principal Registry of the Family Division.

Application to court

A father, a step parent or a second female parent can apply to the court to gain parental responsibility without the consent of the child's mother. You can ask the court staff for an application form to apply for a s.4 order, and you will need to prepare a statement setting out why you want the order. When writing this statement, bear in mind that when considering an application, the court will take the following into account:

- the degree of commitment shown to the child;
- the degree of attachment between the applicant and child; and
- the reasons for applying for the order.

Where can I get further help?

Citizens Advice is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website.

Website www.citizensadvice.org.uk

Advice on line Website www.adviceguide.org.uk

Community Legal Services Direct is part of the Legal Services Commission. They provide free information direct to the public on a range of common legal issues and makes it easier to find quality legal help and information. Website www.clsdirect.org.uk. Telephone 0845 345 4345 Staffed during office hours, with voice

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group

mail and a call back service available out of hours.

Families Needs Fathers is a national charity providing information and support on shared parenting issues arising from family breakdown to divorced and separated parents, irrespective of gender or marital status. Support is provided through a national helpline, a website, a network of volunteers, and regular group meetings are held in a variety of locations.

Helpline 0870 7607 496 (Monday – Friday 6.00 pm – 10.00 pm)

Website www.fnf.org.uk

Family Rights Group provides a specialist advice and information services for families in England and Wales, who are in contact with the local authority about the care of their children, and their advisers and supporters.

Helpline: 0808 801 0366 (open 10am - 3:30pm Monday to Friday)

Website www.frg.org.uk

General Register Office

Births & Deaths Section

Certificate Service Section

General Register Office

PO Box 2

SOUTHPORT

PR8 2JD

Tel: 0845 603 7788

(8am to 8pm Monday to Friday 9am-4pm Saturday)

<http://www.gro.gov.uk/gro/content/births>

Parentline Plus is a national charity offering help and information for parents and families via a range of services including a free 24-hour confidential helpline, workshops, courses, information leaflets, email helpline and website

Free confidential, 24-hour helpline 0808 800 22 22

A free text phone for people with a speech or hearing impairment

0800 783 6783. Website www.parentlineplus.org.uk

E mail helpline parentssupport@parentlineplus.org.uk

www.parentscentre.gov.uk

This government website provides information and support for parents on how to help with your child's learning. It sets out your responsibilities and rights as a parent in respect of your child's schooling.

Last updated Sept 09

