

Family Law Consultants

# GUIDE TO

issues relating to children



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*Family Law Consultants*

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# Parental *Responsibility*

**“ HAVING PARENTAL RESPONSIBILITY will allow you to play an active role in key decisions about your child. ”**

***Parental Responsibility is defined 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'.***

Therefore, if you have Parental Responsibility you are recognised in the eyes of the law as having all the legal powers to make appropriate decisions in relation to the upbringing of your child.

On a practical level having Parental Responsibility will, amongst other things, allow you to contact your child's GP to obtain or discuss medical treatment for your child and to play an active role in your child's education, giving you access to school reports, parents evenings, etc.

A mother automatically has Parental Responsibility for her child, as does a married father irrespective of whether the marriage to the mother occurred before or after the birth of the child.

As from the 1st December 2003 unmarried fathers of children born after this date, also automatically have Parental Responsibility for their child, provided they are named on that child's birth certificate.

## ***How to obtain Parental Responsibility***

If you are a father who does not have Parental Responsibility it can be obtained in one of the following three ways:

- ***By marrying the mother of the child (which is not always an option)***
- ***By entering into a voluntary Parental Responsibility Agreement with the mother***
- ***By obtaining an order of the court (Parental Responsibility order)***

Before the court will make an order granting Parental Responsibility a father needs to establish that there is a degree of commitment to the child, a degree of attachment exists between the child and the father and that the application is being made purely in the interests of the child's welfare. If you have regular contact with your child, this is not difficult to establish.

***Before the court will make an order granting Parental Responsibility a father needs to establish that there is a degree of commitment to the child.***

## ***Parental Responsibility for Step Parents and Civil Partners***

If you wish to have Parental Responsibility for your Partner's children and you are married or have a registered civil partnership, it can be obtained in one of the following ways:

- ***By entering into a voluntary Parental Responsibility Agreement with every person who have Parental Responsibility for the child concerned;***
- ***By obtaining an order of the court. This could be a Parental Responsibility order or a Child Arrangements order stating that the child lives with you.***

Once you have Parental Responsibility it must be exercised appropriately and jointly with all those who have Parental Responsibility for the child. Parental Responsibility comes to an end when the child attains the age of 18 years or by court order if earlier.

## ***Temporary Parental Responsibility***

If Parental Responsibility is only needed for a temporary period anyone with Parental Responsibility can delegate to another. This would allow the delegate to do what is reasonable in all circumstances for the purposes of safeguarding or promoting a child's welfare. For example, allowing you to take your step-child to the doctor whilst your civil partner was at work.



# MAKING Arrangements

Written by Samantha Harris - Partner at Family Law Consultants - who has over 15 years experience dealing with divorces and separations.

**The law states that children should not be subject to court orders unless absolutely necessary. Where you have reached an agreement as to where your children will live and how much contact they will have with the other parent, the court will generally not become involved.**

However, if you are experiencing difficulties in relation to your children, for example your children live with your former partner and you are having difficulty arranging to see them, or your children live with you but you are worried about their contact with your former partner for whatever reason, you can seek the help of the court by applying for a Child Arrangements Order.

A Child Arrangements Order sets out with whom a child shall live and how much contact they should have with the other parent. When dealing with applications relating to children, it is important to remember that it is the child's right to have a good relationship with each of their parents and it is the child's welfare that is the paramount consideration.

To apply for a Child Arrangements Order you will need to be either:-

- **a parent, guardian or special guardian of a child;**
- **anyone who holds a residence order in respect of that child;**
- **a step parent of the child where the child lived with the step parent as a child of the family;**
- **anyone with whom the child has lived for at least 3 years.**

If you do not fit into one of the groups above you may still make an application but before you can do so you will need to apply to the court for an order giving you permission to make the application. This process is known as seeking "leave" to issue an application. In deciding whether to grant "leave" the court will consider, amongst other things:

- **the nature of the application;**
- **the connection between the person who is applying and the child;**
- **the risk there might be of the proposed application disrupting the child's life to such an extent that they should be harmed by it;**

Wider family members such as grandparents will have to follow the route of obtaining leave to make an application for orders in respect of their grandchildren.

Before the court will make an order in relation to a child it must have regard to the Welfare Checklist. The Welfare Checklist asks the court to consider the following:

- **The ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding).**
- **Their physical, emotional and/or educational needs.**
- **The likely effect on the child of any change in their circumstances.**
- **Their age, sex, background and any characteristics of theirs, which the court considers relevant.**
- **Any harm which they have suffered or is at risk of suffering.**
- **How capable each of the parents and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs.**
- **The range of powers available to the court under the Children Act 1989 in the proceedings in question.**

Most applications will take between 6-9 months to conclude, depending on whether the court feels it is appropriate for a CAFCASS officer to prepare a full report. At the outset of every case, a CAFCASS officer will be in contact to obtain some information from both parties so that they can prepare a letter for the Court, recommending what, if any involvement they should have in the case. This will depend on whether there are any welfare issues to consider.

If you have concerns for a child's safety, or are worried our child may not be returned to you after contact, do speak to us, as in some circumstances it may be possible to obtain an emergency order.

If you have any other issues that relate to your child, for example, if you cannot agree what school they should attend, or if you are considering changing their name or moving to another country. The court does have powers to make decisions on such matters so please do talk to us to see how we can help.

Please remember that before you can issue a court application, you must attend a Mediation Information Assessment Meeting (MIAM) unless there are exceptional reasons as to why you cannot.