

Children and Court proceedings



An overview

The Children Act 1989 governs the law relating to children. Proceedings brought by individuals are called private law proceedings and those brought by a local authority social services department are called public law proceedings. In this factsheet we focus on private law proceedings and the types of orders the court can make.

The court is not able to make an order for a child who has reached the age of 16, unless the court is satisfied that the circumstances of the case are exceptional. It is also important to be aware that unless you fall into an exempted category (for example your case involves domestic violence or the application is urgent) you will be required to attend a mediation assessment meeting before you can proceed to issue an application.

For further information on mediation please see our mediation factsheet.

Parental responsibility

Parental Responsibility (PR) 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 their property”. A person with PR therefore has a say in respect of the upbringing of a child

In simple terms a person with PR is responsible for the care and well being of a child. The law does not list what these duties, powers and rights are, but examples include:

- › Consent to medical treatment
- › Arranging the child's education
- › Agreeing to the child's change of name
- › Administering the child's property
- › Representing the child in legal proceedings
- › Determining the culture and religion of the child
- › Agreeing to the child's adoption
- › Agreeing to and prohibiting the issue of the child's passport.

Mothers automatically have PR from when the child is born. The position with fathers can vary. A father will have PR if:

- › They are or have been married to the mother at any time since the birth of the child
- › They are registered jointly with the child's mother on the birth certificate, providing it is after 1st December 2003
- › They have acquired it by formal legal agreement with the mother or by court order

The following people and organisations can also acquire PR:

- › Step parents, if they have acquired parental responsibility by formal agreement with both parents with parental responsibility
- › Anyone else who has been granted parental responsibility under a court order

- › A local authority where there is a care order in force
- › Guardians who have been formally appointed in accordance with Section 5 of the Children Act 1989.

If you do not automatically have responsibility you can obtain it by either entering into a parental responsibility agreement with the mother or by applying for it through the courts.

Contact Order

This is an order requiring the person with whom the child lives, to visit, stay or have contact with the person named in the order. Contact can either be direct (face to face meetings) or indirect (for example by letter, telephone or exchange of cards). Some orders will be very specific as to times, dates and arrangements for the collection and return whilst others will leave these arrangements to the parties to agree.

Prohibited Steps Order

This is an order prohibiting a parent from taking a specified course of action (step) without the permission of the court. For example a Prohibited Steps Order can be used to prevent a parent removing a child from the jurisdiction or taking the child away on holiday.

Residence Order

This is an order confirming where a child will live. A court can make a Shared Residence Order. This means that the care of a child will be shared between the persons named in the order. A Residence Order will automatically confer parental responsibility on any person in whose favour it is made for as long as the order is in force.

If a Residence Order is in force, the child's name cannot be changed or the child cannot be removed from the United Kingdom without the written consent of every person who has parental responsibility or permission of the court. This does not however, prevent the removal of a child for a period of less than one month by the person in whose favour the Residence Order is made.

Specific Issue Order

This is an order dealing with a specific issue regarding the welfare of a child. For example a Specific Issue Order can be applied for to determine a child's schooling or religion. Contact, Residence, Specific Issue and Prohibited Steps Orders are called Section 8 Orders. This is because they are provided for under Section 8 of the Children Act.

The persons who can apply for a Section 8 Order are as follows:

- › The parent, guardian or special guardian of a child
- › Anyone who holds a Residence Order in respect of the child

» Continued.

- A step parent where the child has lived with the step parent as a child of the family
- Anyone with whom the child has lived for at least 3 years and within the preceding 3 months
- A person with the consent of those with parental responsibility.
- A person with the consent of those in whose favour a Residence Order has been made
- A person who has the consent of the local authority where the child is in their care.

If none of the above points apply you can still apply for a Section 8 Order by seeking leave of the court. This is the route that can be taken by wider family members such as grandparents. When deciding whether to grant leave, the court will consider the nature of the application, the applicant's connection to the child and the risk of the proposed application disrupting the child to such extent that they are harmed by it.

Appointment or removal of a guardian

Under Section 5 of the Children Act 1989, a guardian can be appointed in writing by a parent with parental responsibility, the appointment which will take effect when they die (if they have a Residence Order) or when the last surviving parent with parental responsibility dies. In default (or in addition) the court has a concurrent right of appointment. The court may also terminate the appointment of a guardian, whether they have been appointed by the court or by a parent. Any person can apply for an order to be named as a guardian. In relation to an application for removal of a guardian, this can be applied for by any person with parental responsibility or, with leave, the child.

Disclosure of information as to the whereabouts of a child

This is an order requiring an individual to disclose to the court information they know in relation to a child's whereabouts. The information is given to the court and not to the applicant. It is a pre-condition of an application, that the child is the subject of proceedings or an order within The Family Law Act 1986.

Factors considered by the court when deciding whether to make an order

The child's welfare will always be the court's paramount consideration. The court will also have regard to a general principle that any delay in determining the application is likely to prejudice the welfare of the child. The court will not make an order, unless it considers that doing so would be better for the child than making no order at all. When the court is considering whether to make, vary or discharge a Section 8

Order the court has to have regard to:

- The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding)
- Their physical, emotional and educational needs
- The likely effect on them, of any change in his circumstances
- Their age, sex, background and any characteristics of them, which the court considers relevant
- Any harm which they have suffered or are at risk of suffering
- How capable each of their 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 Act in the proceedings in question.

Order for financial relief for a child

Section 15 and Schedule 1 of the Children Act 1989 set out the provisions whereby the court can order financial provision for a child. Schedule 1 enables the following orders to be made:

- An order requiring either or both parents to pay to the applicant or child periodical payments (maintenance) for such term as specified in the order
- An order requiring either or both parents to secure to the applicant or child such periodical payments for such term as specified in the order
- An order requiring either or both parents to pay to the applicant or child such lump sum as may be specified
- An order requiring a settlement to be made for the benefit of the child and to the satisfaction of the court, property, to which either parent is entitled and which is specified in the order
- An order requiring either or both parents to transfer to the applicant or the child such property to which the parent is entitled.

'Parents' includes a child's natural mother and father and also any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family.

A child of the family is defined as a child of both parties, or any other child (not being a child who is placed with those parties as foster parents by local authority or voluntary organisation) who is being treated by both of those parties as a child of their family.

The following people can apply:

- A parent or guardian of a child
- Holder of a residence order
- A child over the age 18.

In deciding whether to make an order, the court shall have regard to all the circumstances including:

- The income, earning capacity, property and other financial resources which each parent of the child has, or is likely to have in the foreseeable future
- The financial needs, obligations and responsibility which each of the parents has or is likely to have in the foreseeable future
- The financial needs of the child
- The income, earning capacity (if any), property and other financial resources of the child
- Any physical or mental disability of the child
- The manner in which the child was being, or was expected to be, educated or trained.



Contact us

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Call: 0800 916 9055
Email: enquiries@familylaw4police.co.uk
Web: www.familylaw4police.co.uk

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