

## Parental Responsibility

### Your questions answered

**Q.** “What is Parental Responsibility?”

**A.** *Parental Responsibility* is defined in 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.

**Q.** “What does that include?”

**A.** *Parental Responsibility* includes the following:

**Care and Control:** This is the duty to look after and bring up the child including the power to control the child both physically and in determining how and where he spends his time. This power dwindles as the child gets older and ends with little more than advice once the child is nearing adulthood.

**Discipline:** *Parental Responsibility* includes the power to exercise discipline over the child. Any physical contact can amount to an assault. Although a defence is available of lawful correction such a defence will only succeed if the correction was moderate in nature, instrument and quantity.

**Protection and Maintenance:** This can extend to the duty of one parent, for example, to protect a child from violence or sexual abuse by the other. It relates generally to protection from physical and moral harm. The duty to maintain the child is set out in law, and it is clear that this duty exists whether or not a parent has *parental responsibility*.

**Education:** A parent with *parental responsibility* has a duty to ensure that a child, of compulsory school age (ie 5 to 16), receives full-time education and attends regularly. Disputes between parents as to the nature of the child’s education can be referred to the Court to be resolved.

**Religious Upbringing:** There is no duty imposed upon a parent to see that his/her child receives religious instruction. Where the child is sufficiently mature to hold his/her own views, then those views will prevail over those of the parents. The Courts are slow to impose any religious upbringing on a child in the event of dispute between the child’s parents but insistence by a parent on a particular religious upbringing will not be tolerated if it is likely to cause harm to the child.

**Medical Treatment:** Where a child is under 16 and the treatment is not an emergency, the parent with *parental responsibility* must normally give his consent. A dispute can be referred to the Court for resolution, the overriding consideration being the child’s welfare. Where the child is 16 or over,



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he can give his own consent. A person with *parental responsibility* is entitled to access the child's medical records.

**Consent to Marriage:** Normally each parent with *parental responsibility* must consent to the marriage of a child who, not being already a widow or widower, is between 16 and 18 years of age. However if a Residence Order is in force only the parent having the benefit of the order is required to give consent.

**Agreement to Adoption:**

Agreement of a parent with *parental responsibility* for his child is a pre-requisite to the making of an Order for the adoption of the child, although the Court has the power to dispense with this need. A father without parental responsibility should be consulted and counselled but his consent is not strictly required.

**Appointment of Guardians:**

A parent who has *parental responsibility* for a child may appoint an individual to be the child's guardian in the event of his/her death. However the guardian's parental responsibility will only take effect when there is no surviving parent with parental responsibility unless a Residence order was in force in favour of the deceased parent whereupon the guardian will have joint parental responsibility with the surviving parent.

**Child's name:**

Those with parental responsibility have the right to name the children both as to fore name/s and surname as they wish. Normally a child whose parent were not married to each other at his birth takes his mother's surname, although where she is living with the father she may well choose to adopt his name for herself and the child. The duty to register the child lies with the parent/s with *parental responsibility*.

**Removal out of the Jurisdiction:**

All persons with *parental responsibility* must give consent before a child can be taken out of the jurisdiction otherwise a criminal offence under the Child Abduction Act 1984 may be committed. If a parent has a Residence Order then that parent is permitted to take the child out of the jurisdiction for periods up to 28 days without the consent of the other parent with parental responsibility. A parent can also prevent the issue of a passport to his child if the child is under 18.

**Q. "How can Parental Responsibility be obtained?"**

**A.** A mother automatically has *parental responsibility* for the child at birth, as does a married father. An unmarried father will automatically have parental responsibility where the child's birth is registered after 1<sup>st</sup> December 2003 by the parents jointly, otherwise an unmarried father who seeks *parental responsibility* for his child can obtain it by one of the following methods:

- By marrying the mother.
- By entering into a properly witnessed and registered Parental Responsibility Agreement with the mother.
- By obtaining a Court Order – If the father applies to the Court for an Order, the purpose of granting the Order will be to emphasise the status conferred on the father by virtue of his paternity, rather than the rights, powers and responsibilities which flow from the grant. The Order will necessarily involve the father in the upbringing of his child, although in

practice, possibly without active involvement in matters within the day to day management of the child's life.

In deciding whether or not to grant an Order, the Court must apply the principle that the child's welfare is paramount and the Court must be satisfied that making an Order would be better for the child than making no Order.

If the child is old enough, then his wishes and feelings will be taken into account together with any harm which the child has suffered at the hands of the father, and any defects in the capacity of the father to meet the child's needs.

The Court will also consider the extent of the father's commitment and attachment to his child, the state of the current relationship between them, and his reasons for applying for an Order.

The fact that the father has failed to pay maintenance for his child is evidence of lack of commitment, but that may be outweighed by other evidence, e.g. his sustained attempts at making contact. Account may be taken of the father's criminal conduct, however the father is entitled to ask the Court to recognise his position as the father of the child, irrespective of any question of residence or rehabilitation of the child with the mother, or contact.

Where the father has shown commitment to the child, there is a presumption that *parental responsibility* should be granted. The Court considers it important that whenever possible, the law should confer on the father a stamp of approval that he has shown himself willing and anxious to pick up the responsibility of fatherhood and not to deny it or to avoid it.

**This fact sheet is intended as a general guide only. If you have specific queries not covered in this fact sheet please ask for further advice.**