

Parental Responsibility

February 2012 Edition

WHAT IS PARENTAL RESPONSIBILITY?

The Children Act 1989 (CA 1989) introduced the term Parental Responsibility (PR) and defined it 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' (section 3(1) CA 1989).

This gives parents the responsibility for making important decisions regarding a child's education, health and religion as well as day-to-day decisions for example food and social activities. Parents with PR who do not live together can make these decisions independently of each other and do not necessarily need to consult the absent parent.

WHO HAS AUTOMATIC PARENTAL RESPONSIBILITY?

Married parents have each Parental Responsibility. If unmarried, only the mother has PR.

HOW DO YOU ACQUIRE PARENTAL RESPONSIBILITY?

A – Unmarried Fathers

There are a number of ways in which an unmarried father can enter acquire Parental Responsibility:-

- (i) Being registered on the child's birth certificate with the mother's consent (from 1st December 2003);
- (ii) Entering into a Parental Responsibility Agreement with the mother;
- (iii) Applying to the Court for a Parental Responsibility Order;

- (iv) Obtaining a Residence Order;
- (v) Being appointed the child's Guardian (only acquire PR on mother's death);
- (vi) Marrying the mother.

B – Civil Partners

Civil Partners have the right to apply for Parental Responsibility for their partner's child(ren). There are several options available:-

- (i) Applying to the Court for a Court Order;
- (ii) Entering into a Parental Responsibility Agreement with the Child's Mother;
- (iii) Applying as a Step-Parent (see below);
- (iv) Female civil partners can acquire Parental Responsibility at birth if certain conditions are met (see below);
- (v) Adopting the child.

C – Step-Parents

Step-parents can apply for PR via the following methods:-

- (i) Entering into a Parental Responsibility Agreement with the agreement of the mother and any other person with existing Parental Responsibility;
- (ii) Applying to the Court for a Parental Responsibility Order;
- (iii) Adopting the child.

OPTIONS EXPLAINED

(i) (Step-Parent) Parental Responsibility Agreement

This is a form which you or your legal advisor complete, with details of the persons who already have Parental Responsibility (the birth mother and sometimes the birth father) and provide details of the person to whom it is agreed to give Parental Responsibility to; this can be the step-parent or civil partner. Once completed, the form must be signed by all parties in front of a Court official, not a solicitor, by taking the form to a County Court or the Principal Registry of the Family Division in London. Once signed and witnessed, the Agreement must then be registered with the Principal Registry for it to take effect.

(ii) (Step-Parent) Parental Responsibility Order

This method involves making an application to the Court and the Court deciding whether to give the applicant Parental Responsibility. This method is used when the birth mother or any other person with existing Parental Responsibility does not agree to Parental Responsibility being acquired by the applicant. The application (for which there is currently a Court fee of £200) is normally made by a solicitor, who will assist in preparing the court papers with you. The Court will look at what is in the best interests of the child concerned and look at factors such as the applicant's commitment to the child; the current relationship with the child and the reasons the application is being made.

(iii) Residence Order

A Residence Order states where a child is to live and Parental Responsibility is acquired by the person who has the Order made in their favour. However, PR acquired through a Residence Order lasts only as long as the Residence Order is in place. Residence Orders are usual when the persons who wish to have Parental Responsibility are not living with the parent usually after divorce, separation or dissolution.

(iv) Civil Partners and Registering Child's Birth

Lesbian civil partners of a child's birth mother can be recorded as the child's second parent

on the birth certificate if the following conditions are met; the child was conceived by artificial insemination; and the insemination took place on or after 6th April 2009; and the mother was in a Civil Partnership; and the mother's civil partner consented to the artificial insemination.

(v) Guardianship

A person can be appointed a child's Guardian and will therefore acquire Parental Responsibility at the time of the parent's death.

PARENTAL RESPONSIBILITY, CONSENT AND TAKING A CHILD ABROAD

(i) Residence Order in Place

If a Residence Order is in place, the parent with the Residence Order can take their child out of the UK for up to a month without both parents agreeing. A parent who wishes to prevent a child being removed can apply to the Courts for one or more of the Orders below.

(ii) No Residence Order in Place

If the parent who wishes to take the child abroad but who does not have a Residence Order cannot take the child without obtaining consent from all those who have Parental Responsibility.

COURT ORDERS TO PREVENT CHILD BEING TAKEN ABROAD

You can apply for the following orders to stop a child from travelling abroad:

(i) A 'Prohibited Steps Order' dealing with travel, preventing the other parent from taking the child abroad.

(ii) A 'Residence Order' saying that the child should reside with you.

(iii) A 'Parental Responsibility Order' giving you Parental Responsibility if you don't already have it.

(iv) An 'Injunction' preventing the child being taken abroad by the other parent.

(v) Applying to the Court to make the child a 'ward of the High Court' so the Court's permission is needed before the child can be taken out of the country.

CHILD ABDUCTION ACT 1984

It is a criminal offence to take a child out of the country without appropriate permission; if your child is abducted then this should be reported to the Police immediately.

The Foreign and Commonwealth Office (FCO) can assist and provide advice on what to do if your child has been abducted.

IMPORTANCE OF MAKING A WILL

It is important to consider making a will and appointing a Guardian for your child, should you die before they reach 18, especially if there is no-one else with Parental Responsibility for your child. The Court will appoint a Guardian in these circumstances and it might be someone that you do not wish to be your child's Guardian.

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