



# "Parents" and "Parental Responsibility"

Guidance for Schools



## Guidance

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# "Parents" and "Parental Responsibility"

- Audience** Head Teachers, Governing Bodies and Directors of Education
- Overview** This circular outlines the definition of "parent", "parental responsibility" and "having care of a child" for the purposes of the Education Act 1996, and advises schools on how to apply this. It also provides an outline of relevant court orders and advice on who schools must involve in issues about a pupil's education and other school matters.
- Action required** Schools to apply this guidance when dealing with non-resident parents who wish to be involved in their children's education.
- Further information** All enquiries should be forwarded to:  
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Or visit: [www.wales.gov.uk](http://www.wales.gov.uk)
- Additional copies** Additional copies of this circular can be obtained from the contact details above
- Related documents** Education Act 1996 (Section 576), Children Act 1989, Parental Responsibility Agreement Regulations 1991, Adoption and Children Act 2002, Civil Partnership Act 2005



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# **“Parents” and “Parental Responsibility” - Guidance for Schools**

## **Introduction**

1. Schools are regularly required to have dealings with pupils' parents. This can often lead to complications regarding who a pupil's parents are, and is further complicated when there are disputes between a number of adults claiming to have parental responsibility for the child.

2. This circular outlines the definition of “parent”, “parental responsibility” and “having care of a child” for the purposes of the Education Act 1996, and advises schools on how to apply this. It also provides an outline of relevant court orders and advice on who schools must involve in issues about a pupil's education and other school matters.

3. This is, however, intended only as *guidance* for schools and therefore should not be treated as a complete and authoritative statement of the law - that is a matter for the courts.

## **Who is a “parent”?**

4. The definition of “parent” in section 576 of the Education Act 1996 includes:

- all natural parents, whether married or not;
- any person who, although not a natural parent, has parental responsibility for a child or young person; and
- any person who, although neither a natural parent nor a person with parental responsibility, has care of a child or young person.

Any reference to a “parent” for the purpose of this Circular should be interpreted as the above definition of “parent” under the Education Act 1996.

*It should be noted, however, that in the context of parent governor elections and annual parents meetings, “parent” is defined so as to exclude a parent who is not an individual e.g. where a local authority has parental responsibility for a child, as described in paragraph 7.*

## **What is meant by “parental responsibility”?**

5. “Parental responsibility” is defined in the Children Act 1989 and means assuming 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. The Children Act 1989 states that if a child’s natural parents were not married when the child was born the mother automatically has parental responsibility. The father can, however, acquire parental responsibility by various legal means. It is now the case (following the enactment of the Adoption and Children Act 2002) that a father who is registered as such in the register of births and deaths also automatically attains parental responsibility. In addition, it is now the case that ‘step-parents’ (which includes civil partners) can acquire parental responsibility, for example by entering into an agreement with a parent with parental responsibility.

6. People other than a child’s natural parents can acquire parental responsibility through:

- being granted a residence order;
- being appointed a guardian;
- being named in an emergency protection order (although in this case parental responsibility is limited to taking reasonable steps to safeguard or promote the child’s welfare); or
- adopting a child.

7. A local authority, by virtue of section 33 of the Children Act 1989, acquires parental responsibility if named in the care order for a child, although in this case any person who is a natural parent or guardian retains parental responsibility and may exercise it unless the authority has restricted the extent to which they may do so. Such a restriction may be placed if it is necessary to do so in order to safeguard or promote the child’s welfare, and may relate to matters such as a parent’s contact with the child or consent to the child’s medical treatment.

8. A local authority does not, however, have parental responsibility for a child where that child is being “accommodated” by the authority under a joint arrangement made between the authority and the child’s natural parents. In those circumstances, parental responsibility remains solely with the natural parents.

*More information regarding the education of children referred to in paragraphs 7 and 8 can be found in National Assembly for Wales Circular 2/2001 "The Education of Children Looked After By Local Authorities".*

9. Parental responsibility under any of the above circumstances does not stop for the original holder simply because it is extended to another. It is therefore possible that in some instances there will be several people who are regarded as having "parental responsibility" for a child.

### **Do any court orders deal specifically with parental responsibility?**

10. Yes. Court orders under section 8 of the Children Act 1989 deal with disputes about a child's care or upbringing, and can limit parental responsibility. The two types of order which deal specifically with parental responsibility are:

- A **prohibited steps order** - this specifically restricts an individual's exercise of parental responsibility and means that the consent of the court may be required for certain steps within the normal scope of parental responsibility before they can be exercised;
- A **specific issue order** - this is more a response to a specific issue or question which has arisen and which requires a decision by the court in order to resolve it.

11. In addition there are two more general types of order:

- A **residence order** - this states where and with whom a child should live and, if they do not already have it, allocates parental responsibility to the holder;
- A **contact order** - this instructs the person with whom the child is living to allow another person contact with the child through visits or by letter or telephone.

12. A court can also make a **care order**, giving parental responsibility to the local authority where they consider it to be in the child's best interests. Where such an order is made, the natural parents or guardians will also retain their parental responsibility for the child, although the local authority may restrict the extent to which they may exercise their responsibility if it is necessary to do so in order to safeguard or promote the child's welfare.

## What is meant by having “care” of a child?

13. A person has “care” of a child if that person lives with and looks after the child, irrespective of their relationship to the child. Such a person is considered to be a “parent” for the purposes of the Education Act 1996, even though that person may not necessarily have parental responsibility for the child.

## What do schools need to do?

14. As a general rule, **everyone who is a “parent”** (as defined in paragraph 4) **has a right to participate in decisions about a child’s education**, although this may not be the person with whom the school liaises on a day-to-day basis. All parents should be treated equally by schools and LEAs unless there is a court order limiting the individual’s exercise of parental responsibility (as described above).

15. All those with parental responsibility for, or care of, a child have the same rights as natural parents in relation to a child’s education, for example:

- to receive information from the school such as copies of pupil reports and arrangements for discussing this with teachers, attendance records and the governors’ annual report;
- to participate in activities such as voting in elections for parent governors;
- to be asked to give consent such as that required for participation in extra-curricular activities. However, those who have “care” of a child may not be able to consent to certain activities e.g. a child participating in a trip outside the UK; and
- to be informed about meetings involving the child such as a governors’ meeting regarding the child’s exclusion.

## What about the administrative issues?

16. Headteachers should ask for the names and addresses of all parents when they register a pupil. These details must then be included in the Admissions Register and on any manual or computerised pupil records, and made available to the pupil’s teachers.

17. Information about court orders should be noted on pupil records so that this can be taken into account: when obtaining parental consent; when a child is ill; or in other circumstances such as a parent collecting a child from school when they shouldn't be (for example, when the child is in local authority care and should be collected by foster parents).

18. Schools should be cautious about changing their records in response to requests to change a child's surname. Legally, this cannot be done without the consent of all others with parental responsibility for the child. Written consent is only **required** in instances where the child is subject to a residence order or care order, though it is encouraged in all cases.

19. If schools are unaware of the whereabouts of a 'non-resident' parent (a parent with whom the child does not live) they should make the resident parent aware of the non-resident parent's right to be involved in the child's education, and request that information is passed on to them. If the resident parent does not share this information, and does not provide contact details for the non-resident parent for the school to deal directly with them, the school can do nothing more. However, if the non-resident parent subsequently contacts the school requesting access to information, the school should provide this to them direct, after of course satisfying themselves that they are the child's parent.

## **What about obtaining parental consent?**

20. Schools maybe uncertain about the lengths to which they should go to seek parental consent in relation to extra-curricular activities, school trips and the like. There is a general principle found throughout the education legislation that, so far as possible, children should be educated in accordance with their parents' wishes. This operates regardless of the rules about Parental Responsibility. In the light of this general principle it is right that where both parents have asked for their consent to be obtained, a school should seek to obtain consent from both parents. There may, however, be exceptional cases in which consent should be sought from only one parent, for example where there are serious concerns as to whether seeking consent from a particular parent may cause harm to a child.

21. In the event that two parents with parental responsibility cannot agree on a matter of consent or agree as to how joint Parental Responsibility should be exercised there is a mechanism for that to be resolved by the courts under the Children Act 1989. Normally this

is dealt with by what is known as a "specific issue order". In the absence of such a court order, it remains the case that a single parent's consent (to a matter in respect of which consent is required) remains good and can be acted upon by a school. However, practical problems can ensue where parents disagree over the exercise of parental responsibility and there is no court order regulating the matter in question. This is because one parent's exercise of Parental Responsibility is not any more 'valid' than another. For example, one parent may consent to a child going on a school trip and that permits the school to take the child on a trip. However, the other parent could, once the trip is underway, exercise his/her parental responsibility so as to remove the child from the trip.

As such schools should routinely seek to act on best practice and seek the consent of both parents (who have asked to be consulted about matters connected with the exercise of Parental Responsibility). If only one parent responds, the consent of that parent is valid and may be acted upon by the school. In the event of conflict, schools may wish to try and facilitate agreement between parents. If agreement is not forthcoming, the safer decision would be to interpret that consent has not been given. This safeguards the school against any civil liability, for instance in the event of a child being injured. This decision may be challenged by the parent who has provided consent, in which case the school should explain that, since the other parent has requested that they be consulted, they are obliged to treat both parents' views equally. It should also be explained that there is a need to protect the school against possible legal action, and it may be suggested that the parent should seek independent legal advice about obtaining a court order setting out the decisions that can be made by each parent.

22. In circumstances where a child is ill or has had an accident and may need emergency medical treatment, schools should follow the provision made in the Children Act. This advises that those who do not have parental responsibility but who have care of a child may "do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare". For example, the school could take a child to hospital for a wound to be stitched but they would need to inform the persons with parental responsibility as soon as possible. However, if a decision were to arise regarding alternative treatment the hospital would need to discuss this with the persons with parental responsibility for the child.

## **What if a parent's action conflicts with the school's ability to act in the best interests of the child?**

23. If a school feels that an action, or proposed action, of a natural parent, person with parental responsibility, or carer conflicts with their ability to act in the best interests of the child staff should try to resolve the issue with them but avoid becoming involved in any conflict.