

Parenthood and the Law

A guide to Legal Parenthood and Parental Responsibility – the law explained

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The law relating to being a parent, parenthood, and parental responsibility and the acquisition of these legal statuses and the exercise of rights and responsibilities can be confusing.

A child only has two legal parents albeit this is not the same as legal parental responsibility. The former includes rights to inheritance and duties in relation to child support, while parental responsibility governs decisions about the child's life such as schooling, religion and medical treatment.

1. The Legal Parents

A child can only have two legal parents. The legal parents have a duty to provide for their child. A person becomes a legal parent by:

- being the birth (gestational) mother. You are not a legal parent if the child is born through fertility treatment and you are an egg donor. It is the woman who carries the foetus who becomes the child's mother and a legal parent - also sometimes referred to as the natural parent;
- being the biological father (unless the father donated sperm to a fertility clinic and one licensed by the UK's Human Fertilisation and Embryology Authority);
- where a couple have a child involving donor insemination (on or after April 2009), the birth mother's partner will be considered the legal parent and can be named on the birth certificate as the other parent **if** married to or a civil partner of the mother **at the time of conception**;
- where the mother is not married and conception was via donor insemination, the birth mother can

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name her partner as the child's other biological parent **if** she and her partner sign an agreement at the fertility clinic so long as this is done **prior to** conception **and** the fertility clinic is registered with the UK Fertilisation and Embryology Authority;

- through adopting a child;
- being named in a Parental Order. This is different from a Parental Responsibility Order and is used to transfer parentage where a surrogate parent carries the child to term. The Parental Order removes the surrogate (and her partner if she has one) as the child's legal parent(s), replacing them with (and transferring parenthood and parental responsibility to) the people named in the order.

1.1 Surrogacy and legal implications

Where a surrogate mother is involved in a child's birth, a parental order (different from a parental responsibility order) is required to transfer legal parenthood and parental responsibility to the people named in the order (who then become the child's legal parents).

It is important to be aware that under the Human Fertilisation and Embryology Act 2008, the surrogate mother is considered to be the child's legal parent (as is her partner, if married) until a parental order is made. If the surrogate mother is unmarried, the biological father will normally be considered as the child's legal parent (until a parental order changes this, in the event that the biological father is not to be the new parent).

1.2 Sperm donation and parentage

Irrespective of the mother's relationship, it is important to be aware that the biological father may be considered the second legal parent if:

- conception was through normal intercourse; or
- conception was not carried out via a fertility clinic licensed by the UK's Human Fertilisation and Embryology Authority; or
- the mother was in a civil partnership with her lesbian partner **AND** that partner **did not consent** to becoming the legal parent before conception; or
- the mother was not in a civil partnership with her lesbian partner **AND** the necessary forms were not signed at a fertility clinic registered by the UK's Human Fertilisation and Embryology Authority **before** conception.

2. Holders of Parental Responsibility

Parental Responsibility affords the legal right to take decisions about such things as the children's education, medical matters and religion. Having Parental Responsibility also grants a person the automatic right to apply for, or to be involved in court proceedings that affect the children concerned. This can include matters such as adoption, contact issues involving other family members, international relocation, care applications by Social Services, changes to the children's surname and appointment of a guardian in the event of the deaths of the parents.

The birth mother always holds parental responsibility for her child. The biological father can

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acquire parental responsibility in a number of ways which we explain further on.

Other adults can also acquire parental responsibility for a child, and again, we expand upon this further on. There is no upper limit to the number of people who can acquire parental responsibility for a child.

2.1 What is Parental Responsibility?

The legal definition of Parental Responsibility is:

“All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property.”¹

Parental Responsibility is very important. Most people think it simply grants a parent the right to make decisions about their children's schooling and medical matters but it goes beyond this.

In absence of parental responsibility there is no automatic right to involvement in some court proceedings, decisions about changing a child's surname or decisions relating to the children emigrating.

2.2 Does PR guarantee a parent's inclusion in decisions about their children?

Not necessarily. Each person with Parental Responsibility has the right to independently make decisions that affect their children. There is, however, an obligation on any person exercising a parental responsibility or parental right to have regard to the views of any other person with the same rights and responsibilities.

2.3 Resolving Disputes

Where parents are in dispute about decisions which impact on their children's lives, in most circumstances they should attempt mediation prior to an application to the court to resolve matters.

Where the dispute remains unresolved among the holders of parental responsibility, attempts at mediation were unsuccessful or not appropriate, they may apply to the family court for:

- A specific issue order: one which decides (as the name suggests) upon the specific issue in dispute; or
- A prohibited steps order: one which restricts the rights of a holder of parental responsibility.

Both applications would be made via the C100 court application form unless proceedings are already underway on another matter in relation to the children, whereupon form C2 should be used.

Examples of where a specific issue order might be sought include where parents cannot agree on the choice of school or medical treatment.

Examples of where a prohibited steps order may be appropriate would be to prevent the children from emigrating abroad or to stop the children's surname from being changed.

¹ Section 3(1) of the Children Act 1989

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2.4 Matters upon which holders of parental responsibility should consult, and those whereby they can take independent decisions

The family court gave useful guidance upon matters which people with parental responsibility should liaise, and matters upon which they can take independent decisions in the judgment *A v A* [2004] EWHC 142 (Fam) at paragraph 133:

Decisions that could be taken independently and without any consultation or notification to the other parent.

- How the children are to spend their time during contact.
- Personal care for the children.
- Activities undertaken.
- Religious and spiritual pursuits.
- Continuance of medicine treatment prescribed by GP.

Decisions where one parent would always need to inform the other parent of the decision, but did not need to consult or take the other parent's views into account.

- Medical Treatment in an emergency.
- Booking holidays or taking the children abroad in contact time.
- Planned visits to the GP and the reasons for this.

Decisions that you would need to both inform and consult the other parent prior to making the decision.

- Schools the children are to attend, including admissions applications.

- Contact rotas in school holidays.
- Planned medical and dental treatment.
- Stopping medication prescribed for the children.
- Attendance at school functions so they can be planned to avoid meetings wherever possible [where the parents are likely to argue or otherwise behave badly]
- Age that children should be able to watch videos. ie videos recommended for children over 12 and 18.

The above is simply guidance from that judgment, but is useful nonetheless.

Be aware that while the resident parent (or the person named in a child arrangements order as the person with whom the child lives) may take the children abroad on holiday for up to one month without the consent of any other holder of parental responsibility, other holders of parental responsibility should seek the consent of all other holders of parental responsibility before taking the children abroad. If consent is unreasonably withheld, the court can grant permission following an application for a specific issue order.

2.5 Determining who has Parental Responsibility for a child?

A mother automatically has Parental Responsibility for her child.

A biological father may or may not have Parental Responsibility for their child, depending on whether:

- they were married to the child's mother;

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- the child was born on or after 1 December 2003 and the father jointly registered the child's birth and was named on the birth certificate;
 - the father has a sole or shared residence order made in their favour prior to 22nd April 2014;
 - the father is named in a child arrangements order as a person with whom the child lives (in which case he is automatically granted PR);
 - the father is named in a child arrangements order as someone with whom the child visits or otherwise has contact AND the court SPECIFICALLY granted him parental responsibility within that child arrangements order (this is not automatic);
 - the court granted the father a parental responsibility order for his child;
 - the father and the mother have entered into a formal Parental Responsibility Agreement. A separate agreement is needed for each child.
- where conception is via a UK fertility clinic licensed by the Human Fertilisation and Embryology Authority and both partners sign a consent form before the date of conception (the form is provided by the fertility clinic). These forms must be signed **prior to** conception!
 - Having a joint residence order made in her favour (superseded by child arrangements orders in April 2014) - joint residence is a phrase used where partners are not separated.
 - Being granted an order for parental responsibility by the court.
 - By having a child arrangements order naming her as someone with whom the child lives.
 - By having a child arrangements order naming her as someone with whom the child spends time, where the court has specified within the order that parental responsibility is granted to her.
 - Where the birth mother has entered into a Parental Responsibility Agreement with her lesbian civil partner (all other holders of parental responsibility for the child must consent).

2.6 Acquisition of parental responsibility by non-biological lesbian parents

The non-biological lesbian parent may gain parental responsibility in one of the following ways:

- Being in a civil partnership with the biological mother at the time of conception where conception is via donor insemination or specialist fertility treatment (note: conception via normal intercourse rather than artificial insemination is excluded). The non-birth mother must consent to the conception.
- Where not in a civil partnership, the non-birth mother may acquire parental responsibility

2.7 Can other adults gain PR for a child?

Yes, and in a number of different ways:

- Step-parents can acquire Parental Responsibility by entering into a formal Parental Responsibility Agreement with the mother and with the agreement of all other parties who have parental responsibility for the children.
- Non-biological parents in a civil partnership can also enter into a formal Parental Responsibility Agreement (note, the form used for this is

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different to the one used by step-parents above) with the biological parent and with the agreement of all other persons who have parental responsibility for the children.

- Parental Responsibility is acquired via adoption;
- It may be acquired through having a residence order made in your favour before 22nd April 2014, or by being named in a child arrangements order as a person with whom the child lives.
- Since the introduction of the Children and Families Act 2014 and amendments to the Children Act 1989, the court can grant parental responsibility to a person named in a child arrangements order as someone with whom the named child(ren) spend(s) time. It is important to note that being named as a person with whom the child spends time in a child arrangements order does not automatically grant parental responsibility.
- If the parents die and a guardian was named in the parent's will, they gain PR for the child.
- The Local Authority can gain PR for a child if the court grants a care order.
- If the court grants a special guardianship order to another adult, they gain PR.

2.8 How do biological fathers enter into a Parental Responsibility Agreement?

- The agreement must be written out in the correct format. The agreement form is the C(PRA)1 issued by Her Majesty's Court and Tribunal Service (HMCTS) or the local family court.
- The agreement must be signed in front of a Justice of the Peace (Magistrate), Justices' Clerk

or a Court official who is authorised by the Judge to administer oaths. The parents will need to complete the Parental Responsibility Agreement and present it along with the child's full birth certificate and photographic evidence identifying both parents (ideally a photo driving licence or passport) to a Family Proceedings Court, County Court, or the Principal Registry of the Family Division where it can be signed and witnessed.

- Two copies must then be made, and sent along with the original to the Principal Registry of the Family Division.

2.9 How do step-parents enter into a Parental Responsibility Agreement?

- The agreement must be written out in the correct format. The form to use is the C(PRA)2 available from HMCTS or the local family court.
- The agreement must be signed in front of a Justice of the Peace (Magistrate), Justices' Clerk or a Court official who is authorised by the Judge to administer oaths. You will need to complete the Parental Responsibility Agreement and present it along with the child's full birth certificate and photographic evidence identifying both parents (ideally a photo driving licence or passport) to a Family Proceedings Court, County Court, or the Principal Registry of the Family Division where it can be signed and witnessed.
- Two copies must then be made, and sent along with the original to the Principal Registry of the Family Division.

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2.10 What if parents will not agree to enter into parental responsibility agreements?

If the mother or other holders of parental responsibility refuse to enter into a Parental Responsibility Agreement, the father or step-parent can apply to the Court asking them to grant parental responsibility via a Parental Responsibility.

The form to use for the application is the C1 Form.

2.11 Delegating Authority

A person with PR may not surrender or transfer any part of it to another person; however, a person who has PR may arrange for all or some of their responsibilities to be met in certain circumstances by someone else (including someone else who also has PR for the child).

3. The Psychological/Social Parent

As well as having legal parents and those with legal parental responsibility, a child may have a psychological or social parent. This will be someone heavily invested in their care, and examples include non-biological LGBT parents who failed to acquire a legal status, a father who discovers he is not biologically related to the child, grandparents heavily involved in the children's upbringing in the place of a parent etc.

The psychological/social parent is one who "...on a continuous, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfils the

child's psychological needs for a parent, as well as the child's physical needs."²

Being the psychological/social parent does not automatically grant any rights or role in the child's life unless you also have parental responsibility for the child and/or are the legal parent or have a court order made in your favour in respect of the children. However, in common law, the court does attach significance to the role of the psychological/social parent when considering whether to make orders in their favour (which might include orders for that person to have the child live with them, spend time with them, or in relation to applications for parental responsibility).

4. Special Guardians and Parental Responsibility

Where a special guardianship order has been made by the court, a special guardian gains parental responsibility for the named child(ren), and also:

- the right to take the children abroad for a period of less than 3 months;
- the right to make decisions which affect the named child to the exclusion of any other person who holds parental responsibility for the child unless related to matters where the law requires that the consent of each party with parental responsibility is given;
- the right to nominate another person as a guardian for the children in a will.

² Goldstein, Freud and Solnit in 'Beyond the Best Interests of the Child' (1973), referred to in Re G (Children) [2006] UKHL 43

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Examples of matters where a Special Guardian cannot independently overrule the rights of others with parental responsibility include:

- changes to a child's surname;
- granting permission for the child to marry if between the age of 16 and 18;
- the placing of the child for adoption;
- consent to a child being sterilised;
- granting parental responsibility to a father or step parent via Parental Responsibility Agreements.

Examples of matters where the Special Guardian would not need the consent of others include decisions about religion, medical treatment, school selection and other matters related to day to day care.

While a Special Guardianship Order is in force no one other than the Special Guardian can remove the child from the Court's jurisdiction (e.g. England and Wales) without the written consent of every other person who holds parental responsibility for the child or the leave of the Court.

A Special Guardianship Order automatically discharges a Care Order previously granted to Local Authority.

5. Local Authorities and Parental Responsibility

The Local Authority will have parental responsibility if the child is subject to a Care Order, Interim Care

Order or Emergency Protection Order. Note that when a child is accommodated by agreement (s.20 CA1989) the Local Authority does not have PR.

Where a child is subject to a Care Order, Interim Care Order or Emergency Protection Orders and this is not by consent, unless specifically ordered by the court, the other holders of parental responsibility do not lose that legal status and parental responsibility becomes shared with the Local Authority. In such circumstances, the Local Authority can only limit the parents' exercise of their parental responsibility in the interests of the child's welfare.³

Supervision Orders do not confer parental responsibility on the Local Authority. Under a Supervision Order, the Local Authority may specify that the child do certain things (such as meeting with the social worker and attending therapy) where the Order allows for this.

6. Contact with Children in Care, parents, guardians and others with parental responsibility

The Children Act 1989 places an obligation on Local Authorities to allow "reasonable" contact between a child in its care and his parents, guardian, and others with parental responsibility.⁴

A Local Authority, of its own volition, may refuse to allow established contact if:

- (a) they are satisfied that it is necessary to do so in order to safeguard the child's welfare; and
- (b) the refusal -

³ Section 33(4) Children Act 1989

⁴ Section 34(1)(a) to 34(1)(d)

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- (i) is decided upon as a matter of urgency;
and
- (ii) does not last for more than 7 days".⁵

The 7 day time limit is to allow the Local Authority to continue apply to the court for an order.

7. Foster Carers

Foster carers do not have legal parental responsibility for the children they care for, but may 'do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare'.

The Children Act 1989 Volume 2 Statutory Guidance on Care Planning, Placement and Case Review requires local authorities to ensure that the placement plan specifies any arrangements for the delegation of authority from the parents to the Local Authority. This should include any arrangements for further delegation from the Local Authority to the foster carer. The placement plan should inform the foster carer as to what decisions they can make.

8. Adoption Orders

Adoption Orders end the legal ties between the birth family and the child.

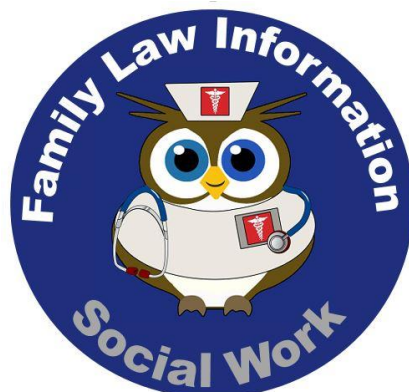


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⁵ Section 34(6) Children Act 1989