



## Parental responsibility

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This note provides information on acquiring parental responsibility, including for unmarried fathers, civil partners and step-parents.

It applies to England and Wales.

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### 1 What is parental responsibility?

The *Children Act 1989* introduced the concept of parental responsibility and defines 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.<sup>1</sup>

The guidance to the 1989 Act states that parental responsibility is concerned with:

bringing the child up, caring for him and making decisions about him, but does not affect the relationship of parent and child for other purposes. Thus, whether or not a parent has parental responsibility for a child does not affect any obligations towards the child, such as a statutory duty to maintain him, [...] nor does it affect succession rights<sup>2</sup>

### 1 Acquiring parental responsibility

#### 1.1 Married parents

A child's biological mother always has parental responsibility for her child.<sup>3</sup> A father who is married, or deemed to be married to the mother of the child when the child is born, automatically has parental responsibility.<sup>4</sup> Parents do not lose parental responsibility if they divorce.

#### 1.2 Unmarried fathers

Under changes brought in on 1 December 2003, fathers who are unmarried at the time of the birth of their child have parental responsibility for the child by right if they are registered on the child's birth certificate.<sup>5</sup> This is in contrast to the previous situation under the *Children Act 1989*.<sup>6</sup> There is no retrospective application of the changes to the *Children Act 1989* in regard to parental rights for unmarried fathers.<sup>7</sup>

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<sup>1</sup> *Children Act 1989*, s3(1)

<sup>2</sup> *The Children Act 1989 Guidance and Regulations Volume 1 Court Orders*, para 2.2.

<sup>3</sup> *Children Act 1989*, s2

<sup>4</sup> *Ibid.*, s2(1)

<sup>5</sup> *Adoption and Children Act 2002*, s111 amended the *Children Act 1989*

<sup>6</sup> *The Adoption and Children Act 2002 (Commencement No. 4) Order 2003* (SI 2003/3079) brought into force section 111 on 1 December 2003.

<sup>7</sup> *Adoption and Children Act 2002*, section 111(7)

If the child's parents were not married at the time of the child's birth, and the child has not been 'legitimated by statute'<sup>8</sup>, the child's father will not have parental responsibility unless he acquires it in accordance with the provisions of the *Children Act 1989*. The Act provides four methods for the father to obtain the parental responsibility, namely:

- by being registered as the child's father on the child's birth certificate – where a child's parents are not married to each other and the birth has been registered without identifying a father, the birth can be re-registered to include the father on the birth certificate if the formalities required by section 10 of the *Births and Deaths Registration Act 1953* are complied with;<sup>9</sup>
- by entering into a 'parental responsibility agreement' with the child's mother;<sup>10</sup>
- by applying to the court for an order that he shall have parental responsibility;<sup>11</sup>
- by obtaining a residence order in his favour which, if granted, requires the court at the same time to make an order giving him parental responsibility.<sup>12</sup>

Additionally, the unmarried father may acquire parental responsibility for his child by:

- marrying his child's mother;
- being appointed as the child's guardian; or
- adopting his child.

The legal practitioner journal *Children Law and Practice* notes that:

Even without parental responsibility, the unmarried father is treated under CA [Children Act] 1989 as the child's father and is entitled to apply for any order with respect to him (including s [section] 8 residence and contact orders). If the child is in care, he is entitled to have reasonable contact with him, but he is not entitled to remove him from accommodation provided by the local authority.<sup>13</sup>

### 1.3 Civil partners

A child's biological mother always has parental responsibility for her child regardless of the nature of the family structure.<sup>14</sup> The civil partner of the biological mother will also have parental responsibility for the child if:

- a) she and the mother were in a civil partnership or, deemed to have been in a civil partnership, at the time of the child's birth;<sup>15</sup>
- b) her name is registered on the birth certificate;<sup>16</sup>

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<sup>8</sup> The father has registered under the *Births and Deaths Registration Act 1953* (England); *Registration of Births, Deaths and Marriages (Scotland) Act 1965*; or *Births and Deaths Registration (Northern Ireland) Order 1976*

<sup>9</sup> After 1 December 2003; *Children Act 1989*, s4

<sup>10</sup> *Ibid.*, s4(1)(b)

<sup>11</sup> *Ibid.*, s4(1)(a)

<sup>12</sup> *Ibid.*, s12(1)

<sup>13</sup> Hershman and McFarlane, *Children Law and Practice*, para A[212]

<sup>14</sup> *Children Act 1989*, s2

<sup>15</sup> *Ibid.*, s2(1A)

<sup>16</sup> *Ibid.*, s4ZA(1)(a)

- c) she has entered into a parental responsibility agreement with the mother;<sup>17</sup>
- d) she has obtained a court order for parental responsibility;<sup>18</sup> or
- e) she has a residence order.<sup>19</sup>

#### 1.4 Step-parents

Where a child's parent who has parental responsibility for the child is married to, or is a civil partner of, a person who is not the child's parent ('the step-parent'), the step-parent may acquire parental responsibility for the child either by:

- a) making an agreement with the parent(s) with parental responsibility that the step-parent will have parental responsibility; or
- b) a parental responsibility order made by the court on an application by the step-parent.<sup>20</sup>

## 2 Parental responsibility agreements and orders

An unmarried father can be placed in the same position as a married father, with respect to his child, by entering into a 'parental responsibility agreement' with the mother. A parental responsibility agreement may also be made between a parent or parents who have parental responsibility for the child and a step-parent.<sup>21</sup> Parental responsibility acquired under a parental responsibility agreement can only be brought to an end by a court order. A parental responsibility agreement must be made in accordance with the *Parental Responsibility Agreement Regulations 1991*<sup>22</sup> on the appropriate form.<sup>23</sup> The agreement will only take effect once it has been filed with the Principal Registry of the Family Division (of the High Court) – once the agreement has been filed, a copy will be sent to each parent.<sup>24</sup>

An alternative is to go to court and seek a 'parental responsibility order'. The application for such an order can be made by a child's father, or a step-parent or the other female parent, and the child does not necessarily have to be 'habitually resident' or physically present in the jurisdiction.<sup>25</sup>

*Children Law and Practice* states, with regard to parental responsibility orders generally, that 'no additional guidance is given under CA 1989 for the basis upon which the court should consider making the order, save for the general principle set out in section 1, namely the child's welfare being the paramount consideration. The checklist in [section 1\(3\)](#) need not apply to such an application, but the court must consider whether making such an order would be better for the child than making no order.'<sup>26</sup> It adds:

Parental responsibility does no more than confer the status of fatherhood which the father would have when married to the mother. It does not give the father the right to

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<sup>17</sup> *Ibid.*, s4ZA(1)(b)

<sup>18</sup> *Ibid.*, s4ZA(1)(c)

<sup>19</sup> *Ibid.*, s12(1A)

<sup>20</sup> *Children Act 1989*, s4A

<sup>21</sup> *Ibid.*

<sup>22</sup> SI 1991/1478

<sup>23</sup> Form C(PRA)

<sup>24</sup> SI 1991/1478, reg3(2)

<sup>25</sup> Hershman and McFarlane, *Children Law and Practice*, section A, para 222

<sup>26</sup> *Ibid.*, [A-221]

interfere with matters of the child's day-to-day management, but is akin to an order for joint custody with care and control to the mother. Hence, hostility and lack of trust between the parents is not sufficient reason to refuse to grant parental responsibility.<sup>27</sup>

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<sup>27</sup> *Ibid*