



Parental Responsibility

Parental responsibility (PR) in family law is a legal status derived from the Children Act 1989. You may be quite rightly regarded as a 'responsible' parent by a host of organisations, even singly responsible for your child's daily care, but at the same time not have the formal status of a parent with parental responsibility. Generally this page will be concerned with a child's parents and their parental responsibility. However, others, besides parents, can have parental responsibility for a child; for example, a local authority for children in its care, a child's guardian, a child's stepfather and perhaps a child's grandparents or other relatives will be able acquire parental responsibility in certain circumstances.

In some instances explained elsewhere on this webpage, unless you have parental responsibility you will not be considered to be a 'parent' of the child since the definition of parent in some instances only includes parents with parental responsibility.

Up to six people can have PR for a child.

What is Parental Responsibility

Parental responsibility was a legal concept first defined in the Children Act 1989 (s3) 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." Detailed and explicit definition as to what this encompasses was deliberately avoided. Over the years a number of Court of Appeal judgments have given flesh to the bones of the bare definition provided in the statute. The 1989 Act emphasised parental responsibilities over parental rights but in many instances a parent must exercise his rights in order to perform his responsibilities. For example, in order to fulfil your parental responsibility to see that your child attends school and is educated properly a parent must be accorded certain rights with regard to the education system. Parental responsibility, unless discharged, runs until the child reaches the age of 18, though its importance and impact on the child will diminish as the child grows older and his own views and wishes carry more weight.

Parental responsibility also confers status on a parent. This status is important for:

- (a) the father and the mother: unless both parents have parental responsibility the parent with care (PWC) (and the non-resident parent (NRP) themselves) may view the NRP as a 'second-class' parent, rather than as an equal parent. A NRP perceiving himself as a second class parent may be less inclined to involve themselves with their child, be more inclined to walk away; a PWC, regarding the NRP as a second-class parent may ignore the NRP and make all important decisions about the child without any reference to them. There is no difference in law between the powers of mothers and fathers.
- (b) the child: though in most instances the child will not be made aware of parental responsibility, in separated families the child needs to have a positive image of the parent he no longer lives with in order to bolster his own self-esteem. Lord Justice Ward's words from the 1995 judgment *Re S (Parental Responsibility)* are frequently quoted to emphasise this aspect.
- (c) public authorities; all are more willing to fully engage with a parent who has formal parental responsibility and to treat him as an equal parent, than a parent who does not.

Do parents with parental responsibility need to share decision making?

s2(7) of the Children Act 1989 states:

Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility;

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However case-law has established that in certain circumstances parents are under a legal duty to consult, meaning that where parents are separated, the resident parent is not always entitled to act without first consulting her ex-partner. Back in 1998 the Court of Appeal (Re H (Parental Responsibility)) said that a father with parental responsibility would have to be consulted on “schooling, serious medical problems and other important occurrences in the child's life’.

Parental responsibility is not concerned with the day-to-day care of the child, does not permit either (separated) parent to interfere with how the other parent cares for the child when the child is in their care. In A v A (Shared Residence) [2004] EWHC142 at paragraph 118 Mr Justice Wall remarked:

‘It is a basic principle that, post separation, each parent with parental responsibility retains an equal and independent right and responsibility to be informed and make appropriate decisions about their children. However, where children are being looked after by one parent, that parent needs to be in a position to take the day-to-day decisions that have to be taken while that parent is caring for the children. Parents should not be seeking to interfere with one another in matters which are taking place while they do not have the care of their children. Subject to any questions which are regulated by court order, the object of the exercise should be to maintain flexible and practical arrangements whenever possible.’

The parents in the case above had, with the help of NYAS, agreed a ‘Schedule of Items in Relation to their Exercise of Parental Responsibility’, a schedule which Mr Justice Wall chose to endorse by appending it to the end of his judgment. The schedule differentiated between 3 sorts of decisions:

- (a) Decisions that could be taken independently and without any consultation or notification to the other parent
- (b) 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
- (c) Decisions that you would need to both inform and consult the other parent

Though there is no absolute agreement, the rule of thumb is that the following matters require the consent of all those who have parental responsibility for the child:

- (a) Change of surname (even where there is no residence order)
- (b) Removing the child from the jurisdiction (i.e. England and Wales) for more than one month
- (c) Committing to a serious and irreversible operation (except in an emergency)
- (d) Change of school

Who automatically has parental responsibility for a child?

Many parents will have parental responsibility without being aware that they do.

All mothers, whether married or unmarried, automatically have parental responsibility for any child born to them. [Children Act 1989 s2(1) & s2(2)(a)]

Fathers who were married to the mother of the child when the child was born also automatically have parental responsibility. [CA 1989 s2(1)]

How can an 'unmarried father' obtain parental responsibility?

Unmarried Fathers can acquire parental responsibility in any of the following ways:

- (a) By jointly registering the child’s birth with the mother (for births registered after 1 December 2003) you will automatically gain parental responsibility (i.e. there will be no separate official document stating that you have PR) [CA 1989 s4(1)(a)]. It is the date of registration, not the date of birth which is important in determining whether the father has parental responsibility.

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- (b) By re-registering the birth for pre December 2003 registrations, to add the father's details, you will automatically gain parental responsibility [CA 1989 s4(1)(a)].
- (a) You would either need the mother to attend with you or provide a formal declaration of agreement that your name is to be added to the birth record.
- (b) NB: the birth can only be re-registered if the father's name was omitted from the original registration. If it is already there, you cannot re-register, and therefore you cannot gain parental responsibility by this means.
- (c) By subsequently marrying the mother of the child you automatically gain PR [CA 1989 s2(3)Family Law Reform Act 1987 s(1)]
- (d) By obtaining a residence order from the court (PR is a 'by-product' of the residence order) you will automatically acquire parental responsibility [CA 1989 s12(1)], although in this form PR will terminate when the resident order ends (usually age 16).
- (e) A birth parent can sign a parental responsibility agreement on form C(PRA1) according to the Children Act 1989. This document itself will signify that you have parental responsibility for the child) [CA 1989 s4(1)(2)].
- (f) A step-parent's PR agreement can be made by consent with all those already having PR for the child on form C(PRA2) according to the Children & Adoption Act 2002.
- (g) By obtaining a parental responsibility order from the court. The order will specifically state that the court has granted you parental responsibility. [CA 1989 s4(1)(3)]
- (h) By obtaining an adoption order from the court.

Only with (d), (e), (f), (g) and (h) will you obtain a document that explicitly states that the father has parental responsibility for the child. With the other means of obtaining parental responsibility there will be no separate documentation confirming parental responsibility, the documentation of the status acquired (marriage, child's birth certificate, etc.) being themselves evidence of parental responsibility.

Can the mother's new partner have parental responsibility for my child?

The mother's new husband can acquire parental responsibility by either (a) a parental responsibility agreement (b) by the court making a parental responsibility order following the step-father's application or (c) by having a residence order made in his favour (a joint residence order with the mother would be the norm). The mother's new boyfriend/partner cannot have parental responsibility for your child – only her husband (or girlfriend, if she is in a formally recognised civil partnership).

Should the birth father himself not have parental responsibility, the mother (all mothers have parental responsibility) can, without the birth father's agreement, enter into a parental responsibility agreement with her new husband [CA1989 s4A(1)(a)]. If you, the birth father have parental responsibility your agreement is required. You will not lose your parental responsibility should you enter into a parental responsibility agreement or the court makes an order giving the step-father parental responsibility.

Some birth fathers strongly resent another man having parental responsibility for his child whilst others recognise that if their child spends a great deal of time with the step-father, particularly if the step-father cares for the child alone, then it makes sense for that adult to have parental responsibility. Of course, we would expect the birth father to have parental responsibility too.

Allowing a step-parent to acquire parental responsibility was brought in by the Children and Adoption Act 2002 in order to address the circumstances in which step-fathers would apply to adopt the child in order to acquire parental responsibility. Prior to the Act around a quarter of all adoptions concerned step-parents. An 'unmarried' step-father, though he cannot acquire parental responsibility by way of a parental responsibility agreement or order can, if in an 'enduring' relationship with the mother, still adopt the child.

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How can a parental responsibility agreement be made?

Whilst unmarried couples are co-operating harmoniously over the parenting of their child the fact that the father doesn't have parental responsibility is not likely to be an issue. It is only when disputes arise that it becomes so, and this, of course, is the time least likely for the mother to be persuaded to agree for the father to have equal parental responsibility. The father is in a position of having to 'sell' the idea to the mother and to convince her that by making this agreement for the benefit of their child she is not going to disadvantage herself. It is almost inevitable that she may regard it as giving away some of her absolute control. Also, the fact that the agreement cannot be made without both parents attending the court office is often itself reason enough for a mother to decline. Inertia on her part, not even opposition, could be the limiting factor.

Floating the idea to the mother without alarming her can be a delicate task and this sample letter (PDF or Word download) may just provide a beginning to which you may add some persuasive arguments of your own.

A parental responsibility agreement has to be made on a specified form and filed with the Principal Registry.

The notes accompanying the PRA Form give full instructions as to how to go about this. Currently, there is no charge for making such an agreement. The following points should be noted:

- (a) Only the biological parents can make a Parental Responsibility Agreement
- (b) Step-parents must apply on C(PRA2).
- (c) The child must be resident in England or Wales.
- (d) A separate form must be filled in for each child.
- (e) All parents with PR and giving consent, and the prospective parents must attend with documentary evidence of their identity.

How can an application be made for a parental responsibility order?

Less than 2% of the 11,000 applications for parental responsibility in 2006 were refused. The number of applications for parental responsibility is falling, following the new regulations which came into force in December 2003 which gave automatic parental responsibility to those fathers who jointly sign the birth certificate.

Generally, fathers who apply for a parental responsibility order choose to do so in tandem with an application for contact. They may have come to terms with not having parental responsibility and would not choose to go to court on this sole issue and stand the chance of antagonising the mother. But when problems over contact arise, since both applications can be incorporated on the same form for a single fee, they will apply for a contact order and a parental responsibility order together.

Combining applications for both orders (PR and contact) is more efficient and simple, but often the fairly straightforward decision about, and almost inevitable award of, parental responsibility, gets delayed until the contact issue is resolved. A stand-alone application for parental responsibility could be disposed of very quickly. Furthermore, since in many instances a mother's opposition to the father's application for parental responsibility would have no real merit or chance of success she should not benefit from legal aid funding and in many instances would be required to act in person or pay for legal representation. This factor alone could result in her not opposing the application or even, perhaps under pressure from the court, opting to make a parental responsibility agreement.

However, when the father is applying for both contact and parental responsibility, the mother, with the help of her (often publicly funded) solicitor can choose to argue against the granting of parental responsibility, just to be difficult, knowing that parental responsibility is almost certain to be awarded. S1(2) Children Act 1989 does require the court to dispose of the PR element of the application "without undue delay".

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Section 4 of the Children Act does not stipulate the criteria which a father must meet in order to be given parental responsibility but just before the Children Act came into force in 1991 the Court of Appeal decision in *Re H (Illegitimate Children: Parental Rights)* dealt with this matter and since then the following factors have remained central to any decision:

- (c) That the status of the birth father is not in dispute.
- (d) The degree of commitment which the father has shown towards the child (this can be illustrated by financial support, pursuing contact and keeping arrangements, present at birth, having one's name on the birth certificate, involvement in child's education etc).
- (e) The degree of attachment existing between the father and the child (naturally a father of a very young child may have had less opportunity to develop this).
- (f) The reasons for the father's application (to weed out applications made solely to be obstructive or disruptive since the overwhelming number of applications will be made for genuine motives).
- (g) Any other relevant factors.

How can parental responsibility be obtained by a residence order?

The parental responsibility order goes hand in hand with the residence order, so if the residence order is discharged (as they sometimes are, especially with shared residence orders) then the parental responsibility order will also be terminated. You would have notice of any application to have the residence order discharged or varied to one of sole residence to the mother, and therefore would have an opportunity to apply for a parental responsibility order – though a separate application would surely be unnecessary in the proceedings. In any event, under Family Proceeding Rule 4.4 and FPCR 4 an application can be made by way of statement.

Simply mentioning the ramifications of removing residence from you as regards your parental responsibility would be sufficient for the court to address this by making a parental responsibility order.

I don't have parental responsibility - does it matter?

Guardians and death of a parent (CA1989 s5)

Should the mother die and has appointed a guardian (generally in a will) the guardian will automatically acquire parental responsibility if the father doesn't have parental responsibility (and if the mother has a sole residence order the appointment of her guardian will stand, whether or not the father has parental responsibility).

A father with parental responsibility can appoint someone to be the child's guardian upon his death but this will not have any effect if the mother outlives him (unless the father has a residence order for the child) since the mother will have parental responsibility.

Being the child's guardian (in many instances the mother's relative, the maternal grandmother or aunt will be nominated by the mother as the guardian) and acquiring parental responsibility for the child doesn't automatically mean that the child will live with and be brought up by the guardian. However, this is likely to be the default position and likely to provide the status quo which the father may then have to attempt to reverse by making an application for residence.

These matters will take on more significance if the guardian lives far away and the child's move to the guardian's locality will diminish or even terminate the child's previously established contact with his father.

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Removing the child from the jurisdiction

A father without PR has no status internationally should the mother decide to 'up sticks' and simply go and live anywhere else in the world (unless there is a residence order in force (CA s13). In many instances a father will tend to know whether this is a possibility – perhaps in instances where the mother is originally from another country and still has close family living there; or when she has began a serious relationship with a man from a different part of the world. With forewarning, a father, even one without parental responsibility, could obtain a prohibited steps order that specifically prevented the mother from removing the child from England and Wales. Frequently, however, a mother may take the child on 'holiday' but have no intention of returning.

If the father has parental responsibility then the mother would either have to obtain his permission for permanent removal or apply to the court for leave to remove the child. If she retained the child abroad to live in another country she will be viewed as having unlawfully abducted the child and steps can be taken to have the child returned to the jurisdiction.

Technically, under the Child Abduction Act 1984, removal from the jurisdiction, even for a short holiday, requires the consent of everyone with parental responsibility for the child – or leave of the court. In practice, mothers who don't have the right to take the child for "less than one month" bestowed upon them by a residence order [CA1989 s13(2)], routinely take their children abroad on holiday without a second thought about obtaining the father's permission – and their lawyers routinely fail to remind them that the father's permission is required.

Adding the father's name to the birth certificate

If the father's name is not on the birth certificate and he has parental responsibility then he can, even without the mother's consent, have the child's birth re-registered to include his name. Most fathers and their children think it is important to have the father's name on the birth certificate but a significant number of mothers may not. There is no charge for this but, as with copies of all birth certificates, certificates containing the newly added information have to be paid for. Further information on how to go about this can be found on the government's General Record Office website.

Accessing information about your child

Education - In practice, it is necessary to have parental responsibility to be fully involved in your child's schooling. [See this link](#) for further details.

Health - The prevailing view is that parental responsibility is required for a father to be allowed to be given access to his child's medical information. The General Medical Council's Guidance for Doctors in relation to children (0-18 years) when referring to sharing information with 'parents' specifically defines these as being parents with parental responsibility. If you don't have parental responsibility, as far as the GMC is concerned, you are not a parent. For further information refer to the Doctors page of this website.

Placing your child for adoption

The Adoption and Children Act 2002 s52 (6) defines a 'parent' as a parent with parental responsibility, requiring the agreement of all such parents to be obtained (or their permission to be dispensed with by the court) before a child is placed for adoption. A father without parental responsibility has no absolute right to be involved in the proposed adoption of his child.

You may consider the likelihood of adoption not to be anywhere on the horizon; but people's circumstances change, mothers do re-partner to abusive men, do get involved in substance abuse, do have their children taken into care by social services. Your child could be involved in such a situation.

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