



# Arrangements for Children on Separation

**When parents separate, they have to make decisions about where their children will live, and how they will retain contact with both parents. These are not necessarily legal decisions. Most parents are able to agree these arrangements without any external assistance, but it can be helpful to understand the background legal position, and that is the purpose of these notes.**

## Parental Responsibility

The Children Act 1989 is the main piece of legislation that deals with family disputes about children. It introduced the concept of Parental Responsibility, which is relevant to all parents, not just those who separate. Parental Responsibility is "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". A person who has Parental Responsibility for a child is responsible for taking the important decisions in that child's life, for example in relation to education, religion and medical care.

Married parents both have Parental Responsibility for their children, and both will retain this status if they separate or divorce. They must therefore take joint responsibility for important decisions, even after separation.

If the parents were not married at the time of the child's birth and the father's name does not appear on the birth certificate, only the mother will automatically have Parental Responsibility. If the child was born after 1 December 2003, a father whose name appears on the birth certificate will have automatic Parental Responsibility.

An unmarried father whose name does not appear on the birth certificate, or whose child was born before 1 December 2003, can acquire Parental Responsibility. If the mother agrees, both parents can enter into a "Parental Responsibility Agreement" which is registered with the court, and this gives the father Parental Responsibility. If she refuses, the father can make an application to the court for a Parental Responsibility Order. It is very unusual for such an application to be refused.

## Resolving Disputes

When parents separate, the courts prefer not to interfere with decisions about how the children should spend their time. There is a legal presumption that no court orders about residence or contact will be made at the time of a divorce. So far as is possible, parents are encouraged to make these decisions together, without using the court system.

## Mediation or Negotiation

Using the court system to determine arrangements for children should be viewed as a last resort. If parents are unable to agree,

a trained mediator may be able to help resolve the dispute. Alternatively, solutions can be negotiated through meetings or correspondence either between the parents themselves, backed by legal advice, or between solicitors acting on their behalf.

## Using the Court System

If there is a protracted dispute, either parent can ask the court to intervene and to impose a decision about any issue relating to a child's welfare.

The welfare of the child is the court's primary concern when it considers any question in relation to the upbringing of a child. The court will apply what is known as the "welfare checklist", which looks at a number of factors, including the child's wishes and feelings, and physical, emotional and educational needs. The extent to which the wishes of a child are taken into account depends on the age of the child. The views of teenagers are strongly influential; for younger children they will still be of importance.

An independent Child and Family Reporter (CAFCASS Officer) may be asked to help try to resolve the dispute, or to assist the court with making decisions. The court will not make any order relating to a child unless it considers that making an order would be better for the child than not making an order. If a judge believes it is in the child's best interests, he/she can make one or more of the following orders:

### (a) Residence Order

This order states with whom a child should live. It is possible, in the right circumstances, for a court to make a shared residence order in favour of both parents. These "shared care" arrangements have become increasingly common. They do not necessarily result in a 50/50 division of the child's time, but can be appropriate where, both prior to and following separation, children spend a significant amount of time with each parent.

The welfare of the child is always the paramount consideration. The court will consider the day-to-day needs of each child, and which parent is best able to meet those needs. The court will try to find a practical solution which enables children to spend time with both parents.

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**(b) Contact Order**

This order determines the contact arrangements between the child and the parent with whom he or she does not usually live (including overnight contact and holidays).

It is every child's right under the United Nations' Convention on the Rights of the Child to have contact with both their parents, wherever possible, and generally the court will presume it is also in the child's best interests. There is no presumption that the child's time should be divided equally between the parents.

Grandparents and step-parents can also apply for contact orders, although grandparents first need to obtain the court's permission to bring such an application.

**(c) Specific Issue Order**

The court can be asked to determine any particular issue on which the parents cannot agree, for example the child's surname, education, religion or medical treatment.

**(d) Prohibited Steps Order**

This order prohibits a parent from taking a step in relation to a child. It can be used, for example, to prevent a parent removing a child from England and Wales, from changing a child's surname, or from moving a child to a different school without the agreement of the other parent.

**Leaving the Country**

It is a criminal offence to take a child abroad without the consent of every person with Parental Responsibility for that child.

Holiday arrangements should always be agreed between parents.

If a parent wants to leave the country permanently with the children, and the other parent does not consent, the court system can be used to keep the children here while the court determines what is in the children's long term best interests.

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