

## Overview

The Children Act 1989 is the main source of law that governs relationships between children and their parents or Guardians. Disputes about children following separation are often referred to as private law proceedings because any dispute is between private individuals.

## Welfare of the Child

The court's first and paramount consideration when deciding to make an order is to the welfare of the child as opposed to any perceived "rights" of any adults involved. It will determine the facts and apply a number of considerations known as the **Welfare Checklist** to help it decide upon what is in the child's best interests.

A 'presumption of continued parental involvement' has now been introduced, although this is not to be mistaken as a presumption of shared care or indeed a guarantee of direct or any contact, but an indication that parental contact with a child is assumed to be in a child's best interests providing there are no welfare issues why it should not be.

The other provisions include:

- the ascertainable wishes and feelings of the child (considered in light of age and understanding);
- the child's physical, emotional and educational needs;
- the likely effect on the child of any change of circumstances;
- the child's age, sex, background and any characteristics of the child which the court considers relevant;
- any harm which the child has suffered or is at risk of suffering;
- how capable each of the child's parents and any other person in relation to whom the court considers the question relevant is of meeting the child's needs
- the range of powers available to the court.

## Parental responsibility

Parental Responsibility (PR) is defined by The Children Act 1989 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".

A person who has PR is entitled to a say in important matters affecting the child's upbringing such as:

- whether the child should undergo medical treatment;
- where and how the child is educated;
- what the child should be named and whether there should be any changes.

Mothers automatically have PR from the moment of the child's birth. A father will automatically have PR if he was married to the mother at the time of the child's birth.

A father who is not married to the mother will only have PR automatically if the child was born after December 2003 and he is named on the birth certificate. In all other circumstances, a father will not automatically have PR and must obtain it by agreement with the child's mother, or by court order.





In some families, people other than the child's parents may acquire PR including step-parents, grandparents, uncles and aunts particularly if they have acquired it by court order in order to care for a child.

### **Section 8 Orders Generally**

Private law orders made in respect to children include Child Arrangement Orders, Prohibited Steps Orders or Specific Issue Orders are sometimes referred to as Section 8 orders. This is because the court's power to make them comes from Section 8 of the Children Act 1989.

Most parents and some family members or other significant people in a child's life are entitled as of right to apply for a section 8 order relating to their children. Those who cannot must ask for permission or Leave from the court to make the application.

The court will not make a section 8 order unless it considers that doing so would be better for the child than making no order at all, this is called the no-order principle and will proceed on the basis that delay in resolving a dispute about section 8 orders is likely to prejudice the welfare of the child.

Presumption of time.

## **Child Arrangements Order**

A Child Arrangements Order may determine where a child will live and with whom, and whether, how and when they will spend time with a parent or people including relatives other than those they normally live with.

The court can be asked to make a child arrangements order if parents are unable to agree on the arrangements for where a child may live or spend time with their either parent but may also make sure a child has a continuing relationship with important people such as grandparents, step-families and particularly siblings living elsewhere.

Terminology for Orders changed with The Children Act 1989 when Residence and Contact Orders came into force. Before then such orders were referred to as Custody or Access Orders, although such descriptions continue to be in common usage despite such arrangements now being described as "Live with" or "Spend time with" Orders.

**Shared care arrangements** are becoming increasingly popular and reflect a preference in avoiding if possible describing a child as living with one parent and spending time with the other. A shared care order can be made even if the division of time between the two homes is not the same. It does not necessarily mean an equal division of time.

There is no "one-size fits all" arrangement for children and no two families are the same. Different arrangements work for different families. Common arrangements may include a child staying with the parent they do not normally live with on regular weekly or two weekly occasions and for a share of holiday periods.

The best arrangements fit the family circumstances. Parents living further apart may mean less regular arrangements are necessary and may require indirect time including visits, telephone calls, or time together using Skype and similar forms of communication. These are especially important where geography prevents more frequent face-to-face contact.

A child arrangements order can also include provisions that spell out precisely how the arrangements operate: conditions and directions for handovers, who must do (or not do) something during the time the child spends with them, or how parents are to communicate over any issues that arise during visits.

## **Prohibited Steps Order**

A Prohibited Steps Order (PSO) is an order that forbids someone from exercising PR in a particular manner. Some of the more common examples of PSOs include forbidding a parent from:

- removing the child from the UK;
- changing the child's name; or
- changing the child's school.

PSOs may be made against any person (that is, they are not only available against a child's parents). So, a PSO could be made against a family member or friend whom it was feared might make a decision or take certain steps in respect of a child.

## Specific Issue Order

A Specific Issue Order (SIO) is an order made by the Family Court where a dispute arises about a question of how PR is exercised. Such disagreements may usually be narrow and well-defined including:

- which school a child should attend;
- whether a child should have particular course of medical treatment;
- religious rites with which the child should participate
- whether a child should temporarily or even permanently leave the UK.

If made a SIO will grant permission for a particular course of action to be taken.

## Other orders - Information as to the whereabouts of a child

This is an order requiring a person to give the court any information they have about the whereabouts of a child. These orders can be made to oblige family members, legal advisers, the police, or other third party to disclose information to the court and are especially useful in resolving situations where a parent has removed a child to avoid court proceedings or and can only be made where there are proceedings to obtain or enforce a section 8 order.

## Appointment or removal of a guardian

A guardian is a person who assumes responsibility for, and has PR for, a child on the death of his or her parents. A parent with PR may appoint a guardian in writing (this is often done in a will). The appointment only takes effect once all parents with PR for the child have died.

The court also has the power to appoint a guardian if there is no-one with PR. The court retains the power to resolve any disputes about who should be a child's guardian. It may also terminate the appointment of any person as a guardian.



To find out more, please contact our Child Law team now on

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