

A GUIDE TO PARENTAL RESPONSIBILITY



Parental Responsibility (PR) is defined in the Children Act 1989 (CA 89) and the Adoption and Children Act 2002 (ACA 02). The CA 89 describes PR as ‘all the rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child and his property’.

PR is the responsibility a parent has for a child rather than the rights she or he has over the child. PR is the ability to make or be involved in the important decisions necessary in a child's life including in relation to:

- education (where a child should go to school and the right to receive school reports);
- health and medical treatment (whether a child should receive medical treatment or inoculations);
- religion (what religion, if any, a child should follow or receive instruction in); and,
- going abroad, either permanently or on holiday.

Who has Parental Responsibility?

Mothers

As the biological (birth) mother of your child you will automatically have PR for your child.

Married fathers

If you are or were married to the father of your child at the time of the birth, or marry your child's biological father after the birth he will

automatically have PR for your child. It is presumed in law that if you are married at the time of your child's birth your child is the biological child of your husband.

Unmarried fathers

If you are not married to the father of your child and **your child was born before 1st December 2003** he does not automatically have PR for your child. He can gain PR as set out below.

If you are not married to the father of your child and **your child was born on or after 1st December 2003 and the father is named on the birth certificate** he will automatically have PR for your child.

Civil partners of mothers

If the child was conceived by artificial insemination after 6 April 2009 and you were in a civil partnership your civil partner will automatically have parental responsibility for the child. Both names should be added to the birth certificate and your child will have no legal father.

Further information about parental responsibility and the rights of civil partners or other same-sex partners can be found in our **Guide to Lesbian Parenting**.

How can an unmarried father who does not automatically have PR obtain it?

An unmarried biological father can acquire PR in one of three ways:

- By entering into a **PR Agreement** with the mother of his child
Form C(PRA1) is available from the Magistrates Court, County Court or to download from the court service website (see 'Other useful contacts' below). Both parents must sign the form at a family proceedings court, county court or the Principal Registry of the Family Division in front of a justice of the peace, a justices' clerk, an assistant to a justices' clerk, or a court official who is authorised by the judge to administer oaths. You must provide identification and your child's birth certificate. The agreement must then be sent to the Principal Registry of the Family Division.
- By the court making a **PR order**
An unmarried biological father has the right to apply to the court asking for a PR order. This application may be made at the same time as any other application, for example, for contact or residence. The father will have PR until his child is 18 or the order is brought to an end by the court. It is extremely rare for the court to terminate a father's PR. If a PR order is made the birth can be re-registered to show that the biological father is the parent.

- By subsequently **marrying the mother**
If the biological father marries the biological mother of his child after the birth, the father will acquire PR.

What about non-parents?

Other people can also acquire PR for your child. These might include step-parents, grandparents or same-sex partners. Non-biological parents can acquire PR for a child if:

- They **adopt** the child
When an adoption order is made the adoptive parent or parents gain PR for the child and the biological parents lose PR. If the adoption is a joint adoption between a biological parent and her or his partner, when the adoption order is made the biological parent who is adopting keeps her or his PR, the person they are adopting with gains it and any other person who has PR loses it.
- They are appointed as a **guardian** of the child
A parent or parents with PR can appoint another person(s) to be the child's guardian(s) after his or her death. The appointment can be made in writing (and must be signed and dated) or in a will. The appointment of a guardian will only take effect if:
 - there is no other person with PR for the child; or,
 - if the parent who made the appointment had a residence order at the time of the death and it was not a joint or shared residence order with the surviving parent; or,

- if the parent who made the appointment was the child’s only special guardian (see below).

This means that if you have a residence order or there is no other person with PR at the time you can appoint a guardian whose appointment will take effect immediately on your death and will have priority over the surviving parent (although this can be challenged by the other parent asking to make a residence order in his or her favour). If there is no-one with PR for a child the court may appoint a guardian.

- The court makes a **residence order** in their favour

When the court makes a residence order in favour of a non-parent, the person with the residence order acquires PR for the child. That person will have PR for the duration of the residence order but PR would be lost if the order is brought to an end by the court.

- The court makes a **special guardianship order**

When the court makes a special guardianship order in favour of a non-parent, this person or persons will acquire PR for the child. This order can either be an alternative to adoption or act as a ‘super-residence’ order. It provides the child with a legally secure family home but unlike adoption the parents do not lose their PR.

A special guardian, however, can overrule the PR of the parents when making decisions about the child.

Married step parents and civil partners

Married step-parents and civil partners can now acquire PR for a step child or child of the family by either entering into a PR agreement or by asking the court to make a PR order. Form C(PRA2) is available from the Magistrates Court, County Court or to download (see Other useful contacts.)

For further information about these issues please see our **Guide to Residence Orders** and **Guide to Lesbian Parenting**.

Local authorities

A local authority social services department can acquire PR for a child if the court makes a care order (including an emergency protection order or interim care order) in respect of that child. The Local Authority will then share PR with anyone else who has PR for the child but the Local Authority can overrule any decisions that they do not feel are in the child’s best interests.

What does having PR mean?

The CA 89 allows everyone who has PR to be involved in the important decisions that have to be made as your child grows up. This includes decisions about education, health and medical treatment, religion and leaving the country. If more than one person has PR, they should try to reach an agreement about the decision but if they cannot, then either of them can apply to the court for a decision. This is called an application for a **specific issue order (SIO)**. The court can also stop a person with PR from making a decision about a child (for example

removing them from school or taking them abroad) by making a **prohibited steps order (PSO)**. When making any decision about any aspect of a child's upbringing, the child's welfare is the most important factor the court will consider. For further information about SIOs and PSOs see our information sheet **When Parents Separate**.

More than one person can have PR for a child. With the exception of special guardians (see above), no one person with PR has a greater right to have a say in decisions about a child than another person (or persons) with PR. No one person with PR can override a decision made by another person with PR without a court order. Everyone with PR has an **equal right** to make or be involved in the important decisions in a child's life.

However, the law recognises that the exercise of PR has to be realistic. For example, when a couple separate the person with whom the child lives is allowed to make all the day-to-day decisions about the child. Having PR does not give a non-resident parent the right to interfere in the day-to-day management of the child's life.

If another person subsequently acquires PR for a child the other people who already have PR do not lose it unless the court makes an order. PR cannot be surrendered or transferred to another person by a person with PR.

What will the court consider in a PR application?

The CA 89 says that when the court makes any decision about a child, the child's welfare must be the court's "paramount

consideration". This means it must consider the child's welfare above everything else. When making a decision the court must consider all your child's circumstances and in particular the following factors:

- **your child's wishes and feelings** (depending on her or his age and understanding (generally the older your child is the more attention the court will pay to those wishes and feelings))
- **your child's physical, emotional and educational needs** (this includes practical needs such as accommodation and food as well as love and affection)
- **the likely affect on your child of any change in her or his circumstances** (the court will look at the previous or existing arrangements for contact and generally considers that change is disruptive to a child)
- **your child's age, sex, background and any characteristics the court thinks relevant** (this could include any cultural or religious needs your child has or any disabilities that might affect contact arrangements)
- **any harm your child has suffered or is at risk of suffering** (this includes risk of physical, sexual or emotional abuse as well as any domestic violence your child has seen or heard)
- **how capable both parents are of meeting your child's needs** (the court can consider whether the non-resident parent has the skills to look after your child and can consider whether these are affected, for example, by substance misuse)
- **the range of powers available to the court** (the court can choose from a very

wide range of different contact arrangements from direct to indirect contact to no contact at all)

In particular when deciding whether a father should have PR the court will consider:

- whether the father, by his actions during and since the application, has shown sufficient commitment to the child to justify giving him PR;
- what the level of attachment is between the father and the child; and,
- his reasons for applying for PR.

It is likely that the court will give an unmarried father PR. Even in cases where a father does not succeed in an application for contact, the court may still grant PR as it gives the status of fatherhood that he would have had if he were married to the mother or named on the birth certificate.

Can I lose PR?

The only way that biological mothers can lose PR is when their child is adopted. Similarly, biological fathers who are married to the

mother of their child can only lose PR if their child is adopted. However, biological fathers, who have obtained PR by way of a PR agreement or a PR order, can lose PR when the court makes an order discharging a PR agreement or revoking an order for PR or if their child is adopted.

Maintenance and PR

Even if a father does not have PR, he is still required to financially support his child. Paying maintenance does not give a biological father PR or entitle him to have it. Nor should the fact that a father does not pay maintenance be used as a reason to withhold PR. For further information on child support see our **Guide to Child Maintenance**.

The issues relating to PR can be complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would also strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.

Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on 020 7251 6577 (telephone) or 020 7490 2562 (textphone) on Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone) on Tuesdays 11am–1pm and Thursdays 2–4pm.

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on 020 7490 7689 (telephone) or 020 7490 2562 (textphone) on Mondays 2–4pm and Wednesdays 11am–1pm.

Other useful contacts

Child Support Agency	08457 133 133	www.csa.gov.uk
Community Legal Service (for finding a solicitor)	0845 345 4345	www.legaladvisorfinder.justice.gov.uk/AdviserSearch.do
Gingerbread (advice for single parents)	0808 802 0925	www.gingerbread.org.uk
National Domestic Violence Helpline	0808 2000 247	www.nationaldomesticviolencehelpline.org.uk
National Family Mediation	0300 4000 636	www.nfm.org.uk
Relate	0300 100 1234	www.relate.org.uk
Resolution (for finding a family solicitor)	01689 820 272	www.resolution.org.uk
Samaritans	08457 909090	www.samaritans.org.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office/Admin: 020 7251 6575

Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R



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