

CHILDREN AND THE LAW: WHEN FAMILIES CANNOT AGREE

Other **Children and the law** guides:

Adoption for women prisoners

When social services are involved

Parental responsibility



Introduction

This guide will give you information about your legal options while you are in prison if your child is living with their father or other family members. It only covers the law in England and Wales. **This guide contains general legal information, it is not legal advice as everyone's situation will be different.**



Many women find it upsetting to think about their family while they are in prison. If you are affected by any of the issues discussed in this guide, make sure you speak to someone about it.



You can get legal advice about your circumstances from the Prisoners' Advice Service.



Or you may want to talk to someone about how you are feeling. You can speak to the family engagement worker, a peer mentor, the chaplaincy, the mental health team or the Samaritans.

See the **Useful contacts** page at the end of this guide.

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Key information

In an emergency, if you need to contact the person caring for your child or the social worker, you can ask the family engagement worker to help you make some calls.

Going to prison does not end your parental responsibility.

Everyone's situation is different and what is right for your child may not be right for someone else's child. Make sure you speak to someone about what is happening. See the section on **Who can help you in the prison.**

If you have arrived in prison without any plans for your child, speak to the family engagement worker and ask to make some urgent calls. Some women arrive in prison and haven't been able to plan things for their child. This can seem very scary and it is possible that they may have been taken into care. If this has happened in an emergency, it does not mean they will stay in care. This might just be for a short time and the social worker will want to know who you think should care for your child. Please see our guide, **Children and the law: when social services are involved.**

You may have already decided who will care for your child and have discussed this with them. You do not have to have a court order in place for someone else to look after your child if you do not feel you need this. It is a good idea to write down any agreements about contact arrangements and when the person will bring your child to see you to avoid any misunderstandings or problems in the future.

While you are in prison, there are several situations that may arise in relation to your child. This guide will help you understand what your legal options are. For example:

- The person caring for your child may apply to the court for an order. This guide will help you understand what they are asking the court to do.
- You may not agree with all the decisions that the person caring for your child is making. This guide will help you decide whether to do something about this.
- You may not be happy about the level of contact you are having with your child. This guide will help you understand your options.

Parental responsibility

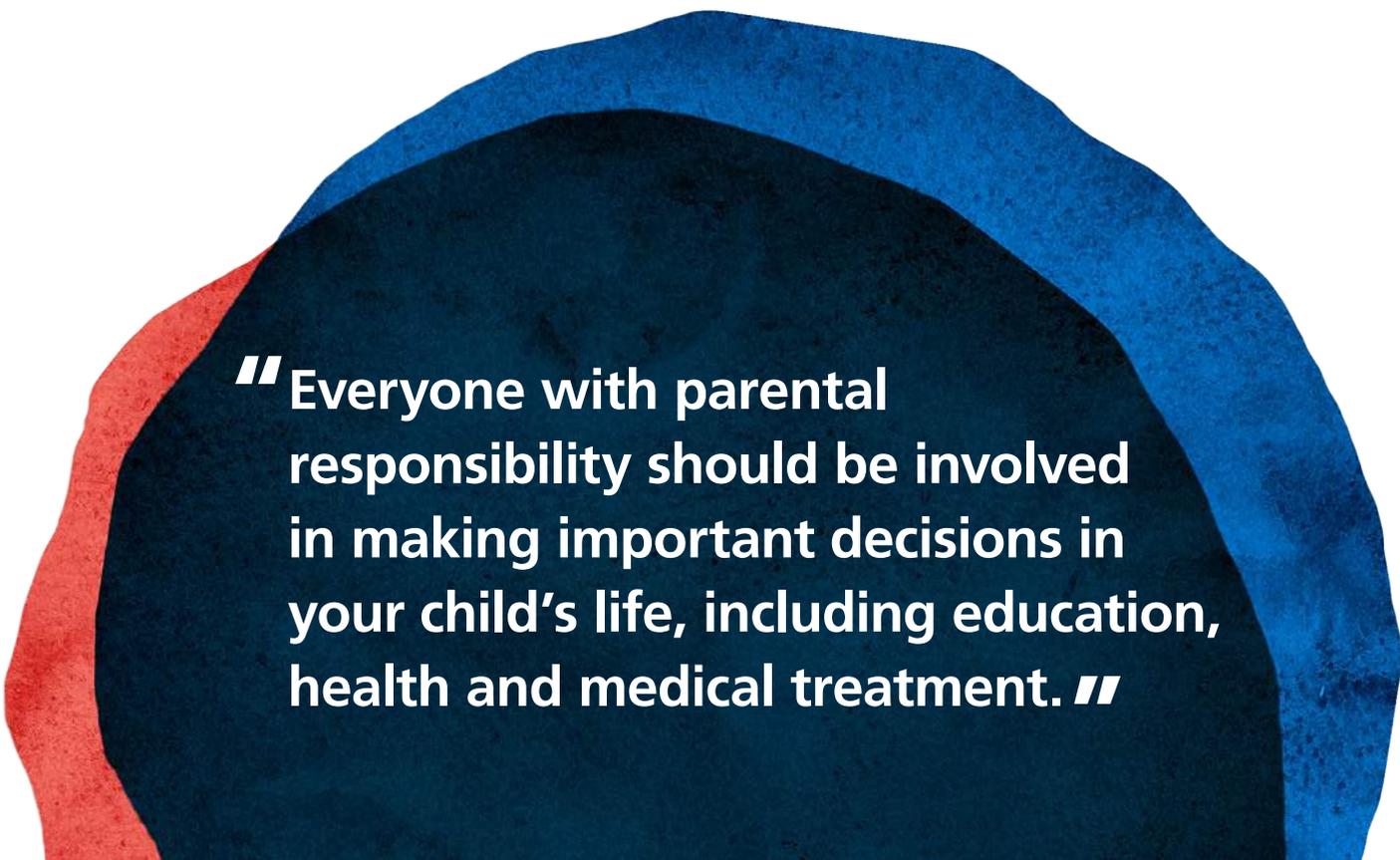
If you are a birth or adoptive mother, you will automatically have parental responsibility for your child. **Parental responsibility** is the legal term which describes the rights and responsibilities that someone has for a child. Going to prison does not end your parental responsibility for your child.

Other people who may have parental responsibility are:

- your child's father if:
 - you were married to him,
 - you have entered into a parental responsibility agreement with him,
 - he has been granted parental responsibility under a court order, or
 - your child was born after 1st December 2003 and he is named as the father on the birth certificate,
- your wife or civil partner if you were married or civilly partnered at the time the child was conceived through assisted reproduction and she consented to the treatment.
- anyone who has been given parental responsibility under a court order.

Everyone with parental responsibility should be involved in making important decisions in your child's life, including education, health and religion.

Different court orders affect the way someone can exercise their parental responsibility. Where we have discussed different court orders in this guide, we have also explained how they can affect parental responsibility. If you want to understand how parental responsibility works in detail, see our guide, **Children and the law: parental responsibility**.



“Everyone with parental responsibility should be involved in making important decisions in your child's life, including education, health and medical treatment.”

The legal principles when families cannot agree

The law for all of the issues discussed in this guide can be found in the Children Act 1989 and Part 12 of the Family Procedure Rules. You can speak to your solicitor or to Prisoners' Advice Service for more information about the law.

The Family Court expects parents and family members to try to agree arrangements for children without going to court.

There are some important legal principles that apply in every case. When you think about the best way forward for your child, you can think about these principles to help you decide what to do. It might also be helpful to use these principles when you talk to the person caring for your child.

Mediation

Mediation is a process where you sit down with the person caring for your child and a professional family mediator to discuss the problem. The purpose is to agree the best way forward for everyone without ending up in court. You can go to mediation if there is a disagreement about your child. You do not have to go to court.

A **mediator** is a professional who will help keep the conversation focused on the issues you need to discuss and help move things on when it looks like agreement is not possible. Some family law solicitors and barristers are also qualified as family mediators.

Legal aid is available for mediation if you are on a low income. If you are not eligible for legal aid, you would have to pay for a mediator.

The Family Court expects families to try to agree on what is best for your child without having to go to court. To help families do this, it is required in most situations that everyone goes to mediation before making an application to court.

However, in some situations this is not a requirement. The most common reasons you will not be expected to go to mediation are:

- You were the victim of domestic abuse from the person caring for your child;
- It is an emergency and you do not have time to go to mediation;
- It is not physically possible because you do not know where the person lives, they live far away or one of the parties is in prison.

What this means is that **you do not have to go to mediation while you are in prison**. But if you are about to be released from prison, you would be expected to try mediation with the person caring for your child before you make an application to the court unless one of the other exceptions applies to your situation.

If you are in prison but think mediation sounds like a good idea, you will struggle to arrange for a professional mediator to visit you in prison. Instead, you could try to arrange for a family member or friend to act like a mediator between you and the person caring for your child. See the page on **Tips for dealing with problems without going to court** for more information.

The presumption of parental involvement

In an application for a child arrangements order, specific issue order or prohibited steps order, the Family Court will assume that parents should be involved in their child's life unless it is not safe. This is called the **presumption of parental involvement**. It is in section 1(2A) of the Children Act 1989. The orders are explained later in this guide.

Parental involvement does not have to be face-to-face contact. It can be involvement of some type, either direct or indirect through letters and cards. There are lots of different types of contact and the court should think about all of these different options when they decide what contact is in the best interests of the child.

If you are trying to come to an agreement with the person caring for your child because they are not bringing them to see you, you can tell them that it is likely that the Family Court will think your child should be having some contact because of the presumption of parental involvement.

The court does not have to apply the presumption of parental involvement if there is some evidence that the involvement of the parent in a child's life would put the child at risk of suffering harm. If you are worried, you can raise this with the court and the court will decide what is safe for your child.



“ The Family Court expects parents and family members to try to agree arrangements for children without going to court. ”

The child's welfare is the most important thing

The final legal principle you should know is that when the Family Court makes any order about a child's upbringing, the most important thing they have to think about is what is best for that child. This is called the **welfare principle**. It is found in section 1(1) of the Children Act 1989.

To make sure they have worked out what is best for the child, they look at what is called the **welfare checklist**. This is a list of information the court should look at before making any decisions. It is set out in section 1(3) of the Children Act 1989.

The welfare checklist

- **Your child's wishes and feelings.** The court will normally ask a professional, called a CAFCASS officer, to speak to your child about what they want. They will think about this when they make decisions, but they do not have to do what your child wants. The more mature your child is, the more likely the court is to follow their wishes and feelings.
- **Your child's needs – physical, emotional and educational needs.** This includes practical needs like accommodation and food but also includes love and affection. The court will want to know if your child has any special needs that should be considered.
- **The likely effect on your child of a change of circumstances.** For example, if the person caring for your child wants to move to a different part of the United Kingdom, this will be a change of circumstances for your child and the effect on them will have to be considered.
- **Your child's age, sex, background and any of the other personal characteristics that might be relevant.** This includes your child's religion and culture too.
- **Any harm, abuse, or neglect your child has suffered or is at risk of suffering.** For example, if your child has witnessed domestic abuse, this is viewed as harmful.
- **How capable you, anyone else with parental responsibility or the person caring for your child are of meeting their needs.**
- **The court must consider all of the different orders it can make.** Having considered all of the different orders available, it will make the order that it believes best meets your child's welfare.

When you think about what you want for your child, it may help to go through this list and think about each point and how it applies to your child before making any final decisions.

Tips for dealing with problems without going to court

Sometimes going to court will be the only way to sort out the problem you have but everyone's situation is different. There are many mothers who find that going to court is not a helpful way of solving their problem in a way that is best for their child. It is best for children if everyone involved in their lives tries to be respectful to each other. If it is possible to avoid going to court, then this is often the best result for everyone involved.



If you have an agreement with the person caring for your child and everything is going okay, you do not need to ask the court to become involved. It is useful to write down any arrangements you have agreed to help prevent future disagreements or misunderstandings. Reaching an agreement does not stop you applying to the court for an order if things change in the future.

Sometimes, going to court is the only option. You should think carefully about whether this is best for your child before making an application.

Here are some tips to think about before making any application to the Family Court.

Find out all of the information



You can ask for more information about what is happening. The person caring for your child can speak to you on the phone or write to you with information. You may have another family member who could help you to find out more information. Sometimes the family engagement worker will help you make calls or speak to the person caring for your child for you.

For example, the father of your son has not brought him to see you for a few weeks. He used to bring him every other week. You are worried something has happened. After speaking to another family member, you find out that the reason your son hasn't been to see you is because his father's car had broken down and he had not been able to fix it. Your family member has agreed that they will bring your son to visit you until his father is able to fix his car.

Think about whether there is a way of compromising.

Sometimes, the person caring for your child will have to make decisions that you might not be happy with, but their options may be limited. When you think about what is happening with your child, try to think about different ways the situation could be resolved and whether it is possible to agree to something that makes you both happy.

You may want to think about getting your child's carer to agree to certain things you would like.

For example, your child is living with your sister. She has a child arrangements order that says your child lives with her. Your sister wants to change your child's school so that it is easier for her to take them to school and get to work on time. You are not very happy about this but can understand why your sister has suggested this. You could think about different ways of solving the problem, such as another family member taking your child to school. If this is not an option, you could tell your sister that you will only agree to your child moving school if she makes sure that your child keeps in contact with their old school friends.

Think about what is best for your child



Sometimes you may not be happy about what is happening in your child's life but understand that it is best for them at the moment. You may find it helpful to talk it through with someone. You may want to talk to another family member or there may be people in the prison that can help. See the section on **Who can help in the prison**.



Think about the **welfare checklist** set out in the section on **The legal principles when families cannot agree**. The court will think about this when they decide what order to make for your child. You may find it helpful to talk to someone about the reasons that you do not agree with the decision – are they focussed on your child or about something else?

If you do not believe the person caring for your child has thought about all of the different parts of the welfare checklist, you could explain to them the reasons why you think this. You can point out that if a court is asked to make an order, they will make an order based on what they believe is best for your child.

Is there someone else who can act like a mediator?



In the earlier section on **The legal principles when families cannot agree**, we discussed that the court expects the adults in your child's life to agree on what is best for your child. Sometimes a professional mediator will be asked to help the adults discuss the problem and try to get them to agree the best way forward. Unfortunately, you will not be able to get a professional mediator in prison, you may have a family member or friend or a friend who can act like a mediator.

They may be able to arrange a joint visit with the person caring for your child and help you discuss the problem with them.

If you are going to do this, you will need to think carefully about who you choose to act like a mediator. They should understand what you are asking them to do and be very calm, and it is best if they already have a good relationship with you both.

Write to the person caring for your child and ask for a response



If you have tried all of the steps above but are not getting very far with the person caring for your child, you can try to write to them to explain your views and ask them to write back to you. It may be helpful for them to read what you have written and to have to write a response. This will give them time to reflect on what you are asking and hopefully to think about what is best for your child.

You could think about whether it is a good idea to write to the person caring for your child about all kinds of issues. This may be a good way for you to stay in touch with them generally and keep them up to date on what is happening with you. You may want to raise questions you have about your child's day to day care that you don't want to ask during your contact.

For example, during your contact session with your child, you notice that they haven't had their hair cut in a long time and it is getting quite long. You don't raise this at the time because you don't want to cause a scene. You could write a polite letter to the person caring for your child informing them that you used to get their hair cut every 4 weeks.

If you write to the person caring for your child about about day to day issues like hair cuts, be prepared to accept that there are some things you will not be able to change. The person caring for your child is able to make day to day decisions and does not have to do things in exactly the same way you would. However, you can always raise issues and try to compromise on solutions.

The rest of this guide looks at the different orders the court can make and what they do.

“Writing to the person caring for your child can be a good way to stay in touch with them generally and keep them up to date on what is happening with you.”

Child arrangements orders (living arrangements and contact arrangements)

If you agree arrangements for your child with the person caring for them, you do not need to ask the court to become involved.



It is useful to write down the arrangements you have agreed to help stop future disagreements or misunderstandings.



Reaching an agreement does not stop you applying to the court for an order in the future.

It is no longer possible for the court to make a residence order or contact order. Instead, the court can make a **child arrangements order** which will deal with who your child lives with and who they spend time with.

If there is a **residence or contact order** in place for your child, they still work in the same way as when the court made them. If you make an application to the court to change those orders, you would have to apply to vary a child arrangements order instead.

Custody and **access** are very old terms which are no longer used by the Family Court.

What is a child arrangements order?

A child arrangements order is an order setting out:

- who your child will live with, and when they will live with them; and
- who your child will have contact with, and when they will have that contact.

The court can order that your child lives with a parent, family member or friend. It is possible for a child arrangements order to say that a child lives with more than one person but at different times and the order will set out the times that your child lives with each person.

The court can order when your child is to have contact with other people. This can include visits to see you in prison. There are different types of contact and the court should consider all of the types of contact when they make an order. They are:

- **Direct contact:** which will be face-to-face during visits to the prison.
- **Supervised contact:** this is when someone, perhaps a professional or family member, is expected to supervise your contact with your child. The court order should say who is supposed to supervise contact.
- **Supported contact:** this is when someone else is present during contact but not carefully supervising.
- **Indirect contact:** this is when you write letters and cards to your child or speak to them on the telephone. The court will not order that your child should write back to you but can order that the person caring for your child should encourage them to respond to your letters if they want to. In some prisons, there is a programme called Storybook Mums where your child can be sent a recording of you reading them a story. You can ask the family engagement worker whether this is available in your prison.

Child arrangements orders are very flexible. This is so that the court can make orders that best meet your child's individual needs. They can be very vague and leave it up to the person caring for your child to make arrangements for contact when they think this is appropriate.

For example, an order may say that your children lives with their grandmother and that she is required to bring your children to visit you in prison at least once per month. This means your children's grandmother must bring your children to see you once a month, but it is up to her when she does this and if she decides to bring them more often, then she can do this.

Sometimes, they are very specific and do not give any flexibility to the person caring for your child. They can set out in detail how often contact will take place, on what days and at what times.

The type of order the court will make will depend on your child's individual circumstances. The court will think about the **welfare checklist** (on page 5) and will make an order that they think best meets your child's welfare, based on all of the information.

Who can apply for a child arrangements order?

- The mother
- The father
- Anyone who has parental responsibility including under a child arrangements order, which states that your child lives with that person, or a special guardianship order
- A step-parent if they are married to or in a civil partnership with the with you or the other parent of your child and they have treated your child as a child of the family. This means they have treated your child as their own.
- Anyone your child has been living with for 3 out of the last 5 years
- Anyone with the permission of everyone with parental responsibility
- A foster carer or relative that your child has lived with for 1 year immediately before the application is made
- Anyone who has been given the court's permission

For example, if your family member has had your child living with them for more than a year then they can make an application for a child arrangements order without asking the court's permission. If your child has lived with them for less than a year, then they must ask the court for permission before they make an application.

The court will decide to give them permission based on whether they have a sufficient connection to your child and that the application would not disrupt your child's life.

For example, you agreed with your brother that your daughter should live with him while you are in prison. She has been living there for 2 months and your brother decides to apply for an order that confirms she lives with him. He is not able to apply without the court's permission. The court will probably give your brother permission because he has a sufficient connection to your child as he is her uncle and she is living with him.

Effects of a child arrangements order on parental responsibility

A child arrangements order does not affect your parental responsibility for your child.

If the court makes a child arrangements order that says your child **lives with** their father, then the court must also make an order giving him parental responsibility if he doesn't already have it. This is called a **parental responsibility order**. If the child arrangements order is ended when you are released from prison, this will not end the parental responsibility for the father, as he has parental responsibility under a different order.

If the court makes a child arrangements order that says your child is to **have contact with** their father and he does not have parental responsibility, the court will also have to think about whether to make a parental responsibility order giving him parental responsibility. They will not automatically make the order, but they have to consider whether it would be in your child's best interests for their father to have parental responsibility.

If the court makes a child arrangements order that says your child lives with someone who is not their parent, that person will gain parental responsibility but only for as long as the child arrangements order is in force.

See our guide, **Children and the law: parental responsibility** to understand more about parental responsibility.

Effects of a child arrangements order on holidays

If a child arrangements order says that your child lives with someone, that person can take your child out of the United Kingdom for up to 28 days without getting your consent. If they want to take your child out of the United Kingdom for longer than this, they must have the consent of everyone with parental responsibility.

You can ask the court to include a condition in the order that the person your child lives with must tell you before they take your child out of the United Kingdom and give you information about where they are going and how long for. If taking your child out of the United Kingdom would interrupt your court-ordered contact, then they cannot do this without your agreement.

How long does a child arrangements order last?

When the court makes a child arrangements order, most orders will not set out how long they last. Unless the order says something different, it will last until your child is 16 years old.

The part of the order that says your child lives with someone can last until the child is 18 years old but only in exceptional circumstances, for example if your child has a disability. If the court intends the order to continue after your child's 16th birthday, it will say this in the order.

Enforcement orders

Breaches of a child arrangements order

If there is a child arrangements order in place and someone breaches it, this means they are not doing what they were told to do in the order. You can apply for an **enforcement order**.

For example, your children are living with their father under a child arrangements order. The order says that he must bring your children to see you in prison once per fortnight. He has stopped bringing your children to visit you. Nothing has changed that you are aware of. You have tried to speak to him and asked family members to speak to him too, but he has said he is fed up with bringing your children to see you and is not going to do it anymore. You can apply to the court for an enforcement order to force him to bring your children to visit you.

An **enforcement order** is an order that punishes someone for breaching a court order. The court can:

- make the person who has breached the order do unpaid work
- fine the person who has breached the order
- order that the person who has breached the order pays compensation to the other parent (for travel expenses where contact has not taken place)
- give the person who has breached the order a sentence of imprisonment or a suspended sentence
- move your children to live with someone else in situations where someone has refused to do what they are told lots of times without any good reason

Sometimes, letting someone know you intend to apply for an enforcement order is enough to get them to do what they are required by the order. Sometimes, you might apply for an enforcement order and the court will not make the order because they believe they should give the person another chance to comply with the order. It is hoped that by going to court this is enough to make the person understand that they must comply with the order.

The court will not make an enforcement order if the person who has breached the order has a reasonable explanation for it. What is reasonable will depend on everyone's individual circumstances.



You might find it helpful to speak to someone in the prison about what is happening to see if they feel the explanation is reasonable. You can speak to the family engagement worker or ask for legal advice from Prisoners' Advice Service.

Special guardianship orders

What is a special guardianship order?

A **special guardianship order** is an order that appoints a **special guardian** for your child. This person is normally a family member or friend. They could be a foster carer that your child has lived with for a long time. They are normally the person that your child is living with. The special guardian can make decisions for your child like where they should live or what contact they should have with you and other members of the family. A parent cannot be a special guardian.

Special guardianship orders are most common when the local authority has been involved with a family. They are seen as being more stable than foster care and may be more appropriate if you are going to be in prison for a long time or if the local authority is worried about your child. See our guide, **Children and the law: when social services are involved** for more information about when a local authority will become involved with families.

The local authority's role in a special guardianship order

If someone wants the court to make a special guardianship order, they must be assessed by the local authority first. They will have to tell the local authority that they want to be a special guardian 3 months before they make any application to the court.

The local authority will assess their ability to meet your child's needs. They will also put together a support package for the special guardian.

When the local authority assesses the person who would like to be a special guardian for your child, they will have to think about your relationship with your child and what contact they should be having with you.

Who can apply for a special guardianship order?

- anyone who has a child arrangements order that states your child lives with them
- anyone your child has lived with for 3 years if this was within the last 5 years and did not end more than 3 months before the application to the court
- anyone who has the consent of everyone with parental responsibility for your child
- a foster carer or family member that your child has lived with for 1 year and are still living with them when the application is made
- any person, including your child, who has the permission of the court to apply

Contact arrangements under a special guardianship order

WHEN THE COURT MAKES THE ORDER:

When the court makes a special guardianship order, they have to think about what the contact arrangements between you and your child will be. Read the local authority report for the court. It should say what they think about your contact.

If you are worried, you should tell the court why you are worried about your contact.

At the time that a special guardianship order is made, the court can also make a child arrangements order that sets out contact arrangements for a parent. When the court makes a special guardianship order, you can ask them to also make a child arrangements order for your contact and the special guardian will have to do what the order says.

AFTER THE COURT HAS MADE THE ORDER:

If your child already has a special guardian, then the local authority has a duty to assess whether assistance with contact arrangements is needed. You can speak to the social worker about your contact and ask them to help you come to an arrangement with the special guardian.

You can apply to the court for a child arrangements order for your child to have contact with you if you are not able to get agreement from the special guardian or the local authority. You should seek legal advice from a solicitor or speak to Prisoners' Advice Service about this.

See our guide, **Children and the law: when social services are involved** if you are concerned about your child and their special guardian. You can ask the family engagement worker to help you contact the social worker.

Contact Prisoners' Advice Service for legal advice on your options in this situation.

Effect of a special guardianship order on parental responsibility

If a special guardianship order is made, the special guardian will gain parental responsibility for your child until they are 18 years old unless the order is changed or ended by the court.

You do not lose your parental responsibility, but the parental responsibility that a special guardian has is slightly different from yours. They have to discuss important decisions about your child with you, but they can go against your views if they think this is in your child's best interests.

Effect of a special guardianship order on holidays

A special guardian can take your child out of the United Kingdom for up to 3 months without the consent of everyone with parental responsibility. If they want to take your child out of the United Kingdom for longer than this, they must have the consent of everyone with parental responsibility.

You can ask the court to include a condition in the order that the person your child lives with must tell you before they take your child out of the United Kingdom and give you information about where they are going and how long for. If taking your child out of the United Kingdom would interrupt your court-ordered contact, then they cannot do this without your agreement.

How long will a special guardianship order last?

A special guardianship order will last until your child reaches the age of 18 unless it is changed or ended by the court.

You can apply to end a special guardianship order before your child turns 18, but you will need to have the permission of the court to do this. To get the court's permission, you will have to show the court that there has been a significant change in circumstances since the special guardianship order was made. This might be that you have been released from prison and your child is living with you again.

“ If your child already has a special guardian... you can speak to the social worker about your contact and ask them to help... ”



Specific issue orders and prohibited steps orders

The person caring for your child may have to make decisions about your child's life. They should ask for your views on big decisions and get the agreement of everyone with parental responsibility. See our guide, **Children and the law: parental responsibility** for more information about parental responsibility.

What is a specific issue order?

If it is not possible to agree on some things, then anyone with parental responsibility or caring for your child can ask the court to make the decision instead and put this in an order. This is called a **specific issue order**.

For example, your child's father is caring for your child and he starts a relationship with someone of a different religion. His new partner is insisting that your child practices her religion too. Your child's father should discuss this with you. You have told him that you do not agree to this as your child follows your religion which is important to you and your child. You or the father of your child can apply to the court for a specific issue order for the court to decide on your child's religious upbringing.

What is a prohibited steps order?

If the person caring for your child goes ahead with their plan without your permission, you can apply to the court for an order to stop it. This is called a **prohibited steps order**.

For example, your child's father is caring for your child and he starts a relationship with someone of a different religion. His new partner is insisting that your child practices her religion too. You have raised your child in your religion and want them to continue to practice the same religion. You have been told that he is taking your child to church and has stopped celebrating your child's current religious holidays. You can apply to the court for a prohibited steps order which can stop your child's father from doing anything further to change their religion.

What kind of decisions will the court help with?

You can ask the court to make a specific issue order or prohibited steps order while you are in prison if you cannot agree about:

- your child's education – for example, what school they should go to
- your child's religion – for example, whether your child should be brought up in one faith or another
- your child's health – for example, what medical treatment your child should have
- your child's name – for example, your child's aunt wants to change your child's surname to her surname
- taking your child out of the United Kingdom

The court is unlikely to become involved in less important decisions about the way in which you bring up your child, such as the day-to-day decisions made by the person caring for your child while you are in prison. You are unlikely to be able to ask the court to interfere in decisions about, for example, the clothes the person with care of your child dresses your child in or the food your child eats (unless this is relevant to your child's health or religion).

How will the court make decisions?

If you apply for a prohibited steps order or a specific issue order, a copy of the application will be sent to the other person and the court will send you details of the date of the first hearing. You should ask the court to make a **production order** so that you are escorted to the hearing from prison.

In an emergency the court can make these orders without the other person being made aware of the hearing if they believe it is in your child's best interests. The court may make a prohibited steps order for a short time until they can arrange another hearing when the other person can go to court and explain their side of the story.

The court will base their decision on what is in your child's best interests and will consider all of the factors in the **welfare checklist** set out at page 5.

How long does a specific issue order or prohibited steps order last?

A specific issue order or prohibited steps order will last until your child is 16 years old or it is ended by the court.

You can ask the court to change or end a specific issue order or prohibited steps order. This will usually be because the order is no longer needed.

Moving homes within the UK

The person that cares for your child is free to move homes especially if this does not affect your child's contact with you or other family members and does not affect their schooling.

If the person looking after your child moves somewhere quite far from where they are currently living but within the UK, the court would expect them to discuss this with you and try to agree new arrangements in relation to schooling and contact arrangements. You should talk to them about their plans.

If the person caring for your child has thought through what they want to do and has a good reason why they are moving, the court is unlikely to stop someone moving to a new area, as long as your child's welfare is met.

If the person caring for your child has no clear plans or reason why they are moving, and you are worried the only reason they are moving is to limit the contact your child has with you, then the court may stop this under a prohibited steps order.

You can speak to your solicitor or Prisoners' Advice Service to get legal advice about your individual circumstances.



“ ...the court is unlikely to stop someone moving to a new area, as long as your child's welfare is met... ”

Taking your child abroad for a holiday

Before your child is taken abroad on a holiday the person caring for your child must get permission from you and anyone else who has parental responsibility for your child. Your permission is required even though you are in prison. This means that the person caring for your child needs your permission every time they plan to take your child abroad or, if you do not agree, they will need to get the court's permission.

Can someone take your child out of the country without your consent?

These rules apply to the United Kingdom (UK) which is England, Wales, Scotland and Northern Ireland.

The **only** time someone can take your child out of the UK without your consent is if there is a court order in place, for example:

- If the person caring for your child has a child arrangements order saying that your child lives with them, they can take your child out of the UK for up to 28 days without the consent of everyone with parental responsibility.
- A special guardianship order allows your child's special guardian to take your child out of the UK for up to 3 months without the consent of everyone with parental responsibility.
- A specific issue order can give someone permission to take your child out of the UK on one particular holiday. You would know if someone has asked the court to make this order because they must tell you.

If none of this applies, and someone has taken your child out of the UK without your consent, this is child abduction. See the section on **child abduction on page 21**.

Even if the person caring for your child has a child arrangements order or special guardianship order in their favour, they should still tell you that they are going on holiday with your child and give you information about the holiday.

If the person caring for your child has a child arrangements order or special guardianship order in their favour, they cannot take your child on holiday without your consent if the holiday interferes with any court-ordered contact between you and your child.

Child abduction

It is a criminal offence for someone to take or send a child under 16 years old out of the UK without the consent of everyone with parental responsibility for the child or a court order.

The family engagement worker can help you make calls in an emergency.

If you are worried that someone intends to take your child out of the UK, you should contact the police and try to speak to a solicitor as soon as possible. Someone may have threatened to take your child, or you may have found out that someone is making plans to take your child abroad. The police can contact all the national police forces and the immigration authorities. If there is a **real** and **imminent** risk of your child being abducted a port alert can be issued at all ports and airports to help stop your child leaving the UK. The person who has abducted your child could be arrested and charged with child abduction.

You can apply to the court for a prohibited steps order to stop someone from removing your child from the UK. See the section in this guide on **Specific issue orders and prohibited steps orders**.

If you believe your child has been abducted, seek urgent legal advice. You may be able to get free legal advice from a legal aid solicitor. There is an international convention that some countries have signed up to called the Hague Convention. The purpose is to make it easier to return children to their country when they have been abducted. You can contact **Reunite** which is a specialist charity that supports parents whose children have been abducted. See the **Useful Contacts** section at the end of this guide.



“ If you are worried that someone intends to take your child out of the UK, you should contact the police and try to speak to a solicitor as soon as possible. ”

Who can help you in the prison



The **family engagement worker** can provide a lot of support including contacting family or social workers on your behalf.



Prisoners' Advice Service can provide legal advice and should be able to tell you if you can get legal aid for your case.



Samaritans can provide emotional support if you need a safe place to talk.



The **chaplaincy** can provide emotional support and someone to talk to about your problems.



A **peer mentor** can help you talk through your problem.



The **mental health team** are available if you feel you are being affected by any issues in relation to your family



Speak to a **custody officer** if you feel overwhelmed and need support immediately.



Useful contacts

Please be aware that most of the services listed below work across England and Wales but some are limited to certain areas or specific prisons. We have included services that may be limited in this way because availability changes and a service that is currently only available in some prisons, may be available in all prisons in the future. It is always worth exploring what support you can get.

PRISONERS' ADVICE SERVICE

For free legal advice and support

T: 020 7253 3323

Monday, Wednesday and Friday.
10:00-12:30 and 14:00-16:30

Prisoners' Advice Service
PO Box 46199
London EC1M 4XA

www.prisonersadvise.org.uk

RIGHTS OF WOMEN

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children

Family law advice

T: 020 7251 6577

Mon-Thurs: 7-9pm & Fri: 12-2pm

Immigration law advice

T: 020 7490 7689

Mon and Thurs: 10am-4pm

ADVOCATE

(previously Bar Pro Bono Unit)

For representation at court. A solicitor will have to refer you for support

www.weareadvocate.org.uk

PERSONAL SUPPORT UNIT

For support during court hearings

T: 020 7947 7701

REUNITE

For legal advice about child abduction

Advice line: 01162 556 234

NATIONAL YOUTH ADVOCACY SERVICE

Helpline for support and advice for your child if they are in care or involved in court proceedings

Helpline: 0808 808 1001

FAMILY RIGHTS GROUP

Support for parents and family members when social services are involved

Freephone 0808 801 0366

THE LAW SOCIETY

For help finding a solicitor

T: 020 7242 1222

SOLICITORS REGULATION AUTHORITY

For information about how to complain about poor service from a solicitor

www.sra.org.uk

LOCAL GOVERNMENT OMBUDSMAN

To complain about a local authority once you have been through their complaints process

Helpline: 0300 061 0614

SAMARITANS

Emotional support if you need a safe place to talk

Freephone: 116 123

WOMEN IN PRISON

For advice and guidance in prison, on release and in the community

Freephone: 0800 953 0125

BIRTH COMPANIONS

Support for pregnant women and new mothers

Dalton House
60 Windsor Avenue
London SW19 2RR

FAMILY LIVES

Support for parents and families on a broad range of issues including adoption

Helpline: 0808 800 2222

AFTER ADOPTION - BIRTH TIES

Helpline for birth parents of children who have been adopted

Helpline: 0800 840 2020

NATIONAL OFFENDERS' FAMILIES HELPLINE

Support for your family

Telephone: 0808 808 2003

HIBISCUS

Support for black, Asian, minority ethnic or migrant women in prison

Telephone: 020 7697 4120

E: info@hibiscus.org.uk

ADVANCE - THE MINERVA PROJECT

Support for women in contact with the criminal justice service to prevent re-offending

It is not possible to refer yourself

*- speak to the offender service about whether they can help and ask them to call: **020 8741 7008***

MIND

A national charity offering support in relation to mental health

Infoline: 0300 123 3393

MENCAP LEARNING DISABILITY HELPLINE

Advice and information about learning disability

Helpline: 0808 808 1111

The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

July 2019

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

JUSTICE BEHIND BARS



Lancaster University
Law School

PAS offers free legal advice and information to prisoners throughout England and Wales regarding their rights, conditions of imprisonment and the application of the Prison Rules.

We pursue prisoners' complaints about their treatment in prison by providing advice and information and, where appropriate, taking legal action.

Examples of issues we can advise on include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, resettlement and healthcare matters. We also provide advice on Family Law and on Immigration Law to prisoners with issues relating to detention or deportation.

If you have something that you'd like to discuss with one of our Caseworkers, you can:

Write to us at: **Prisoners' Advice Service, PO Box 46199, London EC1M 4XA**
(Mark your envelope Legal Mail Rule 39 in all correspondence with PAS)

Call us Monday, Wednesday or Friday between 10:00-12.30 and 14.00-16.30 on 020 7253 3323

We produce the quarterly Prisoners' Legal Rights Bulletin, which shares information about key cases and changes in Prison Law, and is free to prisoners. To sign up for this, please write to the address above.

www.prisonersadvice.org.uk

Prisoners' Advice Service (PAS) is a registered charity (No: 1054495) and is a company limited by guarantee (No: 3180659).

RIGHTS of
WOMEN
helping women through the law

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

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Charity number: 1147913