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CHILDREN ACT

The children

The Children Act 1989 came into force in October 1991 and changed the arrangements relating to custody, care and control, and access.

The Act introduced three new arrangements in connection with children, namely, residence, contact, and parental responsibility.

However when the Children and Families Act 2014 (CFA 2014) came into effect, the terms 'residence' and 'contact' have no longer been used in private law children proceedings. CFA 2014, s 12 amended section 8(1) of the Children Act 1989 by removing the definitions of 'contact order' and 'residence order' and inserted instead a new single order called a child arrangements order (CAO).

A CAO means an order relating to:

- a) Whom a child is to live, spend time or otherwise have contact with, and
- b) When a child is to live, spend time or otherwise have contact with any person.

A CAO that regulates the child's living arrangements, ie with whom they will live and when, covers those matters that were formerly contained in a residence order.

A CAO that regulates with whom a child is to spend time or otherwise have contact and when, covers those matters that were formerly contained in a contact order

Specific matters that arise in connection with the exercise of parental responsibility for a child and that do not concern with whom the child should live or spend time will continue to be dealt with by means of specific issue orders or prohibited steps orders.

A prohibited steps Order limits when certain parental rights and duties can be exercised.

A specific issue Order contains directions to resolve a particular issue in dispute in connection with the child.

A prohibited steps or specific issue Order could be obtained where there is a dispute as to the child's education, determining whether the child can be taken abroad, or preventing a parent from seeing the child.

In deciding whether an order should be made, the Court will have regard to S1(3) of the Children Act 1989 and in particular:

- (a) The ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding. More consideration is given to the wishes of an older child and their wishes will carry more weight with the court when they consider what order to make, if any, in the circumstances);
- (b) The child's physical, emotional and educational needs;
- (c) The likely effect on the child of any change in his/her circumstances;

- (d) The child's age, sex, background, and any other characteristic which the Court considers relevant;
- (e) Any harm which the child has suffered or is at risk of suffering;
- (f) How capable each of the child's parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting the child's needs;
- (g) The range of powers available to the Court under the Children Act in the proceedings in question.



Parental responsibility

What is parental responsibility?

Parental responsibility is defined in law 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.’

Parental responsibility is concerned with the care and upbringing of the child until they grow up. In reality, it gives the parent responsibility for taking all the important decisions in the child’s life, for example, education, religion and medical care, discipline. If there is a dispute over the exercise of independent action taken by one parent, it can be challenged by an application for either a prohibited steps order or a specific issue order.

It also enables a parent to take day-to-day decisions, for example, in relation to nutrition, recreation and outings. The duties involved in parental responsibility will change from time to time with differing needs and circumstances, and vary with the age and maturity of the child. It is important to bear in mind that a child will gradually become mature enough to take decisions himself.

Parental responsibility does not entitle someone to interfere with day-to-day decisions such as what the child wears, their hobbies or choice of TV

programmes etc. Parental responsibility lasts until the child reaches 18 or marries between the ages of 16 and 18.

Who has parental responsibility?

A child’s mother automatically has parental responsibility and does not lose it if she and the child’s father separate, whether or not they were married.

A father who is married to the child’s mother when the child is born will automatically have parental responsibility. A child’s father can also acquire parental responsibility by marrying the mother after the child’s birth. Parental responsibility is not lost on divorce.

Fathers of children born after 1 December 2003 who are not or have not been married to the child’s mother will have parental responsibility if they are named on the birth certificate of the child. Fathers of children born before 1 December 2003 who were or are not married to the child’s mother may not have parental responsibility. It can be obtained by agreement with the child’s mother or by court order.

Certain court orders can confer parental responsibility for a child. A person obtaining parental responsibility through a court order does not have to be a parent of the child.

For same-sex couples, the situation is more complicated, depending on how the child was conceived and in what family circumstances.

How do I obtain parental responsibility?

For children born after 1 December 2003 where the parents were not and have not been married, it is possible to re-register the child’s birth to add the father’s name to the birth certificate. This gives the father parental responsibility.

Parental responsibility can be granted to a father by written agreement with the child’s mother. A parental responsibility agreement is a legal document that must be signed and witnessed by a court officer. To be effective, it must also be filed at the Principal Registry of the Family Division in London. A step-parent can also acquire parental responsibility by agreement.

If agreement is not possible, a father can apply to court for a parental responsibility order. The child’s mother can oppose the application and put forward her reasons for doing so. When considering whether to allow a father to have parental responsibility, a judge will consider the father’s commitment and attachment to the child, and whether his reasons for applying are genuine. Generally, courts tend to award parental responsibility unless the father poses a risk to his child or to the mother.

A successful application to court for a special guardianship order or a parental order after surrogacy will also automatically grant parental responsibility. Parental responsibility may also be granted when the court makes a child arrangements order.

How can you lose parental responsibility?

There is no limit to the number of people who can have parental responsibility at any one time, and no one will lose parental responsibility just because another person acquires it.

If, on divorce, a residence order is made in favour of a grandparent, this will mean that the child's mother, father and grandparent will all have parental responsibility. The parents 'lose' the responsibility of having the child living with either of them because of the residence order but retain all other responsibilities. If a care order is made, the local authority acquires parental responsibility but the parents still, in theory, retain parental responsibility. However, in practice the local authority is given the discretion to determine the extent to which a parent may meet his or her parental responsibility

Two situations in which parents will lose parental responsibility are:

- (a) The parent's death; and
- (b) The child's adoption.

An unmarried father who has acquired parental responsibility by a parental responsibility order or parental responsibility agreement, or by registration on the birth certificate, can lose it if the court makes a further order ending it.

Anyone other than an unmarried father, who has acquired parental responsibility by being granted

a residence order, will lose it automatically when the residence order terminates.

A married father may lose parental responsibility if he is found not to be the child's biological father

An order ending parental responsibility can only be made when an application has been made for such an order by someone who has parental responsibility for the child (including the father himself), or with leave of the court by the child.

The Children Act contains no provision that would give the court jurisdiction to revoke a father's parental responsibility for his child in circumstances where that parental responsibility is conferred upon him where he was married to the child's mother at the time of the child's birth.

Exercising parental responsibility

Even though several people may have parental responsibility for a child, in theory it is possible for each to act alone with no duty to consult anyone else. However, the court has held that when there was joint parental responsibility, this did not confer the right unilaterally to change the child's surname, and suggested that good practice is to refer to the court all disputed issues regarding change of surname regardless of who has parental responsibility. Also, the court has held that there is a small group of important decisions made on behalf of a child which, in the absence of agreement by all those with parental responsibility, ought not to be carried out or arranged by the one-parent carer. Instead, they

should be referred to the court for the court's determination, on the facts of the case each time, by way of a specific issue order.

The only way to challenge a decision is to make an application to court, for example, for a specific issue order or a prohibited steps order. If a child is being adopted, or taken out of the UK, there are specific provisions requiring both parents' consent, or the consent of the court.

It is not possible to transfer or surrender parental responsibility. However, parents can delegate responsibility for a child on a temporary basis, for example, to a school for a school trip, or to a nanny or childminder. Temporary carers do not acquire parental responsibility but 'may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare'. This could cover emergency medical treatment for the child if needed when the parent is absent, for example during a school trip, or when the parent is at work during the day and a nanny is in charge.



Prohibited steps order

A prohibited steps order is an order that no step that could be taken by a parent in meeting his or her parental responsibilities for a child and which is of a kind specified in the order, shall be taken by any person without the consent of the court.

This order deals with a specific problem which has arisen. However, it cannot overlap with a Child Arrangements Order. Section 9(5) of CA 1989 provides that the court cannot make a prohibited steps order or a specific issue order with a view to achieving a result that could be achieved by a Child Arrangements Order.

If no Child Arrangements Order (living with order) were in force, a prohibited steps order could be used to prohibit the removal of the child from the country, or to prevent a change of surname, or preventing one parent from moving with the child from one part of the UK to another.

Specific issue order

A specific issue order is an order giving directions for the purpose of determining a specific question which has arisen or which may arise in connection with any aspect of parental responsibility for a child. It does not give a parent a general power, it just makes a decision on one issue over which there is a disagreement which cannot be resolved. It could be used to decide which school a child should attend, whether a child should have a particular operation (including, for example,

sterilisation or circumcision) or course of treatment or immunisation (such as the MMR vaccination), or the religion a child should adopt.

Who can apply?

Parents, step-parents with parental responsibility, guardians, special guardians and anyone who is named in a child arrangements order as a person with whom the child is to live (formerly known as a residence order), may apply to the court for a specific issue or prohibited steps order without requiring the court's permission to do so. Anyone else, including the child him/herself, will need the court's permission to make an application for a specific issue or prohibited steps order.

An order can be for a specified length of time or last until the child reaches 16 years of age. In limited circumstances orders can last until the child is 18 years of age.

What is the procedure?

If it is not possible to reach an agreement you can apply to the court for an order. It is now a requirement that before you make an application for a prohibited steps or specific issue order you must attend a family mediation information and assessment meeting (MIAM). A MIAM is a short meeting that provides information about mediation as a way of resolving disputes. A MIAM is conducted by a trained mediator who will assess whether mediation is appropriate in the circumstances. If both parties are agreeable then you can attend a MIAM together; if, however, that

is not suitable then separate meetings will be held. The intention is to see whether your dispute could be resolved in mediation rather than by using the courts.

In some circumstances one of the exemptions to attending a MIAM may apply. These include cases where an application must be made urgently, where there are child protection concerns or where there are issues of domestic violence. Depending on the situation, there may be an exception to the requirement to attend a MIAM.

The court procedure is the same for applications for both specific issue and prohibited steps orders.

An application is made on a specific court form, which sets out the details of all the adults and children in the case, and requires you to say what order you are asking the court to make and why. If your application is urgent your family lawyer will be able to advise you as to what you need to do. It may mean you make the application without telling the other parent what you are doing, but in most cases your application will be sent to the child's other parent and any other relevant adults. When the court receives the application, it will set a time and place for a first court appointment.

The person starting court proceedings is the applicant. The child's other parent and any other person involved may be a respondent. The respondent(s) must file certain forms with the court to confirm they have seen the papers and should also prepare an answer setting out their case.

What happens at court?

The first court hearing is known as the first hearing dispute resolution appointment (FHDRA) and it is when the court investigates what the issues are, enquires into the possibility of settlement and gives directions about how the case should proceed if it is not possible to reach an agreement. The court might order that a Cafcass (Children and Families Court Advisory and Support Service) officer prepares a report to help the judge at the final hearing or it might order that the child be legally represented in the proceedings. Sometimes the court will adjourn the case for mediation to take place.

If the issues can't be sorted out the court will hold a final hearing. Here, a judge will hear evidence from the adults involved, the Cafcass officer and any other necessary experts, and then make a binding decision.

Child arrangement orders

A child arrangements order (CAO) is an order that regulates arrangements for a child that relate to any of the following:

1. With whom the child is to live, spend time or otherwise have contact.
2. When the child is to live, spend time or otherwise have contact with any person.

Contact simply means the time that a child spends

with an adult. There are several ways that contact may take place:

1. Direct contact between the child and the person named in the order.
2. Overnight staying contact.
3. Supervised contact, and
4. Indirect contact through letters or cards.

In rare circumstances, where the best interests of the child dictate, the court can order that there is no contact.

A CAO may provide for the child to live with one parent only or it may provide for the child to share their time between both parents.

An order that provides for a child to spend time with both parents does not necessarily mean the child's time will be spent equally between their parents. It is more a reflection of the parents' equal status in the eyes of the court. The child may still spend more time at one home than at the other and the child arrangements order will usually say in detail how the child's time is to be divided.

Who can apply?

Certain people are automatically entitled to apply for a CAO. A child's parent can always apply for a CAO, as can a child's step-parent (if they have parental responsibility or the child has been treated as a child of the family), guardian, special guardian or anyone with whom the child

has lived for a period of at least three years (this period need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application). Other people may also apply if they get the consent of everyone with parental responsibility or anyone who is named as a person with whom a child is to live under a CAO. A relative of a child may apply for a CAO that regulates with whom the child is to live if the child has been living with them for at least one year immediately before making the application. In addition certain other people may be eligible automatically to apply for a CAO if they meet certain specific criteria which is set out in the [Children Act 1989](#), your family lawyer will discuss with you whether your circumstances meet that criteria. Anyone else who is not automatically eligible may apply for a CAO if they first obtain permission of the court.



Mediation

It is usually best to reach an agreement as to the arrangements for your child(ren) amicably with the other parent. This can be done by discussing matters between you. If you reach an agreement in this way it is not usually necessary to obtain a Court Order although you can submit an agreed Order to the Court to formalise your agreement, as the Court only usually intervenes when parents cannot agree, it may not be approved.

If you are unable to reach an agreement, it may be necessary for you to make an application to the Court for a Child Arrangements Order. In most cases it is compulsory for you to attempt to resolve the matter at mediation by attending a Mediation Information and Assessment Meeting (MIAM) before you can submit your application to the Court. This requirement is to help parents avoid Court proceedings where possible and to encourage them to agree arrangements for the child(ren).

If your case is urgent, involves elements of domestic abuse or if there are child protection concerns, you may be exempt from the requirement to attend a MIAM. If you qualify for an exemption, mediation breaks down or the other parent does not attend, you can then submit your application to the Court for a Child Arrangements Order.

What is the procedure?

If it is not possible to reach an agreement about time with the children or where they should live, you can apply to the court for an order. Before you can do this you are now required by the rules governing these applications to attend a meeting with a mediator to see whether mediation might be suitable, rather than using the court. This requirement applies unless certain exemptions, including issues relating to the safety of the child or domestic violence, apply. The other party to the proceedings will also be encouraged to attend mediation. If you are willing to attend together then the mediation meeting may be conducted jointly; otherwise, separate meetings will be held.

An application is made on a specific court form, which sets out the details of all the adults and children in the case. It then requires you to say what orders you are asking the court to make and why.

When the court receives the application, it will set a time and place for you and the other person or people involved to have a first court appointment (called a first hearing dispute resolution appointment (FHDRA)). Information about this appointment and a copy of the application form must usually be sent to any other adults involved so that they have time to prepare a response. The person starting the court process is called the applicant and the other parent, and any other adult with parental responsibility or looking after the child, is a respondent.

The respondent(s) must complete certain forms and send them to court to confirm they have seen the papers.

The application

The applicant must file Form C100 (or Form C2 if there are already existing family proceedings), together with sufficient copies for service (and a fee). If the applicant alleges that the child has suffered or is at risk of suffering harm, he must also file a Form C1A. The standard form enables the applicant to include the details of the order needed, any directions and the reasons for applying. Form C100 (and all other documents used in the proceedings) should be simply worded using non-inflammatory language.

On filing, the court fixes a date for a preliminary hearing known as a First Hearing Dispute Appointment (FHDRA). The applicant must join as a party every person whom he believes to have parental responsibility for the child. The FHDRA usually takes place within 6 weeks of the application.



Cafcass

Once an application for a Child Arrangements Order has been made, the Court will refer the matter to Cafcass (Children and Family Court Advisory and Support Service). Cafcass will carry out safeguarding checks with the Police and Social Services as well as discussing matters with the applicant and with the other party. Cafcass will then prepare a summary of their findings and recommendations for the court in a safeguarding letter (also known as a safeguarding report). This letter is also usually sent to the parties before the first Court hearing.

If Cafcass is concerned about the welfare of the child(ren) as a result of their enquiries, they can make various recommendations. Common recommendations include the preparation of a Section 7 Report to give the Court a more detailed analysis of the issues, police disclosure, medical disclosure and attendance on courses to address drug misuse or domestic violence. If either party has made allegations of domestic abuse or raises child protection concerns, Cafcass can recommend that the Court list a Finding of Fact hearing to decide whether the allegations are true.

Cafcass almost always make a recommendation for both parties to attend a Separated Parents Information Programme (SPIP). This is a short course which helps parents understand how to put children first in the midst of their separation, even where there is a dispute. The course helps parents learn the fundamental principles of how

to manage conflict and difficulties. The course is free and parents attend separately.

Service

Copies of the application must be served on all parties before the hearing, together with a Notice of Proceedings showing the date for the FHDRA hearing, and blank Acknowledgement. These papers are usually served by the Court.

Without notice applications

All s 8 orders can be made without notice. However, without notice interim orders should be made only in exceptional circumstances where it is necessary to protect the child.

First hearing dispute resolution appointment (FHDRA)

The court will fix the FHDRA hearing when an application is issued.

The task of the court at the FHDRA is to decide how the case should proceed and whether any further information or evidence is required. The outcome of the hearing will often depend upon the content of the Cafcass safeguarding letter. A representative from Cafcass will be present at the hearing to explain their recommendations to the Court.

If there are no safeguarding concerns, it is possible to reach an agreement with the other party at the hearing. In those circumstances the Court may make a final Order that day.

If the Court requires further information before an Order can be made or if agreement cannot be reached, another hearing will be listed. The type of hearing will depend on the circumstances of the case but it is often a Dispute Resolution Appointment (DRA). If Cafcass recommend a Finding of Fact Hearing then this is likely to be scheduled between the FHDRA hearing and the DRA hearing.



Preparation of a Section 7 Report by a Cafcass Officer

The court will sometimes order a Section 7 report in contested proceedings. This will be prepared by a Cafcass officer and will be filed with the court before the next hearing and made available to the parties.

The reporter is independent of all parties and will have access to the court file and, depending on what the report is to cover, will interview the parties and the child(ren), as well as anyone else who appears relevant, for example schoolteachers, the family doctor, grandparents. The reporter has a responsibility to make recommendations about what is in the child(ren)'s best interests. This is done by compiling a written report which will often include conclusions and recommendations as to which order should be made. In the majority of cases the court will be guided by the recommendations contained in that report but in all cases, the court's paramount concern is of the welfare of the child(ren) involved.

In some cases the court will order the Social Services to compile such a report instead of the Cafcass Officer. If this is the case then the above principles also apply when such a report is completed.

In some areas of the country there is a considerable delay in the preparation of these reports and it is, therefore, important to obtain a direction to prepare a report as early as possible in the proceedings.

Dispute resolution appointment (DRA)

At this hearing, the parties are encouraged to reach an agreement through negotiation and discussion. If matters cannot be agreed then the Court will list the matter for final hearing. Sometimes the Court request that the Cafcass officer attends the DRA to assist in resolution of matters.

Final hearing

At the final hearing the Court will take all of the evidence in the case into account, together with a range of factors relating to the child(ren)'s welfare in reaching its decision. Welfare considerations will include the child(ren)'s physical, emotional and educational needs, the likely effect on any change in their circumstances, the age, sex and background of the child(ren) and any potential risk of harm. The Court can also take into account the capability of each parent in meeting the child(ren)'s needs. The Court will have to be satisfied that any arrangements are safe and can place restrictions any order that it makes.



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