



# Taylor *Bracewell*

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## Family Law

### Parental Responsibility v1

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# Parental Responsibility

The Children Act 1989 introduced the term parental responsibility which is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to his/her child and the child’s property”.

Separate guidance issued when the Children Act came into force states that parental responsibility is said to be concerned with “bringing the child up, caring for him/her and making decisions about him/her”.

Some aspects of parental responsibility which have been acknowledged by the Courts since the term was created by the Children Act include

- naming the child
- choosing the child’s religion
- making arrangements for the child’s education
- consenting to medical treatment or the taking of blood for testing
- consenting to the child’s temporary removal from England and Wales e.g. for holidays or extended stays
- administering the child’s property

## Who has parental responsibility?

The child’s mother always has parental responsibility for her child and this cannot be removed, suspended or altered in any way, at any time, whatever other order may be made, save for an adoption order.

She will share parental responsibility with the child’s father if she is married to him at the time of the child’s birth. Parents who share parental responsibility will continue to do so whether or not they live together or remain married.

If not married to the mother, the child’s father can acquire parental responsibility and he will then share it with the mother, if

1. He subsequently marries the mother



2. He is registered as the child's father on the child's birth certificate after the 1 December 2003
3. He and the mother enter into a parental responsibility agreement
4. He obtains a parental responsibility order from the Court; or
5. He obtains a residence order from the Court

Fathers who acquire parental responsibility upon marriage or registration retain it and share it with the child's mother until the child reaches 18 unless an adoption order is made.

Registration as father on the child's birth certificate before 1 December 2003 did not confer parental responsibility on the father but it may be persuasive evidence in support of a subsequent application to the Court for an order (as to which see below).

## What is a parental responsibility agreement?

Unmarried parents may be placed in the same position as married parents with respect to their child, by entering into an agreement that the father has parental responsibility. To be effective, a parental responsibility agreement must be made in a particular form and must be filed with the Principal Registry of the Family Division. We can assist you with the preparation, completion and filing of an agreement.

Once made, the parental responsibility agreement may only be brought to an end by order of the Court on the application of any person with parental responsibility or the child, with leave or permission of the Court, if he/she is deemed to have sufficient understanding to make the application. On any application to bring the agreement to an end, the welfare of the child is the Court's paramount consideration.

## What is a parental responsibility order?

If no agreement can be reached, an unmarried father who is not named on the child's birth certificate after 1 December 2003, may apply to the Court for an order that he shall have parental responsibility for the child. Notice of the application must be served on the child's mother who will have the opportunity to put forward any objections which she may have.



When considering any application for a parental responsibility order, the Court must have the child's welfare as its paramount consideration and must be satisfied that making such an order would be better for the child than making no order.

Specifically, the Court must be satisfied that the applicant is the child's biological father (and orders can be made for DNA testing to establish paternity if it is not conceded by the mother) and must consider:-

- The degree of commitment which the applicant has shown towards the child
- The degree of attachment which exists between them
- and the reasons for applying

Following the change in the law which came into effect from 1 December 2003, it is also thought that registration as father on the child's birth certificate before that date would be another factor to be considered.

Unless the application is conceded the Court is likely to seek assistance from the Children and Family Courts Advisory and Support Service (CAFCASS) in the form of a written report following enquiry and investigation by a Children and Family Reporter. Such a Report usually takes 14 to 16 weeks. If matters cannot be agreed, the parents will be invited to submit written statements setting out their reasons for and against an order being made and the Judge will then hear evidence and submissions before making a decision.

Once again, any person with parental responsibility or the child (with sufficient understanding) may apply for the order to be set aside. Otherwise it remains in force until the child reaches 18 unless an adoption order is made.

As a general rule, Courts usually favour a father having Parental Responsibility unless there are exceptional circumstances which leads the Court to believe that this would not be in the child's best interests.

## Can step-parents acquire Parental Responsibility?

Since 30 December 2005 it has been possible for step-parents to obtain Parental Responsibility. A step-parent (mother/father) is defined as "*someone who is married to a person with Parental Responsibility*".



This can be obtained with the agreement of the parent(s) with Parental Responsibility by the signing of a Parental Responsibility Agreement which is filed with the Principal Registry of the Family Division.

If no agreement can be reached with the parent(s) a step-parent can make an application to Court for a Parental Responsibility Order. Such an application is considered by the Court as set out above at paragraph 4.

## Parental Responsibility on the making of Residence and other orders.

If an order is made that a child should live with his father (a Residence Order) and he does not already have parental responsibility for the child, the court must make an order granting parental responsibility to the father at the same time. He will retain parental responsibility even if the Residence Order is later discharged, unless a separate application is also made and granted for the parental responsibility order to be set aside (see above).

Where a Residence Order is made in favour of a person who is not the child's parent or guardian, that person will acquire parental responsibility but only during the continuance of the Residence Order. Similarly, a Local Authority in whose favour a care or interim care order is made acquires parental responsibility for the child, again during the continuation of that order.

We hope that these notes are helpful but if you have any questions on the meaning of parental responsibility, who has it and who may acquire it, how it is shared and exercised and how it may be lost you should make a further appointment for a more detailed discussion.

## Need more information?

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