

## A brief guide to The Children Act 1989

### Welfare Principles

- 1 The cardinal principle of the Act is that the welfare of the child is paramount when an issue concerning the upbringing of a child has to be decided by a court under this legislation. This means that it is more important than either parent's views or the views of any other adult involved in the child's life.
- 2 Although "cardinal" it does not apply to every issue involving a child.
- 3 There is a presumption that no Order will be made by the Court unless it is better for the child for an Order to be made.
- 4 There is an emphasis on avoiding unnecessary delay.

### The Major Concepts Of The Children Act

#### 1 Parental Responsibility

This replaces the old idea of "custody" and recognises that parents have responsibility for their children rather than "rights", and also should consult with each other before making major decisions relating to the welfare, education etc. of the child(ren).

A mother has Parental Responsibility for her child from birth. The father's position depends on various factors. Firstly he will automatically have Parental Responsibility if he is married to the mother either before or after the birth and secondly, if the child's birth was registered on or after 1 December 2003 and if he together with the mother registers the birth of the baby. If the father has not registered the birth of the baby with the mother, or the child's birth was

registered before 1 December 2003, then the mother may agree that he has Parental Responsibility by entering into a Parental Responsibility Agreement, or a Parental Responsibility Order is granted to him by the Court. Also, if he has not previously had Parental Responsibility but obtains a Residence Order then the father will gain Parental Responsibility at that time.

Any other person will have Parental Responsibility for a child automatically if they are awarded a Residence Order by the Court in relation to that child. This Parental Responsibility will only last for the duration of the Residence Order.

Where children are subject to Care Proceedings and if an Interim Care Order or a full Care Order is made, then the Local Authority also have Parental Responsibility, in addition to any others who had Parental Responsibility prior to the making of the Order.

If, after a Care Order has been made, the child is to be adopted, the Parental Responsibility of the natural parents will be affected. If the Local Authority obtains a Placement Order (ie. an Order that the child be placed with prospective adopters), this not only grants the Local Authority Parental Responsibility but also the power to restrict the Parental Responsibility of the natural parents. The Parental Responsibility of the natural parents is terminated upon an Adoption Order being made.

Otherwise Parental Responsibility continues throughout the child's minority.

An un-married father who has acquired Parental Responsibility by way of agreement or Court Order can have his Parental Responsibility removed by Order

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of the Court, although this is only in very exceptional circumstances.

### 2 Residence

A Residence Order replaces the old idea of care and control. The Order designates with whom a child is to live. It automatically confers the right to the person with a Residence Order to take the child abroad for the purposes of a holiday for up to one month, unless the Court orders to the contrary. Residence may be shared amongst more than one person. A Residence Order expires on the child's 16th birthday (18 in exceptional circumstances) or if both natural parents, each having parental responsibility, live together for a continuous period exceeding 6 months, or by further order of the court.

### 3 Contact

This replaces the old idea of access but differs to access. A Contact Order requires the person with whom the child is living to allow the child to visit or stay with or otherwise have contact with a named person. The Contact Order expires on the child's 16th birthday unless there are special circumstances or if the parents with parental responsibility live together for a continuous period exceeding six months.

Directions and conditions may be attached to the Contact Order.

### 4 Prohibited Steps Order

This is an Order that no step which could be taken by a parent in meeting his or her parental responsibilities of a specific type, shall be taken without leave of the Court. It prevents certain actions being taken in relation to the child or being imposed by the

parent regarding the child – such as a voluntary medical procedure. Conditions and Directions may be included in the Order.

### 5 Specific Issue Order

These enable a parent and/or others to bring a particular question relating to the exercise of parental responsibility to be determined by a Court. An example of this is for the future of the child's schooling or medical treatment. Directions and Conditions may be made with the Order.

Any of the above four Orders (numbered 2-5 above) may be made by the Court at any time during family proceedings without a specific application being made. This includes in divorce proceedings when the Court has a duty to consider the arrangements for the children and decide whether the Children Act powers should be used.

## How To ask The Court For An Order

### 1 Where there are ongoing Divorce Proceedings

The person initiating those proceedings ("the Petitioner") has to state in the Petition whether or not they will be seeking any Order in relation to the child. They also have to lodge with the Court a Statement of the proposed arrangements for their children which sets out both the arrangements that exist now and any anticipated changes.

In the ideal situation, this statement is agreed by the parents and signed by them both then approved by the spouse receiving the divorce proceedings ("the Respondent")

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in the Acknowledgement of Service of the divorce proceedings.

The District Judge upon deciding whether or not there should be a Decree Nisi will also decide whether or not s/he should exercise any of his/her powers under the Children Act 1989 to hold a hearing, give general directions about a specific issue, seek information or direct the involvement of a CAFCASS Officer, and whether or not to delay the pronouncement of the Decree Absolute until these matters are resolved.

If the Respondent spouse objects to the Petitioner's proposals and wishes to have the matter adjudicated by the Court, not only does s/he have to express this in the Acknowledgement of Service but s/he too may wait for the District Judge to give Directions in the divorce or initiate the process by making a formal application.

A Direction may be given to a spouse who is a party to other proceedings already in progress to initiate Children Act proceedings. If so a Form C2 will be used with the appropriate court fee.

### 2 Without Divorce Proceedings

A parent (or other interested person) may approach the Court for an order without any other court proceedings.

In cases commenced by a parent, the application in Form C100 is used, with one form per family and one fee per family, currently £175 as at January 2009.

In some cases, the adult will require permission of the court to make an application of this type, e.g. grandparents, but usually parents do not need the Court's permission.

The person making the application usually should initiate proceedings in a Family Proceedings Court unless a higher court such as a County Court is more appropriate to the case. If there are existing court proceedings, this new matter has to be issued in the same Court. A Judge will decide if it should remain in that Court or be transferred to another – usually the Family Proceedings Court for the area in which the child resides.

Following the issue of the application, the other persons who are designated to be Respondents, have the opportunity to lodge Notice of their wish to be involved in the proceedings. All parties are brought to the Court to see if the matter can be resolved by agreement. If not, a decision is made about which is the appropriate Court to continue to deal with the case and directions are given for a timetable of what information has to be supplied to the Court and when.

The avoidance of delay is a significant matter. Usually there is also a short hearing a couple of weeks before the final full hearing to attempt to narrow issues and achieve a late settlement and ultimately to ensure that all of the information which the Judge will need to make his or her decision will be available on the day.

### Check List Of Relevant Matters For The Decision

The Children Act 1989 specifies a check list of the major factors that must be taken into account by the Court when deciding the case. These are:-

- a The ascertainable wishes and feelings of the child concerned (considered in the

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- light of the child's age and understanding).
- b The child's physical, emotional and educational needs.
- c The likely effect on the child of any change in circumstances.
- d The child's age, sex, background and any characteristics which the Court considers relevant.
- e Any harm the child has suffered or is at risk of suffering.
- f How capable are each of the child's parents and any other person in relation to whom the Court considers the question to be relevant of meeting the child's needs.
- g The range of powers available to the Court under the Act in the proceedings in question.

### Other Orders

- 1 An unmarried father may apply for a Parental Responsibility Order. (see above)
- 2 An Application may be made to appoint or terminate the position of a Guardian. The Guardian may be appointed in writing e.g. in or with a will, by someone with a Residence Order or parental responsibility.
- 3 A Special Guardian may be appointed by the Court for example when a relative has taken over the care of a child after the death of his/her parents.
- 4 Application to Change a name.
- 5 Application to Remove a Child from the Jurisdiction (whether for a holiday, school visit or otherwise but see Residence Order above).
- 6 For financial provision for the child/ren.

This information sheet has been prepared to highlight some key issues relating to The Children Act 1989. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2006 and may be affected by subsequent changes in the law.

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