

Parental Responsibility

The Children's Legal Centre is a unique, independent national charity concerned with law and policy affecting children and young people.



PARENTS HAVE DUTIES RATHER THAN RIGHTS

What is parental responsibility?

Parental responsibility is defined in *s.3(1) Children Act 1989* as being:

"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".

The term parental responsibility attempts to focus on the parent's duties towards their child rather than the parent's rights over their child.

What does parental responsibility mean in practical terms?

When a decision has to be taken about a child, all those with parental responsibility for the child are allowed to have a say in that decision. The decision will have to be about the upbringing of the child. Day to day decisions should be taken by the resident parent or the person with whom the child lives without interference from other parental responsibility holders.

Who has parental responsibility?

- **Mothers** automatically have parental responsibility and will not lose it if divorced.
- **Married fathers** automatically have parental responsibility and will not lose it if divorced.
- **Unmarried fathers** do not automatically have parental responsibility.

In practical terms parental responsibility means the power to make important decisions in relation to a child - for example, decisions about where a child is to live, whether a child should receive medical treatment, what religion the child should follow and which school they should attend.



Do I have any responsibilities even though I do not have parental responsibility?

The law regards the issues of parental responsibility and maintenance as being completely separate. An unmarried father who does not have parental responsibility still has a duty towards his child to provide child support maintenance.

An unmarried father without parental responsibility will still have rights, for example:

- he has an automatic right to apply to the court for certain court orders in respect to his child; and
- if the child is in local authority care, he has a right to have reasonable contact with his child.

This information is correct at the time of writing [July 2006] The law in this area is subject to change. The Children's Legal Centre cannot be held responsible if changes to the law outdate this publication.

Individuals may photocopy information in CLC publications for their personal use. Professionals, organisations and institutions must obtain permission from the CLC to photocopy our publications in full or in part.

Parental Responsibility

Can parental responsibility be transferred?

A person with parental responsibility cannot transfer his or her responsibility to another person. Parental responsibility can be shared with another person, but not completely transferred. It is possible to delegate the responsibility of looking after a child to a child minder, teacher, friend or relative, but the person with parental responsibility is still liable and responsible to ensure that proper arrangements are made for the child.

Temporary carers will not have 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.

Unmarried fathers DO NOT automatically obtain parental responsibility for their child.

How can unmarried fathers obtain parental responsibility?

An unmarried father can obtain parental responsibility by:

- marrying the mother;
- having his name registered or re-registered on the birth certificate if his name is not already registered;
- making a parental responsibility agreement with the mother;
- obtaining a parental responsibility order from the court;
- obtaining a residence order from the court; or
- becoming the child's guardian on the mother's death.

What does the change in the law mean to me?

This will depend on the individual's situation.

The law has changed so that unmarried fathers who registered or re-registered their name on their child's birth certificate AFTER 1st December 2003 will have parental responsibility for their child.

Therefore:

- If an unmarried father has a child after 1st December 2003 and he is registered on the birth certificate he **WILL** have parental responsibility.
- If a child was registered before 1st December 2003 and the father was not named on the birth certificate, the child can be re-registered to include the father's name. Once this has been done, the father **WILL** have parental responsibility.
- If an unmarried father's name is already on the birth certificate and the child was registered before 1st December 2003, the law has not changed this situation so the father **WILL NOT** have parental responsibility. (Unless obtained by other means.)



Parental Responsibility

Does the mother need to consent to having the father's name put on the birth certificate?

If the parents are married to each other, then either parent is able to register the birth and include both the mother and the father's name on the birth certificate. The consent of the other parent is not required.

If parents are not married then the mother will need to consent to the father's name being put on the birth certificate.

Both the mother and father need to be physically present at the registry office to sign the birth register. If one parent cannot attend, they must complete and sign a statutory declaration confirming they consent to being put on the birth certificate, but are unable to attend the registry office. A statutory declaration is a formal document that must be signed by a commissioner, a solicitor or the courts.

If the mother does not agree to include the father's name on the birth certificate then the father can apply to court for a parental responsibility order.

If an unmarried father does not consent to having his name on the birth certificate, the mother is unable to register him as the father.

Does the father need to consent to have his name put on the birth certificate?

If the parents are married to each other, then either parent is able to register the birth and include both the mother and the father's name on the birth certificate. The consent of the other parent is not required.

If parents are not married then the father will need to consent to have his name put on the birth certificate.

The father will need to be present at the registry office to sign the birth register or sign a statutory declaration if he is unable to attend.

If the father refuses to attend or sign a statutory declaration form, then the mother is not able to register his name.



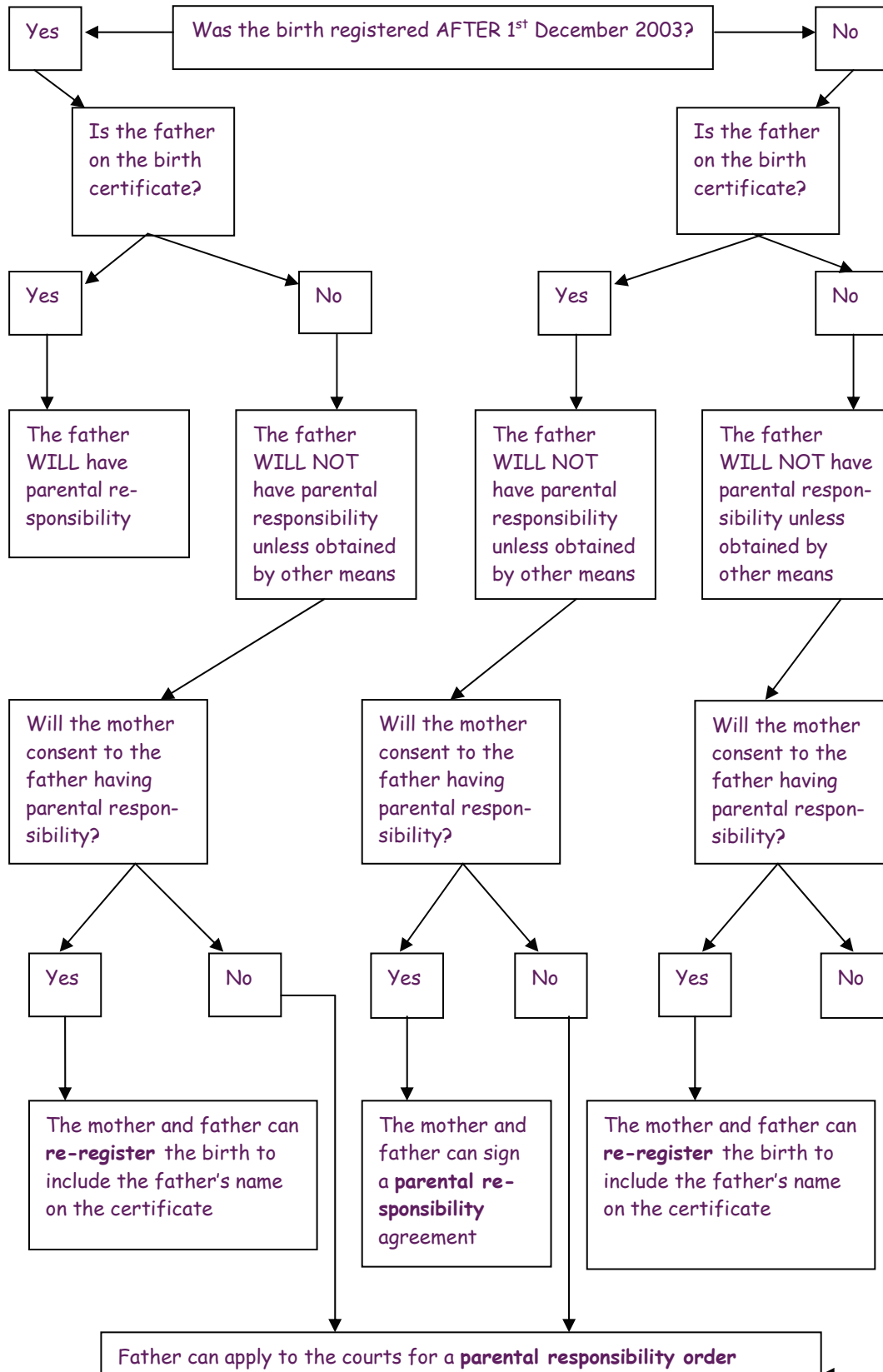
What happens if neither parent can attend the registry office to register the birth?

The majority of births are registered by parents but sometimes neither the mother nor the father is able to attend. If this happens it is possible that registration can be undertaken by:

- the occupier of the house or hospital where the child was born;
- someone who was present at the birth; or
- someone who is responsible for the child;

Parental Responsibility

How can an unmarried father obtain parental responsibility?



Parental Responsibility

What is a parental responsibility agreement?

A parental responsibility agreement is an agreement made between the mother and the unmarried father to allow him to have joint parental responsibility.

Both parents will have to agree to this.

A parental responsibility agreement is suitable when both parents agree to the unmarried father having parental responsibility and the father is already on the birth certificate and therefore cannot re-register.

The parental responsibility agreement must be signed and witnessed by a justices' clerk, or court officer and it must be filed at the Principal Registry of the Family Division. The agreement must be filed to make it legally binding, if it is simply signed by parents and not filed then the agreement is not legally binding.

If the mother refuses to allow the father to be registered on the birth certificate or refuses to sign a parental responsibility agreement with him, he can apply to court for a parental responsibility order.

What is a parental responsibility order?

A parental responsibility order is an order under the *Children Act 1989*, which unmarried fathers can apply for when the mother refuses to allow the father to be registered or re-registered on the birth certificate, or refuses to sign a parental responsibility agreement with him.

The process involves the father making an application to court for the court to decide whether or not they should allow the unmarried father to have parental responsibility.

If the court decides that the father should have parental responsibility, the order will give the father equal parental responsibility with the mother.

How do I get a parental responsibility order?

An application for a parental responsibility order may be made to the family proceedings court, the county court or the high court.

The application should be made on a C1 Form (if there **have not already been legal proceedings** about the child) or a C2 Form (if there **have** already been legal proceedings). Both forms can be obtained at local county courts, family proceedings courts or at www.hmcourts-service.gov.uk

If a C1 Form is used it must be completed and sent to the family proceedings court, if a C2 Form is used it must be lodged at a county court.

Parental responsibility is awarded to unmarried fathers in the majority of cases and is only refused in exceptional circumstances, such as where a father poses a risk to his child.

The courts consider the following factors as important in deciding whether to grant a parental responsibility order:

Does the father have commitment and attachment to the child?

Does the father have genuine reasons for applying for the order?

Sometimes a Family Court Reporter can be asked to interview the parents in order to make a decision. The court may also request evidence from other relevant persons.

Parental Responsibility

Can the mother oppose a parental responsibility order?

The mother should be given a chance to put forward her reasons why she has refused to allow parental responsibility and why she does not think that the courts should make the order. It is then left to the court to make a decision as to whether or not it will make the parental responsibility order.

Courts are often willing to make parental responsibility orders, but sometimes they refuse, such as the following cases:

- The courts decided that giving the father parental responsibility would put stress on the mother and undermine her ability to care for her child who had multiple handicaps and special needs (*Re M (Contact: Parental Responsibility) [2001]*)
- The father had injured his child and another child, and displayed cruel behaviour towards them both (*Re H (Parental Responsibility) [1998]*)
- The father was found to be in possession of obscene photographs of children (*Re P (Parental Responsibility) [1998]*)
- The father was serving a long term prison sentence for a number of robbery offences (*Re P (Parental Responsibility) [1997]*)

Can people other than parents acquire parental responsibility?

Parental responsibility is not automatically granted to people who are not parents, even if in reality, they care for and are responsible for the child on a day to day basis. There are several ways that a person who is not the child's parent may obtain parental responsibility for the child:

- by being appointed as a guardian to care for the child if those with parental responsibility for the child have died;
- by obtaining a residence order from the court which requires that the child lives with that person;
- by becoming the child's special guardian; or
- by adopting the child.

A step-parent may make an agreement to obtain parental responsibility for his or her step-child providing all those with parental responsibility agree. This is similar to the parental responsibility agreement and it will not take parental responsibility away from those who already have it. The form required is called a C(PRA2) and can be obtained at local county courts, family proceedings courts or at www.hmcourts-service.gov.uk.

Same-sex couples joined through Civil Partnership will also be able to obtain parental responsibility in this way.

Local authorities will be given parental responsibility if the child is under a care order.



Amending the Register

If the unmarried father obtains parental responsibility by a court order but is still not on the birth certificate, he can make an application to amend the register provided that he is able to produce the parental responsibility order as evidence.

Parental Responsibility

When does parental responsibility terminate?

Parental responsibility terminates:

- when a young person reaches the age of 18;
- when a young person aged between 16 and 18 gets married;
- when a child or young person is adopted;
- where parental responsibility has been obtained by a residence order and that residence order has been discharged or has expired; (if a father acquired parental responsibility via a residence order, he will not lose it on its expiry, unless a specific order discharges it.) and
- where parental responsibility has been granted to an unmarried father under a parental responsibility order, a parental responsibility agreement, or registration on the child's birth certificate, a child or any other person with parental responsibility can make an application to the court to have it terminated. In order for a child to make such an application, they will need to acquire leave (permission from the court) first.

Only when adoption takes place, can a mother lose parental responsibility.

What if parents cannot agree on a major decision about the child?

If parents are unable to agree about a decision concerning the upbringing of their child, they could try family mediation.

The aim of mediation is to lessen conflict and to try to resolve disputes amicably. The process of mediation differs throughout the country, in some mediation services parents are seen separately and then they are brought together to see if they can reach a compromise. In other mediation services the parents are seen together, sometimes with their solicitor or a representative present.

If the decision is something that cannot be compromised then either parent can apply to the court for a specific issue order. The parent does not have to have parental responsibility to be able to do this. This order is effectively asking the court to make the decision on behalf of the parents, the decision will be based on what the court thinks is in the best interests of the child.

Do all parental responsibility holders have to agree before a decision can be made?

In most cases, decisions can be taken by one parental responsibility holder. It is not always necessary to seek the consent of another person if they have parental responsibility. For example a school will only need consent from one person with parental responsibility to take the child on a school trip. If the other parent strongly objects, they could seek a prohibited steps order from court to prevent this taking place, but it is highly unlikely to succeed.

Where there is a major decision to be made about the child's life, all those with parental responsibility will need to agree. For example, if one parent wants to change the name of the child, or move abroad with the child or have the child put up for adoption, all those with parental responsibility must agree.

Parental responsibilities diminishes over time as the child becomes a young person able to make their own decisions.

Can young people make their own decisions?

If a young person is old enough he or she is able to make decisions for themselves, such a decision could include his or her religion. Parents are able to decide what religion their child should be brought up with, however, once the child reaches a certain age and is competent enough to be able to decide what religion to follow, he or she is able to make decisions in his or her own right. The young person would generally be about 15 years old, but this would depend on the maturity and understanding of the individual young person.

Parental Responsibility

Can I take my child abroad?

This is always a difficult issue. It is sensible to seek the agreement of the other parent before taking a child abroad. Parents should be reasonable about this and provide the other parent with plenty of notice. Remember to always act in the best interests of the child. If the resident parent has a residence order, they are able to take the child abroad for up to a month without the consent of the other parent. If they intend to take the child for longer than a month, they will need written consent of every person with parental responsibility.

Where the parent with whom the child lives does not have a residence order, he or she can take the child on holiday, but should inform the non-resident parent that he or she intends to do so. It is not necessary to obtain the non-resident parent's positive agreement, but the resident parent should carefully consider any reasonable objections. If the non-resident parent wishes to prevent the resident parent taking the child on holiday, he or she will need to apply for a court order.

A non-resident parent who wishes to take their child abroad on a holiday will generally have to negotiate this with the resident parent. If contact is agreed, there is no reason why the child cannot be taken abroad during that time. However, the resident parents often do object and may refuse to allow the child to go. In such a case, the non-resident parent will need to seek a court order permitting him or her to take the child away.

The application for a passport must be signed by one person with parental responsibility. In the case of unmarried fathers who have obtained parental responsibility through a court order or a parental responsibility agreement, the original order or agreement must be sent with the application to prove the father has parental responsibility.

Can I change my child's surname?

To be able to change a child's surname, all those who have parental responsibility will need to agree. If the parental responsibility holders do not agree, the parent seeking to change the name can apply to the courts to obtain its consent to the name change. The court would then have to make the decision on whether or not it will be in the best interests of the child.

If a parent with parental responsibility has been absent from the child's life and is un-contactable it is possible to change the child's surname without the consent of that parent.

Once a child reaches the age of 16 they are able to change their name themselves.

Do grandparents have special parental rights?

With regard to parental responsibility, grandparents are treated the same as any other person seeking to have a relationship with the child. They do not have any special grandparents' rights.

If grandparents are caring for a grandchild, it is advisable to obtain either a residence order or a special guardianship order, because if either of these orders are granted, the person who has the order will automatically obtain parental responsibility.

Children's Legal Centre

University of Essex

Wivenhoe Park

Colchester

Essex

CO4 3SQ

Phone: 01206 877910

Fax: 01206 877963

E-mail: clc@essex.ac.uk

Website:

www.childrenslegalcentre.com

Children's Legal Centre

Advice Line:

08088 020 008