

Children - The Range of Court Orders

Overview

The Children Act 1989 is the main source of law that governs relationships between children and their parents. Disputes between separating or separated parents about children are sometimes called private law proceedings. This is because the dispute is between individuals, and is private in the sense that it does not actively involve government agencies concerned with child protection.

Where those government agencies are involved – in the form of a local authority's social services department, this is because there is a concern about the risk to a child from some feature of family life. The risk may be to the child's physical, emotional or mental health, and may be active (for example, through abuse) or passive (such as through neglect). Proceedings involving social services are called public law proceedings.

In this factsheet, we focus on private law proceedings and the types of orders a court can make.



Parental responsibility

Parental Responsibility (PR) is the name for the bundle of rights many people assume one has just by virtue of being a parent – namely the right to make decisions about a child's upbringing.

The Children Act 1989 defines PR 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”.

A person who has PR is entitled to a say in all important matters affecting the child's upbringing. Examples of issues where a person with PR is entitled to be involved in decision-making include:

- whether the child should undergo medical treatment;
- where and how the child is educated;
- what the child should be named and whether there should be any change to that;
- how the child's property should be dealt with;
- when and how the child should be represented in legal proceedings;
- the child's religious upbringing, and
- whether the child should travel abroad, either for a holiday or to live.

PR is an abstract concept, so is separate from decisions about where a child lives (residence) and whom he or she sees (contact).

Although having PR gives a parent certain rights, there is an obligation to exercise those rights for the benefit of the child. Where there is dispute as to how PR should be exercised, the court will look at what outcome best meets the child's needs, not which parental rights should be prioritised.

Mothers automatically have PR from the moment of the child's birth. A father will automatically have PR if he was married to the mother either at the time of the child's birth or subsequently. A father who is not married to the mother will only have PR automatically if the child was born after December 2003 and he is named on the birth certificate.

In all other circumstances, a father will not automatically have PR and must obtain it by agreement with the child's mother, or by court order.

In some families, people other than the child's parents will have PR – stepparents, grandparents, uncles and aunts, for example.

Child Arrangements Order

A child arrangements order confirms where a child will live and with whom, and when they will spend time with a person or people other than those they normally live with, this is usually the non-resident parent, although can include grandparents and other relatives.

The court will make a child arrangements order if parents are unable to agree on the arrangements for where a child lives and when they spend time with their non-resident parent.

The concept of the arrangements for children used to be referred to as residence and contact, and prior to that, custody. The terminology originally changed with the Children Act 1989, over twenty years ago, and more again more recently in the last year. However, these old expressions have stuck, and people sometimes still talk about custody when they mean residence, with even fewer people being aware that the labels of residence and contact are now no longer used.

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Contact Order is an order requiring the person with whom the child lives, to visit, stay or have contact with the person named in the order.

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An arrangement called shared care is becoming increasingly popular. It can provide for a child to live with both parents and spell out how the time will be divided. A shared care order can be made even if the division of time is unequal between the two homes. These orders are especially popular because they are seen as reinforcing the significant and continuing role that both parents will play in their children's lives post-separation.

Contact Order

There is no “one-size fits all” arrangement for children. Different arrangements work for different families. A common pattern is for a child to stay with the parent they do not normally live with on alternate weekends and for half of holiday periods. However, geography and other issues may make that pattern less than ideal for a particular family. The quest is to identify the arrangement that is best for the particular child concerned.

The arrangements can also take the form of visits, telephone calls, time together using Skype and similar services, and other forms of indirect communication. These are especially important where geography prevents more frequent face-to-face contact.

A child arrangements order can also include provisions that spell out precisely how the arrangements operate: conditions and directions for handovers, who must do (or not do) what during the time the child spends with them, how parents are to communicate over any issues that arise during contact visits, and similar. Whether the attachment of conditions like these to a child arrangements order proves necessary depends on the particular case.

A child arrangements order can be made to make sure a child has a continuing relationship with important people other than parents: this might include in particular families stepparents, grandparents, aunts and uncles.

The court will make a child arrangements order to resolve any dispute about how a child spends time with the important adults in his or her life.

Prohibited Steps Order

A Prohibited Steps Order (PSO) is an order that forbids someone from using PR in a particular manner.

PSOs can cover as many matters as there are aspects to PR. Some of the more common examples of PSOs include forbidding a parent to:

- remove the child from the UK;
- change the child's name or allow him or her to be known by another name;
- change the child's school, and
- take the child for identified medical or therapeutic treatments.

PSOs may be made against any person (that is, they are not only available against a child's parents). So, a PSO could be made against a family member or friend whom it was feared might make a decision of a type usually taken by someone with PR.

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Specific Issue Order

A Specific Issue Order (**SIO**) is made where a dispute arises about a question of PR. The disagreement facing a court dealing with a SIO is usually narrow and well-defined.

Examples of matters that might be the basis of a SIO include:

- which school a child should attend;
- whether the child should have particular course of treatment (such as a vaccination or operation);
- in which religious rites the child should participate (for example, circumcision, confirmation), and
- whether the child should temporarily leave the UK for a holiday.

A SIO will grant permission for the particular course of action in dispute to be taken.



“ A person with parental responsibility has a say in respect of the upbringing of a child. ”

Section 8 Orders Generally

Child Arrangement orders, PSOs and SIOs are sometimes referred to as **section 8 orders**. This is because the court's power to make them comes from section 8 of the Children Act 1989.

Most parents are entitled as of right to apply for a section 8 order relating to their children. Other family members and significant people in a child's life might also be able to apply for a section 8 order as of right.

Those who cannot must ask for permission from the court to make the application. A child can theoretically apply for a section 8 order relating to himself or herself, but this also needs the court's permission, and it is exceptional for it to be given.

Section 8 orders, once made, usually last until the child concerned turns sixteen. In exceptional circumstances, they can last until the child turns eighteen.

When considering whether to make a section 8 order, the court's first and overriding obligation is to the welfare of the child. The court is charged with making the decision that best promotes that particular child's interests.

The court is required to have regard to a number of matters (known as the **Welfare Checklist**) to help it decide upon the child's best interests. These are:

- the ascertainable wishes and feelings of the child (considered in light of age and understanding);
- the child's physical, emotional and educational needs;
- the likely effect on the child of any change of circumstances;
- the child's age, sex, background and any characteristics of the child which the court considers relevant;
- any harm which the child has suffered or is at risk of suffering;
- how capable each of the child's parents and any other person in relation to whom the court considers the question relevant is of meeting the child's needs, and
- the range of powers available to the court.

The court will proceed on the basis that delay in resolving a dispute about section 8 orders is likely to prejudice the welfare of the child.

The court will not make a section 8 order unless it considers that doing so would be better for the child than making no order at all. This is called the **no-order principle**.

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Appointment or removal of a guardian

The Children Act 1989 introduces a concept of a child's **Guardian**. A guardian is a person who assumes responsibility for, and has PR for, a child on the death of his or her parents.

A parent with PR may appoint a guardian in writing (this is often done in a will). The appointment only takes effect once all parents with PR for the child have died.

The court also has the power to appoint a guardian if there is no-one with PR.

The court retains the power to resolve any disputes about who should be a child's guardian. It may also terminate the appointment of any person as a guardian.

The court will take into account the same matters in deciding a question about guardianship as it does when dealing with section 8 orders.

Information as to the whereabouts of a child

This is an order requiring a person to give the court any information they have about the whereabouts of a child. These orders are especially useful in resolving situations where a parent has disappeared with a child to avoid court proceedings or to frustrate a section 8 order.

These orders can be made against family members, legal advisers, the police, the manager of a refuge, etc.

The information is disclosed to the court, not the person making the application. The court then decides what to do with the information.

Orders of this type can only be made where there are proceedings to obtain or enforce a section 8 order.

Order for financial provision for a child

The majority of parents will be able to resolve questions about financial support for their children by reference to the Child Maintenance Services (**CMS**). Even if the CMS is not formally instructed to calculate child support, the formulas they apply will indicate for most families an appropriate level of financial provision.

There are some situations where the CMS will not be able to assist, or where the formulas may be less helpful. These include the following:

- some families where either of the parents or the child ordinarily live outside of the UK;
- where the paying parent's net income is more than £104,000 per annum;

- where a child has special needs, and
- where a child is beyond secondary education.

In these situations, the court retains the ability to look at what level of regular financial support is suitable. This is because of section 15 of (and Schedule 1 to) the Children Act 1989 (**Schedule 1**). The court will be guided by, but not bound by, the CMS formulas.

Beyond the question of regular financial support, there are other types of financial provision to benefit a child that a court is able to order under Schedule 1. One very common example is where there is a dispute about parents' contributions towards school fees. Private school fees are not dealt with by the CMS, and an application to court would need to be made if there were any disagreement about who ought to pay.

In some families, circumstances make it appropriate to look beyond regular payments and school fees to other forms of financial support for children. These might include security for the obligation to make regular payments, capital sums, the provision of a home or the transfer of a property. These are specialised applications, which cannot be made to the CMS and can only be considered by a court. They are most appropriate where one parent's financial resources are significantly greater than the other's. They are more common between parents who never married or entered into a Civil Partnership.

Where the court is able to resolve any question of financial support for a child under Schedule 1, it is required to take all of the family's circumstances into account. In particular, it must consider the following matters when it reaches its decision:

- the income, earning capacity, property and other financial resources which the child's parents have, or are likely to have in the foreseeable future;
- the financial needs, obligations and responsibilities which the child's parents have, or are likely to have in the foreseeable future;
- the child's financial needs;
- the child's income, earning capacity, property and other financial resources;
- any special needs of the child through physical or mental disability, and
- the way in which the child was being, or was expected to be, educated.

Under Schedule 1, the definition of a child's "parents" is wider than normal. It includes a child's biological mother and father, but also any other person to whom they are or were married, so long as the child was treated as a child of the family. So, an application under Schedule 1 might be made, in suitable cases, against a stepparent (or former stepparent).

Please feel free to discuss your own position and concerns. Contact your nearest office on:

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