



Act Family Law provides this guide as general information, we hope you find it helpful. It is not intended to replace legal advice. Each case has different issues and requires separate individual advice.

Act is not liable for any consequences if you rely on these notes rather than seeking specific guidance on your own case.

GUIDE TO CHILD LAW

Introduction

Where the Court is asked to determine any question concerning a child, it does so by reference to the Children Act 1989 and to the underlying principle that the child's welfare is the Court's paramount consideration.

The Court will not make an Order unless it considers that doing so would be better for the child than making no Order.

Disputes involving children will often be sorted out between the adults involved without the need for Court assistance. Mediation or collaborative process are effective ways of achieving out of court solutions, saving time, money and emotional stresses. However, should Court intervention become necessary, the Court can make a wide variety of orders.

Parental Responsibility

This is defined by the Children Act as "all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his property". These responsibilities will include deciding education, religion and medical needs, amongst other matters.

Parents who are married to each other at the time of the child's birth will both have parental responsibility for the child.

If parents are not married at the time of the child's birth, the mother automatically acquires legal parental responsibility. Under the Adoption and Children Act 2002 an unmarried father has parental responsibility if his name is on the birth certificate at registration or re-registration of a child born after 1 December 2003.

If he doesn't get automatic parental responsibility, an unmarried father can obtain parental responsibility either by agreement with the natural mother, or by Court Order.

Types of Court Order available.

To apply for the orders below, the parent applying will first need to have Parental Responsibility.

Residence Order

This is an Order as to where a child is to live. It can be with one parent, or divided between them (shared residence).

Contact Order

This is an Order requiring one parent to allow a child to visit, stay with or otherwise have contact with some other specified person. The Court may determine the frequency, duration and type of contact and whether it should be indirect (by telephone or letter) or direct (physically see each other). Contact may be overnight "staying contact", which may include longer holiday periods, or daytime "visiting contact".

Specific Issue Order

This is an Order to determine a specific question in connection with any aspect of the exercise of parental responsibility. For example, the issue may be whether a child should take a mother's name after divorce or retain the former family name. It may be an issue of which school a child is to go to, or whether they should receive a particular medical treatment.

Prohibited Steps Order

This is an Order that something must not happen or must not be done in respect of the child. For example, the Court may make an Order preventing one parent taking a child to another country, or changing their name. Specific Issue and Prohibited Steps Orders are often used in combination.

Who may apply for these Orders?

A parent, guardian or person with a Residence Order can apply for any of the above Orders.

Other people may be able to apply for Orders, but may require the Court's prior permission to do so.

Legal Considerations.

Whenever the Court is considering a contested application for the making, variation or discharge of one of these Orders, it considers:-

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding);
- (b) the child's physical, emotional and educational needs;
- (c) the likely affect on the child of any change in the child's circumstances;
- (d) the child's age, sex, background and any characteristics of the child 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.

Court Procedure

If a Court application is made for an Order, the general principle is that any delay in resolving the issues in question is likely to prejudice the child's welfare and will therefore be dealt with by the Court as soon as is practicable. In practice however, delays are frequent and often lengthy.

In certain circumstances all Orders can be made on an emergency basis. These hearings should take place within a week or so of the emergency application. If the Court makes an emergency Order there will be a subsequent full hearing as soon as possible.

An application is listed for an initial Court appointment to consider what issues need to be addressed, and how. The first appointment will normally take place about 3-4 weeks after the application.

It is usual for a CAFCASS Court Reporter to become involved in proceedings. The Court Reporter will prepare a report based upon investigations and interviews of the adults involved, and where appropriate with the children and any associated persons.

The Court Reporter investigates the case on behalf of the Court, and is therefore neutral, and the Report includes a conclusion which may or may not contain a recommendation to the court as to how the matter might be resolved. In some cases the Report may conclude that there is no clear recommendation that can be made, and that the issue can only be decided by the court. Even where there is a firm recommendation, the final decision rests with the court, although the court will give considerable weight to the Report.

Confidentiality

Court proceedings are confidential. All statements and reports prepared for the case and what is said in Court must not be disclosed to anyone who is not a party to the case without the permission of the Court. Only the Court can decide to lift confidentiality and only where satisfied that it would be right to do so in the children's interest. A breach of the confidentiality rule would amount to Contempt of Court which is punishable by imprisonment or a fine.