



a guide to contact on separation and divorce

# fathers matter

2nd edition *revised and expanded*

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**Creative Communications**

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parental responsibility. At all times the welfare of the child must be the court's paramount consideration.

- By being appointed a guardian either by the mother or the court. Note, however, that he will assume parental responsibility only in the event of the mother's death.
- By obtaining a residence order from the court. This automatically gives him parental responsibility. We will look at residence applications later.
- By marrying the mother.

### Stepfathers and parental responsibility

There may be a situation where the mother has children from a previous relationship and remarries. Her new husband treats the children as his. They are children of the family. However, marrying the mother does not automatically give a stepfather parental responsibility, unlike the natural father.

#### **What are the ways a stepfather can acquire parental responsibility?**

Prior to the amendments made by the Adoption & Children Act 2002 he could do this in three ways by:

- Being appointed guardian to care for the child if the natural parent dies.
- Obtaining a residence order stating that the child lives with him. If he is married to the child's mother and the child has been living with him for 3 years or more, or he has the consent of everyone with parental responsibility, he has a right to apply for an order. However, it is unlikely that the natural father would consent.
- Adopting the child.

The Adoption & Children Act 2002 amended the Children Act to insert a new section in respect of the acquisition of parental responsibility by stepparents. This provides that a stepfather will be able to acquire parental responsibility in other ways as follows:

- If he is married to the mother, and she agrees to him having parental responsibility, provided the natural father also agrees (where he has parental responsibility), he can then enter into a parental responsibility agreement.
- He can make an application to the court himself as a stepparent for a parental responsibility order.

#### **Limitations**

As set out above, if a stepfather obtains a residence order then he will only have parental responsibility for as long as that order is in force. Parental responsibility does not give a stepfather the right to consent – or refuse to consent – to the making of adoption orders in respect of the child, or the right to remove the child from the jurisdiction. In all other respects he will have the same parental responsibility for the child as the natural father.

## Civil Partners and parental responsibility

There is also a scenario where one of the partners in a single sex relationship already has children and the other partner plays a significant role in those children's upbringing. The Civil Partnership Act 2004 came into force on 5 December 2005. The Act enables two same-sex individuals who are not close relatives to obtain legal recognition of their relationship by registering a civil partnership provided each is over 18 and neither is married nor in an existing civil partnership. The formation of a civil partnership creates rights and responsibilities. A registered partner can now acquire parental responsibility of his/her civil partner's child in the same way as a stepparent by:

- Agreement between the parent (and any other parent who also has parental responsibility) and the civil partner in which case the civil partner can enter into a parental responsibility agreement.
- Making an application to the court for a parental responsibility order.

## Is parental responsibility really necessary?

For a father parental responsibility enables him to be involved in the day to day decision-making relating to his children but for an unmarried father, who does not acquire it automatically, but who wants to be involved, this is a big issue. For example, without it he may have difficulty obtaining information about his children from their school or doctor. For an unmarried father, who lived with the mother and was involved in the day to day care and decision-making relating to their child, it can be a rude awakening to find that without parental responsibility he is not in a position to question the upbringing of his child. There are situations where parental responsibility is absolutely necessary for the unmarried father:

- In the case of adoption; without parental responsibility his consent will not be required.
- If there is a residence order in force and the mother wants to change the child's surname; she does not need his consent if he does not have parental responsibility.
- In the case of abduction; there have been difficulties where unmarried fathers without parental responsibility have applied for a child to be returned under the Hague Convention as it is not clear whether there has been a breach of a 'right of custody' within the meaning of the Convention. Parental responsibility is considered sufficient to establish a right of custody.

## Exercising parental responsibility

Common sense dictates that where both parents have parental responsibility they should consult with each other and not take important steps unilaterally. In practical terms, when the parents live apart it is the parent with whom the child lives who normally carries the responsibility for day to day decisions.

As explained in the previous section, in some situations the consent of more than one person with parental responsibility will be required. Where parents disagree about an important issue the court will have to decide the issue for them.

We look at specific issue orders and prohibited steps orders in detail in Chapter 15.

In some circumstances it might be necessary to make the child a ward of Court. This means that no major decision relating to the child's welfare may be made without the consent of the High Court.

Can a father apply for a parental responsibility order where his child was not born in the UK and does not reside here?

Irrespective of whether the child is resident here or was not born in the UK, it is possible to obtain a parental responsibility order.

Can a father lose parental responsibility?

He will not lose it due to someone else obtaining it. This is because, as indicated above, more than one person is allowed to have parental responsibility. In fact, there is no limit to the number of people who may have parental responsibility at any one time. But he can lose parental responsibility in the following circumstances:

- The natural father will lose it on death or if his child is adopted. Adoption automatically extinguishes parental responsibility.
- An unmarried father who obtained a parental responsibility order could lose it if the court makes an order ending it. For example, if he inflicted serious injury on his child. It could also be revoked on the successful application of another person who has parental responsibility or, with leave, on an application by the child himself.
- A stepfather who acquired parental responsibility by being granted a residence order will lose it automatically when the residence order terminates. In fact, anyone other than an unmarried father will lose it in these circumstances.

What happens if the father entrusts his children to the care of someone else?

It is not possible to transfer or surrender parental responsibility, but the father can delegate responsibility for a child on a temporary basis. For example, this could be to a school for a school trip or to a nanny or childminder. Temporary carers do not acquire parental responsibility, but may do what is reasonable while the child is in their care for the purpose of safeguarding or promoting the child's welfare. This includes a stepfather who does not have parental responsibility. For example, this could cover emergency medical treatment.

When does parental responsibility come to an end?

Parental responsibility will come to an end as regards any issue in relation to a child's upbringing as soon as the child itself is mature enough to make a decision about that issue. A balance needs to be struck between parental responsibility on the one hand and the wishes of a mature child (having listened to that child's views) on the other.