

## PARENTAL RESPONSIBILITY

Parental responsibility is defined in the Children Act 1989 "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". No further explanation is offered by the Act. It would be impossible to detail every individual aspect of parental responsibility. It will often be exercised without much thought given to it, such as day to day discipline. Less frequent discussions affecting a child which call for parental responsibility to be exercised include the child's education, religion and medical treatment. Some aspects of parental responsibility will obviously fade as child becomes older.

The fact that a person has, or does not have, parental responsibility for a child does not affect any obligation which he may have in relation to the child. An unmarried father without parental responsibility is for instance still obliged to maintain his child.

Certain decisions affecting a child can only be taken by, or with the consent of, one or more of the persons who have parental responsibility for the child. These include:-

### 1. AN ADOPTION ORDER

This cannot be made unless each of the child's parents who have parental responsibility consent to the Order or their consent is dispensed with by the Court.

### 2. CHANGE OF NAME

A child's surname cannot be changed without the written consent of every person who has parental responsibility for the child. If the consent is not forthcoming an application can be made to the Court.

### 3. LEAVING THE JURISDICTION

The child cannot be taken outside England and Wales without the consent of those parties who have parental responsibility.

### 4. APPOINTMENT OF GUARDIANS

The guardian for a child can only be appointed by a parent who has parental responsibility.

### 5. MARRIAGE

A child who wishes to marry between the age of 16 and 18 needs the consent of each parent who has parental responsibility.

## WHO HAS PARENTAL RESPONSIBILITY?

Certain persons automatically have parental responsibility for a child, others acquire it through a variety of means.

### MARRIED PARENTS

Where a child's parents were married to each other at the time of his birth both his mother and his father automatically have parental responsibility for him. If the couple marry after the birth the father automatically acquires parental responsibility on marriage.

### UNMARRIED PARENTS

Where the parents of a child whose birth was registered prior to 1 December 2003 were not married to each other at the time of the child's birth, only the mother automatically has parental responsibility. The child's natural father will only

acquire parental responsibility by one of the following means:-

- 1) marrying the child's mother.
- 2) entering into a parental responsibility.
- 3) making an application to the Court
- 4) obtaining a Residence Order
- 5) being appointed the child's guardian (usually in the mother's Will)
- 6) adopting the child.

Where the father of a child whose birth was registered on or after 1 December 2003 even if not married to the mother at the time of the child's birth now has parental responsibility if his name is placed on the birth certificate of the child at registration. In reality an unmarried father will not be able to register his name on that birth certificate without consent of the mother

### **EXERCISING PARENTAL RESPONSIBILITY**

More than one person may have parental responsibility for the same child at the same time. A parent will not cease to have parental responsibility simply by virtue of someone else acquiring it. Where parental responsibility is shared each person may act alone unless the consent of the other party is specifically required. For example, following a divorce both the child's mother and father have parental responsibility for the child. During the child's contact visits, the father can exercise parental responsibility without reference to his former wife. On a day to day basis, each parent needs to be able to act alone. But should the father for example wish to take the child abroad he will need the mother's consent or a Court Order.

### **TERMINATION**

The natural mother of the child would only cease to have parental responsibility for her child in three specific circumstances.

1. Where the child is freed for adoption.
2. Where the child is adopted.
3. Where she is a surrogate mother and a parental order is subsequently made under Section 30 of the Human Fertilisation and Embryology Act 1990.

The natural father who was married to the child's mother will only cease to have parental

responsibility when his child is freed for adoption or actually adopted. An unmarried father will cease to have parental responsibility for his child in the following circumstances:-

1. The child is freed for adoption.
2. The child is adopted.
3. The father's appointment of guardian for the child is terminated and parental responsibility was acquired in that capacity alone.
4. Where a successful application is made by any person who has parental responsibility for the child for either a parental responsibility agreement or a parental responsibility order to be brought to an end.
5. On the child's 18th birthday, where parental responsibility has been acquired solely by virtue of either a parental agreement or a parental responsibility order.

A parental responsibility agreement can be obtained from the local County Court. The mother and father of the child should both attend taking with them identification. A parental responsibility order can be obtained by completing a standard application form and having the matter heard either at the local Magistrates Court or the local County Court.

Lees Solicitors LLP provide this fact sheet free of charge

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