

Parental responsibility in England and Wales

The legislation relevant to parental responsibility is:

- Children Act 1989, ss. 2–4
- Adoption and Children Act 2002, s. 111.

The term 'parental responsibility' refers to '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' [s.3(1)].

However, 'parental responsibility' does not include any obligation to maintain the child [s.3(4)], which is a quite distinct liability [see Schedule 1 Children Act 1989 and Child Support Act 1991 (as amended)].

Who has parental responsibility?

Where the father and mother of the child were married to each other at the time of the child's birth, or have subsequently married, they both have parental responsibility for the child [s.2(1)-(3) Children Act 1989]. Where the father and mother of the child are not married to each other at the time of the child's birth, but jointly register their child's birth, they also both have parental responsibility [s.111(1)-(7) Adoption and Children Act 2002]. This latter provision applies only to children born after 1 December 2003.

How can parental responsibility be acquired?

The **unmarried father** can also acquire it by:

- registering the child's birth together with the child's mother (s.4(1) as amended by the Adoption and Children Act 2002) as long as the provisions of registration are complied with, as set out in Births and Deaths Registration Act 1953
- obtaining a parental responsibility order (PRO) from the court [s.4(1)(a)]; in such an application the court will regard the child's welfare as its paramount consideration, but it is not obliged to take the items on the welfare checklist into account
- means of a formal parental responsibility agreement with the mother [s.4(1)(b)]
- being granted a residence order [s.12(1)], in which case the court will also make a PRO in favour of the father. On any application for a residence order the court will regard the child's welfare as its paramount consideration and, if the application is contested, is required to take the items on the welfare checklist into account
- being appointed a guardian [s.5]
- marrying the mother at any time (even after the birth of the child).

A **step-parent** may acquire it by:

- obtaining a parental responsibility order (PRO) from the court [s.4A(1)(b)]
- means of a formal parental responsibility agreement with all those who already have parental responsibility [s.4A(1)(a)].

The step-parent must be married to or in a civil partnership with a parent of the child who has parental responsibility.

Anyone can acquire it by:

- being granted a child arrangements order specifying that the child lives with them [s.12(2)] while the order remains in force
- being appointed a guardian [s.5]
- having an adoption order made in their favour.

The **local authority** can acquire it by having a care order in force with respect to the child [s.33(3)] or by being granted an emergency protection order. Note that an emergency protection order can also be obtained by 'an authorised person' who will also hold parental responsibility of the order is granted. An 'authorised person' is 'an officer of the National Society for the Prevention of Cruelty to Children' (s44(2) and s.31(9) Children Act 1989).

Sharing parental responsibility

More than one person can have parental responsibility for the same child. Any person with parental responsibility for a child can act independently in meeting that responsibility as long as that is not incompatible with any order made under the Act or with any express statutory provision [s.2(5)–(8)].

Therefore a care order does not extinguish parental responsibility already held by others. However, the local authority has the power to restrict the extent to which others may exercise their parental responsibility where the local authority believes this is necessary in order to safeguard or promote the child's welfare [s.33(3)-(4)].

The local authority cannot cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the care order had not been made [s.33(6)(a)] or give or refuse consent to adoption of the child.

Delegating parental responsibility

A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf [s.2(9)].

How long does parental responsibility last?

If people have parental responsibility by virtue of their status as married parents they can only lose it on the making of an adoption order.

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If a father or step-parent has acquired parental responsibility as the result of a formal agreement or court order it can be brought to an end:

- by a successful application to the court by a person with parental responsibility
- with the leave of the court, on the application of the child [s.4(3)].

Otherwise it comes to an end once the child reaches the age of 18 (or dies below that age).

If a person has acquired parental responsibility as the result of a child arrangements order a successful application for the discharge of the order brings the parental responsibility to an end [s.12(2)]. Otherwise it ends on the child reaching the age of 18.

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