

4 Arrangements for Children



Parental Responsibilities and Rights in Scotland

When parents separate the children can often be affected by the separation. It is well recognised that children will cope better when their parents split up if the parents can sort out the arrangements for the future care of their children amicably. This factsheet covers arrangements for children and useful agencies.

What are Parental Responsibilities?

Parents have the following legal responsibilities towards their children:

- to safeguard and promote the child's health, development and welfare;
- to provide direction and guidance to the child in a manner appropriate to the stage of development of the child;
- if the child is not living with you, to maintain personal relations and direct contact with the child;
- and to act as the child's legal representative.

These responsibilities are to be fulfilled only if fulfilling them is practicable and in the interests of the child. For example, if a parent is living abroad or is ill s/he would not be able to fulfill their responsibilities. Similarly, a parent may have behaved in a way that makes it no longer in the child's interests for them to exercise their responsibilities.

These responsibilities continue until the child is 16 except for the responsibility to provide guidance, which continues until the child is 18.

What are Parental Rights?

Parental Responsibilities and Parental Rights go together, as the rights are there to allow a parent to fulfill their responsibilities. These rights are:

- to have the child living with you or to regulate where the child lives;
- to control, direct or guide the child's upbringing in a manner appropriate to the child's stage of development;

- if the child is not living with you, to maintain personal relations and direct contact with the child on a regular basis;
- to act as the child's legal representative.

These rights apply until the child is 16.

Who has Parental Responsibilities and Rights?

The following people have Parental Responsibilities and Rights (PRRs):

- the child's mother;
- the child's father if the parents were married when the child was conceived or if they get married later;
- if the parents are not married, the child's father if his name is on the birth certificate which was registered on or after 4 May 2006;
- an unmarried father who is not named on the birth certificate but who has signed a PRR Agreement with the mother;
- an unmarried father who has obtained a court order for PRRs;
- any other person, for instance grandparents, step-parents, aunts etc, who has obtained a court order for PRRs;
- a guardian who has been appointed in the will of someone who has died and who had PRRs before they died.

If in doubt you should speak to a solicitor who will advise you.

If I don't have PRRs how can I get them?

There are two ways:

- You and the mother could agree that you should have PRRs. If so, you would both sign a PRR Agreement form (Form J 8231). This is available from the local registry office, Citizen's Advice Bureau or by calling the Lone Parent Helpline 0808 801 0323. Once the form has been completed, send it with a fee (£20.05) to the Keeper of the Registers of Scotland. The Keeper will register the form and send

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All factsheets are available free to lone parents.

Ring 0808 801 0323 for copies or see www.opfs.org.uk

you a document that shows that you have PRRs. The agreement is a binding legal document and can only be cancelled by a court order.

- You could apply to the court for a court order for PRRs. Anyone with an interest in the child can apply to the court. This can be the father or a grandparent. The court will decide what to do based on the child's best interests – it could give you full PRRs, only some of them or none at all. If you are considering going to court you should always speak to a solicitor first.

Will a court take a child's views into account?

Yes, if the child is old enough and mature enough to express a view and wants to express a view. Every child is different. If children are able to express a mature view they must be listened to and that view must be taken into account before any important decisions are made. Children of 12 and over will have their views sought. Children under 12 may express their views if it is felt they are sufficiently mature.

What if my child never knew his/her father?

If a father previously unknown to your child now wishes to have contact you will have to consider whether it is in the child's interests. Questions to ask yourself might include: How do I tell my child about his/her father? Does my child want to know his/her father? If I introduce him how should I do that? There is no legal time limit for a parent to ask for contact with a child but a court would look at each case on its own merit, including the fact that the child does not know the father.

Freephone Helpline 0808 801 0323 Monday to Friday 9.30am-4.30pm

One Parent Families Scotland gratefully acknowledges the support of The Scottish Government and the Royal Bank of Scotland Group

If I have PRRs can I smack my children as part of discipline?

Since 2003 it has been against the law to punish a child by:

- shaking them;
- hitting them on the head; or
- using a belt, cane, slipper, wooden spoon or other implement.

Smacking is not banned but any form of physical punishment will be looked at, taking into account:

- the age of the child;
- what was done to the child, for what reason and in what circumstances;
- the duration and frequency of the punishment;
- how it affected the child both physically and mentally; and
- other things such as the gender or health of the child.

Smacking is not an advisable form of punishment as there are more effective ways of disciplining a child.

Can I decide what religion my child is brought up in?

As you have a responsibility for your child's development, you have the right to choose a child's religion but this must be done in accordance with the child's welfare. For example, a religious belief that would result in harm to the child, like a refusal to consent to a blood transfusion, would not be accepted by a court. Once children reach 16 they can choose their own religion.

Can I change my child's name?

If the parents of a child are not married, and the father does not have PRRs (see above) then only the mother has the right to choose her child's name. If both parents have PRRs then they should choose the child's name together. A child does not have to be given his/her father's surname. A parent with PRRs can ask for their child's name (forename/s and/or surname/s) to be changed and recorded if they can prove that the child has been known by the new name for at least 2 years (or before the child was one year old if the child is not yet two). A parent can only make one change of forename and one change of surname for a child under 16

years. For a child under two, there can only be a change of forenames. If both parents have PRRs and cannot agree on the name change a court can decide what it considers is best for the child.

What about consenting to medical treatment for my child?

In practice a person with PRRs is usually required to give consent for medical treatment to a child under 16. A child's consent is sufficient if the child understands the treatment. If the child is under 16 but, in the opinion of the doctor, is able to understand the nature and possible consequences of the treatment, they can also give consent themselves, even if you do not.

My ex-partner has PRRs too. Can he exercise his rights independently of me?

If two or more people have PRRs, each can exercise them without the consent of the other. However, any decisions must be in the child's interests. For instance, a child cannot be removed from the UK without the consent of a person who has the parental right relating to residence or contact. Whilst strictly speaking this means that consent for a holiday abroad is needed from the other parent, a refusal to consent is unlikely to be supported by a court. Common sense would dictate that a typical foreign holiday is probably in the child's interests.

My child's father was abusive to me. Will this affect his getting contact with my child?

It is recognised that domestic abuse can affect a child even if the child is not directly abused. The law says if there has been abuse, the court must take it into account before deciding if the father should have contact with the child. They will look at the effect of the abuse on you and your child and whether the father's behaviour may affect his ability to care for the child. They will also consider whether there is a risk of further abuse.

My ex-partner and I have been arguing about the arrangements for our children. Do we have to go to court to sort this out?

No. It is usually better to sort out the arrangements for your children by agreement rather than going to court. Sometimes parents can't sort the problem out by discussing it themselves and may need the help of someone else. There are various options:

1. Family Mediation

The Family Mediation Service is an independent organisation which has trained mediators who will try to help you agree arrangements for your children. They do not take sides and will meet with you both to discuss what is best for the children. They will not tell you what to do but will help you both to see the issues from the point of view of the children. The aim is for you to reach agreement without going to court. There may be a charge for this.

2. Collaborative Family Solicitors

These are solicitors who aim to resolve disputes in family cases by open and fair negotiations. Unlike mediation, both parties will have their solicitor present and take part in the negotiations. Collaborative solicitors generally charge by the hour. LegalAid may be available. If the problem can't be sorted out and has to go to court, the solicitors are not allowed to act any more for the clients and they have to get other solicitors for any court case.

3. CALM mediators

Some solicitors are specially trained as CALM mediators. They can help deal with all aspects of a separation, including children and financial arrangements. This involves one CALM mediator sitting down with the couple and trying to reach an agreement. The mediator will charge a fee for their services which is normally an hourly rate. The cost can be shared by you and your partner and, if you are on LegalAid, your share can be paid under your LegalAid.

4. The Parenting Agreement

When you are discussing the arrangements for your children you should

look at the Parenting Agreement and accompanying guide published by the Scottish Government. This is an excellent tool to help you and your ex-partner arrive at an agreement that is best for your children and that is more likely to work. You can get a copy of these documents from the Lone Parent Helpline.

5. Minutes of Agreement

Some couples manage to agree the arrangements for their children themselves. If they have also agreed the financial aspects of their separation they may sign a contract called a Minute of Agreement setting out what they have agreed, including the arrangements for the children. However, it should be noted that anything written about the children is not legally binding and cannot be enforced. The court will look at what was agreed and take this into account.

6. Contact Orders

If parents are unable to decide where their children should live, or agree on contact arrangements, it may be necessary to go to court. The court will make a decision based on the information it has but, as well as being an expensive and stressful process, the outcome may not suit either parent as it will be based on what the court thinks is best for the children. If a parent refuses to comply with contact arranged through the court they can face being fined or even imprisoned for contempt of court. However imprisonment is rarely used as it is arguably not in the best interest of the children. Children's views on contact arrangements should be acknowledged and considered depending on their age and ability to understand what is going on. If a child does not want to visit a parent the matter should be discussed with everyone involved where possible. The court may want to investigate the situation before making contact arrangements.

What will happen to my children if I die?

If you die then responsibility for your children passes to the other parent if they have PRRs. If the other parent does not have PRRs but wants to care for the children they can ask the court for them. If you have PRRs you can appoint a guardian in your will.

Further help and information

Lone Parent Helpline:

0808 801 0323

Monday to Friday 9.30am– 4.30pm

Free, confidential advice, information and support on all lone parent issues.

CALM Scotland

www.calmscotland.org.uk

For details of CALM mediators near you.

Family Law Association

www.fla-scotland.co.uk

For details of family law solicitors near you.

Family Mediation Scotland

18 York Place Edinburgh, EH1 3EP

Tel. 0845 119 2020 Email:-

info@familymediationscotland.org.uk

Web: www.familymediationscotland.org.uk

For details of family mediators near you.

Scottish Child Law Centre

54 East Crosscauseway, Edinburgh

EH8 9HD

Information Line: 0131 667 6333 (Monday to Friday 9.30 am to 4 pm)

Email: enquiries@sclcl.org.uk

Web: www.sclcl.org.uk

Free legal advice on Scottish law as it relates to children.

Scottish Legal Aid Board

44 Drumsheugh Gardens, Edinburgh

EH3 7SW

Communications Office Tel: 0131 226 7061

Legal Aid Helpline: 0845 122 8686

Monday - Sunday 7am - 11pm

Email: general@slab.org.uk

Web: www.slab.org.uk

For details of solicitors who provide Legal Aid.