

Children Act Matters

This note is only intended as an outline summary. It is not a comprehensive statement of the law and court rules; for further information and guidance relevant to your own child or children, please ask for our advice.

The most common disputes over children relate to residence and contact. Proceedings relating to these are conducted under the Children Act 1989 and are briefly described below together with supplementary matters.

Residence Order

Before the Children Act it was determined who had “care and control” of the children and who had “access” to the children. These terms have been replaced and a Residence Order can now be made in favour of a parent who has primary care of the children. Such an Order settles where the child will live if there is a dispute. Where there is no dispute there is normally no need for an Order as the Children Act contains an underlying philosophy that there should be no Order where possible.

A Residence Order can be made to one or more people and they do not necessarily need to be the parent of the child. However in a typical scenario it will be the two natural parents of the child in dispute over where that child should live.

It may be that a Shared Residence Order is made. This means that a child has two homes usually one with each parent and the Court may then determine how the time is split between the two households.

Contact Order

Where the non-resident parent seeks to see their child, they can apply for a Contact Order. The Court will then determine how often and for how long they should see the child and whether that contact should be without restrictions or whether it should be in supervised conditions. The latter can occur where there has been a concern raised about violence or inability to parent safely. When a Contact Order is made either by agreement or following a Court hearing, provisions are automatically included to allow for the enforcement of contact.

Other common Orders under the Children Act are as follows: -

Parental Responsibility Order

Where parties were married to each other whether before or after the date of the child’s birth they both have Parental Responsibility for the child and it will continue after divorce. Unhelpfully Parental Responsibility is defined as “all the rights, duties, powers responsibilities and authority which a parent of a child has in relation the child and his property”. What it effectively means is a level of commitment to a child.

Where a child's parents are not married the mother has automatic Parental Responsibility. If a child is born after the 1st December 2003. The father is named on the birth certificate, that father will have automatic Parental Responsibility. Parental Responsibility can be acquired either by agreement through a Parental Responsibility Agreement, which has to be registered through the Court system, or an Order made by the Court. Parents are allowed to exercise Parental Responsibility individually but need to confer and consult on many major issues relating to a child's upbringing. This includes consultation on major health issues, education and religion and no parent with parental responsibility is allowed to remove the child to live abroad without the consent of the other or without a Court Order.

Parental Responsibility will also be acquired if a parent or other person without it gains a Residence Order in respect of a child.

Recently it has been possible for step-parents to apply for Parental Responsibility and this can be acquired either with the consent of both natural parents or an Order of the Court.

Prohibited Steps Order

Another Order that can be made under the Children Act is a Prohibited Steps Order which as the name indicates prohibits one parent doing a specific act. This can be removing a child for a holiday or permanently from the jurisdiction, bringing them into contact with certain named individuals, or to prevent a change of school.

Specific Issue Order

Specific Issues Orders deal with questions arising on the exercise of Parental Responsibility and can include an application for a parent to have permission to take a child abroad either on a temporary basis or on a permanent basis or for a specific order in relation to medical treatment or to change a child's name.

Procedure

In all the above cases applications are made by way of an application on Form C100 to the Court. The Court fixes a First Directions Hearing about 3 weeks in advance and the application is scrutinised at that early stage and referred to CAFCASS, The Children and Family Court Advisory Support Service. Police checks are done on all the parties so that at the First Directions Appointment the Court is alerted as to whether there are risk factors. Both parties also have the opportunity of filing a Form C1A to give details of any risk factors they consider are relevant.

At the First Hearing the parties are generally invited to speak with either a mediator or a CAFCASS Officer to see if the dispute can be resolved there and then. Frequently an agreement can be reached on an interim basis and then the matter can come back for a Review following a period of time during which perhaps contact can take place. Where there is no possibility of any resolution either a report can be ordered from CAFCASS or the matter set down for a full hearing.

When considering any issues under the Children Act the Court always considers the child's welfare to be the paramount consideration. There is a checklist, known as the Welfare Checklist which the Court has to have regard to in considering the matter before it and it is as follows: -

1. The ascertainable wishes and feelings of the child concerned, considered in the light of his age and understanding.
2. His physical, emotional and educational needs.
3. The likely effect on him of any change of circumstances.
4. His age, sex, background and any characteristics of his which the Court considers relevant.
5. Any harm which he has suffered or is at risk of suffering.
6. How capable each of his parents and any other person in relation to whom the Court considers the question to be relevant are of meeting his needs.
7. The range of powers available to the Court under this Act in the proceedings in question.

Orders relating to children under the Act will normally come to an end when the child reaches the age of 16. Orders are only extended in exceptional circumstances although Parental Responsibility lasts until 18.

No order in relation to children is ever set in stone although there are some restrictions which can be put in place. Other than natural parents, some applicants will need leave of the Court to make an application. That is simply in order that there should be no disruption to the child by frivolous applications. If a party is thought to have litigated too frequently the Court can make an order requiring them to seek leave before making further applications.

Please do ask for further guidance about your own situation and we will be glad to assist. Remember, this note only provides a general guide.