

Parental Responsibility (PR) is defined in the Children Act 1989 (CA 89) as all the rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child and the child's property.

People with PR can make or be involved in the important decisions necessary in a child's life including issues relating to:

- where a child should live;
- education (for example, where a child should go to school and the right to receive school reports);
- health and medical treatment (for example, whether a child should receive medical treatment or inoculations);
- changing a child's name;
- religion (for example, what religion, if any, a child should follow or receive instruction in); and,
- going abroad, either permanently or on holiday (you may be committing an offence if you do not seek consent from everyone with PR before taking a child abroad. See **Children and the law: relocation, holidays and abduction** for further details).

Who has Parental Responsibility?

Mothers

As the biological (birth) mother of your child you will automatically have PR for your child.

Married fathers

If you are or were married to the father of your child at the time of the birth, or marry your child's biological father after the birth he will automatically have PR for your child. It is presumed in law that if you are married at the time of your child's birth your child is the biological child of your husband.

Unmarried fathers

If you are not married to the father of your child and **your child was born before 1st December 2003** he does not automatically have PR for your child. He can gain PR as set out below.

If you are not married to the father of **your child and your child was born on or after 1st December 2003 and the father is named on the birth certificate** he will automatically have PR for your child.

Civil partners of mothers and married lesbian couples

If the child was conceived by artificial insemination on or after 6 April 2009 and you were in a civil partnership your civil partner will automatically have parental responsibility for the child. Similarly, if you were married to your same-sex spouse and the child was conceived by artificial insemination your spouse will automatically have parental responsibility for the child. Both names should be added to the birth certificate and your child will have no legal father.

Further information about parental responsibility and the rights of civil partners or other same-sex partners can be found in our **Guide to Lesbian parenting**.

How can an unmarried father who does not automatically have PR obtain it?

An unmarried biological father can acquire PR in one of three ways:

- By entering into a **PR Agreement** with the mother of his child.

Form C(PRA1) is available at all family courts or to download from the court service website (see **useful contacts**). Both parents must sign the form at a family court in front of a justice of the peace, a justices' clerk, an assistant to a justices' clerk, or a court official who is authorised by the judge to administer oaths. You must provide identification and your child's birth certificate. The agreement must then be sent to the Central Family Court to be lodged.

- By the court making a **PR order**

An unmarried biological father has the right to apply to the court asking for a PR order. This application may be made on its own or at the same time as any other application, for example, for a child arrangements order (an order setting out who the child will live with and spend time with). The father will have PR until his child is 18 or the order is brought to an end by the court. It is extremely rare for the court to terminate a father's PR. If a PR order is made the birth can be re-registered to show that the biological father is the parent. For information on Family Court procedure, see **Children and the law: the Family Court process**.

- By subsequently **marrying the mother**

If the biological father marries the biological mother of his child after the birth, the father will acquire PR.

What about non-parents?

Other people can also acquire PR for your child. These might include step-parents, grandparents or same-sex partners. Non-biological parents can acquire PR for a child if:

- They **adopt** the child

When an adoption order is made the adoptive parent or parents gain PR for the child and the biological parents lose PR. If the adoption is a joint adoption between a biological parent and her or his partner, when the adoption order is made the biological parent who is adopting keeps her or his PR, the person they are adopting with gains it and any other person who has PR loses it.

- They are appointed as a **guardian** of the child.

A person or persons with PR can appoint another person or persons to be the child's guardian after his or her death. The appointment can be made in writing (and must be signed and dated) or in a will. The appointment of a guardian will only take effect if:

- there is no other person with PR for the child; or,
- if the parent who made the appointment was named as the person with whom the child lives in a child arrangements order at the time of the death and the surviving parent was not also named as a parent with whom the child shall live; or
- if the parent who made the appointment was the child's only special guardian.

This means that if you have a child arrangements order stating that the child will live with only you, or there is no other person with PR at the time, you can appoint a guardian whose appointment will take effect immediately on your death and will have priority over the surviving parent (although this can be challenged by the other parent asking to make a child arrangements order in his or her favour). The appointment will only take effect on the death of the person making the appointment where there is no one else with PR or the person who made the appointment has a child arrangements order which states that the child lives with them. If there is no one with PR for a child the court may appoint a guardian.

- The court makes a **child arrangements order stating that the child is to reside with her or him.**

When the court makes a child arrangements order stating that the child is to reside with a person, that person will acquire PR for the child (if they did not already have it). That person will have PR for the duration of the child arrangements order but PR would be lost if the order is brought to an end by the court. Child arrangements orders which state who the child will live with were previously called residence orders. For further information see **Children and the law: when parents separate.**

- The court makes a **special guardianship order**

When the court makes a special guardianship order in favour of a non-parent, this person or persons will acquire PR for the child. This order can either be an alternative to adoption or act as a 'super-child arrangements' order. It provides the child with a legally secure family home but unlike adoption the parents do not lose their PR. A special guardian, however, can overrule the PR of the parents when making decisions about the child.

Married step parents and civil partners

Married step-parents and civil partners can acquire PR for a step child or child of the family by either entering into a PR agreement or by asking the court to make a PR order.

PR agreements require signed consent from all parents with PR. Form C(PRA2) is available from the family courts or to download (see **useful contacts**).

Local Authorities

A local authority can acquire PR for a child if the court makes a care order, emergency protection order or interim care order in respect of that child. The Local Authority will then share PR with anyone else who has PR for the child but the Local Authority can overrule any decisions that they do not feel are in the child's best interests.

What does having PR mean?

The CA 89 allows everyone who has PR to be involved in the important decisions that have to be made as your child grows up. This includes decisions about education, health and medical treatment, religion and leaving the country. If more than one person has PR, they should try to reach an agreement about the decision but if they cannot, then either of them can apply to the court for a decision. The court has the power to decide how people can exercise their PR and to limit how they exercise it. You can ask the court to make such a decision by applying for a specific issue order. The court can also stop a person with PR from making a decision about a child (for example removing them from school or taking them abroad) by making a prohibited steps order. When making any decision about any aspect of a child's upbringing, the child's welfare is the most important factor the court will consider. For further information about these issues see

Children and the law: when parents separate.

More than one person can have PR at the same time for a child. With the exception of special guardians and local authorities with care orders (see above), no one person with PR has a greater right to have a say in decisions about a child than another person (or persons) with PR. No one person with PR can override a decision made by another person with PR without a court order. Everyone with PR has a **right** to make or be involved in the important decisions in a child's life.

However, the law recognises that the exercise of PR has to be realistic. For example, when a couple separate the person with whom the child lives is allowed to make all the day-to-day decisions about the child. Having PR does not give a non-resident parent the right to interfere in the day-to-day management of the child's life.

If another person subsequently acquires PR for a child the other people who already have PR do not lose it unless the court makes an order. PR cannot be surrendered or transferred to another person by the person with PR (although you can delegate your responsibilities temporarily, for example, to a child-minder).

What will the court consider in a PR application?

The CA 89 states that when the court makes any decision about a child, the child's welfare must be the court's "paramount consideration". This means it must consider the child's welfare above everything else.

In particular when deciding whether a father should have PR the court will consider:

- whether the father, by his actions during and since the application, has shown sufficient commitment to the child to justify giving him PR;
- what the level of attachment is between the father and the child; and,
- his reasons for applying for PR.

It is more likely than not that the court will give an unmarried father PR. Even in cases where a father applies for a child arrangements order and does not succeed, the court may still grant PR as it gives the status of fatherhood that he would have had if he were married to the mother or named on the birth certificate.

The courts generally take the view that it will further a child's welfare to have both parents involved in the child's life, unless shown otherwise.

Is it possible to lose PR?

Biological mothers and biological fathers who are married to the mother can only lose PR if the child is adopted.

However, it is possible to apply to the court to have an unmarried biological father's PR terminated whether they have acquired PR by agreement, court order or being named as the father on the birth certificate. These applications are extremely rare. When considering an application of this type, the court will only make an order if it is in the child's best interests. It is very unusual for a court to discharge a PR agreement or revoke a PR order.

An unmarried biological father will also lose PR if their child is adopted.

A person who has acquired PR by obtaining a special guardianship order or by being named as a person with whom the child shall live in a child arrangements order will lose PR if the order is cancelled.

Maintenance and PR

Even if a father does not have PR, he is still required to financially support his child. Paying maintenance does not give a biological father PR or entitle him to have it. Nor should the fact that a father does not pay maintenance be used as a reason to withhold PR. For further information on child support see

Children and the law: child maintenance.

The issues relating to PR can be complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would also strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.

Please note that the law as set out in this guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this guide. This legal guide is designed to give general information only.

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call the following:

Women living and working in London: call **020 7490 2562**

or textphone **020 7490 2562**.

The advice line is open

Mon 11am – 1pm,

Tues and Wed 2 – 4pm.

For all women: call **020 7251 6577**.

The advice line is open

Tues – Thurs 7 – 9pm and

Friday between 12 and 2pm.

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence visit

www.rightsofwomen.org.uk for our advice line details.

Useful Contacts

Child Maintenance Options

0800 988 0988

www.cmoptions.org

Legal aid Agency

0345 345 4 345

National Domestic Violence Helpline

0808 2000 247

www.nationaldomesticviolencehelpline.org.uk

National Family Mediation

0300 4000 636

www.nfm.org.uk

Gingerbread (advice for separated parents)

0800 018 4318

www.gingerbread.org.uk

Relate

0300 100 124

www.relate.org.uk

Resolution (for finding a family solicitor)

01689 820272

www.resolution.org.uk

Samaritans

08457 909090

www.samaritans.org.uk

Court forms and locations

www.justice.gov.uk/about/hmcts

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