

When parents separate there are sometimes decisions that need to be made about a child's upbringing. This legal guide sets out general legal information about the types of orders the court can make in relation to children and answers some frequently asked questions.

Some of these issues can be complicated and your circumstances will be individual to you. You should therefore also seek legal advice. You can obtain free, confidential legal advice on these issues by contacting our advice lines. Details of the advice lines can be found towards the end of this guide. For information on Family Court procedure, see **Children and the law: the Family Court process**.

Language

Whilst in this legal guide we refer to the child's other parent as 'he' we recognise that this may not be the case. The law set out in this legal guide is generally the same regardless of whether your child's other parent is a man or a woman, but if your child's other parent is a woman you may also wish to read this guide alongside our **Guide to Lesbian parenting**.

At some points in this guide we have referred to "the other party". This means the other person in your case, whether it is the child's other parent or another person with parental responsibility for the child. For information about parental responsibility and what this means you can refer to **Children and the law: Parental Responsibility**.

Separating parents

When parents separate one of the most important issues to resolve is what arrangements will be made for the children. This can include issues such as where the children will live, how often the children will see the other parent, child maintenance, schooling and education.

Child arrangements can be flexible to meet the needs of the child. The children could, for example, live with one parent and have regular contact with the other parent. Some children live with both parents. For example, they could spend one week with one parent and one week with the other.

It is important for parents to communicate with each other in a respectful manner to agree arrangements which are centred around the best interests of the child.

Remember that for important issues regarding children you should consult anyone with parental responsibility for the child (see **Children and the law: Parental Responsibility**).

What if the other parent is or has been abusive, or controlling towards me?

If you are concerned that you or your child are at risk of harm you should contact the police and obtain urgent legal advice. You can also refer to our **Guide to Domestic Violence Injunctions**.

What is domestic violence?

The U.K. government defines domestic violence as follows:

‘Domestic violence’ includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse.

‘Controlling behaviour’ means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

‘Coercive behaviour’ means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

Always ensure that arrangements are safe for yourself and your child. This may mean that the other parent should have no contact with you or your child.

If you think it is safe for your child to see the other parent but you want to avoid seeing him then you could arrange for a third person to help with handing over the child from one parent to the other at the beginning and end of contact. The third person could be someone you know or a professional.

Some fathers see their children at **contact centres**. This is a place where parents can see their children with staff present. The staff can watch the family, take notes and provide reports if necessary (this is known as supervised contact). Sometimes there will be lots of families in one large room with staff in the room, but staff do not observe individual families (this is known as supported contact). Staff at contact centres can also assist with handovers, so the other parent can take the child away from the centre for contact but the parents do not have any direct contact with each other.

You should obtain legal advice from a solicitor or contact our advice line before agreeing to child arrangements with an abusive parent.

What if we cannot agree child arrangements?

If you are unable to agree arrangements for children with the other parent then it may be necessary to seek assistance.

If the dispute relates to child maintenance then you can refer to **Children and the law: child maintenance**.

For other types of issues it may be necessary to obtain legal advice either from a solicitor specialising in family law or from other sources of information, such as our legal advice lines (see **useful contacts**).

You could also try reaching an agreement through mediation. Mediation is a process where two parties discuss any issues in dispute with the help of a trained mediator, with the aim of reaching an agreement. Mediation is not appropriate if you have experienced domestic abuse. For further information see our **Guide to Alternatives to the Family Court**.

If it is still not possible to reach an agreement it may be necessary to make an application to the court for one or more of the orders detailed below.

Child Arrangements Order

Child arrangement orders have replaced what were previously known as **contact orders** and **residence orders**. **Custody** and **access** are also very old terms which are no longer used by the Family Court.

A **Child arrangements order** is an order setting out:

1. who the child will live with, and when
2. who the child will spend time, or otherwise have contact with, and when.

The court can order that the child lives with one parent or both parents, and specify when the child lives with each parent.

If the child lives with one parent, the court can order when the child is to have contact or spend time with the other parent. The contact could be face-to-face (direct contact). The contact may have to be supervised (either by a suitable person or at a contact centre). The contact may be indirect (such as through letters and cards). The court can also make an order for the child to see the other parent for a specified number of hours. The court can also make an order for the child to stay with a parent

overnight or more than one night (staying contact), for example over the school holidays.

If you are named as the person with whom a child is to live, then you will automatically acquire parental responsibility for the child if you did not already have parental responsibility (see **Children and the law: Parental Responsibility**).

The court can add **conditions** to a child arrangements order (for example, a condition that the father is not to consume alcohol during his time with the child). The court can also add **activity directions** to a child arrangements order (for example, asking the parents to attend a course which provides information on how to deal with challenges faced by separated parents).

If anyone fails to comply with a child arrangements order, the court can make an **enforcement order** requiring that person to undertake unpaid work, or, in extremely exceptional circumstances, can imprison a parent who is failing to comply with an order. The court will not make the order if the person had a good reason for not complying with the child arrangements order. If you believe you have good reasons for not complying with a child arrangements order, you should apply to the court to have the order varied.

Specific issue orders

A **specific issue order (SIO)** is an order the court can make when two people who have parental responsibility (PR) for a child (see **Children and the law: Parental Responsibility**) cannot agree about an important decision in a child's upbringing. For example, you can ask the court to make a SIO if you cannot agree about:

- your child's education – for example what school she or he should go to;
- your child's religion – for example whether your child should be brought up in one faith or another;
- your child's health – for example what medical treatment your child should have;
- your child's surname (see **Changing your child's name** below).

The court is unlikely to become involved in less important decisions about the way in which you bring up your children, such as the day-to-day decisions you make. For example, your child's other parent is unlikely to be able to ask the court to interfere in decisions about the clothes you dress your child in, the food you give your child or who you choose to baby-sit.

Prohibited steps orders

A **prohibited steps order (PSO)** is an order the court can make to forbid a person who has PR for a child from taking certain action in relation to that child. You can ask the court to make a PSO forbidding your child's other parent or another person with PR to:

- remove your child from your care;
- remove your child from school;
- take your child abroad;
- bring your child into contact with certain people;
- change the child's surname

The court can make these orders without the other person being given notice of the hearing in an emergency. The court may make a temporary or interim PSO and arrange another hearing when the other person can attend and put his or her side

of the story. A PSO could also be made to last indefinitely.

Changing your child's name

Although there are no legal rules or requirements for changing your child's surname, there is clear guidance from the courts that says you must first seek the **permission of your child's other parent** (specifically the child's biological father) and anyone else with PR to change the child's name. This is the case regardless of whether the father has PR or not. If you do not get his permission, he could apply to the court for a **specific issue order** to change the child's name back to his surname. If you are not able to obtain the permission of those with PR (and your child's father if he does not have PR), and you still wish to change your child's name, you should make an application to the Court for a SIO. If the change of name is agreed by the father, or a court has agreed to it, you can prepare a **statutory declaration or change of name deed** to formally change your child's surname.

Holidays, moving abroad and child abduction

There are important rules about when you are allowed to take your child abroad and serious consequences if you do so without the appropriate consents. For information on taking children abroad see **Children and the law: child relocation, holidays and abduction**.

How the court makes decisions about children

When making any decision about a child the court's primary consideration is the welfare of that child. The court will only make an order if they believe that it is better for the child that the order is in

force than not making any order at all. This means the court will not usually make an order to confirm that your child lives with you if nobody is disputing that the child should live with you.

The court will consider all the child's circumstances and in particular the following factors:

- **your child's wishes and feelings** depending on her or his age and understanding (generally the older your child is the more emphasis the court will place on those wishes and feelings)
- **your child's physical, emotional and educational needs** (this includes practical needs such as accommodation and food as well as love and affection)
- **the likely effect on your child of any change in her or his circumstances** (the court will look at the previous or existing arrangements, and generally considers that change can be disruptive to a child)
- **your child's age, sex, background and any characteristics the court thinks relevant** (this could include any cultural or religious needs or any special needs or disabilities your child might have)
- **any harm your child has suffered or is at risk of suffering** (this includes physical, sexual or emotional abuse and now also includes any domestic violence your child has seen or heard)
- **how capable both parents are of meeting your child's needs** (the court can consider both your skills in looking after your child and can consider whether these are impaired, for example, by drink or drugs)

- **the range of powers available to the court** (the court can choose from a very wide range of different orders when making these decisions)

There is a presumption that it is in a child's interests to have both parents involved in the child's life, unless there is a good reason why he should not be involved. This could mean direct involvement (such as seeing the child regularly) or indirect involvement (such as by letters and cards).

The issues relating to orders about children 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 legal 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 legal 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

Gingerbread (advice for separated parents)
0800 018 4318
www.gingerbread.org.uk

Working Families
0800 0130313
www.workingfamilies.org.uk

Reunite (for advice on child abduction)
0116 255 6234
www.reunite.org.

Legal aid Agency
0345 345 4 345

Finding a solicitor or barrister

The Law Society
www.lawsociety.org.uk/find-a-solicitor/

Resolution
01689 820272
www.resolution.org.uk

Bar Council
020 7611 1472
www.barcouncil.org.uk

Free legal advice

Citizens Advice Bureau
www.citizensadvice.org.uk/index/getadvice.htm

Rights of Women – see above for details
www.rightsofwomen.org.uk

Domestic violence help

National Domestic Violence Helpline (domestic violence support)
0808 2000 247
www.womensaid.org.uk/www.nationaldomesticviolencehelpline.org.uk

Court forms and locations
www.justice.gov.uk/about/hmcts

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WOMEN
helping women through the law

52 – 54 Featherstone Street,
London EC1Y 8RT

Office: **020 7251 6575**
Email: **info@row.org.uk**
Website: **www.rightsofwomen.org.uk**

