

**Parental Responsibility and Court Orders**

**What is a Parent?**

It’s important that schools and local authorities are aware that parents may be recognised differently under education law, than under family law. Section 576 of the Education Act 1996 states that a ‘parent’, in relation to a child or young person, includes any person who is not a parent (from which can be inferred ‘biological parent’) but who has parental responsibility, or who has care of the child.

For the purposes of education law, the department considers a ‘parent’ to include:

* all biological parents, whether they are married or not
* any person who, although not a biological parent, has parental responsibility for a child or young person - this could be an adoptive parent, a step-parent, guardian or other relative
* any person who, although not a biological parent and does not have parental responsibility, has care of a child or young person

A person typically has care of a child or young person if they are the person with whom the child lives, either full or part time and who looks after the child, irrespective of what their biological or legal relationship is with the child.

**What is Parental Responsibility?**

In Family law, Parental responsibility means 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. (Children Act, 1989, Section 3 (1))

This includes a duty to provide food, shelter, and safety and to maintain the child financially. But it also includes education, religion, discipline, medical treatment, the name by which a child is known and even where a child should live.

**Who has Parental Responsibility?**

A mother automatically has parental responsibility.

A (biological) father will have parental responsibility if:

* He was married to the child’s mother at the time of the birth or married her subsequently *or*
* He is named on the child’s birth certificate (when registered *after* 1/12/2003) *or*
* He has the benefit of a PR Agreement or Court Order granting him parental responsibility

Where two female parents have a child through fertility treatment, the mother’s female partner is treated in the same way as a father. She has parental responsibility if she is married to or in a civil partnership with the mother at the time of the treatment (or if the two women agree in writing that she will be the child’s second parent). She can also acquire parental responsibility in the same way that a child’s father can.

People who are not the child’s biological mother, father or second female parent can also acquire Parental Responsibility.

When a father or second female parent acquires parental responsibility they:

* become a ‘parent’ for the purposes of adoption legislation and can therefore withhold consent to an adoption
* can object to the child being accommodated in local authority accommodation under section 20 of the Children Act 1989 and remove the child from local authority accommodation (unless the child is over 16 and agrees to be provided with accommodation)
* will automatically be a party to care proceedings
* can appoint a guardian
* can give valid consent for his child’s medical treatment (subject to the competency of the child to give their own consent or object to the treatment being proposed)
* has a right of access to his child’s health records
* can withdraw a child from sex education and religious education classes and make representations to schools concerning the child’s education
* must give consent if child’s other parent seeks to remove the child from the jurisdiction
* can sign a child’s passport application and object to the granting of a passport
* has sufficient rights in relation to a child to invoke the international child abduction rules
* can consent to the marriage of a child aged 16 or 17

Any adult can have parental responsibility for a child if they were appointed legal guardian of the child in the will of a parent with parental responsibility and that parent is deceased.

In certain circumstances, parental responsibility may be shared with a Local Authority (usually when the child has been the subject of Care Proceedings S38 or S31 of the Children’s Act).

**Other ways to acquire parental responsibility**

Parental responsibility can be acquired in other ways:

* adoption - only the adoptive parents will hold parental responsibility
* when a child is placed with prospective adopters they get parental responsibility for the child along with others holding parental responsibility, such as the local authority
* obtaining a parental order following surrogacy
* in the case of step-parents, through agreement with the child’s mother - and other parent if that person also has parental responsibility for the child - or as the result of a court order
* being granted a child arrangements order determining that the child should live with him or her, or if the court determines that a parent should only spend time with the child, the court may also decide to grant parental responsibility
* being appointed a guardian or special guardian
* being named in an emergency protection order - although parental responsibility in such a case is limited to taking reasonable steps to safeguard or promote the child’s welfare

A local authority can also acquire parental responsibility, if it’s named in the care order for a child.

More than one person, and even several people, can hold and exercise parental responsibility for a child. The parental responsibility of one party does not necessarily stop simply because another person is also given it, although this can happen. Therefore, in some cases, several people may exercise parental responsibility on behalf of a child.

Parental responsibility is not given to a foster parent or key worker in residential care but it’s essential that schools engage and work with these individuals, who are often the most influential and important people in the child’s life. How a school engages with social workers and the birth parents of the child in each case needs to be defined locally, but it’s an essential part of supporting the child’s school and care environment.

**Step Parents and Parental Responsibility**

Step parents cannot acquire parental responsibility for a child simply by marrying the child’s biological parent. Previously, step parents could only acquire parental responsibility for a step child by legally adopting the child, or by obtaining a Residence Order (Now known as Child Arrangements Order) from the court.

A step-parent can acquire parental responsibility for a child in very specific circumstances including:

* When the court makes a Child Arrangements Order that the child lives with the step-parent either on their own or with another person. However these types of ‘step parent’ orders are uncommon.
* When the step-parent adopts a child which puts him/her in the same position as a birth parent.
* Through the signing of a Parental Responsibility Agreement to which all other people with parental responsibility consent. (see below)
* When the court has made a Parental Responsibility Order following an application by the step-parent. On acquiring parental responsibility, a step-parent has the same duties and responsibilities as a natural parent.

Same sex partners in a registered civil partnership or marriage can also acquire parental responsibility by agreement or a court order.

**Obtaining** **a Step Parent Parental Responsibility Agreement**

There are two simple conditions to obtaining PR by agreement:-

* you ***must*** be married to the biological parent with whom the child lives
* you must have the signed consent of ***every*** person with parental responsibility for the child

This means that if the other parent of the child is living and has parental responsibility, they *must* agree to you acquiring parental responsibility and they must cooperate in the agreement being approved by the Court, not just the parent to whom you are married.

You must also be able to provide your marriage certificate showing you are married to the child’s parent; the child’s parent must provide the child’s full birth certificate; where there is another parent with parental responsibility, proof that they have parental responsibility must be provided; and all parties to the agreement must provide photographic evidence of identity (e.g. passport or driving licence).

If the other parent’s agreement is not forthcoming and you and your spouse remain of the view that you having parental responsibility is in the child’s best interests, then you can apply to the Court to make an order giving you parental responsibility.

**Gaining a Parental Responsibility Order means:**

* It doesn’t remove parental responsibility from the absent biological parent
* It doesn’t give you a greater say than the absent parent in the child’s upbringing (but it does give you an equal say)
* It doesn’t make you liable to pay maintenance for the child
* If you separate from the child’s parent/move out, it doesn’t give you an automatic right to see the child

What it ***does*** do is give you the same legal rights and obligations in relation to raising the child as the biological parent or parents.

**Court orders and parental responsibility**

Court orders under section 8 of the Children Act 1989 (often-called section 8 orders) settle areas of dispute in relation to the exercise of parental responsibility or a child’s care or upbringing, and can limit how an individual exercises their parental responsibility.

There are different types of section 8 orders, which can be made to address particular issues.

**Prohibited steps order**

A prohibited steps order imposes a specific restriction on the exercise of responsibility. This means that no step specified by the court, which a parent could take in meeting his/her parental responsibility, can be taken without the consent of the court.

e.g. prevention of holiday outside of agreed contact times. Or removing a child out of the country.

**Specific issue order**

A specific issue order is an order giving directions for the purpose of determining a specific question that has arisen, or may arise, in connection with any aspect of parental responsibility.

e.g. arrangements for contact over Christmas or a child changing schools.

**Child arrangements order**

A child arrangements order sets out the arrangements relating to whom a child is to live with and when, and arrangements relating to whom a child spends time with or otherwise has contact with. It replaces the former residence and contact orders.

**Care order**

If a care order is in place, the role that parents can play in their child’s life and schooling may be limited by the local authority.

**Schools should note that court orders limiting a parent’s exercise of their parental responsibility does not necessarily prevent or restrict a school from carrying out their**[**duties under education law**](https://www.gov.uk/government/publications/dealing-with-issues-relating-to-parental-responsibility/understanding-and-dealing-with-issues-relating-to-parental-responsibility#dutiesundereducatonlaw) **(e.g. access to information about the child)**

**Schools should ask to see any copies of any orders held on any child.**

**Impact on Schools and Settings**

Individuals who have parental responsibility for, or care of, a child have the same rights as biological parents. For example to:

* receive information – such as pupil reports
* participate in statutory activities – such as voting in elections for parent governors
* be asked to give consent - such as to the child taking part in school trips
* be informed about meetings involving the child - such as a governors’ meeting on the child’s exclusion

Schools and settings must treat all parents equally, unless a court order limits a parent’s ability to make educational decisions, participate in school life or receive information about their children. Schools must consider whether parents have rights under the education law.

For more information about Parental Responsibility and the impact on schools around legal matters please see the full document guidance:

**Understanding and dealing with issues relating to parental responsibility**

<https://www.gov.uk/government/publications/dealing-with-issues-relating-to-parental-responsibility/understanding-and-dealing-with-issues-relating-to-parental-responsibility>