

PARENTAL RIGHTS AND RESPONSIBILITIES

Parental rights and responsibilities – what are the basic principles?

Attitudes both in society and in the courts have changed significantly in recent years. The law concerning children is governed in Scotland by the Children (Scotland) Act 1995, which stresses the responsibilities parents have, as well as their rights. It discourages the courts from making formal orders unless they are absolutely necessary. It encourages parents to remain as involved as possible with their children after separation. Instead of using the words "custody" and "access" the Court orders that can be requested are for a "residence order" to have a child living with a parent or a "contact order" to have the child spend some time with the parent asking for the order.

Going to court is stressful for everyone. It is better for children if parents can agree things between themselves rather than have to go to court. The agreement can be informal but may also be put in writing (a separation agreement).

However, there are situations when it is important to ask the Court for an order, for example if there is a danger that the other parent might abduct the children or the children might be taken out of the country.

The law does not consider that either the mother or the father automatically has a better claim. The decision is based on what is in the best interests of the child. That will depend on who is best able to provide for the practical and emotional needs of the child. In general, courts are keen to see children having contact with both their parents throughout their childhood, unless there is a good reason why not.

Do the views of child/ren have to be taken into account?

The views of any child involved are very important. A child of twelve or over is assumed to be old enough to say what their views are. With younger children it depends on their maturity. Parents are normally supposed to take into account the views of the other parent and children (where appropriate) in any major decision concerning a child. Sometimes children may need separate legal advice – see our factsheet on "Legal Representation for Children and Young People"

Who has or can acquire parental rights and responsibilities?

All mothers automatically have parental rights and responsibilities for their children. Fathers married to the mother of the child also have automatic parental rights and responsibilities. Unmarried fathers only have automatic parental rights and responsibilities if the child was born after 4th May 2006 and the father's name is on the birth certificate. Otherwise they need a court order or a formal agreement with the mother to share in parental rights and responsibilities.

Can I appoint a guardian for my child/ren?

It is possible to appoint someone to take over your parental rights and responsibilities if both you and the other parent of your child die. If you want any guidance about how to do that contact one of our family lawyers.

If you need to make arrangements for your child/ren or require guidance on any of the above, contact one of our family lawyers.