



Factsheet

Parental Responsibility and Disabled Children



Working wonders for children with brain conditions

Families where a child has a brain condition face challenges every day. Just to learn, play, make friends and experience the world can feel difficult, even impossible. But we don't believe there's any challenge that can't be overcome.

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Thank you.

Parental Responsibility and Disabled Children

Aims

This factsheet looks at some of the key points regarding parental responsibility and disabled children in England and Wales. Its aim is to give an overview and it isn't meant to be an in-depth explanation of the law. As with many areas of the law it isn't always black and white and there are some grey areas particularly regarding 16 and 17 year olds whose developmental delay may affect their ability to make some decisions. If you'd like to read about this area of the law in more detail, please see the [Disabled Children: A Legal Handbook](#)¹ or our guide on [Decision Making, Sharing Information and Confidentiality](#).

This factsheet includes a [glossary](#) (see page 7) which provides an explanation of commonly used terms (these are highlighted in [orange](#) in the text).

What is parental responsibility?

The legal definition² of 'parental responsibility' (PR) is:

"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".

Having PR means that you can make important decisions about your child in areas such as:

- food
- clothing
- education
- home
- medical treatment

Please note that when important decisions are being made about the upbringing of a child both parents with PR for that child can contribute to the decision-making process. There should be consultation, for instance, in the choice of school. However, when it comes to making day-to-day decisions, such as what clothes to wear or what to eat, it is in a child's best interests for the adult(s) with PR in the household where the child lives to make decisions. Where parents with PR live separately, the non-resident parent does not lose PR although the resident parent will make the routine, everyday decisions.

It's also important to realise that although parents can make decisions on behalf of their children who are unable to make decisions for themselves, children should still be involved in the decisions being made about them.

And, as we will see below, in some cases children can make their own decisions in important areas as they grow and mature.

¹ [Disabled Children: a legal handbook, 3rd Edition, by Steve Broach and Luke Clements, LAG, Chapter 7, Decision-making: the legal framework](#)

² Children Act 1989, section 3(1).

Do both parents automatically have parental responsibility?

Mothers will always automatically have PR whether married or not. Married fathers also have PR automatically.

Importantly, **unmarried fathers won't get PR automatically unless they are registered on the birth certificate.**

Can an unmarried father without parental responsibility get parental responsibility?

Yes, there are a number of ways:

- both parents sign an authorised **parental responsibility agreement**
- he obtains a **parental responsibility order** from the court
- he obtains a **child arrangements order** from the court
- he becomes the child's **guardian**.

What happens if a married couple with parental responsibility divorce?

They both keep their PR.

Does anybody else automatically have parental responsibility?

No. Stepparents and grandparents, for instance, do not automatically get PR.

However, there could be good reasons for someone without PR to want to get it.

If you live permanently with a child and are acting effectively as their parent you might feel that you want the authority, stability and recognition. Especially if the other birth parent has no contact, or is abroad, unknown or dead. Without PR you can't make decisions about a child's upbringing, such as choice of school or religion or surname. If you're a stepparent, you can't automatically have the child live with you on the death of your partner, unless you have PR, which means that the other birth parent (if they have PR) might have a greater claim for the child to live with them.

How can somebody without parental responsibility get parental responsibility?

This can be achieved by:

- being appointed as a guardian to care for a child if their parent dies
- obtaining a **child arrangements order** from the court for a child to live with them
- obtaining a **special guardianship order** from a court
- adopting the child
- a stepparent may make for a PR agreement with the birth parents

Under child arrangements orders and special guardianship orders, PR is shared to some extent with

parents.

If a child is made subject to a care order in favour of a local authority, PR will be shared between the local authority and parents. However, if parents voluntarily ask or agree to a local authority caring for their child, e.g. with foster carers or a residential placement, the local authority does not have PR.

Can I give someone else parental responsibility for my child to someone else?

No. PR can only be gained as explained above.

Responsibility for looking after a child can be delegated to other people including partners who don't have PR, childminders, teachers and even friends and relatives. However, it's important to realise that the person with PR remains responsible for making sure that the child is looked after correctly. Although they don't have PR these 'temporary carers' must nevertheless ensure the safety and wellbeing of the child in all situations.

I'm an unmarried father who doesn't have parental responsibility, do I still have other responsibilities to my child?

Yes. It's important to realise that PR and child maintenance aren't the same thing and legally you'd still have to provide [child support maintenance](#).

And, you do have other rights such as:

- the right to apply to the court for certain court orders regarding your child
- the right to have reasonable contact with your child if they are in local authority care.

What happens if adults with parental responsibility disagree on a major decision about a child?

One option would be to go to family mediation. Family mediation is a process where an independent, trained professional helps you and other adults with PR make agreements about vital issues such as parenting arrangements, money and property

You can find details of how to contact local family mediators [here](#).

If you can't resolve your differences, it's possible for either party to apply to the court for a [Specific Issue Order](#) or a [Prohibited Steps Order](#). You don't have to have PR to make such an application. By doing this you're basically asking the court to come to a decision on your behalf and it'll base its decision on what it thinks is in the best interests of your child.

So, what rights does my child have to make her own decisions?

As we have seen, the law assumes that children can't make decisions and you will make them taking their views and feelings into consideration. This would include decisions involving, for instance social care support or medical treatment.

However, things aren't quite as simple as that. Generally speaking, as children grow up and mature they are increasingly capable of being involved not only in the decision-making process but also making their own decisions, including medical care. The law recognises if a child has enough understanding and intelligence to enable her to fully understand what is involved in a given medical

procedure then she is capable of giving consent for it to go ahead³. That doesn't mean that parents are necessarily excluded from the decision-making process, they should be consulted provided the child gives permission. It's also important to realise that the child has a right to confidentiality and in this situation professionals would only share their information with parents if the child agreed to it unless it was felt that there were safety issues that meant it needed to be shared.

Will I have parental responsibility for my child forever?

No, once your child has their 18th birthday she will become an adult in the eyes of the law and you will lose parental responsibility. She will be responsible for making all decisions in all aspects of her life – but see below.

But my child has a developmental delay and there are some decisions she just won't be able to make even when she's 18?

If an adult isn't capable of making a specific decision, then the responsibility for making the decision will ultimately fall to a relevant professional. For instance, in the case of a decision regarding a medical operation the decision would be taken by a doctor. This is clearly potentially very difficult for parents to accept but rest assured that you can't be simply dismissed as 'next-of-kin' and excluded from the decision-making process. In some cases, a specialised court known as the Court of Protection⁴ can be asked to make a decision.

The law that applies in this area is called the Mental Capacity Act 2005 (MCA) and it makes clear that although you would no longer have parental responsibility you should still be consulted on what you think is in your adult child's best interests and her wishes and feelings, beliefs and values. They should also involve her to the maximum extent possible.

It's also important to know that the MCA also applies to **16 and 17 year olds**. This means that if professionals believe that a young person in this age group isn't capable of making a given decision, ultimately, they will be able to make it on their behalf and in their best interests. Again, they should consult with the parents and involve the young person as much as possible in the process. It's also possible for the Court of Protection to be asked to make the decision.

If you have concerns about professionals taking decisions under the MCA regarding your child aged 16 to 17, or when they have passed 18 and entered adulthood, we would strongly advise that you get specialised legal advice as early as possible. If you do have to consider going down this route, you may find our guide [Finding and Assessing Sources of Legal Help](#) useful.

³ This was established from a case heard by the House of Lords referred to as *Gillick v West Norfolk and Wisbech Area Health Authority*. Such a child is sometimes referred to as [Gillick competent](#).

⁴ The [Court of Protection](#) helps people who don't have the mental capacity to manage their own affairs. It has the power to make decisions for people about their money, property, health or welfare. The Court can also give these powers to someone else like a relative or close friend who can manage their loved one's affairs. This usually happens if there is a need to make decisions on a long-term basis. If the Court gives these powers to someone else, they are called a Deputy.

Glossary

Child arrangements order

If the parents cannot agree who the child will live with or how they will keep in touch with the other parent, they can apply to the court for a child arrangements order. Child arrangements orders replaced residence orders (deciding which parent a child should live with) and contact orders (covering what contact rights the non-resident parent has).

Child support maintenance

Child maintenance is regular, reliable financial support that helps towards a child's everyday living costs. The parent who doesn't have main day-to-day care of the child pays child maintenance to the parent who does. In some cases, this may not be a parent but someone else the child is living with such as a grandparent or guardian.

Guardian

A legal guardian is a person who has been appointed by the court to care for someone else and make decisions on their behalf. Essentially, a legal guardian assumes legal responsibility over another person who, in the context of this factsheet, would be a child.

Parental responsibility agreement

A parental responsibility agreement is an agreement made between the mother, or parent with PR, and someone who wants to obtain PR.

Parental responsibility order

A parental responsibility order is an order under the Children Act 1989, which unmarried fathers can apply for when the mother refuses to allow the father to be registered or re-registered on the birth certificate, or refuses to sign a parental responsibility agreement with him.

Prohibited steps order

Prohibited steps orders are put in place by the court to prevent a parent from making a decision about the child's upbringing, such as taking a child abroad.

Special guardianship order

A relative or other adult connected with a child who wishes to care for them can apply to court for a special guardianship order which, if made, will mean the special guardian can exercise PR exclusively in all but the most serious decisions.

Specific issue order

A specific issue order is an order from the court which determines a specific question which has, or may arise, in connection with any aspect of PR for a child, for example about medical treatment.

Further information and resources

Our parental guide **Decision making, confidentiality and information sharing** can be downloaded free of charge [here](#).

Chapter 7, **Decision-making the Legal Framework** written by Camilla Parker in **Disabled Children: a Legal Handbook, 3rd edition**, by Steve Broach and Luke Clements can be downloaded free of charge from the Council for Disabled Children's website [here](#).

Adolescent Mental Health Care and the Law by Camilla Parker, published by LAG, 2020 is a resource for legal advisers such as those providing legal representation before the Mental Health Tribunal. It's also designed to be accessible to non-lawyers including professionals working in children's services and mental health services (adult as well as children and young people's services).

The **Mental Capacity Act Code of Practice 2005** can be found [here](#).

The **Family Rights Group** is a charity working with parents in England and Wales whose children are in need, at risk or in the care system and with members of the wider family who are raising children unable to stay at home. They have a Freephone number, 0808 801 0366 and their website is www.frg.org.uk.

About the author

Derek Tilley is currently working as part of the Cerebra Research Team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements. Firstly, in the area of special educational needs with IPSEA and SNAP Cymru Parent Partnership Services before moving into the area of direct payments with Diverse Cymru. During this period Derek served as a third sector representative on the Cardiff Disabled Children's Strategy Development Group and the Cardiff Autism Strategy Development Group. He recently successfully completed an MSc in Social Science Research Methods at Cardiff University and is carrying out a PhD under the supervision of Professor Sally Power, Director of WISERD Education, Cardiff University, and Doctor Julie Doughty, School of Law and Politics, Cardiff University exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from the education, health and social services.

About the reviewer

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