



BRIEFING PAPER

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Children: parental responsibility - what is it and how is it gained and lost (England and Wales)

By Tim Jarrett

1. Summary

This House of Commons Library briefing note concerns “parental responsibility” as a legal concept as set out in the *Children Act 1989* as amended.

It considers the meaning of parental responsibility, and the fact that it is not a constant right, but diminishes as the child gets older and so can reach a sufficient understanding and intelligence of the consequences of decisions relating to them.

How parental responsibility can be acquired and lost can depend on the person concerned and certain court orders. There can be restrictions on how parental responsibility is exercised, including the gaining of court orders in order to settle or prohibit a particular action by someone with parental responsibility.

This note applies to England and Wales only.

2. The exercise of parental responsibility

2.1 The meaning of “parental responsibility”

Under the *Children Act 1989* as amended, the term “parental responsibility” is defined as “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”.

In addition, where someone has the care of a child but who does not have parental responsibility for them, they may still, subject to the provisions of the *Children Act 1989*, “do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare”.

In addition, whether or not someone has parental responsibility does not affect “any obligation which he may have in relation to the child (such as a statutory duty to maintain the child)”, or “any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property”.¹

The Family Rights Group, a charity,² notes that:

¹ *Children Act 1989*, section 3

² Family Rights Group explains that it works “with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children unable to remain at home” [Family Rights Group, [About Us](#), webpage accessed on 9 August 2017]

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Each parent who has parental responsibility is entitled to make day to day decisions about the child independently of anyone else with parental responsibility, except for taking the child outside the UK.

However, it is still a good idea if a person with parental responsibility consults everyone else with parental responsibility about important decisions such as immunisations, medical treatment, change of school etc. This is particularly important if the decisions will affect contact arrangements. This is because it is usually best for the child if the adults in their life agree on arrangements made for them.³

2.2 The child's welfare remains paramount

During the landmark case of *Gillick v West Norfolk and Wisbech Health Authority*, it was made clear that the welfare of the child was the paramount consideration, and that this limited and governed the exercise of parental responsibility.

As Lord Scarman put it:

When a court has before it a question as to the care and upbringing of a child it must treat the welfare of the child as the paramount consideration in determining the order to be made. There is here a principle which limits and governs the exercise of parental rights of custody, care, and control. It is a principle perfectly consistent with the law's recognition of the parent as the natural guardian of the child; but it is also a warning that parental right must be exercised in accordance with the welfare principle and can be challenged, even overridden, if it be not.⁴

The legal text *Children Law and Practice* notes that "it follows that such parental rights are not absolute but subject to the principle that the child's welfare is the paramount consideration".⁵

3. Dwindling parental responsibility as a child gets older ("Gillick competent")

It should be noted that the extent to which a person with parental responsibility can exercise the "rights, duties, powers, responsibilities and authority" in respect of a child are not constant throughout the child's life; rather, case law has determined that they diminish as the child gets older. Parental responsibility ceases when a child passes 18 years of age.

As the legal text, *Children Law and Practice* notes, "parental right has been described as: 'a dwindling right which the courts will hesitate to enforce against the wishes of the child, the older he is. It starts with the right of control and ends with little more than advice'".⁶

The term "Gillick competent" often arises in regard to such cases; the term derives from the case of *Gillick v West Norfolk and Wisbech Health Authority*. Although that particular case considered the matter of contraception for a young person,⁷ "Gillick competent" is more general and could be construed as being shorthand for a young person being deemed capable of expressing a valid view about their upbringing and understanding the consequences of that position, and therefore that the court should include consideration of their view in its determination. As *Children Law and Practice* notes:

³ Family Rights Group, [Parental Responsibility](#), factsheet 2, 29 October 2014, p5

⁴ [1986 1 FLR 229](#), quoted in Hershman and McFarlane, *Children Law and Practice*, para A51

⁵ Hershman and McFarlane, *Children Law and Practice*, para A51

⁶ Hershman and McFarlane, *Children Law and Practice*, para A54; see Per Lord Denning in *Hewer v Bryant* [1970] 1 QB 357 at 369, [1969] 3 All ER 578 at 582

⁷ See the [NSPCC's webpage on Gillick competency](#) for more details.

A parent does not have the right to control a child up to the age of 18. Parental control yields to the child's right to make his own decisions when the child reaches a sufficient understanding and intelligence to be capable of making up his own mind on a matter requiring his decision. Such a child is now commonly described as a Gillick-competent child. In *Gillick v West Norfolk and Wisbech Health Authority*, the House of Lords, by a majority, held that a child under the age of 16 was capable of giving consent to medical treatment if he was capable of understanding what was proposed and of expressing his own wishes. It follows that the more mature the child, the more care should be taken to consider his wishes and feelings.⁸

In terms of the test of "Gillick competency", an NSPCC webpage notes that:

Lord Scarman's comments in his judgement of the Gillick case in the House of Lords (*Gillick v West Norfolk*, 1985) are often referred to as the test of "Gillick competency":

"...it is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved".⁹

4. Acquiring parental responsibility

4.1 Who is always deemed to have parental responsibility?

Mother

A child's biological mother automatically acquires parental responsibility for her child.¹⁰

Married father

A father automatically has parental responsibility for his child if he is married, or deemed to be married, to the mother of the child when the child is born.¹¹ Parents do not lose parental responsibility if they divorce.

Second female parent married or in a civil partnership

A second female parent automatically has parental responsibility for her child if she is in a civil partnership with or married to (or so deemed to be so) the mother of the child at the time of the placing in the child's mother of the embryo or the sperm and eggs or of her artificial insemination is deemed to have parental responsibility for her child.

However, this does not apply if it is shown that she did not consent to the placing in the mother of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).¹²

Box 1: Second female parent

In this paper, "second female parent" refers to sections 42 and 43 of the *Human Fertilisation and Embryology Act 2008* as amended by the *Marriage and Civil Partnership (Scotland) Act 2014* and *Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014*.¹³

Where a female civil partner or spouse gives birth to a child conceived as a result of donor insemination (anywhere in the world), she is the mother of the child and her civil partner or spouse will automatically

⁸ Hershman and McFarlane, *Children Law and Practice*, para A53

⁹ NSPCC, [A child's legal rights: Gillick competency and Fraser guidelines – How is Gillick competency assessed?](#), webpage (accessed on 9 August 2017)

¹⁰ *Children Act 1989*, section 2

¹¹ *Children Act 1989*, section 4(1)(a)

¹² *Children Act 1989*, section 2(1A)

¹³ SI 2014/3229

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be the other parent (the second female parent), unless the other civil partner did not consent to the mother's treatment.

If a same-sex female couple is not married or in a civil partnership, then one of the women has a child as a result of DI [Donor Insemination] in a UK licensed clinic and the couple have in place, at the time of the transfer of the sperm or embryo which results in conception, current notices of consent to the other woman being treated as a parent, then she will be a legal parent (i.e. the second female parent).¹⁴

Unmarried fathers

Under changes brought in from 1 December 2003, fathers who are unmarried at the time of the birth of their child automatically have parental responsibility for the child if they are registered on the child's birth certificate.

The change does not apply retrospectively to those births registered before 1 December 2003.¹⁵

4.2 How an unmarried father, or second female parent not married or in a civil partnership with the mother can otherwise gain parental responsibility

An unmarried father or second female parent can gain parental responsibility where they do not already have it by:

- re-registering the birth to include the father or second female parent on the birth certificate if the formalities required by section 10A of the *Births and Deaths Registration Act 1953* are complied with.¹⁶ By doing so, parental responsibility is gained from the date of registration. The registration may relate to a child who was born before 1 December 2003;
- entering into a "parental responsibility agreement" with the child's mother (see section 5.1);
- successfully applying to the court for an order that s/he shall have parental responsibility (see section 5.2);¹⁷
- subsequently marrying or (for second female parents only) entering into a civil partnership with the mother of the child;¹⁸
- by being named in a child arrangements order:
 - if the order is for residence, a court must also make a separate parental responsibility order at the same time that it makes the child arrangements order;¹⁹
 - if the order is for contact, a court may also make a separate parental responsibility order at the same time that it makes the child arrangements order. When deciding whether to make the parental responsibility order, the court "must decide whether it would be appropriate, in view of the provision made in the [child arrangements] order with respect to the father or the woman, for him or her to have parental responsibility for the child".²⁰ If the

¹⁴ [Human Fertilisation And Embryology Act 2008-EN](#), p30, paras 179–180

¹⁵ *Children Act 1989*, section 4

¹⁶ *Children Act 1989*, section 4. Parental responsibility runs from the date of the registration rather than the birth.

¹⁷ *Children Act 1989*, sections 4 and 4ZA

¹⁸ *Legitimacy Act 1976*, sections 2 and 2A

¹⁹ Hershman and McFarlane, *Children Law and Practice*, para B281

²⁰ *Children Act 1989*, section 12

court decides to make a parental responsibility order, it must make it at the same time as it makes the child arrangements order.²¹

4.3 Step-parents

Where a child's parent who has parental responsibility for the child is married to, or is a civil partner of, a person who is not the child's parent – a step-parent – then that step-parent may acquire parental responsibility for the child by:

- making an agreement that the step-parent will have parental responsibility with the parent they are married to or who is their civil partner who has parental responsibility (see section 5.1); or
- if another parent also has parental responsibility, making an agreement that the step-parent will have parental responsibility with them and the parent they are married to or who is their civil partner (see section 5.1); or
- a parental responsibility order made by the court on an application by the step-parent (see section 5.2); or²²
- by being named in a child arrangements order (see section 4.4).

It should be noted that the step-parent parental responsibility agreement is classed as a "parental responsibility agreement" and applies equally to step-parents as it does unmarried fathers and second female parents.²³

4.4 How parental responsibility can be acquired by others

Additionally, there a number of ways in which people can acquire parental responsibility for a child:

- being named in a child arrangement order²⁴ if they are not a parent or guardian of the child concerned:
 - if the order is for residence, they will also gain parental responsibility for the child while the child arrangements order remains in force so far as providing for the child to live with that person. Parental responsibility is part of the child arrangements order, rather than being a separate parental responsibility order;
 - if the order is for contact, the court may decide to give that person parental responsibility for the child while the child arrangements order remains in force. Again, parental responsibility is part of the child arrangements order, rather than being a separate parental responsibility order;²⁵
- adoption of the child, although once a child is adopted parental responsibility is vested in the adopters, while it is extinguished in all other persons (see section 7.1);²⁶
- become a guardian of a child, either appointed by those with parental responsibility before their death, or by a court;²⁷

²¹ Hershman and McFarlane, *Children Law and Practice*, para B281

²² *Children Act 1989*, section 4A

²³ *Children Act 1989*, section 4A(2)

²⁴ A "child arrangements order" is an order made by a court that determines the residence and/or the contact arrangements for a child, and is made under section 8 of the *Children Act 1989*. Further information can be found in the [Library briefing paper on this topic](#).

²⁵ *Children Act 1989*, section 12 and Hershman and McFarlane, *Children Law and Practice*, para B281

²⁶ Hershman and McFarlane, *Children Law and Practice*, para A239

²⁷ Hershman and McFarlane, *Children Law and Practice*, para A237

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- become a special guardian of the child further to a special guardianship order.²⁸

In addition, parental responsibility is acquired by a local authority if a child is taken into care or is subject to an Emergency Protection Order.

Also, when a child is formally placed for adoption by an adoption agency, the prospective adopters and the adoption agency acquire parental responsibility during the placement.²⁹

5. Parental responsibility agreements and orders

5.1 Parental responsibility agreement

As noted in section 4 above, a parental responsibility agreement can be made between:

- the mother of a child and:
 - an unmarried father; or
 - a second female parent;
- either parent of a child and the child's step-parent (i.e. their spouse or civil partner where that person is not a parent of the child), subject to the approval of the other parent of the child (if applicable).

In order for an agreement to be recognised, it has been made on the appropriate HM Courts and Tribunal Service form, in accordance with the *Parental Responsibility Agreement Regulations 1991*.³⁰ The forms are:

- [C\(PRA1\)](#) for a mother and unmarried father;
- [C\(PRA2\)](#) for a parent (and other parent, if applicable) and step-parent;
- [C\(PRA3\)](#) for a mother and second female parent.

The forms are available in England and also Welsh.

The form has to be completed and taken, together with copies of it, to the local office of the Family Court or the Central Family Court where a suitable person³¹ will witness it being signed and also sign the certificate of the witness.

They also have to inspect evidence of the identity of the child (the child's full birth certificate), and evidence (showing their photograph and signature) of the identity of the signatories to the form.³² In the case of step-parents, additional information has to be provided as set out in form C(PRA2).

The agreement has effect once it has been recorded at The Central Family Court. Once filed, a stamped copy will be sent to each parent.³³

5.2 Parental responsibility order

As noted in section 4 above, an application to the family court can be made for a parental responsibility order by:

²⁸ Department for Education, *Court orders and pre-proceedings*, April 2014, p5, para 2

²⁹ Family Rights Group, *Parental Responsibility*, factsheet 2, 29 October 2014, p4

³⁰ SI 1991/1478

³¹ Namely, a Justice of the Peace, a Justices' Clerk, an assistant to a justices' clerk, or an officer of the court authorised by the judge to administer oaths. A solicitor cannot witness the signature.

³² HM Courts and Tribunal Service, *Parental Responsibility Agreement*, form C(PRA1), p2

³³ HM Courts and Tribunal Service, *Parental Responsibility Agreement*, form C(PRA1), p2

- an unmarried father;
- a second female parent; or
- a step-parent.

When an application for a parental responsibility order is received by the court, every person whom the applicant believes to have parental responsibility for the child (along with certain others)³⁴ is an “automatic respondent” to such an applicant.³⁵

Any person “who has parental responsibility for the child, or (with court permission) the child himself, may apply for the order to be set aside”.³⁶

In deciding whether to make a parental responsibility order, the court’s “paramount consideration” is the “child’s welfare”.³⁷

6. Restrictions on the exercise of parental responsibility

The ability of a person (including a child’s mother and father) to exercise parental responsibility can be restricted in certain ways, irrespective of how parental responsibility was acquired.

6.1 Prohibited steps order and specific issue order

The exercise of parental responsibility can be limited by a:

- prohibited steps order, which is an order that “no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court”. Such an order might be issued to prevent the removal of the child from the UK, or a change in the child’s schooling;
- specific issue order, which is an order “giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child”. Such an order can be used to settle one particular dispute i.e. one specific issue between the holders of parental responsibility e.g. which school should a child attend, medical treatment, or choice of religion.³⁸

6.2 Child arrangements order

If parental responsibility has been gained as a result of a child arrangements order being made in that person’s favour (but is not in the favour of an unmarried father or second female parent), there are a number of restrictions placed on its exercise including not having the right to:

- consent to an order giving parental responsibility to a person who intends to adopt the child abroad;

³⁴ Namely: where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately prior to the making of the care order; in the case of an application to extend, vary or discharge an order, the parties to the proceedings leading to the order which it is sought to have extended, varied or discharged; and, in the case of specified proceedings, the child.

³⁵ Ministry of Justice, *Family Procedure Rules 2010*, 30 January 2017, Rule 12.3

³⁶ Hershman and McFarlane, *Children Law and Practice*, para A222

³⁷ *Children Act 1989*, section 1

³⁸ *Children Act 1989*, section 8

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- appoint a guardian for the child.³⁹

In addition, where a child arrangements order specifies with whom or when the child is to live with any person, no person (either the person in whose favour the child arrangements order is made or anyone else with parental responsibility) may:

- cause the child to be called by a different surname; or
- remove the child from the UK for one month or more,

unless there is the written consent of all those who have parental responsibility or the leave of the court.^{40, 41}

A person named in the child arrangements order as a person with whom the child is to live may remove the child from the UK for a period of less than one month without such prior approval.⁴²

6.3 Care order

When a care order (including an interim care order) is made by a court – meaning that a child is taken into the care of the local authority (and so becomes a “looked after child”) – a local authority gains parental responsibility for the child.

While this does not extinguish the parental responsibility of any other holders of it, the local authority has the power to determine the extent to which a parent, step-parent, guardian, or special guardian of the child may meet their parental responsibility for the child if the local authority is “satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare”.⁴³

As the Family Rights Group notes, this means that a local authority “can override the wishes of the parents/others with parental responsibility, throughout the time the [care] order is in force”.⁴⁴

However, this does not prevent such a person with parental responsibility “from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting” the child’s welfare.⁴⁵

Further, local authority’s ability to exercise parental responsibility is limited by “any right, duty, power, responsibility or authority by virtue of any other enactment (for example, pursuant to the education legislation”.⁴⁶

6.4 Emergency protection order

Where an emergency protection order is granted by the court which vests in the applicant parental responsibility, then the applicant “shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order”.⁴⁷

³⁹ *Children Act 1989*, section 12

⁴⁰ Hershman and McFarlane, *Children Law and Practice*, paras B292 and B301

⁴¹ *Children Act 1989*, section 13

⁴² *Children Act 1989*, section 13(2)

⁴³ *Children Act*, section 32 and Hershman and McFarlane, *Children Law and Practice*, para A234

⁴⁴ Family Rights Group, [Parental Responsibility](#), p7, 29 October 2014

⁴⁵ *Children Act*, section 32 and Hershman and McFarlane, *Children Law and Practice*, para A234

⁴⁶ Hershman and McFarlane, *Children Law and Practice*, para A234

⁴⁷ *Children Act 1989*, section 44(5)(b)

As *Children Law and Practice* notes, “the provision is clearly designed to prevent the applicant making any long-term plans for the child, for example substantially altering schooling arrangements, which might reasonably be regarded as prejudging the outcome of further proceedings”.⁴⁸

Existing holders do not have their parental responsibility extinguished if an emergency placement order is made.

6.5 Placement order (for adoption)

When a parent or guardian does not consent to a child being placed for adoption, an order can sought from the courts to place that child (a placement order).

When a placement order is made, it vests parental responsibility in the adoption authority and any prospective adopters while the child is placed with them, although it does not extinguish the parent responsibility of any existing holders.

The adoption agency “may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination”.⁴⁹

6.6 Special guardianship

A special guardian “is entitled to exercise parental responsibility to the exclusion of any person with parental responsibility for the child (apart from another special guardian)”.⁵⁰

While existing holders of parental responsibility retain it after a special guardianship order has been made, “their ability to exercise their parental responsibility is limited”.⁵¹ However, they may challenge the decision of a special guardian through a court order, such as a specific issue order.⁵²

Further, “an exception applies in circumstances where the law provides that the consent of more than one person with parental responsibility is required (for example, the sterilisation of a child)”,⁵³ or any rights which a parent of the child has in relation to the child’s adoption or placement for adoption. The Family Rights Group advises parents that a special guardian “cannot override your rights as a parent about any plan for your child to be adopted, so for example they could not agree to your child being placed for adoption. You would be asked about this by the social worker directly”.⁵⁴

While a special guardianship order is in force, no person, including no person with existing parental responsibility for the child, may cause the child to be known by a new surname, or remove the child from the UK “without either the written consent of every person who has parental responsibility for the child or the leave of the court”.⁵⁵ However, the special guardian themselves is allowed to remove the child from the UK for a period of less than three months.⁵⁶

⁴⁸ Hershman and McFarlane, *Children Law and Practice*, para C541

⁴⁹ *Adoption and Children Act 2002*, section 25

⁵⁰ *Children Act 1989*, section 14C(1)(a)

⁵¹ Department for Education, [Special guardianship guidance](#), January 2017, p7, para 12

⁵² Family Rights Group, [DIY Special Guardianship Orders – information for family and friends carers](#), factsheet 19, undated, p5

⁵³ Department for Education, [Special guardianship guidance](#), January 2017, p7, para 12

⁵⁴ Family Rights Group, [Special Guardianship: what does it mean for birth parents?](#), factsheet 20, 30 July 2014, p5

⁵⁵ *Children Act 1989*, section 14C(3)

⁵⁶ *Children Act 1989*, section 14C(4)

7. Losing parental responsibility

Under the *Children Act 1989* as amended, “a person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf”.⁵⁷

It is possible that parental responsibility can be terminated by a court, for example by revoking a parental responsibility order, or an order with which parental responsibility is attached (e.g. a special guardianship order), as explained below.

7.1 For all cases – adoption order

Parental responsibility can be lost if a child is adopted through an adoption order.

The effect of the adoption order is to vest parental responsibility with the adoptive parent(s) and to extinguish the parental responsibility of all previous holders of it, including the birth mother.

7.2 The mother, married father of the child, and second female parent married or in a civil partnership with the mother

A mother of a child, the father where he is married to the child’s mother at the time of the birth, or second female partner married or in a civil partnership with the mother at the time of the birth can lose their parental responsibility if a parental order is made in respect of a surrogate child that the mother gave birth to.⁵⁸

7.3 Unmarried father, or second female parent not married or in a civil partnership with the mother

Where a parental responsibility agreement or parental responsibility order has been made, or where an unmarried father has been registered as a child’s father on the birth certificate, it is possible for a court to order that that person should lose their parental responsibility.

Where an unmarried father or second female parent has gained parental responsibility because of a parental responsibility order made because a child arrangements order for residence was made, the parental responsibility order cannot be revoked for as long as the child arrangements order granting residence to them remains in force.⁵⁹

If a child arrangements order is revoked (or amended so that the child’s residence is changed to another person), any parental responsibility order made alongside the child arrangements order does not necessarily have to also be revoked.

7.4 Step-parent

If parental responsibility has been acquired through a parental responsibility agreement or order, it is possible for a court to order that a step-parent should lose their parental responsibility.

⁵⁷ *Children Act 1989*, section 2(9)

⁵⁸ Hershman and McFarlane, *Children Law and Practice*, para A243

⁵⁹ *Children Act 1989*, section 12(4)

In addition, if a step-parent is named in a child arrangements order, therefore gaining parental responsibility, this ceases “once the [child arrangements] order has ceased to have the required effect [i.e. residence or contact, as appropriate]”.⁶⁰

7.5 Special guardian

If the special guardian acquired their parental responsibility for a child as a result of the special guardianship order being made, then on its discharge their parental responsibility for the child is also discharged.

7.6 Any other person

For any other person, including a step-parent (as noted above), named in a child arrangements order that also provides for parental responsibility, the parental responsibility provided as part of the child arrangements order shall cease “once the [child arrangements] order has ceased to have the required effect [i.e. residence or contact, as appropriate]”.⁶¹

⁶⁰ Hershman and McFarlane, *Children Law and Practice*, para B281

⁶¹ Hershman and McFarlane, *Children Law and Practice*, para B281

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