

Research Briefing

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By David Foster

Parental responsibility in England and Wales



Summary

- 1 Exercising parental responsibility
- 2 Acquiring parental responsibility
- 3 Surrogacy and parental responsibility
- 4 Losing parental responsibility

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Summary

What is parental responsibility?

Parental responsibility is distinct from legal parentage and is [defined by the Children Act 1989](#) as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and [their] property”. It is possible for someone to have parental responsibility for a child without being their legal parent, and for a legal parent to not have parental responsibility.

The scope of parental responsibility is not defined in the Children Act but aspects of it have been acknowledged by the courts. This includes, for example, determining the child’s education and consenting to their medical treatment.

While each person with parental responsibility can generally make day-to-day decisions about the child independently, agreement is usually needed for important decisions such as which school a child should attend.

Where there is a dispute between those who have parental responsibility, the court can be asked to decide the issue. When a court makes any decision about a child’s upbringing [its “paramount consideration” is the child’s welfare](#).

The extent to which a person can exercise their parental responsibility generally diminishes as a child gets older. Parental responsibility ceases when a child reaches 18 years of age.

How is parental responsibility acquired?

Parental responsibility may be acquired in a number of ways and by several different people (including a local authority where a care order has been made).

A child’s birth mother automatically acquires parental responsibility from birth. This is also the case for fathers and second female partners if they are married or in a civil partnership with the child’s mother. Unmarried partners do not automatically have parental responsibility but they can acquire it in several ways, including by being registered on the child’s birth certificate.

It is also possible for non-parents to acquire parental responsibility.

Surrogacy and proposed reform

A surrogate mother, irrespective of whether they are genetically related to the child, is the child's legal mother at birth. Who the second legal parent is at birth depends on the circumstances.

To pass responsibility for the child to the intended parents, a "parental order" can be obtained from the courts after the child is born. This has the effect of conferring both legal parenthood and parental responsibility on the intended parents.

In a joint report published in March 2023, the [Law Commission of England and Wales, and the Scottish Law Commission recommended reforms](#) (PDF) to the law on surrogacy. Under the proposals, intended parents would be able to become the child's legal parents at birth without having to apply for a parental order.

How is parental responsibility lost?

The only circumstances where a child's legal mother can lose parental responsibility is through an adoption order, or a parental order (in respect of a surrogate child that the mother gave birth to). Both these orders also remove their status as the child's legal parent.

This is the same where a father or other parent acquired parental responsibility by being married to or in a civil partnership with the mother at the time of the birth.

Where a child's father or other parent acquired parental responsibility through other means it can be brought to an end by a court order.

The court can also restrict a person's parental responsibility by making an order that in some way limits their rights in relation to the child without terminating their parental responsibility completely.

Proposed reform

In October 2023, the [Government announced it intended to change the law](#) so that parents convicted of killing their child's other parent would have their parental responsibility suspended upon sentencing. The [Government tabled amendments to the Victims and Prisoners Bill](#) (PDF) (NC37) providing for this change. The Bill's Commons Report Stage is scheduled for 4 December 2023.

The proposals followed a campaign by the family of Jade Ward, who was murdered by her ex-partner in August 2021. An [e-petition on the issue](#) received over 130,000 signatures and was [debated in Westminster Hall in November 2022](#).

1 Exercising parental responsibility

1.1 Legal parenthood vs parental responsibility

Who the legal parents of a child are is distinct from who has parental responsibility for them.

While many legal parents will also have parental responsibility for a child, this is not necessarily the case. For example, an unmarried biological father who is not named on the child's birth certificate will usually be the child's legal parent but may not have parental responsibility for them. Conversely, a grandparent caring for a child under a special guardianship order will have parental responsibility for the child but will not be their legal parent.

A child cannot have more than two legal parents, but more than two people can have parental responsibility for them.¹

Who are a child's legal parents?

If conception takes place without intervention both biological parents will be legal parents under common law.²

Assisted reproduction and legal parentage

Where the gametes (reproductive cells) used in assisted reproduction are those of two people receiving treatment services together, they will be the child's legal parents.³

In other cases of assisted reproduction, who the child's legal parents are is set out in the [Human Fertilisation and Embryology Act 2008](#) and depends on how the child was conceived and any consent given or withheld during the process. A child may have one legal mother, or one mother and one father, or a mother and a "second female parent". It is not possible, under the Act, for a child to have two legal fathers from birth.⁴

The person who gave birth to the child is always their legal mother at birth, even if they are not their biological mother.⁵ There may, therefore, be a difference between a person's gender and their parental status; a

¹ Hershman and McFarlane, *Children Law and Practice*, para A1.

² Hershman and McFarlane, *Children Law and Practice*, para A1.

³ Hershman and McFarlane, *Children Law and Practice*, para A28.

⁴ Human Fertilisation and Embryology Act 2008, sections 33 to 47; Hershman and McFarlane, *Children Law and Practice*, para A1.

⁵ Human Fertilisation and Embryology Act 2008, section 33.

transgender man who has given birth to a child will, for example, be their legal mother.⁶

Father or second female parent in cases of assisted reproduction

If the birth mother of a child is married or in a civil partnership, and the child is a result of assisted reproduction or donor insemination, then their spouse or civil partner will be the child's other legal parent – either their father or second female parent. This is the case unless the partner did not consent to the treatment.⁷

If a mother is not married or in a civil partnership and has a child as a result of assisted reproduction or donor insemination in a UK licensed clinic, their partner can be the child's father or second female parent if the required consents were given before the treatment.⁸

Further information is available on the website of the Human Fertilisation and Embryology Authority at: [Becoming the legal parents of your child](#).⁹

The only way to change legal parenthood is through a parental order or an adoption order (see section 2 below).

1.2 The meaning of “parental responsibility”

A person with parental responsibility is responsible for the care and wellbeing of the child.¹⁰ Under the Children Act 1989, 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 [their] property”.¹¹

Whether or not someone has parental responsibility for a child does not, however, affect any obligation they may have in relation to them (see box below).¹²

In addition, where someone has care of a child but does not have parental responsibility for them, they may still “do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare” (subject to the provisions of the Children Act 1989).¹³

⁶ Hershman and McFarlane, *Children Law and Practice*, para A29.

⁷ Human Fertilisation and Embryology Act 2008, sections 35 and 42.

⁸ Human Fertilisation and Embryology Act 2008, sections 36, 37, 43 and 44; Hershman and McFarlane, *Children Law and Practice*, paras A30-A43. The required consents are referred to as the “agreed fatherhood conditions” or “agreed female parenthood conditions.”

⁹ Human Fertilisation and Embryology Authority, [Becoming the legal parents of your child](#).

¹⁰ Family Rights Group, [Parental responsibility](#).

¹¹ [Children Act 1989](#), section 3(1).

¹² [Child Support Act 1991](#), section 1.

¹³ [Children Act 1989](#), section 3.

The scope of parental responsibility is not defined in the Children Act 1989, but aspects of it have been acknowledged by the courts. This includes, but is not limited to:

- Naming the child
- Determining the child’s religion
- Determining the child’s education
- Consenting to the child’s medical treatment
- Protecting and maintaining the child
- Lawfully correcting the child¹⁴

1 Obligation to provide financial maintenance

The obligation to provide financial maintenance for a child is separate from the issue of parental responsibility.¹⁵ The Child Maintenance Service has the power to enforce maintenance obligations against any parent, regardless of whether or not they have parental responsibility for the child.

Further information is available in the Library briefing: [Child maintenance: Calculations, variations and income \(UK\)](#).¹⁶

1.3

Exercising parental responsibility

The strict legal position is that each person with parental responsibility for a child “may act alone and without the other (or others) in meeting that responsibility” unless this would contravene a court order (for example, an order prohibiting the exercise of an aspect of parental responsibility).¹⁷ However, case law has determined there is a need for communication and, at times, agreement between those with parental responsibility.¹⁸ This is particularly true concerning important decisions. The Family Rights Group charity explains:

Each parent who has parental responsibility may make day to day decisions about their child. They can do this independently. For example, one parent can

¹⁴ Hershman and McFarlane, *Children Law and Practice*, para A146.

¹⁵ [Child Support Act 1991](#), section 1.

¹⁶ Commons Library briefing CBP-7770, [Child maintenance: Calculations, variations and income \(UK\)](#).

¹⁷ [Children Act 1989](#), section 2(7) and 2(8).

¹⁸ Hershman and McFarlane, *Children Law and Practice*, para A339.

consent to a child going on a local school trip. They do not always have to ensure the other parent has signed a school form to say that they agree.

It is a good idea if a person with parental responsibility consults all others with parental responsibility about important decisions. For example, in relation to medical treatment, change of school etc. This is important if the decisions will affect contact arrangements. It is best for the child if, as far as possible, the adults in their life agree on arrangements made for them.¹⁹

There are also some circumstances where the consent of more than one person with parental responsibility is required by law – for example, to take a child out of the UK in most cases.²⁰

1.4 Disputes

Where there is a dispute between those who have parental responsibility, the court can be asked to decide the issue. In most cases, this will be done through one of the parties applying for an order under section 8 of the Children Act 1989:

Child arrangements order

This is an order specifying matters such as who a child lives with, when they spend time with named people, and when and what other types of contact take place (for example, phone calls).

Prohibited steps order

This order sets out specific actions that parents or someone with parental responsibility may not do without the court's permission. Such an order could, for example, be issued to prevent one parent unilaterally changing a child's school.

Specific issue order

This is an order directing how a specific question relating to a child's upbringing is to be settled. Such an order could, for example, be issued to determine which school a child should attend.²¹

When a court makes any decision regarding the upbringing of a child, its “paramount consideration” is the child's welfare.²² The legal text Children Law and Practice notes that “parental rights are not absolute but subject to the principle that the child's welfare is the paramount consideration”. It adds,

¹⁹ Family Rights Group, [Parental responsibility – quick facts](#), March 2021.

²⁰ Hershman and McFarlane, Children Law and Practice, para A338; [Child Abduction Act 1984](#), section 1.

²¹ [Children Act 1989](#), section 8.

²² [Children Act 1989](#), section 1.

however, that the courts will be cautious when overriding parental responsibility and will only do so “where the welfare of the child requires it.”²³

2 Support organisations

Organisations that may be able to help with queries related to parental responsibility include:

- [AdviceNow](#) (independent website run by the charity Law for Life: the Foundation for Public Legal Education).
- [Child Law Advice](#) (part of the charity Coram Children’s Legal Centre)
- [Citizens Advice](#)
- [Families Need Fathers](#) (charity for fathers, mothers, grandparents, partners and extended families)
- [Family Lives](#) (a charity providing advice to families)
- [Family Rights Group](#) (a charity that works with families involved with children’s services)
- [Gingerbread](#) (a single parents’ charity)
- [Kinship](#) (a charity for kinship carers)

The National Society for the Prevention of Cruelty to Children (NSPCC) also provides a list of organisations who can help with private law matters, such as parental responsibility, on their webpage [Separation and divorce](#).

1.5

Older children

Parental responsibility ceases when a child reaches 18 years of age. However, the extent to which a person can exercise their parental responsibility in respect of a child under the age of 18 generally diminishes as the child gets older and “reaches a sufficient understanding and intelligence” to be capable of making their own decisions. As such, parental responsibility has been described as “a dwindling right which the courts will hesitate to enforce against the wishes of the child, the older [they are]. It starts with the right of control and ends with little more than advice.”²⁴

²³ Hershman and McFarlane, *Children Law and Practice*, para A234-A235.

²⁴ Hershman and McFarlane, *Children Law and Practice*, para A238.

Children making decisions: Gillick competency

A child who is capable of making their own decision(s) on a matter is commonly described as “Gillick competent.”

In [Gillick v West Norfolk and Wisbech Health Authority](#), it was held that a child under the age of 16 was capable of giving consent to medical treatment if they were capable of understanding what was proposed and of expressing their own wishes. Children Law and Practice explains that it follows from this “that the more mature the child, the more care should be taken to consider his wishes and feelings.”²⁵

The NSPCC explains that there is no set of defined questions to assess Gillick competency but professionals need to consider several things, including:

- the child's age, maturity and mental capacity
- their understanding of the issue and what it involves - including advantages, disadvantages and potential long-term impact
- their understanding of the risks, implications and consequences that may arise from their decision
- how well they understand any advice or information they have been given
- their understanding of any alternative options, if available
- their ability to explain a rationale around their reasoning and decision making.

It adds that the same child may be considered Gillick competent to make one decision but not competent to make a different decision.²⁶

²⁵ Hershman and McFarlane, Children Law and Practice, para A237.

²⁶ NSPCC, [Gillick competence](#), 5 August 2022.

2 Acquiring parental responsibility

2.1 Legal parents

Mothers

A child's legal mother (see section 1.1 above) automatically acquires parental responsibility for the child from birth.²⁷

Fathers or second female parents

A child's legal father or second female parent automatically acquires parental responsibility for the child if they were married to or civil partners of the child's mother at the time of the birth.²⁸ This remains the case if they subsequently divorce or separate from the mother.

If a child's legal parents were not married or in a civil partnership at the time of the birth, the father or second female parent will acquire parental responsibility if they are registered on the child's birth certificate (for births registered from 1 December 2003).²⁹

They can also acquire parental responsibility by:

- subsequently marrying or entering into a civil partnership with the mother of the child.³⁰
- re-registering the birth to include the father or second female parent on the birth certificate. Parental responsibility is gained from the date of re-registration.³¹
- entering into a 'parental responsibility agreement' with the child's mother. In order for the agreement to be recognised it must be made on the [correct HM Courts and Tribunal Service form](#) (C(PRA1) for fathers and C(PRA3) for second female parents). It must then be taken to be the local office of the family court of the Central Family Court to be witnessed.³²

²⁷ [Children Act 1989](#), section 2.

²⁸ [Children Act 1989](#), sections 2(1) and 2(1A).

²⁹ [Children Act 1989](#), sections 4 and 4ZA.

³⁰ Legitimacy Act 1976, sections 2 and 2A; Family Law Reform Act 1987, section 1(2); Hershman and McFarlane, *Children Law and Practice*, para A257.

³¹ [Children Act 1989](#), sections 4 and 4ZA.

³² [Children Act 1989](#), sections 4 and 4ZA. HM Courts and Tribunals Service, [Form C\(PRA1\): Ask the court to witness your parental responsibility agreement](#), 1 August 2014.

- successfully applying to court for an order that they should have parental responsibility for the child (a parental responsibility order). When the court considers such an application, its paramount consideration will be the welfare of the child. It is also required to presume, unless the contrary is shown, that the involvement of that parent in the life of the child will further the child's welfare. There are exceptions to this provision where parental involvement would put the child at risk of harm.³³
- being named in a child arrangements order. If the order is for residence, the court must make a separate parental responsibility order at the time it makes the child arrangements order. If the order is for contact, the court may make a separate parental responsibility order if it deems it appropriate. Such parental responsibility orders will remain in force unless revoked, irrespective of whether the child arrangements order remains in force.³⁴

Even if they do not have parental responsibility, a father who is not married to the child's mother or a second female parent is still treated as the child's legal parent. They are, for example, entitled to apply for court orders in respect of the child, including those under section 8 of the Children Act 1989 (see section 1.4 above).

In 2000, the European Court of Human Rights held that failing to give unmarried fathers parental responsibility automatically did not breach the European convention on Human Rights.³⁵

Further information is available on the website of the Family Rights Group charity:

- [What is parental responsibility and when do fathers have, or get, it?](#)³⁶
- [Will a second female parent have parental responsibility?](#)³⁷

2.2

Step-parents

Where a child's parent who has parental responsibility is married to, or in a civil partnership with, a person who is not the child's other parent (the step-parent) then the step-parent may acquire parental responsibility for the child by:

³³ [Children Act 1989](#), sections 1 and 4.

³⁴ [Children Act 1989](#), sections 12(1) and 12(1A).

³⁵ Hershman and McFarlane, *Children Law and Practice*, para A257.

³⁶ Family Rights Group, [What is parental responsibility and when do fathers have, or get, it?](#)

³⁷ Family Rights Group, [Will a second female parent have parental responsibility?](#)

- making a parental responsibility agreement (see section 2.1 above) with the parent they are married to or a civil partner of, and the child's other parent if they also have parental responsibility.
- applying to the court for a parental responsibility order.³⁸
- applying to the court for another type of court order that gives them parental responsibility (see section 2.3 below).

2.3 How parental responsibility can be acquired by others

There is no power under the Children Act 1989 for the court to make a free-standing parental responsibility order in favour of a non-parent (other than a step-parent).³⁹ It is also not possible for a parental responsibility agreement to be made between a parent and a non-parent (other than a step-parent).

There are, however, a number of ways by which somebody who is not a parent or step-parent can acquire parental responsibility for a child.

Child arrangements orders

Where the court makes a child arrangements order in favour of a person who is not a parent or guardian of a child (including a step-parent) they will automatically acquire parental responsibility if they are named as the person with whom the child is to live.

If they are named in the order as a person with whom the child is to spend time with or otherwise have contact (but not to live) the court may provide in the order for them to have parental responsibility. In contrast to the case with fathers or second female parents, the parental responsibility only lasts for as long as the child arrangements order remains in force.⁴⁰

Where a non-parent acquires parental responsibility through a child arrangements order there are certain restrictions. They do not, for example, have the right to agree, or refuse to agree, to the making of an adoption order.⁴¹

In addition, where a child arrangements order is in force relating to a child's living arrangements, no person may cause the child to be known by a new

³⁸ [Children Act 1989](#), section 4A.

³⁹ Hershman and McFarlane, *Children Law and Practice*, para B281 to B285.

⁴⁰ [Children Act 1989](#), section 12. Hershman and McFarlane, *Children Law and Practice*, para B281 to B285.

⁴¹ [Children Act 1989](#), section 12(3).

surname or remove them from the UK without the court's permission or the written consent of all those with parental responsibility.

However, the person who is named in the child arrangements order as the person with whom the child is to live can take them out of the UK without the permission of others for up to one month.⁴²

Special guardianship orders

A special guardianship order is a court order appointing a person as a child's special guardian.⁴³

A special guardian has parental responsibility for the child as long as the order remains in force. In addition, they can exercise their parental responsibility "to the exclusion of any other person with parental responsibility for the child (apart from another special guardian)."⁴⁴ However, this does not override situations where the law requires the consent of all those with parental responsibility (for example, the sterilisation of a child).⁴⁵

While existing holders of parental responsibility retain it after a special guardianship order is made, their ability to exercise it is therefore limited.⁴⁶ They may, however, challenge the decision of a special guardian through the courts – for example, by applying for a specific issue order or a prohibited steps order (see section 1.4 above).⁴⁷ In addition, they retain the right to consent or not to the child's adoption.⁴⁸

While a special guardianship order is in force, no person may cause the child to be known by a new surname or remove them from the UK "without either the written consent of every person who has parental responsibility for the child or the leave of the court".⁴⁹ However, the special guardian is allowed to remove the child from the UK for a period of up to three months without the permission of others.⁵⁰

Adoption

When a child is adopted, legal parentage and parental responsibility are given to the adopters and removed from those who held them before the adoption.⁵¹

⁴² [Children Act 1989](#), section 13.

⁴³ [Children Act 1989](#), section 14A.

⁴⁴ [Children Act 1989](#), section 14C.

⁴⁵ Department for Education, [Special guardianship guidance](#), January 2017, p7, para 12

⁴⁶ Department for Education, [Special guardianship guidance](#), January 2017, p7, para 12

⁴⁷ Family Rights Group, [Special guardianship: information for parents](#) (PDF), p5.

⁴⁸ [Children Act 1989](#), section 14C(2).

⁴⁹ [Children Act 1989](#), section 14C(3)

⁵⁰ [Children Act 1989](#), section 14C(4)

⁵¹ Hershman and McFarlane, *Children Law and Practice*, para A239

While a [placement order](#) is in force (or while a child is placed for adoption with the consent of those with parental responsibility) parental responsibility is shared between those who had parental responsibility before the order, the prospective adopters and the adoption agency. However, the adoption agency has the power to restrict the extent to which the others may exercise their parental responsibility.⁵²

3 Emergency protection orders

An emergency protection order gives the applicant the power to remove the child named in the order to any accommodation provided by them or on their behalf.⁵³ They can be made for a maximum of eight days, with a possible extension of a further seven days (fifteen days in total).⁵⁴

The order also gives the applicant parental responsibility for the child while the order is in force. However, they can only take such action in meeting their parental responsibility “as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order).”⁵⁵

Children Law and Practice explains: “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”.⁵⁶

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

Guardians

Parents with parental responsibility can appoint a person to be their child’s guardian in the event of their death (this is different to the appointment of special guardians through a special guardianship order).

The appointment takes effect:

- When the appointer dies, if there is no surviving parent with parental responsibility.

⁵² Adoption and Children Act 2002, section 25. A placement order is a court order authorising an adoption agency (often children’s services) to place a child with prospective adopters (Adoption and Children Act 1989, section 21).

⁵³ [Children Act 1989](#), section 44.

⁵⁴ [Children Act 1989](#), section 45.

⁵⁵ [Children Act 1989](#), section 44.

⁵⁶ Hershman and McFarlane, *Children Law and Practice*, para C541.

- If the appointer dies and they were the child’s only surviving special guardian, or were named in a child arrangements order as the person with whom the child was to live with.

A person appointed as a guardian has parental responsibility for the child.⁵⁷

Care orders

When a [care order](#) or interim care order is in force, the local authority has parental responsibility for the child. While this does not extinguish the parental responsibility of any other people who had it previously,⁵⁸ the local authority has the power to determine the extent to which someone may meet their parental responsibility for the child. However, the authority can only do this if it thinks it necessary “in order to safeguard or promote the child's welfare”.⁵⁹

There are also certain things a local authority is not permitted to do while a care order is in force, including cause the child to be known by a new surname without the consent of all those with parental responsibility.⁶⁰

⁵⁷ [Children Act 1989](#), section 5.

⁵⁸ Except a person who had parental responsibility while a child arrangements order was in force and that order was extinguished as a result of the care order.

⁵⁹ [Children Act 1989](#), sections 33(3) and 31(11); Hershman and McFarlane, *Children Law and Practice*, paras C903.

⁶⁰ [Children Act 1989](#), section 33(7).

3 Surrogacy and parental responsibility

The Law Commission has defined surrogacy as “the practice of a woman agreeing to become pregnant, and deliver a baby with the intention of handing him or her over shortly after birth to the intended parents, who will raise the child.”⁶¹

A surrogate mother, irrespective of whether they are genetically related to the child, is the child’s legal mother at birth.⁶² Who the second legal parent is at birth will depend on the circumstances. The Human Fertilisation and Embryology Authority explains:

If the surrogate is married or in a civil partnership, her partner will automatically be the second legal parent (until a parental order is granted), unless it can be shown that her partner did not consent to her treatment. If the surrogate is single, then the man providing the sperm (if he wants to be the father) will automatically be the second legal parent at birth. However, it is possible for the surrogate to nominate a second legal parent such as the intended mother or non-biological father if you’d all prefer. To do this, both the intended second parent and the surrogate will need to give their consent before the sperm, egg or embryo are transferred.⁶³

3.1 Parental orders

To pass responsibility for the child to the intended parents, a ‘parental order’ can be obtained from the courts. A parental order may be applied for by couples (same or opposite sex) or by a single person.⁶⁴

Once a parental order is made, the surrogate has no further rights or obligations to the child.⁶⁵ The legal text Children Law and Practice explains:

The effect of a parental order is to confer both legal parenthood and parental responsibility on the commissioning parent(s), with the consequence that the child is for all purposes treated in law as their child, and not the child of any

⁶¹ Law Commission, [Building families through surrogacy: a new law Volume II: Full Report](#) (PDF), March 2023, p9.

⁶² Human Fertilisation and Embryology Act 2008, section 33; Hershman and McFarlane, Children Law and Practice, para A82.

⁶³ Human Fertilisation and Embryology Authority, [Surrogacy – are there any legal issues to consider?](#)

⁶⁴ Human Fertilisation and Embryology Act 2008, sections 54 and 54A. Previously, only couples were able to apply for a parental order. However, this was extended to single people from January 2019. Further information is provided in the Library briefing: [Children: surrogacy – single people and parental orders \(UK\)](#).

⁶⁵ Human Fertilisation and Embryology Authority, [Surrogacy – are there any legal issues to consider?](#)

other person. The child remains within the prohibited degrees with respect to his birth family in relation to incest and marriage.⁶⁶

Certain conditions must be met before a parental order can be applied for. These include:

- The child was conceived using the gametes (reproductive cells) of at least one of the intended parents or the single intended parent.
- The child is living with the intended parent(s).
- The application is made within six months of the birth (although the court can extend this).
- The surrogate mother (and other legal parent if applicable) agrees freely and unconditionally to the making of the order, with full understanding of what is involved. This agreement must not be given within six weeks of the birth.⁶⁷ Where the surrogate does not give their consent, even if not wishing to care for the child, the court has no power to make the order.⁶⁸

The intended parents and surrogate can record how they want the arrangement to work in a surrogacy agreement. However, surrogacy agreements are not enforceable by UK law.⁶⁹

When the court considers an application for a parental order its paramount consideration is the welfare of the child throughout its life.⁷⁰

Alternatives to parental orders

Legal parenthood and parental responsibility can also be transferred through adoption in a surrogacy case.

The intended parents can also acquire parental responsibility by successfully applying for a child arrangements order that provides for the child to live with them. In such cases, parental responsibility would be shared with the surrogate mother and other parent if applicable.⁷¹

⁶⁶ Hershman and McFarlane, *Children Law and Practice*, para A86.

⁶⁷ Human Fertilisation and Embryology Act 2008, sections 54 and 54A; Hershman and McFarlane, *Children Law and Practice*, para A87.

⁶⁸ Hershman and McFarlane, *Children Law and Practice*, para A87.

⁶⁹ Gov.uk, [Surrogacy: legal rights of parents and surrogates](#).

⁷⁰ The Human Fertilisation and Embryology (Parental Orders) Regulations 2018, SI 2008/1412, Paragraph 2; Adoption and Children Act 2002, section 1(2).

⁷¹ Hershman and McFarlane, *Children Law and Practice*, para A109.

3.2

Law Commission report

In 2018, the Government commissioned the Law Commission to review the law relating to surrogacy.⁷² The project was undertaken jointly by the Law Commission of England and Wales, and the Scottish Law Commission.

The Law Commissions published their joint report in March 2023. The report said surrogacy laws have failed to keep pace with increased demand and “often fall short in providing the right level of protection for all parties involved.”⁷³ It identified several problems with the current law, including:

- The current law means the surrogate, who does not intend to raise the child, is legally responsible for them until a parental order is made. Where the child is cared for by the intended parents from birth, this means those raising the child have no legally recognised relationship with the child.
- The intended parents do not have parental responsibility until a parental order is granted which means they cannot make decisions in respect of the child, such as about medical treatment.⁷⁴

The report recommended a new pathway to legal parenthood in surrogacy cases, which would be overseen by non-profit making surrogacy organisations, regulated by the Human Fertilisation and Embryology Authority (Regulated Surrogacy Organisations).

Under the proposed pathway the required screening and safeguards would take place before, rather than after, birth. This would include (but not be limited to):

- an agreement between the surrogate and the intended parents
- a pre-conception assessment of the welfare of the child
- independent legal advice about entering into the surrogacy agreement for the intended parents and the surrogate
- agreement of a Regulated Surrogacy Organisation to admit the surrogacy agreement onto the new pathway

Under the proposed pathway, intended parents would be able to become the child’s legal parents at birth without having to apply for a parental order.

⁷² [HC Deb 24 July 2018, c862](#).

⁷³ Law Commission, [Surrogacy laws to be overhauled under new reforms – benefitting the child, surrogate and intended parents](#), 29 March 2023.

⁷⁴ Law Commission, [Building Families Through Surrogacy: A New Law – Summary of Report](#) (PDF), March 2023, p9.

However, the surrogate would have the right to withdraw their consent to the agreement until six weeks after the birth:

- If consent was withdrawn after treatment but before birth, the surrogate would be the legal parent at birth and the intended parents would have to apply for a parental order if they wished to gain legal parent status.
- If consent was withdrawn after birth (but within six weeks) the intended parents would be the legal parents at birth and the surrogate would have to apply for a parental order if they wished to gain legal parent status.

The intended parents would not be able to withdraw their consent after conception.⁷⁵

The Commissions published [a draft Bill \(PDF\)](#), giving effect to the recommendations, alongside the report.⁷⁶

The Government has said it is considering the report and will publish a response “in due course.”⁷⁷

⁷⁵ Law Commission, [Building Families Through Surrogacy: A New Law – Summary of Report](#) (PDF), March 2023, pp11-13.

⁷⁶ Law Commission, [Building families through surrogacy: a new law Volume III: Draft Surrogacy Bill](#), March 2023.

⁷⁷ [PQ 188969 \[on surrogacy\]](#), 20 June 2023.

4 Losing parental responsibility

A person cannot surrender or transfer their parental responsibility (other than consenting to adoption or a parental order), but they can arrange for all or a part of it to be met by others acting on their behalf.⁷⁸

However, it is possible for a person's parental responsibility to be terminated by a court. The circumstances under which this can happen depend on how the person acquired their parental responsibility.

4.1 Legal parents

The only circumstances where a child's legal mother can lose parental responsibility is through an adoption order or a parental order (in respect of a surrogate child that the mother gave birth to). Both these orders remove their status as the child's legal parent.

This is the same where a father or other parent acquired parental responsibility as a result of being married to or in a civil partnership with the mother at the time of the birth.⁷⁹

4 Restricting parental responsibility

As set out in section 1.4 above, the court can restrict a person's parental responsibility by making an order that in some way limits their rights in relation to the child (for example, through a prohibited steps order or a care order) without terminating their parental responsibility completely.

This can apply to people who cannot have their parental responsibility removed by the court (for example, legal mothers or married fathers).

In a 2017 case, for example, the court made an order prohibiting a married father from taking any steps in the exercise of any aspect of his parental responsibility in relation to his children.⁸⁰

⁷⁸ [Children Act 1989](#), section 2(9).

⁷⁹ Hershman and McFarlane, *Children Law and Practice*, paras A314-A315.

⁸⁰ [\[2017\] EWHC 3250 \(Fam\)](#) as cited in Hershman and McFarlane, *Children Law and Practice*, para A315.

Unmarried parents

Where a child's father or other parent acquired parental responsibility through a parental responsibility agreement, a parental responsibility order, or by being registered on the child's birth certificate, it can only be ended by a court order.⁸¹

This is also the case for parental responsibility orders made at the same time as a child arrangements order (see section 3.1 above). In such cases, the parental responsibility order does not have to be revoked if the child arrangements order is amended or revoked. In addition, where the child arrangements order is for residence, the parental responsibility order cannot be revoked for as long as the child arrangements order remains in force.⁸²

Court-orders to remove parental responsibility

Any person with parental responsibility, or the child themselves if they have sufficient understanding, may apply to the court to terminate a parent's parental responsibility. The principles to be applied when a court is considering whether to revoke parental responsibility have been summarised in court judgments. They include:

- It should be rare for a father not to be afforded the status of having parental responsibility for their child.
- When considering whether to revoke a person's parental responsibility, the court's paramount consideration must be the welfare of the child.
- There is no requirement for the court to consider the factors set out in [section 1\(3\) of the Children Act 1989](#) (the "welfare checklist") but the court is not prevented from doing so.
- The principle that the court should not make an order unless it considers that doing so would be better for the child than making no order at all applies (under section 1(5) of the Children Act 1989).⁸³

As with the granting of a parental responsibility order, the court is also to presume, unless the contrary is shown, that the involvement of that parent in the child's life will further the child's welfare (see section 2.1 above).⁸⁴

There are only limited cases where a court has allowed an application to terminate a parent's parental responsibility. They include:

⁸¹ [Children Act 1989](#), section 4(2A) and 4ZA(5); Hershman and McFarlane, *Children Law and Practice*, para A316.

⁸² [Children Act 1989](#), section 12(4)

⁸³ [\[2017\] EWHC 3250 \(Fam\)](#) as cited in Hershman and McFarlane, *Children Law and Practice*, para A316.

⁸⁴ [Children Act 1989](#), section 1(2A).

- In a 1995 case, the court terminated the parental responsibility (acquired by a parental responsibility agreement) of a father who had been sent to prison for causing serious injuries to his child.⁸⁵
- In a 2013 case, the court removed the parental responsibility of a father who had been imprisoned for sexual abuse of his child's half-sisters. The court rejected the argument that it was discriminatory for the parental responsibility of an unmarried father to be susceptible to termination in the way that that of a married father is not.⁸⁶
- In a further case in 2013, the court terminated the parental responsibility of a father who was serving a prison sentence for a violent attack on the child's mother.⁸⁷
- In a 2021 case, the court terminated the parental responsibility of a father who had a significant offending history, including sexual offences against children.⁸⁸

4.2 Other people losing parental responsibility

Step-parents

As with parents, if a step-parent acquires parental responsibility through a parental responsibility agreement or order, it can only be brought to an end by a court order.⁸⁹

Special guardians

If a special guardian acquired their parental responsibility for a child because of the special guardianship order being made, then their parental responsibility ends when the order ends.

Child arrangements orders

For people other than legal parents who gain parental responsibility as a result of being named in a child arrangements order (including step-parents), their parental responsibility ends once the child arrangements order is terminated.⁹⁰

⁸⁵ [1995] 3 FCR 753, as cited in Hershman and McFarlane, *Children Law and Practice*, para A317.

⁸⁶ [2013] EWHC 854 (Fam), as cited in Hershman and McFarlane, *Children Law and Practice*, para A317.

⁸⁷ [2013] EWHC 2963 (Fam), as cited in Hershman and McFarlane, *Children Law and Practice*, para A317.

⁸⁸ [2021] EWFC 37, as cited in Hershman and McFarlane, *Children Law and Practice*, para A317.

⁸⁹ [Children Act 1989](#), section 4A(3).

⁹⁰ [Children Act 1989](#), section 12(2) and 12(2A).

4.3

Proposed Government reform

Concerns have been raised that parents who are convicted of murdering their child's other parent still retain their parental responsibility. This means, for example, that they can potentially ask for school reports, be consulted on medical issues and withhold their consent to the child being issued with a passport.

Murder of Jade Ward

The issue received particular attention following the murder of Jade Ward by her ex-partner, Russell Marsh, in August 2021.⁹¹

Jade Ward's family said the fact that Marsh retained his parental responsibility despite being convicted of her murder in April 2022 meant he could still exercise control over the family.

They argued that a parent should automatically lose their parental responsibility if they are convicted of murdering the other parent. Jade Ward's father, for example, was reported as saying, "He's still allowed to say which school they go to, what dentist, whether they can go on holiday or whether they can't go on holiday. There's loads of other things he gets control of. He should automatically have no rights"⁹²

E-petition

In 2022, a friend of Jade Ward's family created an [e-petition calling for a parent's parental responsibility to be automatically suspended](#) during their term of imprisonment if they are convicted of murdering the other parent. It received more than 130,000 signatures.⁹³

In its initial response to the e-petition in June 2022, the Government noted the court can already exercise powers to effectively remove all parental powers and authority where this is appropriate. It also highlighted that the court can prevent an individual from repeatedly bringing issues back before the court (under section 91(14) of the Children Act 1989). However, the response also said the Government:

recognises that in situations where one parent is convicted of the murder of the other parent, the process for restricting parental responsibility from a parent who is imprisoned can be time consuming, and that making or responding to court applications, and attending multiple court hearings on related issues of parental responsibility can often be onerous for those involved.⁹⁴

⁹¹ BBC News, [Jade Marsh: Russell Marsh jailed for estranged wife's murder](#), 12 April 2022.

⁹² ITV News, [Jade Ward: Father of woman murdered by her husband demands he has rights over children removed](#), 24 May 2023.

⁹³ E-petition 614893, [Automatically suspend PR rights of parent guilty of murdering the other parent](#).

⁹⁴ E-petition 614893, [Automatically suspend PR rights of parent guilty of murdering the other parent](#).

Commons debate

A [Westminster Hall debate on the e-petition](#) was held on 7 November 2022. Opening the debate, Mark Tami MP suggested people would be “gobsmacked” if they realised how the law worked in this area. He said:

Importantly, where two parties have parental responsibility, one party cannot make decisions unilaterally; they must seek the other party’s agreement. Responsibility is automatically equal so, in law, neither party’s parental responsibility is considered more important than the other’s. That stretches to even the most extreme cases, in which one parent has been convicted of murdering the other.

I understand that Jade’s parents have been told that if they want to take their grandsons on holiday abroad, they need permission from the father. A convicted parent must also be consulted on issues such as where the children go to school and the medical treatment they receive. Effectively, Marsh has the right to veto decisions made by Jade’s parents and pursue a family court hearing.

...As with Jade’s boys, the children are often in the care of the family of the deceased parent. The current process effectively grants the convicted parent the means to continue the control and coercion of the family in the way they did prior to the murder of the victim.⁹⁵

While noting that the courts can limit a person’s parental responsibility, Mark Tami said this was expensive, time-consuming and emotionally draining for the families. He added that it also still puts the onus on the family to prove that parental rights should be restricted. The onus should instead, he said, be on the convicted murderer to prove that they should have parental responsibility.⁹⁶ This argument was echoed by other MPs.⁹⁷

Sarah Atherton MP raised a particular concern that the process for obtaining parental responsibility “is lengthy and expensive, and that, as a direct result of that lengthy process, parental responsibility remains with the perpetrator of a crime until the process is complete.” She added that her concern with automatically removing parental responsibility “is that we need to have processes in place to deal with the gap in care and decision making.”⁹⁸

The Shadow Justice Minister, Ellie Reeves, said the Labour Party supported the proposal and “a Labour Government would put Jade’s law on to the statute book.”⁹⁹

Responding to the debate, the Justice Minister, Edward Argar, said he sympathised with the views expressed in the e-petition but had reservations

⁹⁵ [HC Deb 7 November 2022, c2WH.](#)

⁹⁶ [HC Deb 7 November 2022, cc3-4WH.](#)

⁹⁷ For example, [HC Deb 7 November, cc13-14WH.](#)

⁹⁸ [HC Deb 7 November 2022, c8WH.](#)

⁹⁹ [HC Deb 7 November 2022, c15WH.](#)

about whether the proposal was “necessarily the best way of achieving the outcomes sought.”¹⁰⁰ He added:

we must look at the issues case by case; there is no one-size-fits-all approach. Each case is different. That is one of the reasons why there are reservations about having an automatic presumption, rather than letting the courts consider each case. It is important to note that under the Children Act 1989, the welfare of the child, rather than the views or interests of any adult, is the uppermost consideration in cases that come before the court.

[...]

Our view is that it is important that courts continue to have the flexibility that the Children Act gives them to make decisions that are tailored to the unique life of every child.

The legal challenge to the concept of automatic suspension is that it risks not aligning with the existing principles underpinning that key piece of legislation—the 1989 Act—and the way it works.¹⁰¹

Government to introduce Jade’s Law

In his speech to the Conservative Party Conference on 3 October 2023, the Justice Secretary, Alex Chalk, announced the Government would legislate to suspend parental responsibility from parents who murder their partners.¹⁰²

A news story published by the Ministry of Justice the same day explained the [Government would table amendments to the Victims and Prisoners Bill](#), which is due to have its Commons Report Stage on 4 December 2023, so that parents convicted of killing a partner or ex-partner with whom they have children would automatically have their parental responsibility suspended upon sentencing. The announcement added:

The rule will apply to anyone convicted of the murder or voluntary manslaughter of a person with whom they share parental responsibility and would then be reviewed swiftly by a judge to ensure it is in the best interests of the child. An automatic exemption would be put in place in cases where a domestic abuse victim kills their abuser.

The Government said the change would “better protect children by preventing killers from having any say over key elements of their life” and would mean “the bereaved will no longer have to go through the current process of applying to restrict parental responsibility through the family court”. It added that the law would be named after Jade Ward.¹⁰³

Further [details of the proposal were provided in a letter from Alex Chalk](#) to Sir Bob Neill MP, chair of the Justice Committee. The letter explained that:

¹⁰⁰ [HC Deb 7 November 2022, c17WH](#).

¹⁰¹ [HC Deb 7 November 2022, cc19WH and 21WH](#).

¹⁰² UKPOL.CO.UK, [Alex Chalk – 2023 Speech to Conservative Party Conference](#), 3 October 2023.

¹⁰³ Ministry of Justice, [Jade’s Law to be introduced to better protect children](#), 3 October 2023.

- Parental responsibility would be automatically suspended through an order once a conviction had been made in the criminal court.
- The suspension would remain in place for the duration of the person’s sentence.
- There would be a review process in the family court, which would consider if the suspension of parental responsibility was in the child’s best interests and any application to have the suspension lifted from the convicted parent.

The letter said the review process would “ensure compliance with the European Convention on Human Rights and maintain the principle that any action taken by the family court is, first and foremost, in the best interests of the children involved in each case.”¹⁰⁴

Reaction

The Government’s announcement was welcomed by Jade Ward’s family, Mark Tami MP, and by domestic abuse charities.¹⁰⁵ The Shadow Justice Secretary, Shabana Mahmood, also welcomed the announcement but said the decision had taken too long.¹⁰⁶

In an article on the Local Government Lawyer website, three lawyers suggested some important things to consider with regards to the proposal. This included:

- Will there be either a time limit for the suspension to expire or mechanism for an offender to regain parental responsibility?
- Will there be any kind of interim suspension for a person charged or remanded pending trial?
- Will the responsibility fall to the local authority to refer the matter to the Family Court for a review of the suspension of parental responsibility?
- Will the Children and Family Court Advisory and Support Service (Cafcass) be involved in the review process at all?
- How will the exemption for domestic abuse victims operate in practice? Will they need to prove domestic abuse?¹⁰⁷

¹⁰⁴ DEP2023-0770, [Letter dated 02/10/2023 from Alex Chalk MP to Robert Neill MP regarding removal of parental responsibility for a person who is convicted of the murder/voluntary manslaughter of the other parent: amendment to the Victims and Prisoners Bill](#), 2 October 2023.

¹⁰⁵ BBC News, [Jade Ward: Pride of murdered woman's family over law change](#), 3 October 2023; Women’s Aid, [Women’s Aid statement in response to Government’s plans to introduce Jade’s Law](#), 3 October 2023; Safer Places, [Safer Places Responds to Jade’s Law Announcement](#).

¹⁰⁶ Sky News, [Parents who kill their partner to automatically lose rights over children under government proposals](#), 3 October 2023.

¹⁰⁷ Local Government Lawyer, [Implementation of Jade’s law](#), 13 October 2023.

Government's amendments for Commons Report Stage (4 December)

The [Government's proposed amendment to the Victims and Prisoners Bill \(PDF\)](#) (NC37) would insert new sections 10A and 10B into the Children Act 1989.

Under the proposed section 10A, the Crown Court would be required to make a prohibited steps order where a parent with parental responsibility is convicted of the murder of their child's other parent. This would prohibit the offender from taking any steps in meeting their parental responsibility for the child without the consent of the High Court or the Family Court. The order would have effect until it is changed or discharged by the High Court or family court.¹⁰⁸

The requirement would also apply in cases of manslaughter where the offender would have been liable to be convicted of murder were it not for a defence of loss of control or diminished responsibility. In addition, the Crown Court would only make an order in cases of manslaughter where it was deemed to be "in interests of justice" to do so.¹⁰⁹

Under the proposed section 10B, the local authority where the child was ordinarily resident would be required to apply to the Family Court to have the prohibited steps order reviewed. It would be required to do this within 14 days of the order being made. This would allow the Family Court to consider whether the prohibited steps order was in the child's best interests.

The local authority would also have to apply to have the order reviewed if the parent was acquitted on appeal.¹¹⁰

The amendment would also make other consequential changes to the Children Act 1989, including to allow the Crown Court to make prohibited steps orders.¹¹¹

¹⁰⁸ [Victims and Prisoners Bill \(Amendment Paper\)](#), 30 November 2023, NC37(3).

¹⁰⁹ [Victims and Prisoners Bill \(Amendment Paper\)](#), 30 November 2023, NC37(3).

¹¹⁰ [Victims and Prisoners Bill \(Amendment Paper\)](#), 30 November 2023, NC37(3).

¹¹¹ [Victims and Prisoners Bill \(Amendment Paper\)](#), 30 November 2023, NC37(2) and NC37(4-8).

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