

Parental responsibility – having it, acquiring it, removing it: a guide from the basics to Jade’s Law

Eléonore Berthelsen & Max Montgomery

What is parental responsibility?

- S3 Children Act 1989:
- *In this Act “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.*

Re EMP (A Child) (Re Section 8 of the Children Act 1989) [2024] EWFC 12

- HHJ Baker
- Embraced gov.uk definition of PR (at [99])

A v A (Shared Residence) [2004] EWHC 142

- Wall J
- Agreement appended to judgment: exercise of PR:
 1. Decisions that could be taken independently and without any consultation or notification to the other parent;
 2. Decisions where one parent would always need to inform the other parent of the decision but did not need to consult or take the other parent's views into account;
 3. Decisions that you would need to both inform and consult the other parent prior to making the decision.

Enforcing Parental Responsibility

- S8(1) Children Act 1989:
 - Prohibited steps order – restricting exercise of PR
 - Specific issue order – exercising PR

Limit of powers without parental responsibility

- S 3(5) Children Act 1989
- *S (Abduction: Hague and European Conventions) [1997] 1 FLR 958, CA:*
 - *"The assumption of the care of the child under section 3(5) for the purpose of safeguarding or promoting his welfare does not clothe the carers with control over the child other than the minimum necessary to provide for the day to day welfare of the child."*

Who has parental responsibility

- Biological mothers - s2(2)(a) CA 1989
- Fathers married to mother (or in CP) at birth – s2(1) CA 1989
- Fathers named on birth certificate – s4(1)(a) CA 1989
- Second mothers married to mother (or in CP) at conception – s2(1A) CA 1989
- Second mothers named on birth certificate – s4ZA(1)(a) CA 1989
- Those who acquire PR

Acquiring Parental Responsibility (1)

- Adoption
 - S46(1) Adoption and Children Act 2002
- Child arrangements order – s8 CA 1989
 - Lives with order
 - Automatic PR for:
 - Father or second mother – s12(1) CA 1989
 - Non parent or guardian – s12(2) CA 1989
 - Spend time with order
 - Court decides if appropriate to grant PRO – s12(1A) CA 1989

Acquiring Parental Responsibility (2)

- Appointment of a guardian
 - S5(6) CA 1989
- Special guardianship order
 - S14C(1)(a) CA 1989

Acquiring Parental Responsibility (3)

- Parental responsibility agreement
 - Must be in form prescribed by regulations:
 - Fathers – s4(2) CA 1989
 - Second mothers - s4ZA(4) CA 1989
 - Step parents – s4A(2) CA 1989
 - Information on form of PRA: <https://www.gov.uk/parental-rights-responsibilities/apply-for-parental-responsibility>

Acquiring Parental Responsibility (4)

- Parental responsibility orders:
 - Fathers – s4(1)(c) CA 1989
 - Second mothers – s4ZA(1)(c)
 - Step parents – s4A(1)(b) CA 1989
- No legislative test

PRO test: Case law

- *Re H (Minors) (Local Authority: Parental Rights (No 3))* [1991] Fam 151
 - Balcombe LJ: test for PRO is threefold:
 - (1) the degree of commitment which the father has shown towards the child;
 - (2) the degree of attachment which exists between the father and the child;
 - (3) the reasons of the father for applying for the order
- *A v B and C (Lesbian Co-Parents: Role of Father)* [2012] EWCA Civ 285:
 - Thorpe LJ (at [23]): "In the end the only principle is the paramountcy of child welfare"

D (Contact and Parental Responsibility: Lesbian Mothers and Known Father) [2006] EWHC 2

- Black J
- Contested application for PRO by biological father to child of long term female partners
- Expert evidence of consultant child and adolescent psychiatrist [54-85]
- PR granted on the basis of recitals Mr B would **not contact child's school or medical professionals [89-94]**

Re EMP (A Child) (Re Section 8 of the Children Act 1989) [2024] EWFC 12

- HHJ Baker:

[107]... “With respect to the issue of PR the court has a number of options:

- a. Leave PR as it is, unfettered;
- b. Leave PR but make specific issue or prohibited steps order to regulate specific rights that can be exercised with PR;
- c. Revoke PR.”

Removing Parental Responsibility...

PR can be restricted or terminated – but not everyone with PR can have their PR terminated.

This depends on how PR was acquired in the first place.

Persons who cannot have their PR terminated:

Mothers

Persons who acquired by virtue of marriage or civil partnership to the child's birth mother

The exercise of their PR can be restricted by court order – by the making of an SIO, PSO, SGO, or Care Order where a local authority shares PR.

Persons who acquired PR by virtue of a court order...

... can have the exercise of their parental responsibility restricted by way of a court order, or have their PR **terminated** by a court order.

Mothers and spouses

Adoption Order – extinguishes PR and status as legal parent

Parental Order – extinguishes PR and status as legal parent

Mothers and spouses...

... can have the exercise of their PR restricted to almost nothing by way of a court orders.

SGOs, Care Orders – PR not extinguished, but special guardians can exercise PR to exclusion of the parents; Care Order – LA consults but can ultimately make decisions.

B and C (Change of Names – Parental Responsibility – Evidence) [2017] EWHC 3250

Order prohibiting F from taking any steps to exercise his PR in relation to either child under they reached the age of 18, or further order.

Re B (Adoption: Natural Parent) [2001] UKHL 70

A vanishingly rare scenario – biological father obtained an adoption order in respect of 3-year old child. Mother's PR brought to an end.

The termination of parental responsibility

Only possible in the case of a person not married to or in a civil partnership with child's mother

Re D (Withdrawal of Parental Responsibility) [2014] EWCA Civ 315

The termination of parental responsibility (2)

D v E (Termination of Parental Responsibility) [2021] EWFC 37

Is the law discriminatory to unmarried persons with PR?

Smallwood v United Kingdom (Application No 29779/96)
(1999) 27 EHRR 155

Is the law discriminatory to unmarried persons with PR?

Smallwood v United Kingdom (Application No 29779/96)
(1999) 27 EHRR 155

Legal reform: restricting PR where someone has been a really *terrible* parent

Jade's Law - Victims and Prisoners Act 2024, section 18

Amendments to the Criminal Justice Bill

Questions