

Guidance for education establishment recording of parental responsibility

The following is a general overview of definitions of parent and parental responsibility. Individual circumstances and situations may vary and must be treated on their own merit. Advice should be sought from legal services if in doubt.

Parents and Parental Responsibility

Education Act Definition of Parent

The Education Act defines “parent” as

- All natural parents, whether they are married or not and
- Any person who although not a natural parent, has parental responsibility for a child or young person: and
- Any person who although not a natural parent, has care of a child or young person

Schools, Early Years settings and other education organisations

Everyone who is a parent has a right to participate in decisions about a child’s education, even though the school’s main contact is likely to be the person with whom the child lives on school days. Unless there is a court order limiting and individual’s exercise of parental responsibility, such as an order preventing the absent parent from having contact with the child, the school and local education authority staff must treat all parents equally.

Generally those with automatic parental responsibility, those who have it by virtue of a court order and those who are parents in accordance with the Education Act normally have the following parental rights

- To attend a school’s annual parent’s evening
- To express a preference when choosing a school
- To stand for election or vote as a parent governor
- To be notified of their right to appeal against a child’s exclusion
- To receive information on the child’s education
- To withdraw a child from religious education and collective worship
- To initiate and be involved in the procedure for obtaining a statement of special educational needs

Any dispute between parents sharing these rights would need to be resolved between them and not by the school. In this case usually consent should be presumed not to have been given until the situation is resolved.

Parental Responsibility

What is parental responsibility?

While the law does not define in detail what parental responsibility is, the following list sets out the key roles:

- providing a home for the child
- having contact with and living with the child
- protecting and maintaining the child

- disciplining the child
- choosing and providing for the child's education

- determining the religion of the child
- agreeing to the child's medical treatment
- naming the child and agreeing to any change of the child's name
- accompanying the child outside the UK and agreeing to the child's emigration, should the issue arise
- being responsible for the child's property
- appointing a guardian for the child, if necessary
- allowing confidential information about the child to be disclosed

Having parental responsibility means assuming all the rights, duties, powers, responsibilities and authority that a parent of a child has by law.

People other than a child's natural parents can acquire parental responsibility through

- Being granted a residence order
- Being appointed a guardian
- Being named in an emergency protection order (although parental responsibility in such a case is limited to taking reasonable steps to safeguard and promote the child's welfare) or
- Adopting a child

Who has parental responsibility?

Unlike mothers, fathers do not always have 'parental responsibility' for their children. With more than one in three children now born outside marriage, some parents may be unclear about who has legal parental responsibility for their children. A mother automatically has parental responsibility for her child from birth. *However, the conditions for fathers gaining parental responsibility varies throughout the UK.*

For births registered in England and Wales

In England and Wales, if the parents of a child are married to each other at the time of the birth, or if they have jointly adopted a child, then they both have parental responsibility.

Parents do not lose parental responsibility if they divorce, and this applies to both the resident and the non-resident parent. It can be removed only by an adoption order.

This is not automatically the case for unmarried parents. According to current law, a mother always has parental responsibility for her child. A father, however, has this responsibility only if he is married to the mother when the child is born or has acquired legal responsibility for his child through one of these routes:

- (from 1 December 2003) by jointly registering the birth of the child with the mother
- by a parental responsibility agreement with the mother
- by a parental responsibility order, made by a court
- a residence order
- a father automatically acquires PR for his children if he marries their mother after their birth

Living with the mother, even for a long time, does not give a father parental responsibility and if the parents are not married, parental responsibility does not always pass to the natural father if the mother dies.

All parents (including adoptive parents) have a legal duty to financially support their child, whether they have parental responsibility or not.

For births registered in Scotland

A father has parental responsibility if he is married to the mother when the child is conceived, or any time after that date. An unmarried father has parental responsibility if he is named on the child's birth certificate (from 4 May 2006). Alternatively, unmarried fathers can also be named following a re-registration of the birth.

For births registered in Northern Ireland

A father has parental responsibility if he is married to the mother at the time of the child's birth. If a father marries the mother after the child's birth, he has parental responsibility if he lives in Northern Ireland at the time of the marriage. An unmarried father has parental responsibility if he is named, or becomes named, on the child's birth certificate from 15 April 2002.

For births registered outside the UK

If a child is born overseas and then comes to live in the UK, the parental responsibility rules apply for the UK country in which they live.

Applying to the courts for parental responsibility

A father can apply to the court to gain parental responsibility. In considering an application from a father, the court will take the following into account:

- the degree of commitment shown by the father to his child
- the degree of attachment between father and child
- the father's reasons for applying for the order

The court will then decide to accept or reject the application based on what it believes is in the child's best interest.

Recording parental responsibility

It is important for education providers (including early years settings) to record who has parental responsibility for the children in their care. Settings are not required to see birth certificates or to take extra measures to prove the statement parents make on registration are correct. It may be prudent to give parents an explanation of what parental responsibility is (as outlined above) so they can take care to provide accurate information.

A record of who has parental responsibility for a child living with someone other than a parent with parental responsibility (as defined under the term 'parent' in the Education Act) should still be kept. The 'parent' with whom they are living should sign the declaration of who holds parental responsibility if those parents are unavailable to do so.

Private Fostering

When recording who a child lives with, education providers may identify private fostering arrangements. They should be mindful of the need to encourage the parent/ foster parent to report private fostering arrangements to the Local Authority Children's Team without delay and then to check that this has been done.

What is private fostering?

Private Fostering is when a child or young person under 16 years old (or under 18 if disabled) goes to live with someone for 28 days or more by private arrangement (without the involvement of a local authority) with someone who is not a:

- parent;
- close relative (brother, sister, aunt, uncle, grandparent or step parent)
- guardian or a person with parental responsibility;

Private foster carers might be:

- friends of the child's family;
- someone willing to care for the child of a family they don't know; or
- relatives not mentioned in the list above, for example a cousin or great aunt.

Examples of private foster care arrangements:

- children sent to this country for education or health care by parents or guardians living overseas;
- Teenagers living with a friend's family as a result of problems at home;
- children on holiday exchanges;
- children whose parents' study or work involves unsociable hours, which make it difficult for them to use ordinary day care or after school care.