



RESIDENCE AND CONTACT FACTSHEET

RESIDENCE:

IF I GET A RESIDENCE ORDER, WHAT WILL MY POSITION BE?

A Residence Order is an Order which regulates where a child is to live.

Therefore a Residence Order means that by law the child is to live with you.

Most other matters relating to the child's upbringing depend upon who has Parental Responsibility. A Residence Order does not affect Parental Responsibility.

WHAT DOES PARENTAL RESPONSIBILITY MEAN?

The married parents or the mother of a child or a person granted a Residence Order automatically have Parental Responsibility.

Anyone else has to apply to the Court to obtain it.

DO I HAVE TO DISCUSS AND AGREE DECISIONS WITH ANOTHER PERSON WHO HAS PARENTAL RESPONSIBILITY?

No. Each person with Parental Responsibility can exercise it **independently**.

IF I DO NOT HAVE A RESIDENCE ORDER, CAN I STILL EXERCISE PARENTAL RESPONSIBILITY?

Yes, Parental Responsibility is unaffected by a Residence Order. The Residence Order only regulates where a child is to live- nothing more.

This is because the Children Act seeks to encourage the view that a parent does not need to cease to be a parent and be involved with their child/children where he or she is no longer primarily responsible for looking after the child/children on a day to day basis.

You have the right to exercise your parental responsibility independently of the person who has a residence order. In practice, it is best to seek to 'pull together' with that other person as far as possible in the best interests of the children.

CAN I STOP SOMEONE ELSE WITH A PARENTAL RESPONSIBILITY DOING SOMETHING WITH WHICH I DISAGREE?

It depends upon the 'something'. If you are aware of a proposed action in sufficient time, you can apply for a Prohibited Steps Order or a Specific Issue Order.

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A Prohibited Steps Order prevents a person with Parental Responsibility from taking a particular step without the consent of the Court. The 'particular' steps will be defined in the Order.

A Specific Issue Order is an Order by the Court directing how a particular question concerning any aspect of Parental Responsibility for a child should be sought.

HOW DO I OBTAIN A RESIDENCE ORDER?

You need to make application to a Court. This will usually be the Magistrates Court, though may be the County Court or even the High Court is a very difficult case.

CAN A JOINT RESIDENCE ORDER BE GRANTED?

Yes. The kind of 'time-sharing' order is very popular in the United States. It has never been as popular in England. Courts can be reluctant to grant such an Order.

IF I HAVE A RESIDENCE ORDER, CAN I DECIDE HOW AND WHEN CONTACT TAKES PLACE?

Yes and no.

If you are asking whether you need to agree to Contact arrangements, the answer is yes. Contact arrangements cannot be forced on you except under a Contact Order.

If you are asking whether contact arrangements are entirely your decision, the answer is no. Contact arrangements are to be agreed between the parties. Both parties should then stick to the arrangements. It is not in any child's best interests for arrangements to keep changing on the decision of one party.

IF I HAVE A RESIDENCE ORDER CAN I CHANGE THE CHILD'S NAME?

Not if there is someone else with parental responsibility. You can only do so with the consent of the person or persons OR with the leave of the court. Obviously, if you are the only person with Parental Responsibility, you can change the child's name.

IF I HAVE A RESIDENCE ORDER, CAN I TAKE THE CHILD OUT OF THE COUNTRY?

You can take the child anywhere in the United Kingdom without needing consent.

Similarly you can take a child out of the United Kingdom for a period of less than one month without needing any consent.

This is intended to cover holidays.

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To take a child out of the United Kingdom for a month or more, you must obtain the consent of every person with Parental Responsibility or the leave of the Court.

CONTACT

IF I GET A CONTACT ORDER, WHAT WILL MY POSITION BE?

A Contact Order is an Order requiring the person whom the child lives with to allow the child to visit or stay with you.

The usual form of Order is for 'Reasonable' Contact.

This leaves it up to yourself and the party with Residence to sort out satisfactory arrangements between you.

If you are unable to do this, then the Court will state in the Order which Contact you are to have.

Most other matters relating to the child's upbringing depends upon who has Parental Responsibility. Neither a Contact nor a Residence Order affect a Parental Responsibility.

HOW DO I OBTAIN A CONTACT ORDER?

You need to make application to a Court. This will usually be the Magistrates Court, though may be the County Court or even High Court in a difficult case.

WHAT WILL THE COURT CONSIDER?

The Children Act 1989 sets out the broad principles in relation to responsibility for children but there is other legislation which covers specific areas of child care, for example, education and maintenance of a child.

In this context, reference to 'a child' means a person under 18 unless specified otherwise. However, many provisions in the Children Act relate only to children up to the age of sixteen unless special circumstances apply.

Children, as they get older, have the right to make certain decisions about their own life if and when they have the understanding to do so.

These decisions may be recognised by the courts even if they are in direct conflict with parents' wishes.

If there is a conflict between parents about a child's upbringing, the court will take into account the child's wishes and feelings bearing in mind her / his age and understanding (but the child's feelings will not override the other factors the court must consider).

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However, in all cases where a court makes a decision about a child's upbringing, the child's welfare is paramount whatever her / his age.

The Court will consider factors that are within the statutory "Welfare Checklist", which is as follows:

1. the ascertainable wishes and feelings of the child
2. the child's physical and emotional needs
3. the likely effect on the child of any change in circumstances
4. his/her age, sex, background, and any other characteristics which the court considers relevant
5. any harm the child is at risk of suffering
6. how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs
7. the range of powers available to the Court under the Children Act 1989 in the proceedings in question

The above list aims to guide not only the Court but also the parties to concentrate on the issues that affect their children.

Please note that this fact sheet should only be used as a general guide only. The advices given do not relate to specific circumstances and we strongly recommend that you make an appointment with us.

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