
Can I still apply for a custody order?

No. The Children Act 1989 has replaced 'custody' and 'custody orders' with 'residence' and 'residence orders'.

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?

Parental responsibility means the legal power and obligation to consider, decide and control the many varied aspects of a child's upbringing.

This will include matters such as education, medical treatment, correction and discipline, etc.

Who has parental responsibility?

The married parents or the mother of a child or a person granted a residence order or an unmarried father named on the child's birth certificate for births after 1st December 2003 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 1989 seeks to encourage the view that a parent does not 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 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.

A prohibited steps order prevents a person with parental responsibility from taking a particular step without the consent of the court. The 'particular' step 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 sorted out.

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 High Court in a very difficult case.

Can a joint residence order be granted?

Yes. This kind of 'time-sharing' order is very popular in the United States. Courts are now much more willing to grant such orders in England than previously.

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. However, you will be expected to agree and promote contact where it is clearly in the child's interest to do so. The court will claim it is in the child's interest in the vast majority of cases. Only where there are concerns about violence, physical or emotional abuse, or the child's health and safety, would contact be curtailed.

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 that person or persons or with the leave of the court. In all cases the consent of the father, whether or not he has parental responsibility, should be sought and in its absence, an application made to the court.

If I have a residence order, can I take the child out of the country?

You can take a 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, however to take a child out of the United Kingdom for a month or more, you must obtain consent of every person with parental responsibility or the leave of the court.

If you would like to discuss any issues raised in this update or any other family related matter please do not hesitate to contact our Family Team on 01279 755777 or email family@nockolds.co.uk

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