

CHILDREN ACT PROCEEDINGS

When a relationship ends everyone's primary concern is that children are affected as little as possible by the changes in adult's lives.

It is vitally important that, if possible, all matters relating to children are resolved amicably.

We have prepared this leaflet to help you to understand what powers a Court has to resolve issues relating to children and also to explain what factors a Court takes into account.

If parties are unable to agree arrangements for their children themselves then they should consider using the services of a mediator. Mediators are independent third parties who will meet with the parents at least once, but usually over several meetings, to listen to their views and to help them reach an agreement that they can both work with for the benefit of their children.

The main provision, which details the laws relating to issues about children, is The Children Act 1989 which came into force in October 1991.

The Act covers many areas but the most common issues are:

- 1) Live With – a Live With Order details where a child lives
- 2) Spend Time With – a Spend Time With Order details the arrangements for children to see and spend time with people that they do not live with
- 3) Prohibited Steps Order- a Prohibited Steps Order limits when certain parental rights and duties can be exercised
- 4) Specific Issue Order – a Specific Issue Order contains directions to resolve a particular issue in connection with a child e.g. which school a child should attend
- 5) Parental Responsibility Order – Parental Responsibility gives a parent the right to make important decisions about the child's upbringing and is acquired as follows:
 - a. if parents are married when they have a child they both automatically acquire Parental Responsibility.
 - b. If the parents are unmarried and the child was born before 1st December 2003, then the Father can only acquire Parental Responsibility by agreement with the Mother or by Order of the Court.
 - c. If the child was born after 1st December 2003 and the Father's name is registered on the birth certificate, the Father will have Parental Responsibility.
- 6) Step-Parent Parental Responsibility Order – a step-parent can acquire Parental Responsibility for a step-child, either by agreement with the Mother and any natural father with Parental Responsibility or by order of the court.

CHILDREN ACT PROCEEDINGS

FACT SHEET

In deciding whether any Order should be made the Court will have regard to the following:

- 1) The ascertainable wishes and feelings of the child (bearing in mind the child's age and understanding)
- 2) The child's physical, emotional and educational needs
- 3) The likely effect on the child of any change in his/her circumstances
- 4) The child's age, sex, background and other characteristics which the Court considers relevant
- 5) Any harm which the child has suffered or is at risk of suffering
- 6) How capable each of the child's parents are, and any other person in relation to who the Court considers the question to be relevant, of meeting the child's needs
- 7) The range of powers available to the Court

The general principle of the Children Act is that the Court shouldn't make any Orders unless it is entirely necessary and that it is in the interests of a child for an Order to be made.

When making a decision the Court's paramount consideration is the welfare of any child.

When parties are unable to reach an agreement and it is necessary to make an application to the Court the Court will first list the application for a First Hearing Dispute Resolution Appointment (FHDRA). The other party will also need to be notified. At that Appointment before seeing the Judge the parties will meet with a duty Children and Family Reporter (CAFCASS - an independent person appointed by the Court to listen to the parties views, to collate background information and, if appropriate, to speak to the children and establish their views and to make a recommendation to the Court) to see if there is any possibility of agreement, if a referral to mediation is appropriate or if the application requires a full investigation by a Children and Family Reporter.

The parties and their legal representative will then see the Judge; if an agreement has been reached the Judge will be asked to approve the agreement if it is felt an Order is necessary. If no agreement has been reached the Judge will give directions as to what further information is needed before they can make a decision e.g. Statements from the parties, a Children and Family Reporters report, and the Judge will list the application for a further hearing once all the outstanding information is available.

At the next hearing the Court will again consider if there is any possibility of the parties reaching an agreement and, if not, will list the case for a final hearing. At any final hearing the Judge will hear from the parties and may hear from the Children and Family Reporter. Once the Judge has heard all the evidence they will then make a decision having regard to the factors detailed above. The Judge's decision will then be embodied into an Order.

In some circumstances it may be appropriate for an application to be made to the Court without the other party having been given notice. If that course of action is appropriate in your case your Solicitor will discuss that with you. However, you should be aware that any Order made without notice will be time limited to protect the position until the Judge has had an opportunity to hear from the other party.

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Even if it is necessary to issue an application parents should continue to try and agree matters at all stages.

There is a lot of information contained in this leaflet but you should not worry as we will discuss your case with you frequently as it progresses.

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