

A Brief Guide to the Children Act 1989

Section 1 of the Children Act 1989 provides that the child's welfare shall be the court's paramount consideration when the Court determines any question with regard to either:-

1. The upbringing of a child; or
2. The administration of a child's property or the application of any income arising from it.

The same Section of the same Statute contains what is known as the "welfare checklist".

When, amongst other things, the court is considering whether to make, vary or discharge what is known as a Section 8 Order and the making, variation or discharge of that Order is opposed by any party to the proceedings, the Court is required to have regard to:-

1. The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
2. His physical, emotional and educational needs;
3. The likely effect on him of any change in his circumstances;
4. His age, sex, background and any characteristics of his which the Court considers relevant;
5. Any harm which he has suffered or 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 in the proceedings in question.

The Orders the Court is able to make under Section 8 of the Children Act are as follows:-

1. "A Contact Order". This is an Order requiring a person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the Order, or for that person and the child otherwise to have contact with each other. Prior to the Children Act, such Orders were known as "Access Orders".
2. "A Prohibited Steps Order". This means an Order that no step which could be taken by a parent in meeting his parental responsibility for a child and which is of a kind specified in the Order, shall be taken by any person without the court's consent.
3. "A Residence Order". This means an Order settling the arrangements to be made as to the person with whom a child is to live. Prior to the Children Act, such orders were known as "Custody" ones.
4. "A Specific Issue Order". This means an Order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

"Parental responsibility" is defined in Section 3 of the Children Act as "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."

The mother of a child automatically has parental responsibility for a child upon his or her birth.

Section 2(1) of the Children Act 1989 provides that if the child's parents were married to each other at the time of the child's birth, they shall each have Parental Responsibility for the child.

A father will also acquire parental responsibility in the event that he subsequently marries the child's mother.

Section 2(2) of the Children Act 1989 provides that if the child's parents were not married to each other at the time of his/her birth, the father shall have parental responsibility if he has acquired it (and has not ceased to have it) in accordance with the provisions of the Act.

Section 4(1) of the Act provides that the father shall acquire parental responsibility if:

1. He becomes registered as the child's father;
2. He and the child's mother enter into a written agreement, called (unsurprisingly) a "Parental Responsibility Agreement";
3. The Court, on his application, makes a "Parental Responsibility Order" in his favour in respect of the child.

The provision referred to under point 1 above was introduced by Section 111 of the Adoption and Children Act 2002 which came into force on 1 December 2003.

A father who was not married to the mother at the time of the child's birth will acquire parental responsibility provided that the father's name is placed on the child's birth certificate at registration or re-registration of the child's birth under the Births and Deaths Registration Act 1953.

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