

PARENTAL RESPONSIBILITY

The Children Act 1989, the Human Fertilisation & Embryology Act 2008 and the Adoption in Children Act 2002 have made important changes regarding the law relating to children, and the parental responsibility and connections between parents and children. We hope the information in this fact sheet about parental responsibility will assist you in understanding this area of the law.

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**Parental
Responsibility
for Gay
Couples**



What is Parental Responsibility?

Parental responsibility is described as “all the rights, duties, powers, responsibilities and authority which, by Law, a parent has in relation to a child and his property”.

In practice it can include the right to decide:

- which school the child should attend;
- the form of religious upbringing the child should have;
- medical treatment the child should receive;
- in which country the child should live;
- and by what name the child should be known.

It may mean that schools, doctors, hospitals, Social Services and other organisations will not deal directly with a parent unless they have parental responsibility.

Once a parent has parental responsibility for the children they will share it even if their relationship is dissolved. The practical significance of this is that any parent can make important decisions on behalf of the child in the absence of the other parent/s. For instance, if your child requires emergency medical treatment any parent who is present at the time can give the medical staff the appropriate authority.

Who Has, or Can Obtain, Parental Responsibility?

A biological father may decide to enter into an informal surrogacy arrangement whereby the child will be given to the biological father and his partner on birth. If the mother changes her mind, she has the legal right to keep the child even when the baby she gave birth to is not genetically related to her. Surrogacy arrangements are not legally enforceable, even if a contract has been signed, and the expenses of the surrogate have been paid. The surrogate mother will automatically have parental responsibility for the child.

If the surrogate mother is married, the child’s legal father will be the surrogate’s husband unless he can show he did not consent to the treatment. The mother could ask the court to allow her to have contact with the child even if the biological father does not agree. If the biological father is named on the birth certificate and the birth is registered on or after 1 December 2003, he will have parental responsibility for the child.

The biological father’s civil partner can share parental responsibility with the biological parents if they enter into a “parental responsibility agreement”. This must be signed by the biological parents and the legal father.

When one of the fathers is biologically related to the child, the intended parents can apply for a parental order. The application must generally be made to the court within 6 months of the birth of the child. The surrogate mother and the legal father of the baby must also consent unconditionally to a parental order being made. This will provide the fathers with parental responsibility.

An order that the second father has or shares residence (formally “custody”) of the child will provide him with parental responsibility.

Alternatively the intended fathers can apply to a registered adoption agency and must be involved in the surrogacy process if this is the plan. It is therefore important to obtain legal advice before you decide to embark on this course of action.