

# WHEN PARENTS SEPARATE: SOME COMMON ISSUES



When parents separate there are sometimes decisions that need to be made about a child's upbringing, other than about contact or where the child should live (see our [Guides to Parental Responsibility, Contact and Residence](#) for further information about these issues). This legal guide has been prepared to provide general legal information about the other types of orders the court can make in relation to children and to answer some frequently asked questions.

Some of these issues can be complicated and your circumstances will be individual to you. You should therefore also seek legal advice.

## Language

Whilst in this legal guide we refer to the child's other parent as 'he' we recognise that this may not be the case. The law set out in this legal guide is generally the same regardless of whether your child's other parent is a man or a woman, but if your child's other parent is a woman you may also wish to read this guide alongside our [Guide to Lesbian Parenting](#) and seek legal advice.

## Specific issue orders

A **specific issue order** (SIO) is an order the court can make when two people who have parental responsibility (PR) for a child (see our [Guide to Parental Responsibility](#)) cannot agree about an important decision in a child's upbringing. You can ask the court to make a SIO if you cannot agree about:

- your child's education – for example what school she or he should go to;
- your child's religion – for example whether your child should be brought up in one faith or another;
- your child's health – for example what medical treatment your child should have; and,
- your child's surname (see [Changing your child's name](#) below).

The court is unlikely to become involved in less important decisions about the way in which you bring up your children, such as the day-to-day decisions you make. For example, your child's other parent is unlikely to be able to ask the court to interfere in decisions about the clothes you dress your child in, the food you give your child or who you choose to baby-sit.

## Prohibited steps orders

A **prohibited steps order** (PSO) is an order the court can make to forbid a person who has PR for a child from taking certain action in relation to that child. You can ask the court to make a PSO forbidding your child's other parent or another person with PR to:

- remove your child from your care;
- remove your child from school;
- take your child abroad (see also **Child abduction** below); or,
- bring your child into contact with certain people.

The court can make these orders in an emergency and without the other person being given notice of the hearing. The court may make a temporary or interim PSO and arrange another hearing when the other person can attend and put his or her side of the story. A PSO could also be made to last indefinitely.

## Procedure for applying for a SIO or a PSO

Before you apply for an order, you must first contact a mediator and arrange for a **family mediation information and assessment meeting (FMIAM)** with your child's other parent (or anyone else who has PR that you have a disagreement with), to discuss if the problem can be addressed using mediation. This requirement does not apply if you are applying to the court on an emergency basis e.g. in the event of child abduction (see below).

There are some exceptions (even if you are not applying in an emergency) that mean you do **not** have to attend a mediation assessment meeting. For example, if your child's other parent was abusing or harassing you and a non-molestation order has been made against

him in the last year. For full details of the procedure and exceptions please see our **Guide to Child Contact**. If you have experienced domestic violence, or for any other reason you want a meeting with the mediator separate from your child's other parent (or anyone else with PR), then you can contact the mediator and inform them of this.

## How the court makes decisions about children

When making any decision about your child the court must consider all your child's circumstances and in particular the following factors:

- **your child's wishes and feelings** depending on her or his age and understanding (generally the older your child is the more emphasis the court will place on those wishes and feelings)
- **your child's physical, emotional and educational needs** (this includes practical needs such as accommodation and food as well as love and affection)
- **the likely effect on your child of any change in her or his circumstances** (the court will look at the previous or existing arrangements and generally considers that change can be disruptive to a child)
- **your child's age, sex, background and any characteristics the court thinks relevant** (this could include any cultural or religious needs or any special needs or disability your child might have)
- **any harm your child has suffered or is at risk of suffering** (this includes physical, sexual or emotional abuse and any domestic violence your child has seen or heard)
- **how capable both parents are of meeting your child's needs** (the court can consider

both your skills in looking after your child and can consider whether these are impaired, for example, by drink or drugs)

- **the range of powers available to the court** (the court can choose from a very wide range of different orders when making these decisions)

## Changing your child's name

Although there are no legal rules or requirements for changing your child's surname, there is clear guidance from the courts that says you must first seek the **permission of your child's other parent** (specifically the child's biological father) to change the child's name. This is the case regardless of whether he has PR or not. If you do not get his permission, he could apply to the court for a **specific issue order** to change the child's name back to his surname. In a number of cases where parents have separated, the courts have said that it is important for children to maintain a link with their father and that sharing his surname is an important part of that. In these cases the court has changed the name back to the father's surname. If the change of name is agreed, or a court has agreed to it, you can prepare a **statutory declaration or change of name deed** to formally change your child's surname.

## Moving or going on holiday with your child

It is a criminal offence if you take or send a child out of the UK, either permanently or for a holiday, without getting the prior permission of either everyone else with PR for the child (in most cases this will be your child's other parent) or the court. Scotland and Northern Ireland are within the UK, but they are out of the court's jurisdiction. If you are

unsure who has PR for your child see our **Guide to Parental Responsibility**.

- If you wish to move or go on holiday with your child **within the court's jurisdiction** i.e. England and Wales, without your child's other parent's consent no criminal offence is being committed and **you do not need his permission, or that of the court**, to do this. There are applications he can make to court to prevent you from doing this though (see below).
- If you wish to move or go on holiday with your child **within the UK but outside of the court's jurisdiction** i.e. Scotland and Northern Ireland, you will not be committing a criminal offence if you go without your child's other parent's consent, but nevertheless his permission or that of the court should be sought because court orders can be issued for your child's return.
- If you wish to move or go on holiday with your child **outside the UK** then you need your child's other parent's prior permission (if he has PR, please see our **Guide to Parental Responsibility**), or that of the court. If you do not have this then you will be committing the **criminal offence of child abduction** and an international arrest warrant can be issued as well as a court order for your return.
- If you have a **residence order** for your child **you do not need permission from your child's other parent or the courts to take your child out of England and Wales (or the UK)** for a maximum of one month. Beyond this, you will need permission.

## Moving within England and Wales

Generally you are free to move to live wherever you choose with your child within England and

Wales. If you move somewhere which is a distance from your child's other parent this may have an impact on any contact arrangements they have with your child. You may need to make alternative contact arrangements that take into account the longer journey and who is going to be responsible for that journey.

In most cases the court is not likely to interfere with a decision to move to a new area but the courts have restricted women from moving to another area where the court considered that the move was to frustrate contact arrangements and where the women had no connection to the area or clear plans for accommodation, work and the child's education. In one case the court placed a restriction on a woman from moving outside of a particular area, but the judge made it clear that the facts of the case were exceptional and that each case should be looked at on its own facts.

### **Taking your child abroad for a holiday**

Unless you have a residence order, before you take your child abroad for a holiday you should seek the prior permission of anyone else who has PR for your child (if you are not sure who has PR, and in particular whether your child's other parent has, see our **Guide to Parental Responsibility**). If they do not agree to you taking your child abroad you can make an application to the court for **leave to remove your child from the jurisdiction**. Scotland and Northern Ireland are outside the court's jurisdiction. If anyone else with PR refuses you permission to take your child on holiday at the last minute and you have already booked your tickets you can make an emergency application to the court.

### **Taking your child abroad to live permanently**

Before you take your child abroad to live permanently you should seek the prior consent (preferably in written form) of anyone else who has PR for your child (if you are not sure who has PR see our **Guide to Parental Responsibility**). If others with PR do not agree to this, you can make an application to the court for **leave to remove your child permanently from the jurisdiction**. You will need to show the court documentary evidence that you have a clear plan for your new life abroad, that you have made plans for where you will live and where your child will go to school. You should also tell the court about any plans you have to work and any support you will have from family and friends there. If a judge thinks that an application to remove a child from the jurisdiction is solely to frustrate contact arrangements, then the application may be refused. Therefore, if your child has been having contact with their other parent, it is very important that you provide the court with clear, realistic, plans for your child to maintain appropriate contact with them, and this should include who will pay for travel costs.

### **Child abduction out of the UK**

It is a criminal offence for a parent of a child under 16 to take or send a child out of the UK without getting the prior consent of either anyone else with PR for the child or the permission of the court.

If you are concerned that someone intends to take your child you should **contact the police and seek urgent legal advice**. Someone might have threatened to take your child or you may have found out that someone is making plans to

take your child abroad. The police can contact all the national police forces and the immigration authorities. The person who has abducted your child could be arrested and charged with abduction. If there is a **real and imminent risk** of your child being abducted abroad a **port alert (also called an 'all ports warning')** can be issued by the police at all ports and airports to help stop her or him from being taken abroad. Contact Reunite (see 'Other useful contacts') or your legal advisor if the police do not take action.

To help prevent your child being abducted, ensure that you have your child's **passport** and that you keep photocopies of it too. You can ask the court to order that someone else hands over your child's passport and any travel documents if you have grounds to believe they are intending to abduct your child. You can also apply to the court for a **PSO** to forbid someone from removing your child from your care and from the country (see above).

If your child has already been taken out of the country seek urgent legal advice and contact the International Child Abduction and Contact Unit (ICACU) (see below for contact details) and Reunite. The procedure for applying for your child to be returned to you depends on which country she or he has been taken to.

## Child abduction within the UK

If you have PR for a child under 16, it is a criminal offence for someone **without PR** to remove or retain your child from your care without your permission. However, even if your child's father does not have PR he will not be guilty of child abduction if he takes your child to live with him within the UK.

If your child has been taken by someone who does not have PR other than her or his father

you should **contact the police and seek urgent legal advice**. The police can make enquiries to find your child and could arrest and charge the person who has abducted her or him. You can also apply to the court for a **PSO** to forbid the person from removing your child from your care and from the country (see above).

If your child has been taken by her or his father or someone else with PR you should **seek urgent legal advice**. You can also contact the police and they may make enquiries to find your child and return her or him to you if your child is at risk of harm. If your child is not at risk of harm they may advise you to seek legal advice about applying to the court for your child to be returned to you.

If you do not know where your child is, the court can order certain people or agencies such as the HM Revenue and Customs to inform the court of any information they have about where your child is, including disclosing to the court the address of the person you believe to have taken your child. The court can make a **collection order** and instruct court officials to go and find your child and return her or him to you. You can also apply to the court for a **residence order** which confirms that your child should live with you (see our **Guide to Residence Orders**) and a **PSO** to forbid the person from removing your child from your care again (see above).

**The issues relating to orders about children can be complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would also strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.**

**For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on 020 7251 6577 (telephone) or 020 7490 2562 (textphone) on Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.**

**For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone) on Tuesdays 11am–1pm and Thursdays 2–4pm.**

**For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on 020 7490 7689 (telephone) or 020 7490 2562 (textphone) on Mondays 2–4pm and Wednesdays 11am–1pm.**

### **Other useful contacts**

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| Child Maintenance Options   | 08457 133 133                 | <a href="http://www.cmoptions.org">www.cmoptions.org</a>   |
| Community Legal Advice<br>(for finding a solicitor)                                 | 0845 345 4345                 | <a href="http://legaladviserfinder.justice.gov.uk/AdviserSearch.do">http://legaladviserfinder.justice.gov.uk/<br/>AdviserSearch.do</a>   |
| Gingerbread<br>(advice for single parents)  | 0808 802 0925                 | <a href="http://www.gingerbread.org.uk">www.gingerbread.org.uk</a>   |
| International Child Abduction and<br>Contact Unit                                   | 020 7911 7127                 | <a href="http://www.justice.gov.uk/guidance/protecting-the-vulnerable/official-solicitor/international-child-abduction-and-contact-unit/">www.justice.gov.uk/guidance/protecting-<br/>the-vulnerable/official-solicitor/international-<br/>child-abduction-and-contact-unit/</a> |
| National Domestic Violence Helpline   | 0808 2000 247                 | <a href="http://www.nationaldomesticviolencehelpline.org.uk">www.nationaldomesticviolencehelpline.org.uk</a>   |
| National Family Mediation   | 0300 4000 636                 | <a href="http://www.nfm.org.uk">www.nfm.org.uk</a>   |
| National Missing Persons Helpline<br>Resolution<br>(for finding a family solicitor) | 0500 700 700<br>01689 820 272 | <a href="http://www.missingpeople.org.uk">www.missingpeople.org.uk</a><br><a href="http://www.resolution.org.uk">www.resolution.org.uk</a>   |
| Reunite<br>(for advice on child abduction)  | 0116 255 6234                 | <a href="http://www.reunite.org">www.reunite.org</a>   |

**Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT**

**Office/Admin: 020 7251 6575 Textphone: 020 7490 2562**

**Fax: 020 7490 5377 Email: [info@row.org.uk](mailto:info@row.org.uk)**

**Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

**Industrial and Provident Society No: 23221R**



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**Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.**

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