

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 leaflet 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.

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;
- 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. Your former partner is unlikely to be able to ask the court to interfere in decisions about, for example, 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 former partner 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);
- bring your child into contact with certain people.

The court can make these orders in an emergency and without the other person being served with 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.

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 father** to change the name. This is the case regardless of whether he has PR or not. If you do not get his permission to change the name, 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 recent 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. It is, however, possible for you to prepare a **statutory declaration or change of name deed** to formally change your child's surname.

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 former

partner this may have an impact on any contact arrangements 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 in a recent case the court did restrict a woman from moving to another area where the court considered that she was only doing so to frustrate contact arrangements and where she had no connection to the area or clear plans for accommodation, work and education for her children. In that case the court restricted her 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

Before you take your child abroad for a holiday you must seek the permission of anyone else who has PR for your child (if you are not sure whether the person has PR 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, Northern Ireland and Ireland are all outside the court's jurisdiction. If your former partner 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.

You will need permission to take your child abroad from either the person with PR or

the court each time you travel unless you have a **residence order** for your child. A residence order allows you to take your child abroad for up to one month (see our **Guide to Residence Orders**).

Taking your child abroad to live permanently

Before you take your child abroad to live permanently you must seek the permission of anyone else who has PR for your child (if you are not sure whether the person has PR see our **Guide to Parental Responsibility**). If they do not agree to this, you can make an application to the court for **leave to remove your child from the jurisdiction**. Scotland, Northern Ireland and Ireland are all outside the court's jurisdiction. You will need to show the court 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.

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 permission of either anyone else with PR for the child or the court. Scotland and Northern Ireland, however, are within the UK (even though they are outside of the court's jurisdiction).

How the court makes decisions about children

When making any of the above decisions 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 attention the court will pay to 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 now also includes 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)

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 permission of either anyone else with PR for the child or the court. Scotland and Northern Ireland are within the UK.

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. If there is a **real and imminent** risk of your child being abducted a **port alert** can be issued at all ports and airports to help stop her or him from being taken abroad. The person who has abducted your child could be arrested and charged with abduction.

To prevent your child being abducted, ensure that you have your child's **passport**. You can ask the court to order that someone else hands over your child's passport and any travel documents to prevent an abduction. 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 Reunite (see Other useful telephone numbers). 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 to take or keep your child from your care without your permission. However, even if the father of your child does not have PR he will not be guilty of child abduction.

If your child has been taken by someone other than her or his father you should

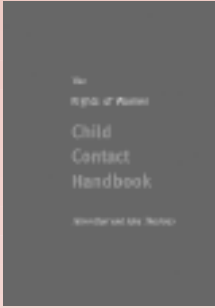
contact the police and seek urgent legal advice. The police can make enquiries to find your child and could arrest and charge the person who has abducted her or him. You can also apply to the court for a **PSO** to forbid the person from removing your child from your care and from the country (see above).

If your child has been taken by her or his father you should **contact the police and seek urgent legal advice**. The police may make enquiries to find your child and return her or him to you. They may, however, 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 Benefits Agency to inform the court of any information they have about where your child is. 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.



Order Form

The Child Contact Handbook

Your details

Name

Address

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Telephone Fax

Email

Number of copies required

Please return your completed form with a cheque for £8 per copy payable to Rights of Women to:

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

We will send your book/s within 28 days of receiving your order.

Rights of Women can be contacted at 020 7251 6575/6 (admin), 020 7490 2562 (textphone), or by email at info@row.org.uk.

For more information on Rights of Women, the publications we produce and services we offer please go to our website at www.rightsofwomen.org.uk.

Industrial and Provident Society No 23221R.



For free confidential legal advice on family law including divorce and relationship breakdown, children and contact issues, domestic violence and lesbian parenting call the Rights of Women Advice Line on **020 7251 6577 (telephone) or 020 7490 2562 (textphone).**

Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm

Friday 12noon – 2pm

For free legal advice on sexual violence and the criminal law please call our Sexual Violence Advice Line on **020 7251 8887 (telephone) or 020 7490 2562 (textphone). Monday 11am – 1pm Tuesday 10am – 12 noon**

Other useful telephone numbers

Child Support Agency	08457 133 133	www.csa.gov.uk
Community Legal Service (for finding a family solicitor)	0845 345 4345	www.clsdirect.org.uk
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk
National Family Mediation	0117 904 2825	www.nfm.u-net.com
One Parent Families	0800 018 5026	www.oneparentfamilies.org.uk
Resolution (for finding a family solicitor)	08457 585671	www.resolution.org.uk
Reunite (for advice on child abduction)	0116 255 6234	www.reunite.org.uk
Samaritans	08457 909090	www.samaritans.org.uk

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

Office/Admin: 020 7251 6575/6 Textphone: 020 7490 2562

Fax: 020 7490 5377 Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R



Please note that the law as set out in this information sheet 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 information sheet. This information sheet is designed to give general information only.