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FAMILY LAW SERVICE

LEAFLET NO.2A – GUIDE TO THE CHILDREN ACT

An introduction for Parents

The Act came into force in October 1991 and made big changes to the law about the upbringing of children. It affects all families and is very important when parents separate or when a parent dies. It also protects children at risk but that topic is dealt with in another leaflet.

Much of the old law has gone. The new law says that parents are responsible for their children not that they have rights over them. Courts are no longer supposed to make orders unless those orders are needed to benefit the child.

'Custody' and 'Access' orders are no longer made. The Act provides a new set of Court orders. Children are given more right to be listened to in court cases about them.

What is Parental Responsibility?

Parental Responsibility enables a person to make decisions about a child's upbringing. e.g. where the child should live, what he or she should be called or which school to attend. It continues until a child is 18 although children can make more decisions for themselves as they get older.

Parents keep their Parental Responsibility if they separate or divorce, even if they do not live with the child. Divorce ends a marriage but not parenthood. A parent will only lose Parental Responsibility if the child is adopted by someone else.

The law encourages parents who do not live with their children to remain in touch and be involved in the child's life.

Under the old law when parents divorced, custody and access orders were usually made about the children. These gave the impression that one parent was being shut out or had less of a say.

Parents are now encouraged to decide together what is best for their children. The Court will no longer make any order about the children unless the parents cannot agree and the Court is forced to decide for them.

Help is available from Mediation Services, the Children and Family Court Advisory and Support Service (CAFCASS) and Solicitors to promote children's welfare by settling disputes away from Court. Court is seen as a last resort.

Who has Parental Responsibility?

Both parents have equal Parental Responsibility if they were married to each other when their child was born or marry each other later.

Only the mother has Parental Responsibility if the parents are not married. The Act lets parents agree that the father should also have Parental Responsibility and a special form must be used to do this. If the mother will not agree, the father can ask the Court to let him share Parental Responsibility with her.

Parents may wish another person, e.g. a relative or friend, to carry out their role while they are in hospital or abroad. Parents who do this remain responsible for their child.

People who are not parents, like step-parents, grandparents or other relatives, do not have Parental Responsibility even though a child is living with them. Such people can get Parental Responsibility in three ways:

- They can be made guardian by a parent who has Parental Responsibility (see below).
- They can get a Residence Order from a Court (see below).
- They can adopt the child.

A step-parent does not get Parental Responsibility just by marrying the child's parent.

Even if a person does not have Parental Responsibility, he or she must do what is reasonable to look after a child living with him or her. This also applies to childminders, teachers and babysitters who all must do what is reasonable to look after a child in their care.

Guardians

The Act makes it easier to appoint guardians to care for children if their parents die. This does not need to be done by Will but must be in writing and signed and dated.

A guardian will only have Parental Responsibility if all parents with Parental Responsibility are dead. If one parent with Parental Responsibility survives the guardian cannot act. The only exception is where the dead parent had a Residence Order (see below) in his or her favour. In that case, the surviving parent with Parental Responsibility will share it with the guardian.

If a parent does not appoint a guardian before death, the Court may appoint one if needed.

When are Court Orders made?

Anyone who is concerned about a child can apply to Court at any time. The Court can make one of a range of new practical orders which should be able to deal with any question about the child. Children who have sufficient understanding can themselves apply for an order.

The Court will decide what is best for the child and will make an order if an order is needed.

The Act provides the Court with a checklist to help it decide what is best for a child. This includes the child's wishes and feelings in the light of his or her age and understanding, the child's age, sex and background, the child's physical, emotional and educational needs, the ability of those concerned to meet those needs, the likely effect of any change in circumstances. The Court will usually be informed of these by a Children and Family Reporter in a written report.

Courts should set timetables to avoid unnecessary delay and are expected to deal with cases more quickly.

What are the Court Orders that may be made?

Residence Order - decides with whom a child should live. It does not remove Parental Responsibility from the other parent. It does affect some other matters, such as changing the child's name, appointing a guardian and removal from England and Wales. (If you have an old Custody order this is not abolished by the Act and is not converted into a Residence Order although the effect is changed).

Contact Order - decides about the child's contact with any other person. This can be face-to-face or by other forms such as letters or phone calls. This order requires the parent with whom the child lives to allow contact.

Specific Issue Order or Prohibited Steps Order - decide particular questions, such as schooling, medical treatment or emigration.

Family Assistance Order - a short term order available only where the adults agree where a Court Welfare Officer or Social Services Department are to advise and assist a family.

The new orders can be made in any family proceedings. The Court can make which ever order it thinks fit or can decide to make no order. The Court may also attach conditions to its orders.

NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.
