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Parental responsibility: A legal perspective

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Parental responsibility is often discussed in relation to the care and treatment of children—but what is parental responsibility? Who has it and what does it allow the person who has it to do? This commentary aims to answer these questions from a legal perspective.

As with many issues regarding children, it is not surprising that it is the Children Act 1989 that provides legislative guidance on the subject of parental responsibility.

Parental responsibility:

‘means 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’

according to section 3(1) of the Act.

Therefore the person with parental responsibility may be seen to have a number of rights with regard to the child. This is not to say that they have rights over the child per se, but rather that they have rights with regard to decision-making on behalf of the child.

Regarding parental responsibility, it is possible for more than one person to have it at one time. Mothers have it automatically but fathers only have it if they are married to the mother at the time of the child’s birth (section 2(1)). The unmarried father may acquire parental responsibility through a ‘parental responsibility agreement’ with the child’s mother (section 4(1b)) or by order of a court (section 4 (1c)). Additionally, for children born since December 2003, if the father’s name is entered onto the birth certificate of the child, this accords the father parental responsibility (Children Act (1989), section 4(1a) as amended by the Adoption and Children Act (2002), section 111 (2)).

Others who may have parental responsibility are:

- Those who have a child’s residence order made in their favour (section 12(2))
- Those who legally adopt a child (Adoption and Children Act (2002), section 46(1))
- Where a care order has been made, the local authority designated to provide that care (section 33(3a))
- Legally appointed guardians (section 5(6))
- Where an emergency protection order has been made for a child, the local authority or other authorized person (section 44(4c)).

Where more than one person has parental responsibility for a child, as in the case of the child’s parents, any individual may exercise their responsibility alone, without seeking the advice or approval of the others, except where this is specifically prohibited in law.

If both a child’s parents have parental responsibility, it is not lost by either parent if they subsequently divorce. Likewise, if the child is in the care of a local authority, parents still retain parental responsibility, even though the local authority also attains it. However, where a child is adopted the natural parents of the child will lose their parental responsibility, which passes to the adoptive parents.

Parental responsibility may not be surrendered. However, it is possible for the person with parental responsibility to arrange for someone else to meet the obligations necessary, for instance, by arranging for someone else to provide temporary care for the child. Likewise, because someone has responsibility for a child this does not mean that they have parental responsibility for that child. A teacher has responsibility for children in his or her care; however this does not mean that they can exercise all the rights incumbent with parental responsibility, such as changing the child’s surname. Section 3(5) of the Children Act (1989)

allows someone who has care of a child, but not parental responsibility, to:

‘do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.’

However, it is important to note that this does not allow the person to supersede the wishes of the person with parental responsibility where these can be ascertained.

Someone with parental responsibility may exercise many rights including:

- Altering the child’s surname
- Appointing a guardian
- Giving consent for medical treatment on behalf of the child
- Removing the child from the UK for periods longer than one month.

They also have a statutory right to apply for access to the child’s medical records.

Although, as stated above, one person may exercise parental responsibility on their own (such as giving consent on behalf of a child) it is advisable to discuss treatment options with all individuals holding parental responsibility. Treatments that are non-therapeutic to the child are generally exceptions to the rule that one person with parental responsibility may act alone or even in disagreement with another who also holds parental responsibility. Consent from all holders of parental responsibility is required in these circumstances. **JCYPN**

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