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What are the ways a stepfather can acquire parental responsibility?

The Adoption & Children Act 2002 amended the Children Act to insert a new section in respect of the acquisition of parental responsibility by step-parents.⁷³ This provides that a stepfather will be able to acquire parental responsibility as follows:

- If he is married to the mother, and she agrees to him having parental responsibility, provided the natural father also agrees (where he has parental responsibility), he can then enter into a parental responsibility agreement. This must be on a prescribed court form which will be C(PRA2).
- He can make an application to the court himself as a step-parent for a parental responsibility order.

Limitations

Parental responsibility does not give a stepfather the right to consent – or refuse to consent – to the making of adoption orders in respect of the child, or the right to remove the child from the jurisdiction. In all other respects he will have the same parental responsibility for the child as the natural father. Once he obtains parental responsibility he will be able to apply for any s 8 order and will not need the leave of the court.

The unmarried stepfather and parental responsibility

There may be a situation where the mother has children from a previous relationship and cohabits with another man who treats her children as his. The mother's unmarried partner cannot acquire parental responsibility in the same way as the married stepfather. However, there are other options. He could apply for a residence order which would give him parental responsibility. The court will have to be convinced that the circumstances warrant it. It is also possible to apply under the Children and Adoption Act 2002 for an adoption order⁷⁴ which can be granted to a couple who are not necessarily married but in an 'enduring relationship.' Also, if he has lived with the child for a period of at least three years, he could apply for a residence or contact order even without parental responsibility.

Civil Partners and parental responsibility

There is also a scenario where one of the partners in a same-sex relationship already has children and the other partner plays a significant role in those children's upbringing. The Civil Partnership Act 2004 came into force on 5 December 2005. The Act enables two same-sex individuals who are not close relatives to obtain legal recognition of their relationship by registering a civil partnership provided each is over 18 and neither is married nor in an existing civil

⁷³ Children Act 1989, s 4A.

⁷⁴ Adoption and Children Act 2002, ss 49(1) and 144(4).

partnership. The formation of a civil partnership creates rights and responsibilities. A registered partner can now acquire parental responsibility of his/her civil partner's child in the same way as a step-parent by:

- Agreement between the parent (and any other parent who also has parental responsibility) and the civil partner in which case the civil partner can enter into a parental responsibility agreement.
- Making an application to the court himself for a parental responsibility order.

Same-sex male cohabittees and parental responsibility

There may be a situation where the natural father has children from a previous relationship and cohabits with another man who treats the natural father's children as his. The father's partner cannot acquire parental responsibility in the same way as a civil partner stepfather. He would be in the same situation as the unmarried stepfather (see above).

Sperm donors and parental responsibility

As we have seen, when a man donates sperm through a licensed fertility clinic in accordance with the provisions of the HFEA 2008 he will not be treated as the father of the child. The issue of parental responsibility arises in those cases where an informal agreement has been reached between the parties and, for example, a male friend donates his sperm to a couple of female lesbian friends who wish to have a child. In law the donor father will be the child's father and therefore able to apply for parental responsibility.

In considering the case law on this issue, it would seem that if the court decides that granting parental responsibility is likely to threaten the stability of the child and the child's immediate family and be an unwelcome interference into it, then it will not be granted. Also, although s 2 A of the Births and Deaths Registration Act 1953 is not yet in force, as we have noted, it makes it a requirement for the unmarried father to register. Therefore, once it does come into force, in a case such as this, the father would have the option of requesting a paternity test and of his name being entered on the birth certificate giving him parental responsibility.

If the male donor is in a civil partnership, and because the donor in an informal arrangement is in law the child's father, the civil partner may apply for parental responsibility. Where the male partners cohabit without being in a civil partnership the non-donor father could apply for leave to make an application for a shared residence order.

Current developments and reform in relation to fathers acquiring parental responsibility

In Chapter 6 we looked at proposals to replace residence and contact orders with a child arrangements order (CAO). The Family Justice Review recommended that

the new CAO should be available not only to those fathers who already hold parental responsibility but to those without it.⁷⁵ The Government is in agreement with this. The ‘category’ of father is not specified but obviously includes an unmarried father who has not managed to acquire parental responsibility. The Family Justice Review also recommended that where a father needs parental responsibility to fulfill the requirement of care set out in the order the court will need to make a parental responsibility order.⁷⁶ Having said that, and as we have seen above, in the majority of cases a father will acquire parental responsibility anyway. What the Government has stated is that unmarried fathers who acquire parental responsibility this way should not have their parental responsibility limited to the duration of the order.⁷⁷

Is parental responsibility really necessary?

For a father, parental responsibility enables him to be involved in the day to day decision making relating to his children, so for a father who does not acquire it automatically, and who wants to be involved, this is a big issue. For example, without it he may have difficulty obtaining information about his children from their school or doctor. For an unmarried father, who lived with the mother and was involved in the day to day care and decision making relating to their child, it can be a rude awakening to find that without parental responsibility he is not in a position to question the upbringing of his child. There are situations where parental responsibility is absolutely necessary for an unmarried father:

- In the case of adoption; without parental responsibility his consent will not be required.
- If there is a residence order in force and the mother wants to change the child’s surname she does not need his consent if he does not have parental responsibility.
- In the case of abduction; there have been difficulties where unmarried fathers without parental responsibility have applied for a child to be returned under the Hague Convention as it is not clear whether there has been a breach of a ‘right of custody’ within the meaning of the Convention. Parental responsibility is considered sufficient to establish a right of custody.

Exercising parental responsibility

Common sense dictates that where both parents have parental responsibility they should consult with each other and not take important steps unilaterally. In practical terms, when the parents live apart it is the parent with whom the child

⁷⁵ Family Justice Review Final Report November 2011, pp.22, 34, 150.

⁷⁶ Ibid.

⁷⁷ The Government Response to the Family Justice Review: *A system with children and families at its heart* – Ministry of Justice & Department for Education, February 2012, Cm 8273, p.70.

lives who normally carries the responsibility for day to day decisions.

As explained in the previous section, in some situations the consent of more than one person with parental responsibility will be required. For example, all persons with parental responsibility are required to give consent to an adoption order being granted, even if that consent is given individually. Additionally, where one parent with parental responsibility is considering making an important decision which will have life-changing consequences for any child concerned, the other parent with parental responsibility should be consulted. Parents acting in their children's best interests will consult and make joint decisions. Unfortunately, when it comes to major issues such as name changes, relocation, medical treatment, religion and education where the parents cannot find an amicable solution the court will have to decide the issue for them. We consider the use of specific issue orders and prohibited steps orders in detail in Chapter 20 and the court's approach to major issues such as name changes and relocation in Chapter 17. The bottom line is that the court must make an order (these are not instances where making 'no-order' is an option) and, in making that order the deciding factor for the court will be that the welfare of the child is the paramount consideration.

In some circumstances it might be necessary to make the child a ward of court. This means that no major decision relating to the child's welfare may be made without the consent of the High Court.

Can a father apply for a parental responsibility order where his child was not born in the UK and does not reside here?

Irrespective of whether the child is resident here or was not born in the UK, it is possible to obtain a parental responsibility order.

Can a father lose parental responsibility?

He will not lose it due to someone else obtaining it. This is because, as indicated above, more than one person is allowed to have parental responsibility. In fact, there is no limit to the number of people who may have parental responsibility at any one time. But he can lose parental responsibility in the following circumstances:

- The natural father will lose it on death or if his child is adopted. Adoption automatically extinguishes parental responsibility.
- An unmarried father who obtained a parental responsibility order could lose it if the court makes an order ending it. For example, if he inflicted serious injury on his child. It could also be revoked on the successful application of another person who has parental responsibility or, with leave, on an application by the child himself. These conditions also apply to a stepfather who has obtained a parental responsibility order.
- If an unmarried stepfather or same-sex partner acquired parental responsibility