

The page features a decorative design with three blue circles of varying sizes and two thin blue lines that intersect to form a triangular shape. One circle is large and positioned in the upper right, another is smaller and positioned in the middle right, and a third is very large and positioned in the lower right. The lines are thin and light blue, extending from the top left towards the center and from the top right towards the center.

Caesar & Howie
The Central Scotland Law Group

Parental Rights and Responsibilities

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For more information or to speak to one of our trained Advisers please telephone our team on 0800 005 1755.

The Caesar& Howie Group
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We are often asked to give advice on this area of Child Law. The law has recently been changed under The Family Law (Scotland) Act 2006. That date is important as you will see below.

If you have parental rights over a child then you have the ability to control, direct and guide your child in a manner appropriate to their stage of development. This includes a right to decide and consent to medical treatments and how the child should be educated. You also have the right to have your child living with you or maintain direct contact with them on a regular basis.

However with the entitlement of parental rights come responsibilities. You will have a duty to safeguard and promote your child's well-being and welfare and provide guidance to the child according to their stage of development. You also have the responsibility of staying in touch with your child. Basically you have a duty to care for and protect your child.

Who then is entitled to parental rights and responsibilities? The mother of the child automatically obtains these rights.

The father of the child is not automatically entitled to these rights. If the father is married to the mother on the birth of the child or subsequently marries her he will obtain parental rights and responsibilities

If this is not the case and the child's birth was not registered on or after 4th May 2006 (the date when the new Family Law commenced) the only way a father can obtain parental rights is if the mother agrees or if agreement is not forthcoming then he will have no option but to apply for a Court Order.

The Family Law Act mentioned above, has now changed the position for fathers. The unmarried father will automatically obtain parental rights and responsibilities if the mother and father register the birth together on or after 4th May 2006 and both names appear on the birth certificate.

If the father's name is not on the birth certificate he can still obtain rights if mother agrees and completes a Parental Responsibilities and Parental Rights Agreement. If the mother refuses to sign such an agreement the father still has the right to apply for a Court order.

If an application to court is made by the father the court's decision will be made with regard to the best interests of the child and not on those of the adults. The test that needs to be met is "Is it necessary for the father to have these rights and responsibilities?" For example, the mother may have taken very ill and not in a position to make any decisions about her child.

The court will also consider degree of commitment previously shown by the father to his child. They will also look at the degree of attachment between the parent and child. Another relevant factor is why the father is making the application. What is the motivation behind the application? The reasons why the mother has refused to consent

to father obtaining parental rights may also be relevant to the decision. Furthermore if the child is twelve or over the child's views should also be taken into consideration before any decision is made.

In addition to the father obtaining parental rights it is also possible for other people to obtain these rights e.g. step-parents, grandparents, aunts and uncles etc. They can apply to the courts for these rights to be granted. Again the court will base their decision solely on the best interests of the child. It may be that the mother is no longer capable of looking after their child and the grandparents feel it is necessary for them to be given authority to make decisions about their grandchildren's well-being.

Please note that parental rights and responsibilities do not encompass the responsibility of financial provision of the child. Unless the parents agree between themselves the level of financial support to be given, this decision will be referred to the Child Maintenance Service. An application will be submitted to that body, which will make a determination on the level of financial provision to be provided. This determination will stand until the child reaches the age of 16. In some circumstances, however, financial provision can continue after the age of 16, e.g. when the child continues in full time education.

We have a specialised team who deal with this emotive area of law. If you have any queries about the above article or wish advice on this matter please do not hesitate to contact us where you will be given efficient and confidential advice.