



Children Orders from the Family Court

Any person with **parental responsibility** for a child may apply to the court for an order about that child. The mother automatically has it, and there are various provisions that enable unmarried fathers and same-sex partners to acquire it in certain circumstances. Those who do not have parental responsibility can obtain it by agreement or court order. Those without parental responsibility generally require permission to apply for a s8 order, but this hurdle is not high for a genuine applicant.

The most common orders that the family courts are asked to make about children are called “**section 8 orders**”. Section 8 is the relevant section of the Children Act 1989, the key law within which the courts work. It enables the court to make

- **child arrangements orders** which give details about where the children should live and what time they should spend with the parent with whom they do not live;
- **specific issue orders** – for example, schooling or medical treatment; and
- **prohibited steps orders** – for example, not to take a child abroad or let him or her be known by a different name.

Child arrangements orders are flexible orders replacing the old contentious categories of ‘residence’ and ‘contact’, which replaced ‘custody’ and ‘access’ before them. They enable the court to make detailed arrangements for where the children will live and with which parent they will spend time, or to make more general provision about it. These orders are enforceable in the same way as residence and contact orders were previously.

Child arrangements orders were introduced in April 2014.

The court also has the power to authorise a parent to move abroad permanently with the children, known as ‘**leave to remove**’.

When considering an application under the Children Act, the **best interests of the children** are the court’s paramount consideration. There is a **welfare checklist** of things for the court to consider. These are:

1. the ascertainable wishes and feelings of the child
2. the child’s physical, emotional and educational needs
3. the likely effect of any change in the child’s circumstances
4. the child’s age, sex, background and other characteristics
5. any harm which the child has suffered or is at risk of suffering
6. how capable each of the child’s parents, and any other relevant person, is of meeting the child’s needs
7. the range of powers available to the court.

The court must also consider whether it would be better for the child not to make an order at all.

The court is often assisted with assessing the welfare checklist by officers from CAFCASS (Children and Families Court Advisory and Support Service), who are social workers who prepare reports for the courts in children cases. If a **welfare report** is ordered by the court at the preliminary hearing, they will want to see you, the other parent, and the children in your respective homes.

Before you make an application to the family court for a children order the court will want to know that you have attended a Mediation Information and Assessment Meeting (a “**MIAM**”) (unless you are exempt) to discuss with a mediator whether your dispute could be resolved in mediation rather than by using the courts.