

## THE CHILDREN ACT

Currently, the majority of issues concerning children which arise upon divorce or separation are determined by the Children Act 1989.

### 1. What factors do the Courts take into account when considering issues relating to children?

Whenever a court decides any issue regarding a child's future upbringing, the child's welfare will usually be the main factor in its decision making. The Court will only make an Order if they feel that it is in a child's best interests to do so.

When considering issues in relation to children, a Court will have regard to various matters contained in a "checklist", to assist it in deciding what is best for that child.

The checklist states that the Court should consider the wishes and feelings of the children concerned (although the weight that the court will give to this factor will depend upon the child's age, level of understanding and maturity).

In addition the court will look at the children's physical, emotional and educational needs. They will also consider any particular characteristics of the child, and will have regard to the child's age, sex and background.

The court will consider how capable the parties are in caring for the children, or in meeting their needs, and will also consider any harm that the children either have suffered, or potentially may suffer, as a result of the application.

Finally, a court will consider the likely effect upon the children of any change in his or her circumstances.

### 2. What type of orders can the court make?

There are commonly four different "types" of order that a court can make under the Children Act, as set out below:-

- a) **A residence order** - this order settles the arrangements as to where the child or the children are to live in the future and, in this respect, is similar to the old "custody orders" that were previously made by courts.



A residence order may however be made in favour of more than one person, and it is possible for a court to agree a “shared” or “joint” residence order where the circumstances allow, with the order then detailing the normal periods of time that the child will usually spend with each of its parents.

- b) **A *Contact order***- a contact order will usually require the person with whom the child lives to make that child available to visit or stay with the person named in the order (usually the other parent). Sometimes a contact order may specify some other way in which a parent will be able to remain in contact with the child (e.g. by telephone, or via the delivery of cards and letters)

Where a child’s parents are unable to agree upon either the frequency, form, or the extent of contact which the non-residential parent should have with the child, then either party can ask a court to decide upon the most appropriate contact arrangements.

What would be an appropriate amount of contact will vary in each case, depending upon the circumstances that exist, although the courts do presume that it will “almost” always be in a child’s best interests to have regular contact with each of its parents following divorce or separation. Such a presumption can, however, be overturned in some circumstances, such as in cases of extreme domestic violence, or child abuse, where the risk of emotional or physical harm to the child if exposed to contact would be such as to make that contact completely undesirable

A court can make an order for “defined contact”, where the days and times of contact visits are specifically laid out in an order.

Either party to the order risks being fined, told to undertake community work, or even threatened with imprisonment, if the terms of a contact order are consistently breached, without there being any good reason for such breaches.

- c) **A *“Prohibited Steps” order***- in the event that one parent proposes a specific course of action for their child to which the other parent objects, it is possible to apply for one of the above orders, asking a Judge to prevent the other party from taking such steps.

Common examples where “prohibited steps orders” are sought relate to situations whereby one parent intends to take a child out of the country, and the other objects, or alternatively, where one parent wishes to change the surname of a child and, again, the other parent objects to this.

In the event that an amicable solution cannot be reached, a Judge can be asked to intervene and decide upon whether the proposed course of action is in the child’s best interests or not, and whether it should therefore be allowed.

- d) **A *“Specific Issue” order***- as the name suggests, this type of order can be applied for when the court is asked to decide a specific question about the upbringing of a child where, again, the parents are unable to agree. There may be a difference of opinion as to where a child should go to school, what religion the child should practice, or whether a child should receive certain medical treatment or not, for example.

Again, in the event that an agreement cannot be reached directly between the parties, a Judge can make a specific issue order to resolve this type of dispute.

### 3. What happens if I issue a court application in relation to my children?

If prior discussions or negotiation cannot resolve the issues and a court application proves necessary, then an application will need to be filed with the court, and an initial court fee paid.

The court will usually initially fix a short hearing, essentially to decide how the application should best proceed. Usually, at court, there will be an opportunity for both parents to speak with a children and family representative (called a "Cafcass officer"). Such a children and family officer will have normally attempted to have spoken briefly to both parents prior to the first court appointment, and will have undertaken a number of "safeguarding" checks to determine whether there are any issues in the proceedings that impact directly upon the child's potential safety. A Cafcass officer will also usually try and speak with the parties at court, to determine whether there is any possibility of resolving the matter amicably, and without a fully contested court hearing.

In the event that matters cannot be resolved by agreement, a Judge or Bench of Magistrates will then make orders with a view to progressing the case and will direct, for example, whether any further evidence is required to resolve the issues. In some cases, the court will order that a local Cafcass Office prepares a full and detailed report upon the issues in question, often after they have interviewed all relevant parties (including, in most cases, the children) at length. The Cafcass Officer will also make background checks with the police or social services to see whether they have previously been involved with the family, and may also contact the children's school in some cases.

The court is able to make interim orders whilst the matter is proceeding, and then a final order, once all the evidence has been obtained and heard, and the Cafcass Officer has reported, and given their opinion upon the issues involved.

Both parties are normally required to attend all court hearings, although the court does not normally feel that it is appropriate for the children to be present at court, on the basis that this would usually prove to be a very traumatic experience for them.

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