

## Family Law in Scotland



This paper provides an overview of the law in Scotland regarding families undergoing separation.

### What are the Parental Rights and Responsibilities?

First of all the law assumes that parents have certain responsibilities for their children. These are:

- to safeguard and promote their children's health, development and welfare
- to provide their children with direction and guidance
- to maintain personal relations and direct contact with their children
- to act as their children's legal representative

In order to fulfil these responsibilities, parents also have rights. The rights mirror the responsibilities and basically mean that parents have the right to have their children live with them and to do what is necessary to look after them.

### Who has these rights and responsibilities?

The law changed recently (as a result of the Family Law (Scotland) Act 2006). Where a child was born before May 4<sup>th</sup> 2006, only mothers and married fathers automatically have parental rights and responsibilities (PRR's). Unmarried fathers and other people such as grandparents who have looked after a child can apply to the court to be granted PRR's, but this depends on the discretion of the court. However, where a child is born on May 4<sup>th</sup> 2006 or later, unmarried fathers whose name appears on their child's birth certificate will also automatically have PRR's.

### What does this mean in practice?

As stated above, most people have no need to involve the courts. Parental rights and responsibilities give you all the powers you need to care for your children. However, when people split up it is sometimes difficult to agree the best arrangements for their children. They can therefore refer the situation to the court and the court will impose a decision. The courts can make certain 'orders':

- an order regulating who a child lives with (a Residence Order)
- an order regulating arrangements for maintaining relations and direct contact with a child (a Contact Order)
- an order dealing with specific issues that have arisen (a Specific Issue Order)

You do not need to have Parental Rights and Responsibilities to apply for these orders. They can be granted to anyone who can show the court that they have an 'interest' (this certainly includes unmarried fathers and grandparents).

So, remember, Residence Orders deal with the question of where children live. Contact Orders deal with arrangements to see someone a child does not live with.

## **What about shared parenting?**

Many separated parents have arrangements where their children live with both of them, at different points in the week. Once again it is important to remember that the courts will not make an order unless there is a good reason. If parents can work these things out for themselves, or with the help of a mediator, the law does not need to be involved. It is only if there is a dispute that the court will make an order. And even if it makes a Residence Order that, say, a child should live with one parent for the bulk of the week, this does not remove the other parent's rights and responsibilities.

## **What about children themselves?**

The Children (Scotland) Act 1995 set out the principle that children who are old enough to understand decisions that affect them should be able to have their views taken into account. This does not mean that children have to make decisions in place of their parents, rather that their views should be sought. Children of 12 and over must be offered the opportunity to say what they think (although they do not have to). Younger children can also be asked for their views if the courts consider them to have sufficient understanding. Parents, however, are still ultimately responsible for deciding what is best for their children.

## **What about the courts?**

There is more than one kind of court in Scotland. The courts that deal with the vast majority of family law cases are known as Sheriff Courts. The judges in these courts are called Sheriffs. When a family law matter is brought to the court (usually by a solicitor) this is called 'Raising an Action'. The person who wants the court to make an order (known as the Pursuer) presents a document (called an Initial Writ) which says what they want the court to do and the reasons for this. This is then sent to the other person (known as the Defender) who then has 3 weeks to reply. The Defender can either accept what is being requested or, if she or he disagrees, send another document (called Defences) setting out the reasons. The matter (called a 'Case') is now in the hands of the court and will remain so until the Sheriff makes a decision or someone withdraws.

Court procedure is complex and we recommend you take advice from a solicitor if you are considering raising an action.

**Remember, you are always free to work out your own arrangements for your children by agreement. Family mediation can help with this.**