

Subject:

**PARENTAL RESPONSIBILITY:
UPDATED GUIDANCE FOR SCHOOLS**

Circular Number:
2023/02

Date of Issue:
13 February 2023

Target Audience:

- Principals and Boards of Governors of all grant-aided schools
- Education Authority (EA)
- Council for Catholic Maintained Schools
- Council for the Curriculum, Examinations and Assessment
- NI Council for Integrated Education
- Controlled Schools' Support Council
- Proprietors of Independent Schools
- Governing Bodies Association of Voluntary Grammar Schools in NI
- Comhairle na Gaelscolaíochta
- General Teaching Council for NI
- Teachers' Unions
- Education Otherwise Than At School Centres
- Middletown Centre for Autism
- Catholic Schools' Trustee Service

Summary of Contents:

This circular provides updated guidance to schools, including pre-schools, to reflect legislative changes in respect of parental responsibility and provides advice on the action required in respect of a person or persons who acquire parental responsibility for a pupil.

Whilst this guidance is primarily aimed at school settings, there may be information in this guidance that is applicable to other educational settings.

Enquiries:

Any enquiries about the contents of this Circular should be addressed to:

Governor Awareness:
Essential

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Guidance for schools

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Superseded Documents:
DE Circular 1999/17

Expiry Date:
None

DE Website:

www.education-ni.gov.uk

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Section 1: Purpose and Scope

- 1.1 The Children (Northern Ireland) Order 1995 ('The 1995 Order'), places the welfare of the child at the heart of all decision making. The Order aims to strengthen the relationship between parents and their children even if parents have separated or are divorced, and even if the courts have said that there should be no direct contact.
- 1.2 The 1995 Order contains a definition of parental responsibility, states who automatically has this responsibility and sets out how it may be acquired by others through the courts. The possibility of others acquiring parental responsibility clearly has implications for schools - parents, and by extension those who acquire parental responsibility, have various rights under current education legislation and may wish to exercise them.
- 1.3 Although the 1995 Order remains the key piece of legislation, there have been a number of changes made to the law relating to parental responsibility since it came into operation. The relevant legislation which has changed the position in relation to who automatically has parental responsibility, who else can acquire it and how this can be done is set out at Annex A.

This Circular has two purposes:-

- To inform schools about the law on parental responsibility as it currently stands, in light of legislative changes; and
- To advise on the action required by schools in respect of a person or persons who acquire parental responsibility for a pupil.

This guidance should however not be treated as a complete and authoritative statement of the law, which may be subject to change.

Section 2: What is Parental Responsibility?

- 2.1 Parental responsibility is defined in Article 6 (1) of the Children (Northern Ireland) Order 1995 as '***all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property***'. In the context of education, for example, parental responsibility confers on a parent the right to express a preference for the school their child should attend and responsibility to ensure regular attendance at school.
- 2.2 Parental responsibility has the same meaning in the Education Orders as in the Children (Northern Ireland) Order 1995.

Section 3: Who is a parent?

- 3.1 Article 2 (2D) of the Education and Libraries (Northern Ireland) Order 1986 provides that, in the Education Orders, “*parent*”, in relation to a child or young person, is defined as including any person –
- (a) who is not a parent of his but has parental responsibility for him, or (b) who has care of him.
- 3.2 A person typically has care of a child if they are the person with whom the child lives and who looks after the child, irrespective of their biological or legal relationship (e.g. a foster carer).
- 3.3 In determining whether an individual has care of a child or young person for the purposes of the Education Orders, any absence of the child or young person at a hospital or boarding school and any other temporary absence should be disregarded.
- 3.4 It should be noted that, in the context of parent governor elections and ballots on grant-maintained integrated status, parent is defined so as to exclude a parent who is not an individual e.g. an authority with parental responsibility by virtue of a Care Order.
- 3.5 It is important therefore at the outset that schools take into account the individual circumstances and consider not just whether the parent holds parental responsibility but whether they are a parent under education law.

Section 4: Who automatically has Parental Responsibility?

- 4.1 A child’s birth mother (person who carried the child) always has parental responsibility unless removed by Adoption Order or Parental Order following surrogacy.
- 4.2 Parents who were married at the time of the child’s birth or parents who were married at the time of the child’s adoption have parental responsibility and **retain it regardless of separation or divorce at a later date.**
- 4.3 Where a child’s father and mother were not married to each other at the time of the child’s birth, then only the mother automatically has parental responsibility for the child. If the child’s parents subsequently marry then the father automatically acquires parental responsibility if he is domiciled in Northern Ireland. This also applies to fathers who enter into a civil partnership with the mother from 13 January 2020.

Section 5: Who can acquire Parental Responsibility?

Unmarried fathers

- 5.1 An unmarried father can acquire parental responsibility in one of the following ways:-

- Making a parental responsibility agreement with the child's mother which allows them to share parental responsibility without a Court hearing.
- Applying to the Court for a Parental Responsibility Order under the 1995 Order, which confers parental responsibility upon an individual.
- Applying to the Court for a Residence Order under the 1995 Order, which will establish who a child lives with and confers parental responsibility for its duration.
- Becoming registered as the child's father on the birth certificate however, this only applies to fathers who are registered after 15 April 2002 (this date applies to children born in NI and different dates apply where the child was born in other parts of the UK). Where the child's parents are not married, and the child's birth has been registered without identifying a father, it can be re-registered to include the father if the formalities in Article 14 of the Births and Deaths Registration (Northern Ireland) Order 1976 are complied with.

Civil partners

5.2 The civil partner of a child's mother can acquire parental responsibility in one of the following ways:-

- The mother's civil partner will acquire parental responsibility if they were in a civil partnership with the child's mother at the time of birth.
- Civil partners can also acquire parental responsibility by becoming registered as a parent of the child, making a parental responsibility agreement with the mother, or obtaining a Parental Responsibility or Residence Order in their favour.

Step-parents

5.3 A child's step-parent can acquire parental responsibility by applying for a Parental Responsibility Order. A step-parent can also obtain parental responsibility by making an agreement with the parent of the child who is their spouse or civil partner, or both parents if the child's other parent also has parental responsibility. If one parent does not have parental responsibility, a parental responsibility agreement can be made without that parent's consent. A step-parent may also acquire parental responsibility by adopting a child.

Guardians

5.4 A person appointed as a child's guardian under the 1995 Order will acquire parental responsibility for the child concerned. Guardians can be appointed by a court order where the child has no parent with parental responsibility, or where there is a Residence Order in favour of a parent or guardian of the child who has died while the order was in force. Alternatively, a parent or guardian may appoint a person to be the child's guardian in the event of their death. There will be no appointment, however, if there is a surviving parent with parental responsibility for the child.

5.5 The Adoption and Children (Northern Ireland) Act 2022 provides for a “Special Guardianship Order” to be made appointing one or more persons to be a child’s “Special Guardian”. These provisions are not yet in force but such an Order will place the child to live with someone other than their parent(s) on a long-term basis and confer parental responsibility for the child on the special guardian(s). A special guardian will be entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian), subject to any other court order and except where the law requires the consent of more than one person with parental responsibility.

Authorities, agencies and adoptive parents

5.6 Where a Care Order has been made in respect of a child, the authority designated by the order will acquire parental responsibility. It will also have the power to determine the extent to which the child’s parent or guardian may meet their own parental responsibility for the child.

5.7 Under the Adoption (NI) Order 1997, where an order has been made declaring a child free for adoption, parental responsibility will be given to the adoption agency and the parental responsibility that any person had for the child before the making of that order will terminate. If an Adoption Order is subsequently made, the person(s) adopting the child will acquire parental responsibility and the parental responsibility held by any other person, including the adoption agency will terminate. These provisions of the 1987 Order are due to be replaced by new legislation- see paragraph 5.8 below.

5.8 The Adoption and Children (Northern Ireland) Act 2022 provides for the replacement of freeing orders made under the Adoption (NI) Order 1987. The new provisions are not yet in force, but provide for an adoption agency to place a child with prospective adopters where the parent or guardian has consented to the placement or for an adoption authority to place a child with prospective adopters where the court makes a ‘Placement Order’.

Parent(s) of a child born through assisted reproduction

5.9 When the provisions of the 2022 Act are in force, once parental consent to a placement is given, or a Placement Order made, the adoption agency has parental responsibility for the child and, while a child is placed with prospective adopters, parental responsibility is given to them. The child’s parents retain parental responsibility throughout the process, up to the point at which an Adoption Order is made, though the agency may determine the extent to which the parental responsibility of any parent or guardian is to be restricted.

5.10 The married or civil partner of a woman who gives birth following assisted reproduction will be treated as the child’s legal parent, unless it is subsequently proven that they did not consent to the donor insemination.

5.11 Where the mother is not married nor in a civil partnership and receives treatment at a licensed clinic, her partner will be treated as a parent where the clinic has received written, signed consent from both parties and neither party’s consent has been withdrawn before

implanting the embryo. This also applies to same-sex couples who are not married nor in a civil partnership.

5.12 Parental responsibility is not, however, automatically conferred to the mother's partner if they are not married nor in a civil partnership. The partner, whether male or female, will only acquire parental responsibility if they become registered as a parent of the child, make a parental responsibility agreement with the mother, or obtain a Parental Responsibility or Residence Order from the court in their favour. Alternatively, they will acquire parental responsibility by their subsequent marriage or civil partnership.

Parent(s) of a child born through surrogacy

5.13 A surrogate will automatically acquire parental responsibility for the child as will their married or civil partner. Together, they will be considered the legal parents of the child, unless the position is changed by an order of a court. Legal parenthood can be transferred to the intended parent(s) by means of a Parental Order.

Others

5.14 Any other person can acquire parental responsibility for the child by having a Residence Order made in their favour.

Section 6: What happens if those with parental responsibility disagree?

6.1 Generally, any person who holds parental responsibility can act alone and without the other or others in meeting that responsibility. However, it is expected that those with parental responsibility will consult together and reach an agreement on any decisions affecting the child, such as long term decisions relating to education. The courts have indicated some important decisions should not be made on behalf of a child in the absence of agreement and a duty to consult in relation to matters of fundamental importance.

6.2 Where there is disagreement between those with parental responsibility on any course of action affecting the child, application can be made to the court by any of the parties for a decision. The court is required when considering disputes about parental responsibility to consider the ascertainable wishes and feelings of the child in the making of any decision about the child. Depending on the circumstances a decision can be obtained by:-

- Specific Issue Order - here the court will give directions for determining a specific question which has arisen in connection with any aspect of parental responsibility for a child. For example, the court could determine which school should be the preferred option for a child; or
- Prohibited Steps Order - here the court will specify action which cannot be taken by a parent with parental responsibility. For example, an order could be obtained to prevent a person with parental responsibility removing a child from a particular school.

Section 7: What does this mean for schools?

- 7.1 It means that anyone who has parental responsibility for a pupil is entitled to exercise the full range of rights exercisable by a parent in current education legislation. Although for day-to-day purposes, the school's main contact is likely to be a parent with whom the child lives on school days, anyone with parental responsibility is entitled to receive information about the child.
- 7.2 It is important that education professionals treat all those with parental responsibility equally, unless a court order limits a parent's ability to make educational decisions, participate in school life or receive information about their child/children.
- 7.3 It is also important that schools balance the requests of parents with their statutory duties. Having parental responsibility does not allow a parent to obstruct a school from carrying out their duties under legislation.
- 7.4 School staff will also need to be aware of and consider the implications of the House of Lords decision in the Gillick case: *Gillick v West Norfolk and Wisbech AHA UKHL (17 October 1985)* (baillli.org), as it relates to the wishes and competence of young people to make decisions and parental responsibility. School staff should exercise professional judgement and seek appropriate management and legal advice as required
- 7.5 Within the Education Authority (EA), Education Welfare Service can assist with issues related to parental responsibility and Information Governance can assist with data protection issues that may arise if a young person does not want a parent to have information about them.
- 7.6 In the event of an issue being raised where the school is unclear how to act, legal advice should be sought to ensure rights are not infringed and that actions are compliant with the law.

Section 8: What action do schools need to take?

Must schools find out about all persons who have parental responsibility for a pupil?

- 8.1 No. Schools do not need to take any special action to find out about all persons who have parental responsibility for their pupils. It is a matter for the person(s) who has/have parental responsibility to ensure that they are in a position to exercise their rights. This means that any person acquiring parental responsibility rights must contact the school and make appropriate arrangements.

What action should a school take if an approach is made about parental responsibility rights?

- 8.2 Before any action can be taken to accommodate a request to exercise parental responsibility rights schools will need to:-

- Confirm that the person has parental responsibility;
- Establish which rights will be exercised independently or on a shared basis; and
- Make the necessary administrative arrangements.

8.3 Any approach about the exercise of parental responsibility rights should be handled sensitively by a school as the circumstances which have given rise to the request may indicate home difficulties for a pupil. For this reason it is recommended that clarifying the position would be best done by means of a personal interview with a member of a school's senior management team, preferably the principal.

How can parental responsibility be verified?

8.4 It is entirely reasonable, against the broader concerns about child protection, for a school to ask for verification that the person making the approach has parental responsibility.

8.5 Where a 'parental responsibility agreement' has been made with the pupil's mother, the father should be able to produce a copy of the agreement for inspection. Where a Parental Responsibility Order has been made, a copy of the Order with details of the court at which it was made, the date and the names of the child/children concerned should be produced for inspection.

8.6 If there are any concerns about the validity of these documents assistance in verifying the details should be sought from the EA's Education Welfare Service.

How should the position on exercise of rights be established?

8.7 Current legislation provides parents with a range of rights which they can choose to exercise and a current list is attached at Annex B. Exercise of all rights may not be appropriate in all cases, for example, if the approach is from a Health and Social Care Trust then involvement in the election of a parent governor would not be necessary.

8.8 It is also important to establish if these rights are to be exercised independently or on a shared basis. This information can provide a helpful insight into the pupil's circumstances and can give early warning about potential areas of difference concerning the pupil's education. It may also require a school to undertake more than one meeting with parent(s) and those with parental responsibility at decision points in a pupil's educational career, for example at transfer to post primary education stage.

What administrative action should be taken?

8.9 When a school has verified parental responsibility and established the position in respect of education rights, then appropriate arrangements should be made to ensure that these rights

can be exercised. It is a matter for each school to determine these in the context of their own organisation and systems and the arrangements noted on the pupil's record. All information held should be handled in accordance with the Data Protection Act 2018 and the UK GDPR.

What happens if those with parental responsibility disagree about an educational decision?

8.10 A school will have a view on the most appropriate educational decision for a pupil based on its experience and knowledge of the pupil and therefore may not be perceived as 'neutral' by one of the parties. In such a situation, a school may wish to consider organising a meeting of all concerned and inviting a 'neutral party', for example an officer from the Education Welfare Service, to chair the discussion. If, after a discussion no agreement is reached then advice can be given about the need to seek a Specific Issue Order.

LEGISLATIVE AMENDMENTS

There have been several amendments made to the Children (Northern Ireland) Order 1995 by the following pieces of legislation:-

- (i) Family Law Act (Northern Ireland) 2001 (“the 2001 Act”)
- (ii) Civil Partnership Act 2004 (“the 2004 Act”)
- (iii) The Marriage (Same–Sex Couples) and Civil Partnership (Opposite-Sex Couples) (Northern Ireland) Regulations 2019 (“the 2019 Regulations”)
- (iv) Human Fertilisation and Embryology Act 2008 (“the HFEA 2008”)
- (v) Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (“the 2018 Order”)
- (vi) The Human Fertilisation and Embryology (Parental Orders) Regulations 2018 (“the 2018 Regulations”)
- (vii) The Adoption and Children Act (Northern Ireland) 2022*

* At the time of issue of this Circular, provisions of the Adoption and Children Act (Northern Ireland) 2022 are not yet in force as Commencement Orders have not yet been made (per Section 160). The 2022 Act will, when commenced, amend the Children (Northern Ireland) Order 1995 and repeal current adoption legislation, the Adoption (Northern Ireland) Order 1987, except for Parts 1 and 2.

Amendments have also been made to the Legitimacy Act (Northern Ireland) 1928 (“the 1928 Act”) and the Adoption (Northern Ireland) Order 1987 (“the 1987 Order”).

PARENTAL RIGHTS

Everyone who is a parent, as recognised under education law, has the right to:

- Be consulted during the statutory assessment process where a pupil has special educational needs (SEN).
- Be consulted during the statement process where a pupil has special educational needs.
- Appeal against a decision not to make a statement of SEN.
- Appeal against the contents of a statement of SEN.
- Request an assessment of a pupil's educational needs.
- Be provided with advice and information about matters relating to the special educational needs of a pupil.
- Be consulted in relation to special school admission.
- Be informed where special educational provision has been made.
- Express their wishes as to the school which a pupil will be educated at.
- Appeal against admission decisions.
- Receive a pupil's annual report.
- Receive a summative record of achievement for pupils in the final years of key stage 2, 4 and sixth form.
- Request that a pupil be withdrawn from religious education and collective worship.
- Have their wishes considered in terms of how a pupil is to be educated.
- Be consulted where a proposal is made by the Authority to establish or discontinue a controlled school or make significant changes in a controlled school.
- Be consulted where a proposal is made by a person/body other than the Authority to establish or discontinue a voluntary school or make significant changes in a voluntary school.
- Be consulted about whether a pupil shall commence secondary education after or before his normal date of commencement.
- Request that a pupil is not entered for an examination.
- Appeal against an expulsion decision of a pupil by the school authorities.
- Access information relating to the school curriculum, educational provision made by the school, and achievements of an individual pupil.
- Receive a copy of the Board of Governors' Annual Report.
- Vote in ballots to change the school's status to grant maintained integrated or controlled integrated.
- Stand for election and vote in the election to be a parent governor.
- Be provided with information relating to school start and closing times, school holidays, school policies etc.

Under the Primary Inspection Guidance everyone who is a parent, as recognised under education law, has the right to:

- Be consulted prior to a general inspection of the school and sent the link to access and complete the parental questionnaire during the inspection.

Under a school Scheme of Management everyone who is a parent, as recognised under education law, has the right to:

- Receive notification of how to access a summary or a copy of the full report on a pupil's school after each general or focused inspection.
- Request a copy of the Education and Training Inspectorate's findings after any other inspection.