



CHILDREN – SECTION 8 ORDERS

1 Residence Order

A Residence Order is an Order settling the arrangements to be made as to the person with whom the child is to live.

Following a Divorce, parents will share Parental Responsibility and therefore the making of a Residence Order will only decide where a child will live. If the parties are in agreement about where a child should live, then there is no need for either party to make an application to the Court for a Residence Order.

2 Contact Order

A Contact Order is an Order requiring the person with whom the child lives, or is to live (regardless of whether there is a Residence Order in force or not) to allow the child to visit or stay with the person named in the Order, or for that person and the child otherwise to have contact with each other. A Contact Order can authorise physical contact, but can also cover contact by letter, e-mail or by telephone. The amount of contact can either be specified in the Order or the Order could be for “reasonable contact” in which case the arrangements can be made by the parents.

3 Prohibited Steps Order

A Prohibited Steps Order is an Order that no step that could be taken by a parent in meeting his or her Parental Responsibility for a child, shall be taken by any person without the consent of the Court. This Order deals with specific problems which have arisen.

An important restriction on a Prohibited Steps Order is that it can relate only to matters which are included within Parental Responsibility (see factsheet on Parental Responsibility).

4 Specific Issue Order

A Specific Issue Order is an Order giving directions for the purpose of determining a specific question which has arisen or which may arise in connection with any aspect of Parental Responsibility for a child. It does not give a parent a general power, it just makes a decision on one issue over which there is a disagreement which cannot be resolved (for example sterilisation or circumcision, a course of treatment for immunisation, the religion the child should adopt and do forth).

5 Section 8 Children Act 1989

The party wishing to apply for any of the above Orders will do so under Section 8 of the Children Act 1989.

Section 1 of the above Act states that the child's welfare shall be the Court's paramount consideration. The Welfare Principle shall determine any contested proceedings under this Act.

In applying the Welfare Principal, the Court will carefully consider a checklist which is set out below, however this is not an exhausted list and the Court can also take any other relevant factors into account.

- The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding).
- The child's physical, emotional and educational needs.
- The likely effect on the child of any change in circumstances.
- The child's age, sex, background and any characteristics of the child which the Court considers relevant.
- Any harm that the child has suffered or is at risk of suffering.
- How capable each of the child's parents and any other person in relation to whom the Court considers the question relevant is of meeting the child's needs.
- The range of powers available to the Court under this Act in the proceedings in question.

Where a Court is considering whether or not to make one of the Orders listed above, the Court will not make an Order/Orders unless it considers that doing so would be better for the child than making no Order at all. This is called the "No Order Presumption". This means that there is a policy that the Court will not intervene and make an Order unless it can be shown that there is a positive need and benefit to the child in doing so.

Costs

Depending on your financial circumstances, you will either need to fund the application on a private basis, or you may be eligible for Public Funding. Your Solicitor will advise you of this.

Where are the Proceedings Issued

A Section 8 Application can either be made at a Family Proceedings Court (a Magistrates Court) or at a County Court. If there are Divorce Proceedings and/or Ancillary Relief Proceedings, it is usual for a Section 8 Application to be made at a County Court.

Court Procedure

The party wishing to apply for one of the above Orders, will file the necessary form at either the Family Proceedings Court or the County Court. The Court will then list the matter for what is known as a First Directions Appointment. The task of the Court at the first appointment is to investigate the issues, enquire into the possibility of settlement and give directions in any case that has to proceed. If the matter can be settled by agreement, the terms of the agreement will be recorded in a Court document and approved by the Court. If no such agreement can be reached, the Court will make the necessary directions to progress the matter. Sometimes these directions include both parties filing a witness statement, a CAFCASS Officer being appointed and preparing a report, the listing of the matter for a next appointment (Final Directions Appointment). If after the CAFCASS report has been filed, the parties are still unable to agree, then at the Final Directions Appointment, the Court will set a date for the Final Hearing. The Judge will make an Order at the Final Hearing.

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