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BABY STEPS

Top legal tips for welcoming
a child into the world



QualitySolicitors



Firstly, many congratulations

No-one really wants to think about legal stuff at this exciting time, and speaking to a lawyer isn't usually up there on most new-parents' to-do list alongside fitting out the nursery or buying the pram.

But in fact there are a variety of legal issues you may face as a new parent, so QualitySolicitors have put together this short guide to explain them.

We hope you find this guide useful and if, in the future, you want any kind of legal advice we'd be happy to help.



We are local

Whether you are expecting a baby or are a new parent, you might already have some ideas of the type of legal advice you need to take care of your child.

We offer a wide range of Family or Employment Law services, all of which can be tailored to your personal circumstances by our legal experts. Please call us or visit our website www.qualitysolicitors.com to find out how we can help you.

Alternatively, you can come and see us to talk through your options – that's the nice thing about us being local.



A QualitySolicitors Guide

Disclaimer: We have done our best to ensure that the information contained in this guide is correct as of 09.04.2015. However, the guide has no legal force and the information may become inaccurate over time, due to changes in the law. It is not possible to cover every situation or point in this type of guide and some of the information is over-simplified. We recommend that you check with us to take legal advice on your particular circumstances before you take action.



Registering the birth of your baby

One of the first things you need to do after your baby is born will be to choose a name and register the birth. You have 42 days to do this from the day of the birth.

If your baby was born in England or Wales, the birth should be registered in the district where he or she was born. Some hospitals also have facilities for registering births, but in most cases you'll need to go to your local Register Office. The appropriate Register Office can be found at www.direct.gov.uk. If it isn't possible to go to your local Register Office you can go to another within England or Wales.

TOP TIPS:

- › It's best to contact the Register Office before you go in case you need to book an appointment.
- › You can buy extra copies of the birth certificate, as well as full versions, from the Register Office at any time.

Who should register the birth?

If you're the baby's natural parents and you're married at the time of the birth (or were married at the time of conception) then either of you may register the birth on your own, on behalf of you both.

TOP TIP:

- › Remember to take your marriage certificate as proof that you're married.

If you're not married, then you have several options which your local Register Office will be able to confirm. These options will probably include:

- Both natural parents may go and sign the birth register together, in order for both to be included on the full birth certificate.
- The mother may register alone. If the father's details aren't included in the birth register, it may be possible to re-register to include him at a later date.

TOP TIPS:

- › Being recorded can be important to many fathers because it gives them legal rights over important decisions for the baby known as Parental Responsibility (see later in this guide).
- › If both parents want to be included on the birth certificate but one of you can't attend, the parent who can't attend should first complete a statutory declaration form that is handed in to the Registrar. Alternatively, ask a solicitor about obtaining a Parental Responsibility Agreement or Court Order to be given to the Registrar to ensure that both parents are registered.

Same-sex couples

Whilst it is likely that at least one of the female parents will have given birth to the child, male parents will need to adopt the child or have a parental order in place. This is regardless of whether they are married or in a civil partnership.

- Male couples would have to get a parental order from the court before they can register as parents.
- Female couples can include both their names on their child's birth certificate when registering the birth. However the rules are different depending on whether or not they're in a civil partnership.

Female civil partners

Either woman can register the birth on her own, if all of the following are true:

- The mother had a child by donor insemination or fertility treatment.
- She was in a civil partnership at the time of the treatment.
- Her civil partner is the child's legal parent.

Female non-civil partners

When a mother isn't in a civil partnership, her partner can be considered as the child's second parent if both women:

- Are treated together by a licensed clinic in the UK.
- Have made a 'parenthood agreement'.

However, for both parents' details to be recorded on the birth certificate, they must do one of the following:

- Register the birth jointly.
- Complete a 'Statutory declaration of acknowledgement of parentage' form and one parent takes the signed form when she registers the birth.
- Get a document from the court (for example, a court order) giving the second female partner parental responsibility. Then only one parent needs to present the document when she registers the birth.

What if you can't attend the Register Office?

There will be occasions when neither parent is able to attend the Register Office within 42 days. In these unusual circumstances the following people (with appropriate proof) can register the birth:

- Someone who was present at the birth.
- Someone who is responsible for the child.
- A representative from the hospital where the child was born.
- An occupier of the house where the child was born (if the baby was born at home).



Changing your baby's name

Choosing your baby's name is a really important decision but what if you change your mind?

In the first 12 months after your baby is born, you may be able to change the first name(s) on the baby's birth certificate to the name that the baby is known by, or to the name you used when the baby was baptised.

Changing your baby's surname is a bit more difficult. You can correct a spelling error on the birth certificate, but as it is considered to be an important symbol of his or her identity, there are a few more hurdles to overcome.

If a child's father has Parental Responsibility (i.e. he is named on the birth certificate) then he needs to agree to any change of surname.

If you are the child's mother and only you have Parental Responsibility, then you can change your child's surname without agreement from the father, but remember that the child's father could still prevent the change of name or have the name changed back, so you should try to discuss it first.

Changes after 12 months

What if you decide to change your baby's first name (or surname) after their first birthday? In these circumstances it is not possible to simply change the birth certificate. You will need a Change of Name Deed.

You can, of course, simply call your child by a different name without a Change of Name Deed, but a Deed will make things much easier for your child in later life. Many organisations such as banks and passport authorities will ask to see a Deed if a person's name does not match the name on his or her birth certificate.

TOP TIP:

- › QualitySolicitors can draw up a Change of Name Deed for you. The solicitor will need to check that you have the agreement of everyone concerned. They will guide you through the specific details that apply to your circumstances and then prepare the official Deed that will record the change of name.



Who has Parental Responsibility?

- If you're the child's mother, you automatically have Parental Responsibility for your child.
- If you're the child's father and you're married to his or her mother, you automatically have Parental Responsibility too. You also automatically have Parental Responsibility if you're the father of the baby and you marry your baby's mother in the future. The same applies if the child is adopted.
- If you're the baby's father and you're named on the child's birth certificate, you have Parental Responsibility. Please note - this only applies to children born after 1 December 2003.

Same-sex parents, civil partners

Same-sex partners who were civil partners at the time of the treatment will both have Parental Responsibility.

Same-sex parents, non-civil partners

For same-sex partners who aren't civil partners, the 2nd parent can get Parental Responsibility by either:

- Applying for Parental Responsibility if a parental agreement was made.
- Becoming a civil partner of the other parent and making a Parental Responsibility agreement or jointly registering the birth.



Who else can obtain Parental Responsibility?

Every family is different, but if there is someone who has an important role in looking after and bringing up a child they may be able to obtain Parental Responsibility. Below are some of the most common ways in which Parental Responsibility is gained.

You're the father of the baby but not married to your baby's mother

If you're not planning to get married and aren't on the birth certificate, you'll need to see a solicitor about entering into a Parental Responsibility Agreement, or applying to the court to obtain a Parental Responsibility Order.

Please note: As the father of a child you have a legal duty to pay money towards your child's maintenance, even if you don't have Parental Responsibility. You can find out more about this in the 'Financial support' section of this guide.

You're the step-parent of a child or the civil partner of a child's parent

If you want the formal authority to take crucial decisions for a child you're helping to bring up then you should speak to one of our solicitors, who will be able to advise you.

It will be possible for you to obtain Parental Responsibility if both natural parents agree. If they don't both agree then your solicitor can help you with making an application to the court to obtain Parental Responsibility.

A legal guardian

Taking responsibility for your child involves making some difficult decisions. Nominating someone to look after your child or children in the event of your death, isn't something any parent wants to think about, but if you have Parental Responsibility for a child, it's important to have a will which nominates a guardian who would take over Parental Responsibility if you die before the child reaches the age of 18. For more information about making a will visit www.qualitysolicitors.com/wills

Someone with a Residence Order

In some circumstances, courts are required to make orders stating where a child should live. If a court has ordered that a child should live with someone and has granted a Residence Order, that person will have Parental Responsibility for the child for as long as the Residence Order is in force.



Financial support

Financial responsibility for the cost of raising a child primarily rests with both natural parents.

Maintenance

This is the legal term for the financial support provided by a parent for their child's everyday living costs.

It may be the case that your child does not live with both natural parents, in these circumstances a parent not living with their child still has a legal responsibility to pay maintenance.

Maintenance is usually paid on a regular (monthly) basis by the parent who spends less time with their child, to the person with the main day-to-day care of the child. This person may not be a parent of the child – it could be a grandparent or guardian. The law considers it important that payments are regular so that the financial support can be relied upon.

If you are separated from your child's other parent you can simply arrange child maintenance payments between yourselves. This can work well when both parents are able to co-operate, but means nothing can be done about missed payments, or if payments stop or become irregular.

Maintenance is often a difficult issue for parents (or the person looking after the child) to negotiate, as it can be a sensitive subject and it is hard to know what is fair. It may be easier to arrange the payments by contacting the Child Maintenance Service.

On 30 June 2014 the Child Maintenance Service (CMS) introduced:

- A £20 application fee.
- Enforcement charges for non-payment.

From 11 August 2014, if you have a Collect and Pay case (where the Child Maintenance Service collects and passes on payments) you'll also have to pay fees for collecting and paying out child maintenance. This will affect how much parents pay and receive.

You'll have to pay a fee each time you make or receive a payment:

- Paying parents will pay a 20% fee on top of their regular child maintenance payment.
- Receiving parents will have a 4% fee deducted from their regular child maintenance payment.

You don't need to be in contact with your child's other parent, or even know where they live, in order to seek assistance from the CMS, because they can try and trace the child's other parent and obtain details of their income from their employer or the government.

The other advantages of using the CMS are that any arrangement reached using the CMS is legally binding, and that the CMS can take responsibility for collecting payments so you don't have to and they will deal with any missed payments.

In some circumstances the courts can also make maintenance orders, but they will only do this if they are already involved in family matters for another reason – a common example is if a child's parents are divorcing.

How much maintenance?

Parents can choose to agree the amount of maintenance between them. Alternatively, the CMS has an online child maintenance calculator which will work out the amount of maintenance payable in the particular circumstances.

The calculator works out the amount of maintenance to be paid by taking various issues into account, such as:

- The income of the parent without the main day-to-day care.
- How many children you or the other parent have or support.
- How many nights a week the child spends with each of you.
- Where the parent without the main day-to-day care of the child lives.



Where your baby lives

If a child's parents don't live together and aren't able to agree with which parent the child should live and for how much time, it may be necessary for the court to decide. The court will make something called a Child Arrangement Order which will set out who the child should live with and when. If you think you require a Child Arrangement Order you will need to speak to a solicitor about applying to the court.

The court will look at all the circumstances to decide what is in the best interests of your child. Depending on the circumstances, a Child Arrangement Order can be in favour of someone besides a child's parents – if the court considers that living with this other person, perhaps a grandparent, is in the child's best interests.



Who the baby sees

Disagreements over who a child spends time with can, of course, be very difficult for everyone concerned. It is very important to make the right decisions for your child, so if you cannot agree between yourselves, you will need to take legal advice about applying to the court. The court will consider what is in your child's best interests and can make an Order.

The court will decide on the level of contact depending on the individual circumstances. The Order may, for example, be for visits (which could be at a specified place for a specified time) or it could be to stay overnight with the person named.

Orders can be made for people other than a child's natural parents, as long as the court feels that contact with the person named is in the child's best interests. Once an Order is made it is the duty of the person with whom the child normally lives to make sure the contact takes place.



Disputes

If you cannot agree on whom your baby has contact with and what the arrangements are, or if you disagree over where and with whom your baby lives, you will need to take legal advice. Page 12 of this guide explains how to get in touch with QualitySolicitors' family lawyers – specialists who will sensitively help to guide you through any legal issues you have. They'll give a clear explanation about what is involved and provide an indication of the likely outcomes.



A will to protect your baby's future

While it's very sad to have to contemplate, when you become a parent it's very important to make or update your will to ensure your child would be cared for and protected if you were not there to look after them. Below are some of the most important provisions you'll need to make for your child in your will.

Appoint a guardian

By making a will you can appoint a legal guardian to look after your child and take on Parental Responsibility until your child reaches the age of 18.

Obviously choosing someone to look after your children should you die is a very difficult decision to take and one that you may prefer not to think about. But it's in your child's best interests that you do consider it now. It's best to first discuss the issue with the person or people you'd like to appoint – perhaps your parents or a brother or sister. Although this is a difficult issue they're likely to be flattered to be asked. If you change your mind as to who would be best, you should amend your will at a later date. Without a legally binding will, the decision as to who would take care of your children may not be as you would have wanted.

Financial protection

It's only by making a will that you can decide how your money, property and possessions (known as your estate) are divided upon your death.

If you're married and don't make a will, then the rules that will apply often mean that when you die none of your estate will go to your children. Instead it may all pass to your husband or wife or civil partner. If that person were to remarry, when they die your estate could pass to their new partner, leaving your children with nothing. You can protect them against this by making a will with specific provision for your children.

You can also use a will to ensure what different children receive; allowing you to decide what is best for your particular circumstances. In your will you can choose to leave your children a set sum of money or a particular item or a percentage of the value of your estate. You can decide whether or not they pay any inheritance tax and you can even link the gift to the inflation rate. Find out more, visit www.qualitysolicitors.com/wills

Appoint 'trustees'

Another advantage of preparing a will is that you can nominate the person or people who sort out your finances when you die – so you can be sure they'll consider your children's best interests. Another key decision you can take, is at what age your children receive any funds left to them. Without a will, if they were to receive anything at all, they would receive it when they reach the age of 18 – which some people feel is too young. By having a will, not only can you decide what they receive, you can also choose the age they will receive it; perhaps 21 or 25.

Things to be aware of if you already have a will

If you marry, any previous will you've made will be automatically cancelled by the marriage. This means that any previous protection you put in place for your children will be gone and you'll need a new will. You can request a will that survives your marriage by making it "in contemplation of marriage".

You'll need to check how your previous will was worded. If it was written before you had children you may wish to make specific provision for your new baby. If it was worded in such a way as to only make provision for the children you had then – you may wish to add your new baby.

Finally, if your will nominated a guardian you may wish to re-consider whether that person is still willing and able to look after your children if necessary. If you had nominated a parent, would they still be able to cope with looking after your children – including your new baby?



Employment Law – as a new mother or father what am I entitled to?

When your new baby arrives, it's only natural that you'll want to focus on him or her without having to worry about work. It's important that you're aware of your employment rights. Below is a summary of the key issues:

Maternity leave

New mothers can take a maximum of 52 weeks' maternity leave. During maternity leave mothers are also entitled to receive all their usual contractual benefits (including holiday pay). The only exception is normal pay which is replaced by Statutory Maternity Pay.

Maternity pay

The rules on maternity pay can be pretty complex, but usually a new mother who has been working for the same employer for 40 weeks before the birth of her baby is entitled to Statutory Maternity Pay for 39 weeks of maternity leave. For the first six weeks the level of pay is 90% of average weekly pay, then for the remaining 33 weeks, depending on earnings, it drops to a fixed rate. It is, however, worth checking your employment contract and staff handbook as your employer may have agreed to pay more than this minimum.

If you're a mother who is self-employed you may still qualify for Maternity Allowance for 39 weeks. Your local Job Centre Plus or Jobs and Benefits Office will be able to provide more details and a claim form.

Keeping in touch during maternity leave

It will obviously be much easier to return to work after maternity leave if you stay in touch with your place of work. You may want to consider attending a few meetings and taking part in training to ensure that you still feel part of the team. You can attend up to 10 'keeping in touch' days without it affecting your maternity pay, provided of course that you arrange these days in advance with your employer. There's no obligation to attend "keeping in touch" days, nor is there any requirement on the employer that you're paid for these days. Payment is a matter that can be negotiated with the employer.

Returning to work after maternity leave

Once you've become used to being at home and looking after your new baby, the return to work can be quite difficult, so preparing for your return by sorting out child-care arrangements is really important.

Ideally your employer should inform you of your start and end dates for maternity leave before it commences. Should you wish to change your return to work date your employer can insist on having 8 weeks' notice of any change.

If you've only taken ordinary maternity leave (i.e. 26 weeks' leave) then you have the legal right to return to your same job on the same terms and conditions. If you've taken any leave in excess of 26 weeks (i.e. additional maternity leave) then you have the right to return to a similar job on similar terms and conditions.

Flexible working arrangements when you return

Balancing work and looking after your new baby may be tough – even with good child-care arrangements – so it's possible to request that your employer offers you a flexible working arrangement. You should request this in writing, in good time before your return date. The law requires that your employer "seriously considers" your request, although they can refuse if there are genuine business reasons for not changing your working arrangements. For detailed guidance on asking for more family-friendly working arrangements go to www.gov.uk/flexible-working

Paternity leave

Fathers or partners have limited rights to time off to attend ante-natal appointments with the mother of the child.

Ordinary Paternity Leave is a period of either one week or two continuous weeks' leave. This leave must be taken between the date on which the child is born and 56 days after that date. You must have been employed for a continuous 26 weeks the 15th week before the baby is due.

As an employee you must give notice of your intention to take leave, the length of paternity leave (one or two weeks), and the date when you intend to take the leave. Notice must be given before the 14th week preceding the expected date of the child's birth.

As your child grows, either parent can take up to 18 weeks' unpaid parental leave for each child under five years (or under 18 for each disabled child). You must have been working for your current employer for at least one year before you are entitled to this type of parental leave.

Your employer is also entitled to ask for evidence of the child's birth and a written declaration as to the relationship with the child's mother.

Paternity pay

New fathers are entitled, subject to their level of earnings, to receive a set rate of pay for their two weeks of paternity leave – known as Ordinary Statutory Paternity Pay. As a new father, it is worth checking your employment contract and staff handbook, as your employer may actually pay you more than the statutory minimum.

Time off in an emergency

Parents have the right to take a reasonable amount of time off to deal with an emergency involving their dependants, for example if a child falls ill. This is unpaid leave, but your employer may choose to pay you.

Shared Parental Leave

Those employees who are eligible for Ordinary Paternity Leave may now be eligible for additional paternity leave. Additional paternity leave enables the child's mother (or co-adopter) to return to work and share the maternity leave period with a person who meets the requirements for paternity leave.

In order to take paternity leave both the mother or (co-adopter) and the eligible person must follow certain notification requirements. An employee who is eligible to take paternity leave may also be eligible to Ordinary Statutory Paternity Pay for the Ordinary Paternity Leave period and Additional Statutory Paternity Pay for the Additional Paternity Leave period. At QualitySolicitors, we can clearly explain your rights when it comes to Shared Parental Leave.

There are also more top tips online - visit our maternity rights pages on www.qualitysolicitors.com/employment-law



Who are QualitySolicitors?

Your local legal experts

With 200 branches across the UK, our solicitors are local, approachable and professional – all of them meeting rigorous quality standards to be part of our network. Everything we do is designed to make life easier and less stressful for you when dealing with your legal matter. You can count on us to be professional, easy to get hold of and to keep you fully informed of what we're doing and the progress of your case. We're also open on Saturdays. So whatever else is going on in your life, dealing with QualitySolicitors won't be a hassle.



QualitySolicitors offer the following key promises:



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*Contact your local office for availability on Saturdays



Next steps

If you'd like to find out more on how we can help you, the first step would be to give us a call for your Free First Advice. You'll speak with a friendly legal assistant who will take your details and discuss what you'd like to achieve.

For your Free First Advice, call **0800 999 7070** or **0203 284 0025** if you are calling from a mobile.



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