

The law – a guide for you as a
new parent



QualitySolicitors

Firstly, many congratulations

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

However, there are a variety of legal issues you may face as you bring up your baby, so QualitySolicitors have put together this short guide to explain them.

We hope you find this guide useful and if in the future you find yourself in need of some advice we'd be happy to help.

Registering the birth of your baby

When your baby is born one of the first things you will need to do is choose your baby's name and register the birth. You have 42 days to do this from the date 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 onsite, but in most cases you will need to go to your local Registry Office. The Registry Office you need can be found at www.direct.gov.uk. If it is not possible to go to your local Registry Office you can go to another within England or Wales.

It is best to contact the Registry Office before you go, as you may need to book an appointment. You will be able to buy additional copies of the certificate if you want to, the cost is currently £4 at the time of registration, then £7 for any additional copies requested up to 6 weeks after the birth and £10 for each copy requested after this time.* Credit or debit cards are usually not accepted at the Registry Office so it is a good idea to take some cash with you.

Who should register the birth?

If you are the baby's natural parents and are married at the time of the birth (or were married at the time of conception), then either of you can register the birth on your own – on behalf of you both, you will just need to take your Marriage Certificate with you as proof. If you are not married, there are several options which we have detailed below, but your Registry Office will be able to provide further details:

- Both natural parents can go and sign the birth register together (this means you will both be included on the full birth certificate).
- The mother can register alone. If the father's details are not included in the birth register, it may be possible to re-register to include him at a later date. 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 cannot attend, the parent who cannot attend should first complete a statutory declaration form that can be handed in to the Registrar.
- Alternatively, they can ask a solicitor about obtaining a Parental Responsibility Agreement or Court Order to be given to the Registrar to ensure both parents are registered.

There will be occasions when neither parent is able to attend the Registry 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 has responsibility for the child.
- An official 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).

*Correct as at July 2013.



Changing your baby's name

Choosing your baby's name is an 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 (family name) is a bit more difficult. You can correct a spelling error on the birth certificate, but a person's surname is considered to be an important symbol of his or her identity, so 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 – see page 6 of this guide for more information) then he needs to agree to any change of surname.

If you are the child's mother and only you have Parental Responsibility (again see page 6 of this guide to find out more about this) 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.



Changing first names after 12 months or a change to surname

What if you decide to change your baby's first name (or names) after their first birthday or you want to change your baby's surname? How do you do it?

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.

QualitySolicitors can draw up a Change of Name Deed for you. Please contact your local branch for a quote for this service.

The solicitor will need to check 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.

Parental Responsibility

Helping your baby grow and develop will be very rewarding but it is a huge responsibility too. Along the way you will need to make many decisions for your child, such as:

- What medical treatment (if any) the child should receive.
- What form of religious upbringing the child should have.
- Where the child should go to school.

These decisions must be made by an adult or adults who have 'Parental Responsibility' for the child.

Who has Parental Responsibility?

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



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 your child they may be able to obtain Parental Responsibility. Below are some of the most common ways in which Parental Responsibility can be gained.

If you are the father of the baby, but you are not married to your baby's mother:

- The easiest way for you to gain Parental Responsibility is to go along to the registration of the birth.
- If you go on to marry your baby's mother, you will automatically gain Parental Responsibility.
- Alternatively, if the two options above are not possible, you will 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 do not have Parental Responsibility. You can find out more about this later on in this guide.

If you are the step-parent of a child or the civil partner of a child's parent: For the formal authority to take crucial decisions for a child you are helping to bring up you should speak to your local 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 do not 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, is not something any parent wants to think about, but if you have Parental Responsibility for a child, it is important that you have a will which nominates a guardian who would take over Parental Responsibility. For more information about making a will see page 11.

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. This is covered in more details on page 10.



Financial support

You do not need a guide book to tell you your baby will cost you a lot more than you expect, not just now, but for the rest of your life.

The legal starting point is that financial responsibility for the cost 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 of his or her 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. This person may not be a parent – 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 Support Agency.



The Child Support Agency (CSA)

The role of the CSA is to assist in circumstances where maintenance payments are required, but the child's parents have been unable to arrange these between themselves.

The CSA is a government body that currently does not charge for its services*. If either parent contacts the CSA for help arranging maintenance, the CSA will aim to set up a child maintenance arrangement within 12 weeks.

You do not need to be in contact with your child's other parent, or even know where they live in order to seek assistance from the CSA. 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 CSA are that any arrangement reached using the CSA is legally binding, and they can take responsibility for collecting payments, so you don't have to. They will also 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 CSA has an online child maintenance calculator which can work out the amount of maintenance payable for your 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.

*Correct as at July 2013.



Where your baby lives

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

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



Contact – who the child sees

Disagreements over who a child has contact with can, of course, be very difficult for everyone concerned. It is 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 a Contact Order.

The court will decide on the level of contact depending on the individual circumstances. The Contact 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.

Contact 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 a Contact Order is made it is the duty of the person the child normally lives with to make sure the contact takes place.



Disputes

If you cannot agree who your child has contact with and what the arrangements are, or if you disagree over where and who the child lives

with, you will need to take legal advice. The back page 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 will give a clear explanation about what is involved and provide an indication of the likely outcomes.



A will to protect your child's future

Whilst it is sad to have to contemplate, when you become a parent, it's 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 will 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 they reach the age of 18.

Obviously choosing someone to look after your children in the event of your death is a very difficult decision to make, but it is in your child's best interests that you consider it now. It is best to first discuss the issue with the person or people you would like to appoint – perhaps your parents or a brother or sister. Although this is a difficult issue, they are likely to be flattered to be asked. If you change your mind at a later date, you can amend your will at that time. Without a legally binding will, the decision of who would take care of your children, should the worst happen, may not be as you would have wanted.

Financial protection: It is only by making a will that you can decide how your money, property and possessions (known as your estate) are divided on your death.

If you are married and don't make a will, then the rules that apply often mean that when you die none of your estate will go to your children. Instead it may all pass to your husband, wife or civil partner. If that person were to then remarry, when they die your estate could pass to their new partner, again leaving out your children. You can protect 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, 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 rate of inflation.

Another key decision you can make, 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.

Appoint trustees: An 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 will consider your children's best interests.

Things to be aware of if you already have a will

- If you marry, any previous will you have made will be automatically cancelled by the marriage. This means any previous provisions you put in place for your children will no longer exist and you will need a new will. You can request a will that survives your marriage by making it 'in contemplation of marriage'.
- You will need to check how your previous will was worded. If it was written before you had children or only made provision for the children you had at that time, you may now wish to add your new baby.
- Finally, if your will nominated a guardian you may want to re-consider whether that person is still willing and able to look after your children. 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 is only natural that you will want to focus on him or her without having to worry about work. It is important however that you are aware of your employment rights. Below is a summary of the key issues:

Maternity leave: As a new mother you can take a maximum of 52 weeks' maternity leave. During maternity leave you are also entitled to receive all of your 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, if you have been working for the same employer for 40 weeks before the birth of your baby, you will be entitled to Statutory Maternity Pay for 39 weeks of your maternity leave. For the first six weeks, the level of pay is 90% of your 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 are 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 employment. You may want to consider attending a few meetings and taking part in training, to ensure you still feel part of the team. You can be paid for up to 10 'keeping in touch days', without it affecting your maternity pay, provided of course, you arrange these days in advance with your employer.

Returning to work after maternity leave: Once you have 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 childcare arrangements is really important.

Your employer should send you a letter telling you when you are due back at work. You can decide to go back earlier but you must give your employer eight weeks' notice.

If you have only taken Ordinary Maternity Leave (i.e. 26 weeks) then you have the legal right to return to your same job, on the same terms and conditions. If you have 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 childcare arrangements, so if you need to, it is possible to request flexible working arrangements. You should request these 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.direct.gov.uk/requestflexibleworking**.

Paternity leave: As a new father you are entitled to two weeks' paternity leave. This must be taken within eight weeks of the birth of your baby. In circumstances where a baby's mother goes back to work without taking her full maternity leave, then the baby's father may be entitled to take the remaining entitlement as Additional Paternity Leave.

Paternity pay: You will be entitled to receive a set rate of pay for your two weeks of paternity leave – known as Statutory Paternity. As a new father, it is worth checking your employment contract and staff handbook, as your employer may have agreed to pay you more than the statutory minimum.

Parental leave: 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 parental leave.

Time off in an emergency: You have the right to take a reasonable amount of time off to deal with an emergency or illness involving your children. This is unpaid leave, but your employer may choose to pay you.

Disclaimer: We have done our best to ensure the information contained in this guide is correct as of July 2013. 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 you check with us for legal advice on your particular circumstances before you take action.

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