

What about the kids?

Jason's story

“ I was nineteen when we first started going out. We soon moved in together and, after a while, had two children. We never really thought to get married.

After fourteen years, it all fell apart. It was such shock when we finally split up – neither of us handled it well. My ex started using the kids to get her own way. She wanted more child support, but I couldn't afford it, so she stopped me seeing them. She gave in after I got the solicitors involved and I began to see them on a regular basis. Even so, my solicitor warned me that I didn't have parental responsibility for either of them. For a while, it didn't seem to matter. But when my daughter became ill, I wasn't able to consent to her having an operation – the hospital wouldn't go ahead until they'd spoken to my ex.

The simplest way for me to get parental responsibility would be to make an agreement with my ex but, since the split, that's not been an option – she's not going to make things easy for me. My only alternative is to go to court but, now we've got contact sorted, I don't really want to rock the boat. I just wish I'd known about parental responsibility when we were still together. ”



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Introduction

If you're an unmarried parent, it can be pretty tricky trying to work out what your legal rights and responsibilities are for your kids, particularly if you've separated from (or were never together with) their other parent. You might have assumed that all parents would be treated the same. But this isn't the case. In some situations you'd be better off if you were married and, in others, it makes no difference at all. And the rules are different again if you have step-children.

That's why we've produced this guide – so you can see how the law affects your relationship with your children. It covers: parental responsibility, residence, contact and child support and gives you information about how to protect your children if you were to die.

Who is this guide for?

Unmarried parents.

What about step-parents?

There are different rules for step-parents. These are explained in each section of the guide in separate paragraphs, labelled 'For step-parents'. If you are married to, in a civil partnership with, or living with someone who has children from a previous relationship, this information is for you.

Who isn't covered by the information in the guide?

- adoptive parents
- people with special guardianship.

Spot the difference

Take a look at the chart below to see whether your rights and responsibilities for your children would differ if you were married.

MARRIED		LIVING TOGETHER
Both parents have it	Parental responsibility	Fathers might not have it
Same rules	Residence	Same rules
Same rules	Contact	Same rules
Same rules	Child support	Same rules
Surviving spouse inherits certain amount. Children get what's left.	If you die without a will	Children inherit everything. Surviving partner gets nothing.
Surviving spouse gets it automatically	Guardianship	Surviving partner can only get it if they have PR

Parental responsibility

What is it?

It's how the law describes the responsibilities and rights that go with being a parent. If you have parental responsibility (PR) for a child, you have a legal duty to care for and protect that child and a legal right to make decisions about that child's future, which will be recognised by schools, hospitals, local authorities and everyone else.

It includes things like choosing your child's names, the religion they'll be brought up in and what schools they'll go to. It also means you'll be able to do things like consent to medical treatment for them, apply for a passport for them, consent to their marriage if they want to marry before they're 18, and look after any property they are entitled to until their 18th birthday.

What isn't it?

It's not a way to score points off each other after a difficult separation. Parents should not see PR as a way of taking "control" of their children's lives away from the other parent. And mothers should not refuse to give fathers PR simply as a way of punishing them.

How do I get it?

Mums: Mums always have it.

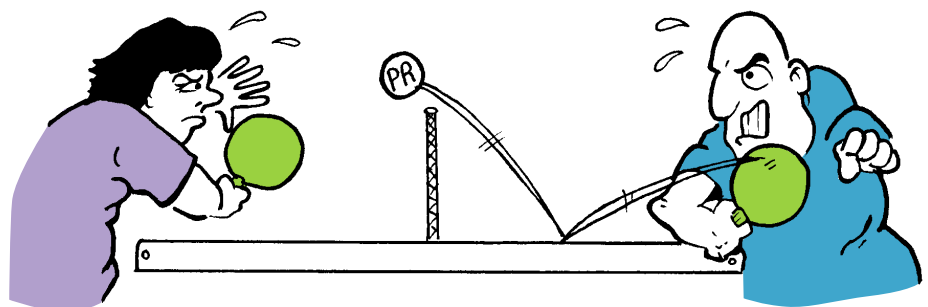
Dads: If you're not married to the mother, you'll only have it automatically if your child's birth was registered on or after 1 December 2003 and your details were included in the registration. If not, you can get it by:

- marrying the child's mother
- re-registering the birth to add your details (this won't be possible if your details were already registered before 1 December 2003)
- making a PR agreement with the child's mother
- applying to the court for an order (if your child's mother will not agree to any of the above)
- becoming the child's guardian on the mother's death.

For step-parents

You can only get PR for your partner's children by applying to court for a 'residence order'. If the court makes the order, it will say that the children should live with you – either permanently, or for the particular period contained in the order. It will also give you PR for your partner's children for as long as the order lasts.

Married step-parents and gay and lesbian step-parents who have entered into a civil partnership are able to make a PR agreement or apply to court for PR instead.



Why do I need it?

It's not really a big deal day-to-day because anyone with PR can delegate their rights and responsibilities to whoever is looking after the child. And, in an emergency, that person can consent to medical treatment for the child even if they don't have PR.

But, you might feel more secure putting your relationship with your child or step-child on an official footing, so that it will be recognised by others. And, if the mother (or the parent the child lives with in the case of step-parents) were to die, you would need PR to be able to take care of the child yourself.

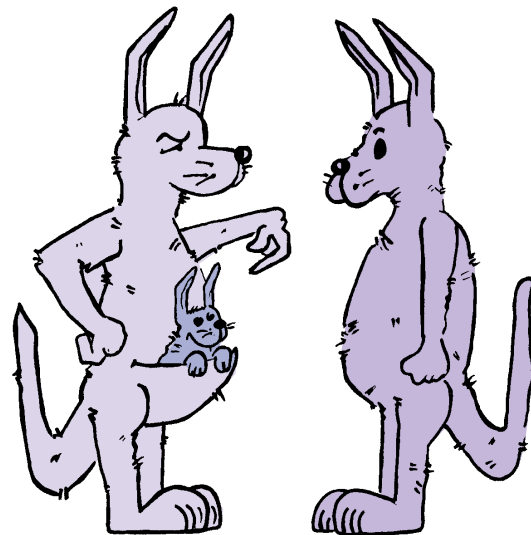
If you're a...	Take a look at...
Mum and you're worried about the consequences of giving PR to your child's father...	▶ 'I'm expecting a baby and I'm not married to the father' , which you can download for free from www.advicenow.org.uk/livingtogether and visit the births section of the register office website at: www.gro.gov.uk/gro/content/births
Dad and you don't have PR...	▶ 'Parental Responsibility for fathers' , which you can download for free from www.advicenow.org.uk/livingtogether and visit the births section of the register office website at: www.gro.gov.uk/gro/content/births
Step-parent wanting PR for your partner's child (and you are not married to or in a civil partnership with your partner)...	▶ 'How to get Parental Responsibility for your partner's child' , which you can download for free from www.advicenow.org.uk/livingtogether

Residence, contact ... and child support

If your relationship breaks down, you will need to decide:

- who your children are going to live with ('residence')
- when and how the parent the children no longer live with is going to have contact with the children ('contact')
- how much that parent should pay towards their upkeep ('child support').

It makes no difference to any of these issues whether or not you were married.



'Residence' was previously known as 'custody'.

'Contact' was previously known as 'access'.

Residence and contact

If you ask the court to decide who your children should live with and what contact the other parent should have with their children, the judge will take a number of things into account, including: the children's wishes (bearing in mind their ages and understanding), the children's needs, the likely effect of change

Lorraine's story

"I left Gary for my current partner when the kids were at primary school. I agreed they should live with Gary because I do shift-work and couldn't always be around to look after them in the evenings.

I knew that, with working shifts, it would be hard to find time to see them. I suppose I just hoped it would all turn out OK in the end. But Gary had other ideas. The boys were never free when I had any time off – only when I was working. Gary accused me of neglecting them but I know he was doing it on purpose to stop me from seeing them. We ended up in mediation – where Gary finally agreed to be more co-operative. I wasn't going to take any chances though – I got our agreement turned into a court order."

on the children, any harm the children have suffered or are suffering, and the children's ages, sex and background.

In other words, your children's welfare is most important, rather than your rights or wishes and, in most cases, the court will accept that it is best for the children to establish and maintain as good a relationship with both parents as possible.

Of course, it will be better for your children, and your relationship with your children, if you can agree on these things between you – either by yourselves, or with the help of a mediator or solicitor. But if there's no way you're ever going to see eye to eye, you'll have to get the court involved.

For step-parents

If you can't agree on arrangements for your step-children after a separation, you might need to get permission from the court before you can apply for a residence or contact order. If you are thinking about doing this, we recommend that you get some legal advice.

You could try a solicitor who is a member of Resolution. Resolution is a group of family law solicitors, who are committed to helping their clients resolve disputes fairly, with as little stress and conflict as possible. You can find your nearest Resolution member by visiting their website at: www.resolution.org.uk/find_member.php.

For more help and information on how to make arrangements for your children on a separation, download our guide, 'Parents Apart' for free at: www.advicenow.org.uk/parentsapart.

Child support

All parents are financially responsible for their own children. So, if your children are living with you after a separation, you can claim child support from the parent they no longer live with.

If you are on Income Support or income-based Jobseekers Allowance, your child support payments currently have to be calculated and collected by the Child Support Agency (CSA).

If not, you are free to make your own arrangements, but you can still use the CSA if you want to. If the CSA is going to be dealing with your child support payments, you should get some advice. You can find your nearest CAB or other advice agency on the Community Legal Service Direct website at: www.clsdirect.org.uk/index.jsp or by telephoning their helpline on: **0845 345 4345**.

If you're making your own arrangements, you can apply to court to have them turned into a 'court order'.

In the not too distant future, the child support system will be changing so that all parents are encouraged to make their own arrangements. The CSA, or whatever replaces it, will just take over cases where parents can't agree or a parent fails to make the agreed payments.

For step-parents

You are not automatically financially responsible for your step-children.

But, if you marry or enter into a civil partnership with one of their parents, you could become financially responsible for them if you treat them as if they were your own.

If you are not married to or in a civil partnership with your partner, you will have no financial responsibility for their children. Even if they live with you, the parent they no longer live with may still have to pay child support.

In reality, you might choose to make a financial contribution to your step-children's upbringing – even if you and your partner separate. It would be useful to set this out in a Living Together Agreement. You could also use the Living Together Agreement to spell out how any child support paid by the other parent should be used. This can be particularly useful if you are not on good terms – so that they can be sure that their money is being spent on the children.

For more information about Living Together Agreements, or to download a template, see www.advicenow.org.uk/livingtogether.

Protecting your children if you die

No-one wants to think about dying. But, if you've got children, you should plan ahead for their sakes. There are two issues you need to sort out: what you want to leave them and who would look after them if you were to die while they're still young. You can do both of these things by making a will.

Wills and inheritance

If you die without making a will, the law decides who inherits your money and property. This means that it might not go to who you want. You could end up leaving your family in real financial difficulty.

If you are an unmarried parent, everything you leave behind will be divided equally between your children. Whether you were still together at the time of your death or had already separated, their surviving parent won't get anything automatically. If they were dependent on you for financial support, they might be able to apply to court for some provision to be made for them but, of course, this is probably the last thing they'll want to face at such a difficult time.

For step-parents

Your step-children won't get anything automatically. But, if they were dependent on you for financial support, they might be able to apply to court for some provision to be made for them (such as maintenance payments or keeping the home).

If you die while you are still technically married to someone else – even if you are no longer together – that person will get all your personal possessions, the first £125,000 of your savings and other property and a life interest in half of anything that is left – not your current partner, your children, or your step-children. So, make a will!

Denise's story

"I divorced Sean's dad when Sean was just a toddler. A couple of years later I met Ian and we'd been together ever since. We had a boy of our own, Carl, but Ian has always treated both of them equally – as if Sean was his own son too. In fact I doubt Sean can even remember his real dad.

But Ian died a year ago and he'd never got round to making a will. I've since found out that this means Carl inherits everything: Sean and I aren't entitled to anything automatically. I know that's not what Ian would have wanted. I know he would have wanted to provide for all of us so I'm trying to make a claim against his estate at the moment. But it's so stressful trying to hold everything together on my own. I just wish we'd both thought about making wills before it came to this."

If you want to leave anything to children who are under eighteen in your will, you will need to set up a 'trust'. If you are going to do this, you should get some legal advice. Find your nearest solicitor who specialises in will-making by visiting the Law Society website at: www.lawsociety.org.uk/choosingandusing/findasolicitor.law

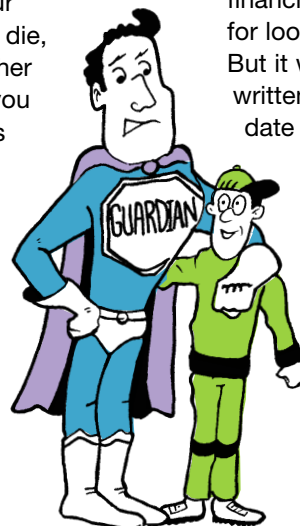
For more information on making a will, download our guide, 'Wills & LivingTogether' from: www.advicenow.org.uk/livingtogether.

For step-families

If you have a new partner who plays a bigger part in your children's lives than their other parent, you might want to appoint your new partner as guardian. But, be aware that, if the surviving parent has PR, the appointment might not work automatically. If you are in this situation, you should get some legal advice. See page 4 for information on how to find your nearest solicitor or advice agency.

Who will look after your children?

If you are an unmarried mother, and you would want your children's father to look after your children if you were to die, make sure that the father either has PR or that you have appointed him as guardian (which will also give him PR). Otherwise, he will have to go through the stress and expense of having to apply to court for PR on your death. Unmarried mothers, of course, have PR automatically.



It's probably best to appoint a guardian in your will, because then you can also set out what financial help they should be given for looking after your children. But it will work just as well in any written document, as long as you date and sign it. You can download a template document from our guide, 'How to appoint a guardian' at: www.advicenow.org.uk/livingtogether.

Q & A

Q My son was born in 2002. I'm not married to my partner but I'm on the birth certificate as his dad. Does that mean I have parental responsibility?

Jamil, London



Q I don't have parental responsibility for my daughter – her mother won't let me have much to do with her at all – so how come I have to pay child support?

Jarred, Leeds

A No, you won't automatically have parental responsibility (PR). It wasn't until 1 December 2003 that unmarried dads got PR by including their details in the birth registration.

To get PR, you'll have to either:

- marry your son's mother
- enter into a PR agreement with your son's mother
- apply to court for a PR order if she won't make an agreement.

A Parental responsibility (PR) and child support are separate issues. All parents have a duty to financially support their biological children if they have the means, whether or not they have PR. But, if you want to have more contact with your daughter and her mother is stopping you, you should go to see a family law solicitor about applying to court for a contact order. They'll also be able to advise you about getting PR.

Q



My partner has a daughter from a previous relationship. We've been together ever since she was a toddler so I think of her as my own but I don't know where I stand legally. Would I be recognised as her mother if me and her dad got married?

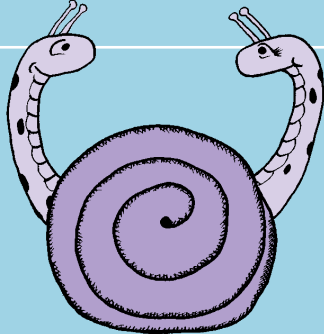
Jemma, Nottingham

A

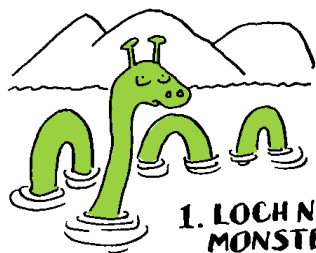
To get the rights and responsibilities for her associated with being a parent, you would need to have parental responsibility (PR) for her. You won't get this just by getting married to her father. But you can get it. You and your partner could ask the court to grant you a residence order which would also give you PR for as long as the order lasts or until she reaches 18. Another option would be to adopt her – legally this would make her your daughter in all respects. You should get advice about this.

Parental responsibility, residence, contact and child support are particularly complicated areas of law. If you are having problems in this area, get some legal advice. You can find your nearest family law solicitor by visiting Community Legal Service Direct at: www.clsdirect.org.uk or calling: **0845 608 1122**.

Jargon buster

The jargon	What it means
Child support:	Money payable by the parent the children do not live with to the parent they do live with to help cover the children's living expenses.
Civil partners:	Same-sex couples that have entered into a civil partnership.
Cohabitants:	<p data-bbox="384 490 1053 584">Couples that have been living together and are neither married, nor civil partners. It includes both male/female and same sex couples.</p> 
Contact: (previously called "access")	When and where a child can see a parent they don't live with or another adult (such as a grandparent), or have contact with them in other ways, such as phone calls, letters, presents.
Court order:	An official decision by a court. In certain circumstances, courts can force someone to obey a court order by threatening them with fines, or even imprisonment, but this rarely happens in family disputes.
Dissolution:	How a civil partnership is ended. In nearly all respects it is the same as a divorce.
Guardian:	A guardian is a person who is appointed to take care of a child and have parental responsibility for them.
Inheritance:	Property received by someone on the death of someone else.
Intestate:	Dying without making a will.
Life interest:	Limited rights for your lifetime over the property of someone who has died, such as: the right to live in a house for the rest of your life, or the right to income from an investment for your lifetime.
Parental responsibility:	All the rights and duties that go with being a parent. All married parents have parental responsibility for their children. If you are not married, only the mother has it automatically, but an unmarried father can get it in a number of different ways.
Residence: (previously called "custody")	Who a child is to live with.
Trust:	Money or property looked after day-to-day by a responsible person or organisation (a 'trustee') on behalf of another person or group of people.
Will:	A document, which says what is to happen to your money and property when you die and which is completed with certain formalities.

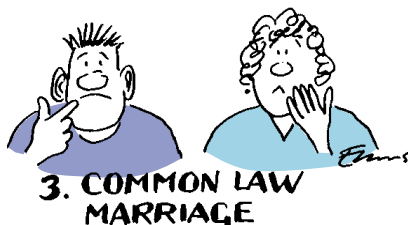
THREE THINGS THAT DON'T EXIST.



1. LOCH NESS MONSTER



2. CATS' NINE LIVES



3. COMMON LAW MARRIAGE

This leaflet is one of a series produced by Advicenow's LivingTogether campaign. Other titles in the series include:

- What is 'Parental Responsibility'?
- Parental Responsibility for fathers
- How to get Parental Responsibility for your partner's child
- I'm expecting a baby and I'm not married to the father
- How to appoint a guardian
- Wills & Living Together
- Living Together Agreements
- Breaking up checklist
- Benefits & Living Together
- Housing & Living Together

The LivingTogether Campaign applies to **England and Wales** only. The law in Scotland and Northern Ireland is significantly different.

The law is complicated and everyone's situation is different. Always get advice.

The LivingTogether campaign aims to increase awareness and understanding of the legal issues around living together. We explain exactly what rights couples living together *really* have, and show you practical ways you can protect yourself and your partner.

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services
alliance**

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ONE**

The LivingTogether campaign is led by Advice Services Alliance in partnership with One Plus One (www.oneplusone.org.uk) and is funded by the Department for Constitutional Affairs.

Advice Services Alliance (ASA), the co-ordinating body for UK advice services. ASA members include AdviceUK, Age Concern England, Citizens Advice, DIAL UK, Law Centres Federation, Shelter and Youth Access. ASA works with its membership and government to develop policy on delivery of legal and advice services; champions the development of high quality information, advice and legal services; and provides supporting services to advice networks.

Written by Antonia Murfin. October 2006.

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