

A Client's Guide to Child Arrangements Orders

Private children law is concerned with the steps a parent can take when they exercise their rights and responsibilities towards their child. This is also known as exercising their parental responsibility (PR). When parents separate, disputes may arise about where and with whom a child will live, or how much time they will spend with a parent or other person with whom they do not live. If these arrangements cannot be agreed on, it will be necessary to apply to the court for orders deciding these issues.

This guide explains the orders that the court can make and outlines the process involved in making an application to the court. It also details what will happen after the application has been issued.

WHAT ARE CHILD ARRANGEMENTS ORDERS?

Child arrangements orders (CAO) regulate with whom a child is to live, spend time or otherwise have contact and when a child will live, spend time or otherwise have contact with a person. For example, if you and your partner have separated and you want your child to live with you, but cannot agree on this, then you will need to apply to the court for a CAO regulating your child's living arrangements. Alternatively, if you have agreed that your child will live with one parent but cannot agree the amount of time that your child will spend with the non-resident parent, you will need to apply to the court for a CAO regulating contact arrangements. A CAO regulating contact arrangements requires the person with whom the child lives to allow the child to visit or stay with the person named in the order, or for that person and the child to otherwise have contact with each other. The order will set out when the child is to spend time or otherwise have contact with the person named in the order.

ORDERS REGULATING A CHILD'S LIVING ARRANGEMENTS

The court may regulate a child's living arrangements by making any of the following CAO:

- Naming one person with whom the child is to live.
- Naming two people who live in the same household together, as persons with whom the child is to live. These CAO are usually made in favour of a child's parent and step-parent.
- Naming two persons who live in different households, as persons with whom the child is to live. The CAO will specify the time that the child will live in each household. This allows a child to live with both parents in their respective households following separation. The division of the child's time between each household need not be equal.

WHAT ARE THE BENEFITS OF HAVING A CHILD ARRANGEMENTS ORDER NAMING YOU AS THE PERSON WITH WHOM THE CHILD IS TO LIVE?

Being named as a person with whom a child is to live in a CAO, means that you have the right to take the child abroad for up to one month without the consent of the other parent or the court's permission.

A parent who is not named as the person with whom the child lives in a CAO does not have this right. However, in the absence of agreement with the other parent, they can apply to the court for a specific issue order to take the child abroad. If the person named in a CAO as the person with whom the child lives wants to take the child abroad for longer than one month, they would have to apply for a specific issue order in the same way.

ORDERS REGULATING CONTACT ARRANGEMENTS

If you and your former partner cannot agree on when your child should spend time or otherwise have contact or the level or frequency of contact arrangements, or if the parent with whom the child lives (that is, the resident parent) is unreasonably preventing contact from taking place, it will be necessary to apply to the court for a CAO to settle these arrangements. The court may order any of the following types of contact to take place under a CAO:

- Direct and indirect contact arrangements. Direct contact arrangements involve the child having contact with a named person by staying with or visiting them. Indirect contact is where the contact takes place by letter, e-mail, voice over internet protocol (VOIP) (such as Skype), instant message or telephone. Indirect contact arrangements are ordered by the court if it is not appropriate for the child to see the person directly (for example, where there is a potential risk to the child's wellbeing that cannot be managed otherwise).
- Overnight and visiting contact arrangements. Direct contact arrangements can involve the child visiting the person named in a CAO for a few hours or staying with them overnight. Visiting contact arrangements are usually ordered where the application concerns a baby or young child. In these cases, the court may order shorter but more frequent periods of contact. If the application involves an older child, who is more able to care for themselves, overnight contact arrangements are likely to be ordered. Contact arrangements can also be phased. If the child has spent no time with the non-resident parent, contact arrangements may begin as indirect arrangements by letter or email to reintroduce the child to the absent parent, progressing to visiting contact for a few hours. Contact arrangements can gradually be extended to longer periods of time, ultimately leading to overnight stays.
- Supervised and unsupervised contact arrangements. If the court considers that there is a risk to the child's welfare through direct or indirect contact arrangements, it can order contact arrangements to be supervised by a third party. For example, if direct contact arrangements are ordered, this can be supervised by the court ordering that contact between the child and the person named in the CAO takes place at a contact centre, where staff are on hand to supervise, support or monitor arrangements as required and ensure the child's safety and well-being. If there are no welfare concerns, contact arrangements will be unsupervised.

WHEN DO CHILD ARRANGEMENTS ORDERS COME TO AN END?

CAO regulating with whom a child is to spend time or otherwise have contact or when the child is to spend time or have contact with any person or both continue until the child is 16 years old, or 18 years old in exceptional circumstances. The court can also stipulate the duration in the order. CAO regulating with whom the child is to live or when the child is to live with any person or both continue until the child is 18 years old. CAO end automatically if a child's parents live together for a continuous period of more than six months after the order has been made.

WHEN TO APPLY FOR CHILD ARRANGEMENTS ORDERS?

You need not apply to the court for a CAO if, following the breakdown of your relationship, you and your former partner can agree on where and with whom your child will live, whether contact should occur with the non-resident parent and the level of contact. A court order is only necessary if you and your former partner cannot agree on these issues.

Where possible and safe to do so, the court expects separated parents to try to resolve disagreements about child arrangements outside of the court system and to be flexible about changes to agreed child arrangements.

You can use the following services to access help and support to resolve a dispute about child arrangements:

- For advice about sorting out child arrangements, see *The Parent Guide For Couples and Parents Who Separate or Divorce*.
- For information about family mediation and to find your nearest mediation service, see *Family Mediation Council*.
- For advice about sorting out arrangements for children and post-separation mediation, see *Advice now (sorting out arrangements for your children)*.
- For advice on separation services and options for resolving disputes, see *Separating or divorcing: what you need to do*.

WHO CAN APPLY FOR CHILD ARRANGEMENTS ORDERS?

The following can apply for CAO:

- The child's parent, guardian or special guardian.
- The child's step-parent or any person who has PR for the child under a PR agreement or order.
- Any person named as the person with whom the child is to live in a CAO that is in force.
- Any person in a marriage or civil partnership (whether subsisting or not) in relation to whom the child has been treated as a child of the family.
- Any person who the child has lived with for three years. This period need not be continuous but must not have begun more than five years before and ended three months before the application being made.
- Any person who has the consent of each person(s) named in a CAO that is in force, as the person(s) with whom the child is to live.
- Any person who has the consent of the local authority where the child is in local authority care.
- Any person who has the consent of each person(s) with PR for the child.
- Any person (who is not the child's parent or guardian) who has PR for the child by being named in a CAO as the person with whom the child is to spend time or otherwise have contact.

The following can also apply for a CAO regulating with whom a child is to live or when the child is to live with any person or both:

- A local authority foster parent who has had the child living with them for one year immediately before the application is made.
- A child's relative who has had the child living with them for one year immediately before the application is made.

APPLICATION FOR PERMISSION

A person who does not fall into any of the above categories must apply to the court for permission to make an application for a CAO.

HOW TO APPLY FOR CHILD ARRANGEMENTS ORDERS?

MEDIATION INFORMATION AND ASSESSMENT MEETING (MIAM)

Before issuing an application, a prospective applicant must attend a MIAM and invite your former partner to attend, unless an exemption applies. At these meetings, a mediator discusses the dispute with each party and assesses whether other forms of dispute resolution (such as family mediation, collaborative law or arbitration) can assist in resolving the dispute.

APPLICATION TO THE COURT

If a party refuses to attend the MIAM or an exemption applies to the requirement to attend a MIAM or a mediator considers that none of the other methods of dispute resolution are suitable or appropriate, an application must be made to the court.

You can make an application by completing Form C100 confirming attendance at a MIAM or giving reasons for non-attendance and submitting the form online or lodging it at your local family court. Form C100 should be accompanied by the court fee of £232.

PROCESS AFTER THE APPLICATION HAS BEEN ISSUED

FIRST HEARING DISPUTE RESOLUTION APPOINTMENT (FHDRA)

When issuing the application, the court will check whether:

- The parties have attended a MIAM.
- If a MIAM exemption has been claimed, whether that has been validly claimed.

The court can direct the applicant or the parties to attend a MIAM before the application proceeds. The court will schedule the FHDRA, which is a 30-minute hearing, at the same time that it issues the application. The court sends the application and notice of this hearing to the other party, at least 14 days before the date of the FHDRA.

The purpose of the FHDRA is to identify the issues in dispute and try to resolve them as quickly and inexpensively as possible. All parties must attend the FHDRA. A court welfare officer (also known as a Children and Family Court Advisory and Support Service (CAFCASS) officer) will attend as well. CAFCASS is an organisation responsible for safeguarding the interests of children involved in court proceedings. CAFCASS work with children and families and the CAFCASS officer advises the court on what they consider to be in the child's best interests. Depending on arrangements in your local family court, a court appointed mediator may also attend the FHDRA to assist you and your former partner to resolve the dispute. Mediation is a voluntary process and both you and your former partner must agree to involve the mediator.

At the FHDRA, the CAFCASS officer and the judge will try to help the parties agree a resolution of the issues. Problems will be discussed openly and solutions suggested. If an agreement can be reached about all or part of the dispute, the court can make an order recording the agreement.

If agreement cannot be reached, the court will identify the remaining disputed issues. The court will also identify evidence that will be required to enable another judge on another day to reach a decision about the disputed matters.

At the end of a FHDRA where the dispute has not been fully resolved, it is common for the court to order parties to prepare statements and other evidence that they propose to rely on. To help it decide the application, CAFCASS might be ordered to prepare a report on specific issues and the best way to resolve them. This can involve a CAFCASS officer visiting the parties' homes, meeting and speaking to them and other significant adults (such as the child's teachers) and the child on one or more occasions.

At the end of the FHDRA, depending on the issues for resolution, the court will either schedule a dispute resolution appointment or a final hearing.

DISPUTE RESOLUTION APPOINTMENT (DRA)

A DRA is usually scheduled if CAFCASS have been directed to produce a report to assist the court in deciding the issues in dispute. The court will first identify the extent to which the dispute can be narrowed or resolved at the DRA. The court will resolve or try to narrow the issues in dispute by hearing evidence from you and your former partner. If an agreement is reached, the court will make an order reflecting your agreement.

If no final agreement is reached at the DRA, the court will direct you and your former partner to file any further evidence and schedule a final hearing. For example, if CAFCASS have filed a report both parties will have the chance to file further statements and evidence responding to the recommendations contained in the CAFCASS report, insofar as that is necessary.

FINAL HEARING

Once all relevant evidence has been prepared and submitted to the court, a final hearing will be held when a judge will consider all the evidence and make a decision about the issues in dispute.

In the small number of cases that proceed to a final hearing, the court will hear oral evidence from the parties and sometimes from other witnesses. If a CAFCASS report has been prepared, the officer is only required to attend court to give evidence if the court considers that necessary. Anyone who gives evidence will be asked questions about their written evidence by their own legal representative, the other parties legal representatives and sometimes by the judge.

After hearing the evidence and listening to the legal argument, the judge will make an order deciding the issues in dispute.

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