

FAMILY MATTERS

FAMILY LAW AND YOUNG PEOPLE IN SCOTLAND



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SCOTTISH EXECUTIVE

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Scottish Ministers' vision for children and young people¹ in Scotland is that they are safe, nurtured, achieving, healthy, respected and responsible, active and included. This means that your parents or guardians, grandparents, teachers, doctors, and other people who are responsible for helping you must do all they can to protect and care for you, to help you to do well at school and to make sure that you are happy and confident.

The Scottish Executive is the government in Scotland and Scottish Ministers are in charge.

What this booklet is for

This booklet is intended to provide you with a general idea about family law in Scotland and what it means for you as a young person living in Scotland today. It covers the things that are important about living in a family in Scotland. It does not try to answer all detailed questions you may have but tells you where you can find out more if you want to.

This booklet does not cover things like children who need to be looked after by the local authority (being "in care") or who have to go to a children's hearing because of something that is happening in their lives. If you want to know more about children's hearings you can look at the website www.childrenshearingscotland.gov.uk.

¹From now on in this leaflet, when we say children we are talking about children and young people.

Families and family law

Families now come in all shapes and sizes and every family is important no matter how it is formed. Where families are strong and working well, Scottish Ministers believe that the government should not get involved. They believe that the government should help families by supporting good values in family relationships (things like trust, tolerance and fairness), not tell people what to do or tell parents how to bring up their children.

Family law helps the government to do that by providing rules about responsibilities and rights. No two families are the same, and the problems every family faces will be different. Family law tries to provide ways to help sort out these problems. But it isn't just about solving problems – the law also talks about how family members have to treat each other, and lays down rules about how this should happen.

This booklet looks at the rules for the relationships between children and their parents and other people who are interested in the children's welfare.

What the law expects mums and dads to do for their children

Parental Responsibilities and Rights (PRRs)

There are certain things that mums and dads are expected to do for their children while they are growing up. These are known as **parental responsibilities**. Along with this, there are certain things that mums and dads are allowed to do to bring up their children. These are known as **parental rights**.

Rather than being two separate things, these two sets of rules work together. Mums and dads are given parental rights to allow them to carry out their parental responsibilities for their children. Mums and dads are expected to use these rights to do things that are best for their children.



So what are these responsibilities and rights and how should they work?

Parents have the **responsibility** to look after their children, to help them to be healthy and encourage their growth, development and welfare. That means they must make sure you are looked after and taken care of when you are ill. They have to make sure you go to school or are given other suitable education and have the opportunity to develop your full potential in life. In order to do this, they have the **right** to have you live with them, or to decide where you will live.

They have both the **responsibility** and the **right** to say how their children should be brought up. This includes being in charge and saying what you can and cannot do until you are 16² and advising and guiding you until you are 18. These **responsibilities** can continue until you are 25, if you remain in full time education or training.

If they are not living with their children they have both the **responsibility** and the **right** to stay in touch with, and be involved with the lives of their children. This means that even if your mum or dad don't live with you, you should be able to keep in touch with them and have the chance to have a good relationship with them, as long as it is safe for you to do so.

Finally, they have both the **responsibility** and the **right** to act for their child in legal proceedings. This means that if you need to do anything that involves the law your mum or dad will take care of speaking to lawyers for you if you want them to. If you are old enough, you could do this yourself.

²The law says that young people over 12 can be old enough to have views about, and begin to take responsibility for, things that affect them.

Who has Parental Responsibilities and Rights (PRRs)?

Following changes made in the Family Law (Scotland) Act 2006, a child's mum and dad are both given PRRs if they register the child's birth together. That means both of their names appear on the child's birth certificate.

For children born in Scotland before the changes made by the Family Law (Scotland) Act 2006, if the child's mum and dad were married to each other (or got married later), then both parents were given PRRs. If a child's mum and dad were not married, then only the mum was given PRRs. The changes made to the rules by the Family Law (Scotland) Act 2006 will not change that. But a dad can still get PRRs if he wants them by:

- marrying the mum; or
- filling in a form called a Parental Responsibilities and Parental Rights Agreement (PRPRA), provided the mum agrees; or
- asking the court to give them to him.

Other people can also ask the court for PRRs, for example step-parents, grandparents, aunts or uncles. They might want to do this if the mum or dad could not look after the child for some reason or if a step-parent wanted to be legally responsible for a step-child.

When deciding whether to give someone PRRs the court will always be thinking about what is best for the child, not what is best for the adult who has asked for the PRRs. The court will give the child the opportunity to express their view and will take that into account when making a decision. If you are ever in this position, you can tell the court what you want to happen but you don't have to say anything if you don't want to.



What about me, how can I have my say?

When any big decisions are being made that affect the children, parents should ask them what they think and should listen to what they say. If they don't want to say anything they don't have to.

This doesn't mean that parents have to agree with what their children say, or do what they ask. It does mean that parents have to give their children the chance to say what they think, and then think about what their children want.

The law says that young people over 12 can be old enough to have views about and begin to take responsibility for things that affect them. However, children under 12 should still be listened to. How much importance their parents give to their views should depend on how much the children understand about what is going on.

If you want more information about PRRs you could contact the Scottish Child Law Centre, which offers advice on legal matters to young people through its helpline: 0800 328 8970. There are also fact sheets available on its website www.sclc.org.uk. You could also contact your local Citizens Advice Bureau or visit their website at www.adviceguide.org.uk.

What happens when families have problems?


All families have problems at some time, all families have arguments and all relationships can go through difficult times. Usually these problems are resolved but sometimes they just get worse.

In some cases these problems become too big for people to deal with on their own. There are a number of places that people can get help. For parents, there are organisations that can help them sort out their problem. For children, organisations such as ChildLine provide someone to speak to about things that might be worrying them. If you need to talk to someone you can phone ChildLine on 0800 1111. This is a free, confidential service for children. The Young Scot website www.youngscot.org.uk has a list of helplines too.

When parents separate

Sometimes parents are unable to resolve their differences and may decide to end their relationship with one another. If this happens, it is important to remember that it is not the child's fault, and this does not mean that the parents have ended their relationship with their children. They are still both parents, and children are entitled to have a relationship with both of them if they want to, unless the court decides that it is not a good idea for this to happen. For example, the court might decide that it would not be safe for a child to see one of their parents.

Most of the time, when parents separate or divorce, they agree between themselves and with the children about things like who should look after them, where they should live and how they will keep in touch with the parent they don't live with. Both parents will usually carry on looking after their children – even if they don't still live together as a family. Even if one parent spends more time looking after the children than the other, both should have an equal say in what happens to the children.



This is sometimes quite a difficult thing for parents to do and to help they might find it useful to complete a *Parenting Agreement*. This is a document that helps parents work through all the things they need to think about and to keep a record of the agreements they have made about their children. It also reminds parents to ask the children what they think or would like to happen. If parents decide to use this document, they may decide to share it with their children if they think they are old enough.

When things are difficult in a family, children and young people may need extra support. This support often comes from other people in the family – grandparents, aunts and uncles for example. Sometimes when parents separate, children can lose touch with these relatives. The *Charter for Grandchildren* is a document which reminds parents how important it can be to children to keep in touch with the people they care about and asks them to help their children make this happen. A copy of the Charter is at the back of this booklet.

Courts and legal decisions about children


Why would anyone go to court about me?

There are a number of reasons why someone might ask the court to make decisions about things in a child's life. For example if:

- a dad wants to get PRRs for his children;
- a step-parent wants to get PRRs for a step-child;
- a mum and dad are separating or getting divorced – they may ask the court to help them decide what arrangements are best for them and their children;
- someone close to a child is unhappy about something that is happening in the child's life; or
- if the child can't live with their mum and dad for any reason someone may ask the court to let them look after the child.

The court that would usually be asked about this is called a sheriff court. There are 49 sheriff courts all around Scotland. The sheriff court that would be involved would usually be the one nearest to where the family live. A judge is the man or woman who listens to the reasons why people have gone to court and then makes the decision. The judge at the sheriff court is called the sheriff.

If parents are getting divorced, even if the mum and dad can agree about the children, the sheriff will always want to know that the arrangements that have been agreed are best for the children before he will allow them to get a divorce. These arrangements might be where the children should live, who should look after them and who they should keep in touch with. If the mum and dad can't agree then they will ask the sheriff to help them make a decision.



A court can also make decisions about a number of things that affect a child's life. For example, this can be a decision such as stopping parents from using their parental responsibilities and rights in a way that is bad for their children. The court can make a decision where parents cannot agree about how to bring their children up, for example about which school they should go to. The court can even give parental responsibilities and rights to someone who isn't a parent so that person can help bring a child up. This might happen if a child had to live with someone else such as a grandparent or an aunt or uncle for a while.

It is important to know that it is not only adults who can ask the court to make these kinds of decisions. You can do it too. If you want more information about how you can do this you might want to contact the Scottish Child Law Centre. They give advice on legal matters to young people and their helpline number is: 0800 328 8970. Or you might want to get a fact sheet from their website www.sclc.org.uk.

When the court makes a decision about me, what does it need to know or think about?

Before making any decisions, the two most important things the sheriff will think about are:

- what is the best thing for you. You are the first and most important person the sheriff will think about before making a decision;
- what you think about things. You will be given the chance to tell the sheriff what you think about the arrangements being made for you, if you are old enough to do so. You do not have to say anything if you don't want to, but if you do, the sheriff will listen to what you say and will think about what you want when he or she makes the decision. You don't have to speak to the sheriff to give your views, you can write them down, or you can ask someone else to speak to the court for you.



FAMILY MATTERS – CHARTER FOR GRANDCHILDREN

Scottish Ministers' vision for children and young people in Scotland is that they are safe, nurtured, achieving, healthy, respected and responsible, active and included. This means that parents or guardians, grandparents, teachers, doctors, social workers and other people who are responsible for helping children and making decisions about their lives must do all they can to protect and care for them, to help them to do well at school and to make sure that they are happy, supported and confident.

Families are important to children

Families come in all shapes and sizes. Grandparents, aunts, uncles and cousins can all play an important role in nurturing children. While parents are responsible for caring for their children and making sure their needs are met, the wider family can play a vital supporting role.

Family life is usually happy but sometimes there can be difficulties. These can range from family quarrels through to divorce and separation to ill health or death. During these times, the children in the family may need extra support. They may want someone to talk to, or simply a safe place where they can have fun. Grandparents can and do play a vital role in helping children to maintain some stability in their lives.

Sometimes, children or young people may lose contact with their grandparents. This can be for a variety of reasons. There may have been a family quarrel, a house move, or a change in who is caring for the children.

When there are problems in families, it can be difficult to see a solution. Tempers can run high, and family members may take sides. Everyone involved should be prepared to put the welfare of the child first and be ready to compromise. Whatever the problem in your family, it is important to look beyond your own feelings to help the children stay in touch with the people who are important to them as well as to adjust to a new situation.

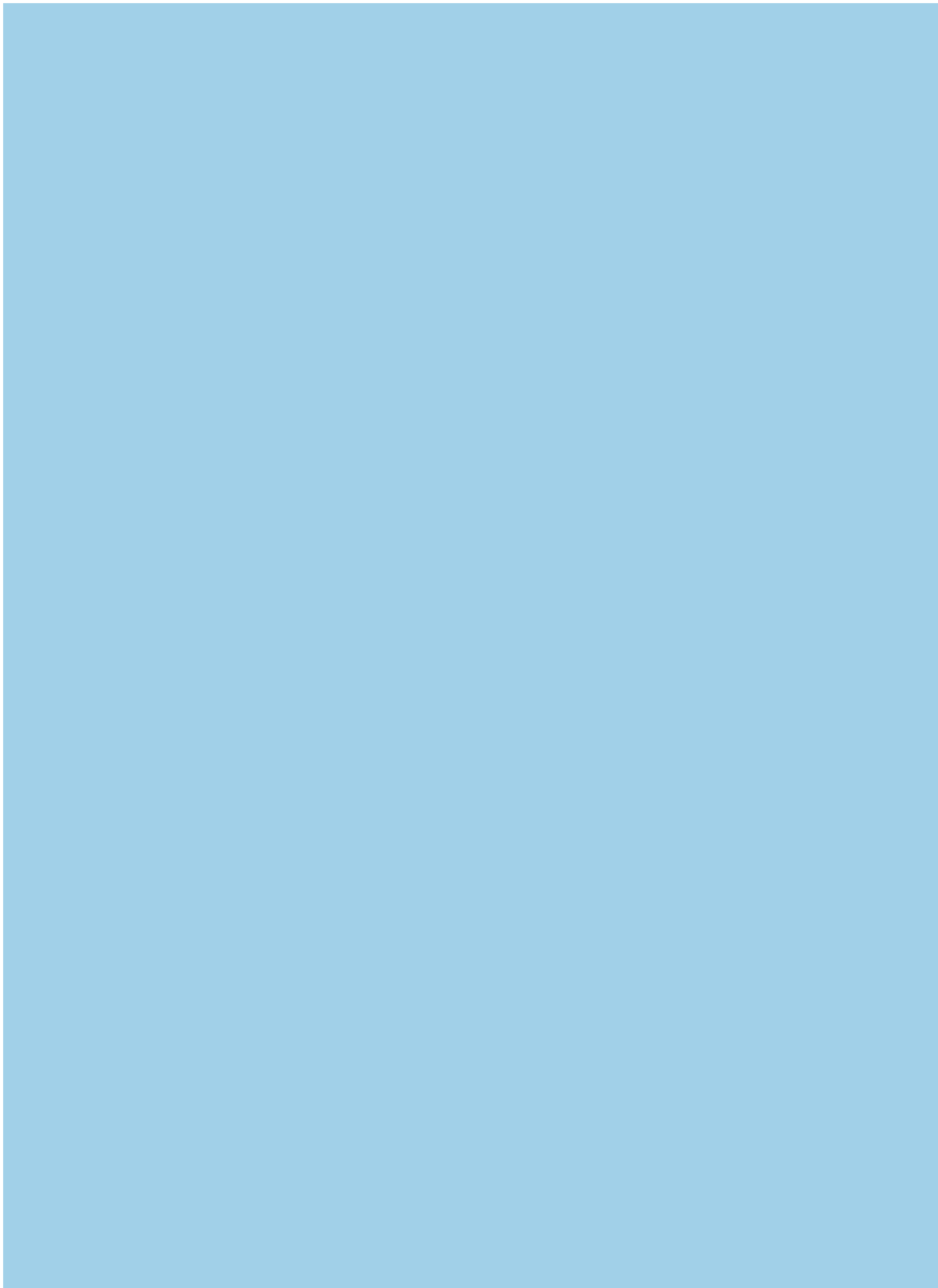
It is important that parents, grandparents and other family members, speak to, and treat each other, with respect. You may not get on, but you can still be civil, for the sake of the children. Try to avoid arguing with or criticising family members in front of the children. It can be very upsetting for them.

On occasions, professional organisations such as social work departments or the courts, can become involved and may have to make decisions that will have a lasting impact throughout a child's entire life. In these circumstances, it is vital that the loving and supportive role that the wider family, in particular grandparents, can play is respected and protected for the child.



FAMILIES ARE IMPORTANT TO CHILDREN – GRANDCHILDREN CAN EXPECT:

- To be involved with and helped to understand decisions made about their lives.
- To be treated fairly.
- To know and maintain contact with their family (except in very exceptional circumstances) and other people who are important to them.
- To know that their grandparents still love them, even if they are not able to see them at the present time.
- To know their family history.
- The **adults** in their lives to put their needs first and to protect them from disputes between adults – not to use them as weapons in quarrels.
- **Social workers**, when making assessments about their lives, to take into account the loving and supporting role grandparents can play in their lives.
- The **courts**, when making decisions about their lives, to take into account the loving and supporting role grandparents can play in their lives.
- **Lawyers and other advisers** to encourage relationship counselling or mediation when adults seek advice on matters affecting them and their children.



Further copies of this document are available, on request, in audio and large print formats and in community languages. Please contact 0131 244 3581.

اس دستاویز کی مزید کاپیاں آڈیو کیسٹ پر اور بڑے حروف کی چھپائی میں اور کیسٹوں کی اس دستاویز میں طلب کیے جانے پر دستیاب ہیں، برائے مہربانی اس پتہ پر رابطہ کریں: 0131 244 3581

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此文件有更多備份，如果需要，語音版本和大字體版本及少數種族語言版本也可提供，請聯絡：0131 244 3581

يمكن أن تطلب النسخ الأخرى من هذا المستند كالتسجيل الصوتي والخط المكبر ونسخ بلغات أخرى، يرجى الإتصال على: 0131 244 3581

The information in this booklet is correct at May 2006. It provides general information about family law. Specific issues should always be checked with the appropriate agencies or legal advisers.

The Scottish Executive has produced a range of Family Matters documents. These are available from www.scotland.gov.uk/familylaw, by e mail family.law@scotland.gsi.gov.uk or by phoning 0131 244 3581

ISBN: 07559 5082 8

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