

Is it legal?

A parents' guide to the law

3rd Edition

RESEARCH & POLICY FOR THE REAL WORLD

Introduction

We live our lives within the law.

The law reflects the attitudes and beliefs of society. From employment to welfare legislation, people generally accept that the law is there to protect them, act as a balance and check against exploitation and wrongdoing and make sure justice is done.

Over the years, the law has become more complicated and more involved in different areas of people's lives. Sometimes the law can be seen as meddling and intrusive, particularly in areas of private life; there has to be a balance between people's right to live as they wish and the right of the law to intervene on behalf of society. This balance between the needs of society and people's individual rights applies to families. In the past parents claimed the right of ownership over their children, arguing that family life was a private matter. But nowadays few would argue in favour of young children being sent up chimneys, or put to work in factories or the mines from five years old. No-one would question the need for laws that protect children from cruelty, even from their parents. In family life, the absolute power of parents over children has been replaced by an interweaving of law, custom, judgement and negotiation. It makes for a potentially more democratic and healthy family, and society, but at times it can be confusing and frustrating for parents. Law-makers, too, can feel frustrated at the limits of law to affect and change family life and relationships.

This booklet is for parents and carers. Its aim is to help them know when the law has something to say about their families' day-to-day lives. Equally important, it helps them know the limits of the law. It is a reminder that whilst law permeates parents' and children's lives to an unprecedented degree, it must work alongside parents to foster healthy and effective families. For it is families who raise children, helping and guiding them to adulthood.

The booklet was first published in 2000. This third edition covers the law in England and updates and expands information on a range of issues. However, it cannot provide a complete list of all the legal issues relating to parenting. It is not about when the law has to step in on major issues, for example, adoption, fostering, child protection, children in care or bereavement.

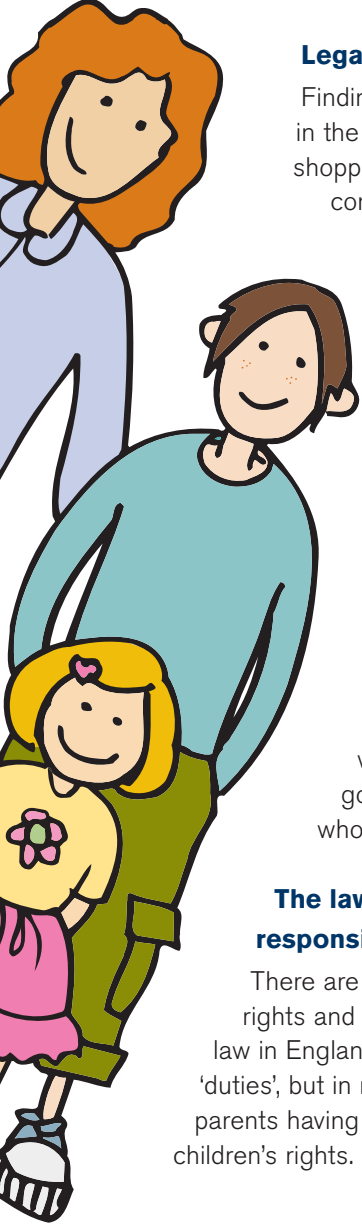
This booklet should not be used as a substitute for expert legal advice for any of these or other specific situations. Parents with a particular query should refer to the helpfile at the back of the booklet for a list of organisations to contact. There is also information on getting in touch with a solicitor.

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The law and family life



Legal advice

Finding a good solicitor is not always easy. Choose a solicitor in the same way as you would choose any other service – by shopping around. Find one who specialises in your area of concern. Many solicitors offer an initial interview free or at a cheap rate, and will advise you if you have a case.

Always ask what their fees are. Legal aid has been replaced by the Community Legal Service Fund.

For a directory of solicitors who offer this service, look at www.justask.org.uk

What is a parent?

That sounds like an easy question to answer, but it isn't necessarily. Being a parent in law is not always the same as being the biological parent, being on the birth certificate, raising or loving a child. In the majority of cases, a child's biological parents have the rights and responsibilities of parenthood as set out in many different laws in England and Wales. But sometimes the court may take over the responsibility of deciding who should look after a child, for example, children who go to live with foster parents, or in residential homes or who are adopted.

The law on parents' and children's rights and responsibilities

There are some important Acts that try to define the different rights and responsibilities of parents towards their children. The law in England and Wales used to talk of a parent having 'rights' and 'duties', but in recent times, the language has changed to one of parents having 'responsibilities' and parents' rights being balanced by children's rights.

1933 Children and Young Persons Act

This important Act imposes criminal liability for the abandonment, neglect or ill-treatment of any children under 16 years old by anyone over 16 years old. This responsibility cannot be transferred, so a parent is still liable even, for example, if a babysitter hurt or neglected the child. The adult must be shown to have wilfully assaulted or neglected the child, or acted 'in a manner likely to cause unnecessary suffering or injury to health' of the child.

A parent is guilty of neglect if they do not ensure that the child has food, clothing, health care and housing.

1989 Children Act

This Act was a landmark law, redefining the relationship between parent and child. It changed the previous emphasis from one of duty and rights of the parent to one of responsibilities. The Act uses the concept of 'parental responsibility' to describe the rights, duties, powers, responsibilities and authority parents have for their child. In this Act, a child is a person under the age of 18.

1 What the law says about parents and children

Parental responsibility

Parental responsibility means being responsible for:

- Your child's wellbeing
- Looking after your child
- Feeding and clothing your child
- Making decisions about their schooling
- Deciding whether to consent to medical treatment
- Representing them in legal proceedings
- Making decisions about where to live
- Making decisions about their religious upbringing.

The law sets out who has parental responsibility. You have it automatically if you are:

- The biological mother of the child
- The biological father of the child, and were married to the mother at the time of conception or birth, or you married the mother after the birth of the child or, for babies born since 2003, you registered the birth of the baby with the mother
- You are adoptive parents once an adoption order is made.

Even if the marriage breaks down, both father and mother will continue to have parental responsibility. Unmarried fathers did not have the same rights and responsibilities as a married father. *The Adoption and Children Act 2002* now gives an unmarried father parental responsibility where he and the mother register the birth of their child together. Even if the unmarried father's name is not on the original birth certificate, you can now re-register the birth at a later date, adding the father's details. This will give the father parental responsibility. See www.gro.gov.uk. But the Act is not retrospective, so unmarried fathers

with children born before 1 December 2003 can still only get a parental responsibility agreement, either by:

- Making an agreement with the mother
- Or by applying to the court for a parental responsibility order.

Unmarried couples wishing to obtain a parental responsibility agreement have to:

- Obtain a form from a solicitor or family court
- Go in person to the local magistrates court or County Court to get it signed
- Send it to the Principal Registry of the Family Division.

You should note also that an unmarried father who has not got parental responsibility will have to apply for a court order to obtain the right, if the mother dies.

Children Act 2004

This was a very important new Act which brought in the re-organisation of all the services in Local Authorities (LA) that provide help for children in their area, under a government programme called Every Child Matters. The aim is to improve the wellbeing of children in the LA so that every child can:

- Be healthy
- Stay safe
- Enjoy and achieve
- Make a positive contribution
- Achieve economic wellbeing

Education, health and social services for young people, and the youth justice system are no longer totally separate sectors in the LA. They now have a duty to co-operate together and to share information about children in their care with other professionals, in order to safeguard and promote the welfare of all



children. To ensure that all parts of the children's services work together to provide 'joined up' help for children, each child will have a unique file in a database so that if anything goes wrong, each professional knows what the other is doing for the child. By 2008, each LA will have appointed a Director of Children's Services to ensure that the ideas behind this programme are being fully carried out. By the summer of 2006, 80 per cent of LAs had made this re-organisation.

The Act also places a duty on LAs to promote in particular the educational achievement of looked after children. At the same time as this Act came in, the government published proposals for earlier help for families having problems caring for their children, to try and prevent children being taken into care.

The Act also established a Children's Commissioner for England (they had already been established in Scotland, Wales and Northern Ireland), to promote the interests of children up to the age of 18, and up to 20 in the case of looked after children and those with learning difficulties. The Commissioner cannot investigate individual cases, but if they think that there is a particular unfair or unjust situation, e.g. in a children's home, which raises questions that apply generally, then they can hold a full inquiry and make recommendations to the government to change their policy. It is their job to see that the aims of the Every Child Matters programme are carried out.

Childcare Act 2006

This Act is the first Act to deal solely with early years and childcare. It is expected to come into force in 2008. It gives LAs new duties, which include:

- A duty to improve pre-school development and learning from birth to five and to reduce inequalities in pre-school children. The Act sets up the Early Years Foundation Stage of learning for pre-schoolers and provides better access to childhood services by setting up children's centres, often at schools.
- A duty to provide information and advice, and sufficient childcare for all working parents in the LA, especially those with disabled children and those on lower incomes.
- Making sure that all childminders and other professionals caring for children up to the age of five, and after school (e.g. in after schools clubs) up to the age of eight are registered, and that they are inspected by Ofsted.

1998 Human Rights Act

The Act (which came into effect in 2000) puts some basic human rights into UK law, based on the European Convention on Human Rights. The Act says that people of all ages, including under 18s, have a right to be protected from inhuman and degrading treatment, and a right to respect for their private and family life. The Human Rights Act is expected to have a profound effect on many aspects of family and child law, for example, determining paternity, and some youth offending policy, such as child curfews.

United Nations Convention on the Rights of the Child

In recent years, children have come to be seen as individuals who also have human rights. The most important statement of children's individual rights was the UN Convention on the Rights of the Child (1989), ratified by the UK Government in 1991. Almost every country in the world has signed up to the Convention to date, with the notable exceptions of Somalia and the United States. The Convention contains three groups of rights:

- **Rights to provision:** children are entitled to education, to the best possible health care, to an adequate standard of living, to play, to family life and to alternative care if the family is unable to provide for them.
- **Rights to protection:** children are entitled to protection from abuse, neglect, sexual or economic exploitation, abduction or discrimination, and to have their best interests given primary consideration.
- **Rights to personal freedoms and to participate in decision-making:** children are entitled to have their views listened to and taken seriously, to respect for their opinions, beliefs and religion, to privacy and information.

Parents may worry that this interest in children's rights undermines their own responsibility and authority to bring up their children. But the UN Convention is not intended to replace the role and authority of parents; in fact some of its articles acknowledge the central and vital role parents play in raising, helping and guiding their children. Parents are the keepers of children's rights, almost entirely when they are young, and as they grow older, parents can help and support their children to think and act for themselves. Encouraging children to participate in family discussions may help prevent or reduce arguments and difficulties later.

2 Is it legal to...? Frequently asked questions

Is it legal to smack my child?

It is against the law for one person to assault another. At the moment it is not illegal for a parent to smack a child, but if the smacking goes beyond the line of 'reasonable chastisement', a parent could be charged with assault. There is no clear definition of reasonable chastisement. It is unlikely to be thought reasonable if it leaves marks on the child, such as visible bruising, minor swelling or it causes mental harm, or if the child is hit with a cane, stick, belt or other implement. The Government has now voted to limit but not completely remove the defence of reasonable chastisement – it has removed it for 'actual bodily harm' but it is still intact in relation to 'common assault'.

Is it legal for children to work?

The law about children working is complicated. The Trades Union Congress and NSPCC have estimated that there are over 200 pieces of legislation, including European and international legislation and local by-laws about children working. The Children and Young Persons Act 1933 (CYPA) sets 14 as the minimum age for a child to be employed, on a part-time basis, but there are restrictions in place over the type of work and the number of hours. No-one under 16 can work in a butcher's shop, in a fairground or amusement arcade, deliver milk or work in a commercial kitchen.

- 14 year-olds may do 'light work' only and cannot work for more than two hours on a school day; they cannot work before 7.00am or after 7.00pm on school days. On a Saturday or a day during the school holiday, they cannot work more than five hours and on Sunday no more than two hours. They cannot work more than 25 hours in one week and must have at least two consecutive weeks' holiday in a year.
- 13 year-olds are allowed to take part time employment, on a more restricted basis, if local by-laws allow it. This work would include employment by their parents in horticultural or agricultural work, or some categories of light work. Some local authorities allow 13 year-olds to work; others forbid it. Local authorities set out the number of hours allowed a day, time of day,

rest and meal breaks and other conditions. They are not allowed to set out longer hours than are allowed for 14 year-olds.

- Children under 13 are not allowed to work, with some exceptions. They can take part in performances, sports and modelling, but a licence needs to be issued.
- 15 and 16 year-olds are allowed to work, but not more than two hours on a school day, not before 7.00am or after 7.00pm. They can work for up to eight hours on a school holiday day or on a Saturday, and for up to 35 hours a week during the school holidays.

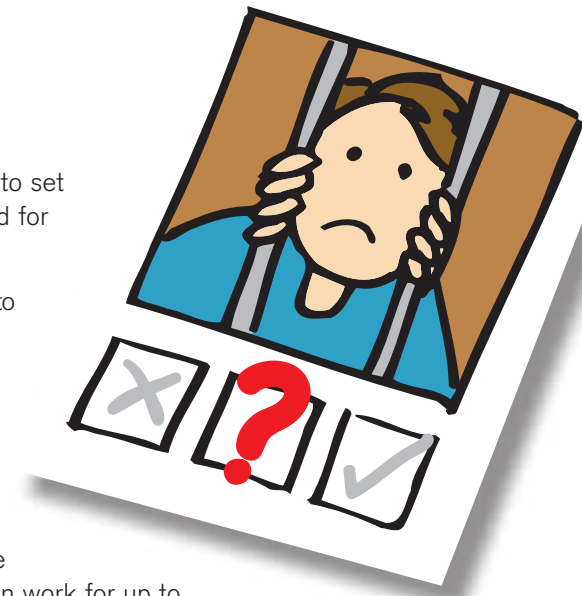
From October 2007, 16 and 17 year-olds are entitled to a minimum wage of £3.40 an hour. The rate is £4.60 for people aged 18-21, but below 16, employers are able to pay as little or as much as they wish. There are no laws about being paid more on Sundays, but some employers will do so.

Can I legally stop my child leaving home?

A parent cannot stop a child leaving home by locking them in or physically restraining them. But parents have a legal responsibility for their children until their child reaches 16, so they can take action in court to bring their child back if he or she runs away. Once the child has reached what is known as the 'age of discretion' (around 16) it is very unlikely that the court would force the child back home, unless it could be shown that the child was in danger.

Can my child go to the doctor without my knowledge?

Children and young people can visit their doctor at any time. However, children under 16 can only consent to treatment if the doctor believes that they fully understand all the issues that are involved. If someone under 16 is judged not to be mature enough to consent to the treatment, the consultation itself can still remain confidential if the child wants it to. From 16, young people can consent to treatment, although if they refuse treatment, their decision can be overridden more easily than with an adult. In some cases where decisions over



treatment are difficult, for example, treatment for anorexia, the court may be asked to make the decision.

Is it illegal to take my child on holiday during term-time?

There is no law making it illegal for parents to take their children on holiday during term time, although the Government and schools are strongly opposed to parents doing so. The law says that schools have the discretion to grant up to ten days authorised absence in a school year. Each application will be considered individually by the school head, who will take into account factors like the child's general attendance record, the child's age, and the timing and length of the holiday. If parents take their children out of school without discussing it first with the school, the leave will be considered unauthorised, and the child could lose their place.

The **DCSF** has published a leaflet, *Is your child missing out? School Attendance: Information for Parents*, available for download only from www.dcsf.gov.uk/schoolattendance/publications

Can my teenager buy fireworks?

No-one under 18 can buy fireworks. No-one under 16 can buy caps, cracker snaps, party poppers or throwdowns.

It is an offence to throw fireworks in the streets, with an £80 fine. Under the Fireworks Act 2003, it is now illegal for under 18s to possess fireworks in public places.

If my child injures someone or damages something by accident, am I liable?

There is no cut and dried answer, but legal opinion suggests that a parent would not usually be liable. The court would have to determine whether the child had caused an accident through failing to take 'reasonable care' and so had been negligent. That decision would be partly based on the age and understanding of the child, but it is extremely unlikely that anyone injured or with damaged goods as a result of the child's negligence would sue the child. The parent is not automatically liable for the child's negligence and would only be liable if it could be proved that the parent themselves was negligent.

3 Home life

The law has to tread carefully when entering the private world of the home. However, in the home, as in other areas involving children, there is a general duty to protect a child.

Leaving children alone

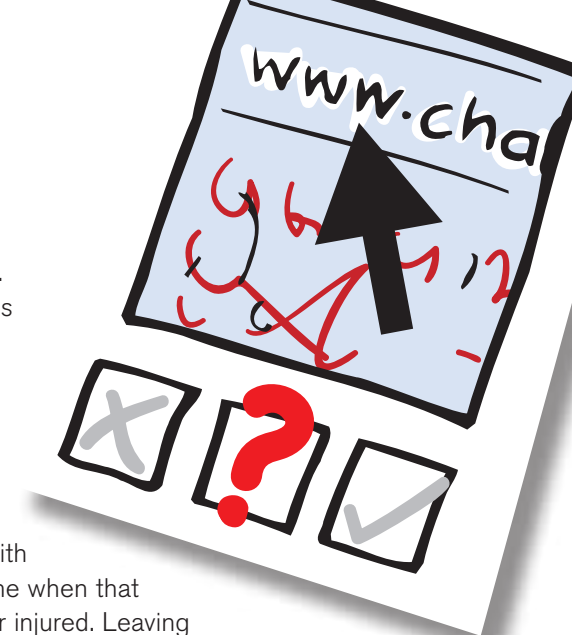
It is not against the law to leave children on their own in the home. However, a parent could be charged with 'wilful neglect' if they leave a child alone when that may result in the child being harmed or injured. Leaving your child alone will depend on whether you and he/she feel comfortable and confident about doing so. The parent remains responsible for the child until the age of 16.

Babysitters

Contrary to common belief, there is no law setting out the minimum age for babysitters. Babysitters do not need any qualifications or a certificate. It is a matter for parents' judgement. Where a parent uses a babysitter under 16, and the child is injured in the babysitter's care, it is possible that the parent could still be held responsible and be deemed negligent.

Buying a pet

Children can buy a pet themselves from the age of 16. The RSPCA website is full of useful information about choosing and looking after a pet. See www.rspca.org.uk.



The **NSPCC** has produced a leaflet, *Home Alone* for parents. It suggests that babies and young children should never be left alone and children under 13 only for short periods. See www.nspcc.org.uk or phone **020 7825 2500**.

The internet

Just under 60 per cent of households now have access to the internet at home, and children in primary and secondary schools use the internet in lessons. It is a global network, so enforcing laws about the internet is very difficult. Countries have different laws and who could police them? There are laws making the production and dissemination of obscene material and child pornography illegal, which apply to books, films and the internet. It is unlikely that a child would stumble across child pornography on the internet by accident, as it is not openly advertised. However, unsolicited 'gifts' advertised on a website can contain offensive or potentially harmful files. Children should be taught not to open them. But there are many sites which, though not illegal, parents would not wish their children to see: pornographic, violent and racist. There is no law preventing children finding these sites. It is up to parents to set some ground rules with their children. In addition, many internet service providers operate safeguards which can help block unsuitable sites.

Buying on the internet

No-one under 18 can buy goods using a credit card on the internet, just as in shops. However, several banks allow children as young as 12 to have debit cards, which can be used to purchase goods. A recent survey by the charity NCH found that very few sites use age verification software, although the Gambling Act 2005 places a duty on gambling sites to use and update this software regularly. The temptation for children and young people to buy is becoming stronger: companies use all kinds of marketing ploys like banner ads and pop-up boxes on sites visited by children and young people, and the increasing popularity of auction sites are putting a lot of pressure on children and young people to buy over the internet. Companies are beginning to develop pre-paid cards, like mobile phone cards, which young people could buy from certain shops and then use online. But it's still early days. In general, parents should make sure that their children understand the rules about online buying, and think about whether they are prepared to use their own credit cards for purchases their children might want to make.

Downloading files from the internet

There has recently been a great deal of media interest in file sharing and downloading from the internet, mostly related to music. Child Net International, a not-for-profit organisation, has produced an excellent guide for parents

which can be downloaded here – www.childnet-int.org/downloads/musicLeaflet.pdf. The guide looks at the legal issues to do with sharing copyright music and film as well as the wider issues of harmful content/contact, privacy and security, and the legal risks.

Chat rooms

Chat rooms are very popular with secondary school age children, but parents need to be aware of the risks involved. In a chat room, people may assume different names, characters, even ages. The problem of chat rooms is you or your child not knowing the stranger your child is chatting to. So, children need to be as internet-wise as they are streetwise; many of the same rules apply. Many chat rooms are monitored and any inappropriate behaviour results in the person being ejected. The general laws about harassment, stalking and intimidation also apply to the internet. Chat rooms can be great fun, but parents and children need to agree a few basic rules:

- Children should never give their name, address or phone number to someone they don't already know
- A child should never send photos to someone he or she has met in a chat room without telling their parents first
- Parents should be aware of which chat rooms their child is visiting
- Children should never arrange to meet anyone they have talked to online unless they are accompanied.

From October 2003 Microsoft closed all its online chat rooms stating that they feared they were being used by abusers to get to children and young people. No other company has yet followed suit. Many young people use Instant Messenger (IM). This is like texting a friend on a mobile phone. Instant messages can be sent to just one friend or a group of named friends. Strangers cannot enter this area without being invited, and it is usually used by a network of friends. A good website for more information is www.thinkuknow.co.uk.

Watching DVDs

DVDs are classified according to whether the content would harm a child, and whether through watching the DVD, a child may cause harm. The DVD may not receive the same classification as when it was shown in a cinema. It is against the law to supply a DVD to anyone below the age stated in the classification. See “Going to the cinema” for more details on film and DVD classifications.

Computer and console games

All computer and console games must by law have age ratings marked on the front and back of the box. Detailed information on the meaning of these ratings can be found at www.askaboutgames.com.

4 At school

The 1944 Education Act created the post-war British education system. The school leaving age became 15 (now 16). The Act brought in free schooling for all. Since the 1944 Act, there have been many more laws passed about education. The Education Reform Act 1988 established the National Curriculum, and the School Standards and Framework Act 1998 introduced a legal power to limit class sizes. The Human Rights Act 1998 states that no child shall be denied a right to education. The Education Act 2002 improves schools' child protection procedures. The Children's Act 2004 transferred the duty to care for children's education to the children's services department.

Early education and childcare

Every three and four year-old child in England is now entitled to a free early education place, for at least two and a half hours a day, five days a week, during term time. This may be at a nursery school or playgroup, or in nursery classes at schools, or with childminders who belong to an approved network. Your child is still entitled to this free education even if the place normally charges fees. To find out more information, visit www.childcarelink.gov.uk.

From 2008, when the Childcare Act 2006 becomes law, all local authorities will have to ensure that there is sufficient childcare available for all working parents who need it, especially those in lower income groups and those with disabled children.

Starting education at five

Once a child reaches the age of five, you have a duty as a parent to make sure that your child receives a full-time education. This usually means attending school, but parents do have a right to educate their child 'otherwise than in



school' under the 1996 Education Act. Children educated at home do not have to follow the National Curriculum or take SATs tests, but you must make sure that your child receives an appropriate education. You do not need any special permission to educate your child at home. You do not need to be qualified as a teacher either. Children starting school must attend on the first school day of the term following their fifth birthday. Some children's services admit these children twice a year, in the autumn and spring terms; others also admit children at the beginning of the summer term. Legally parents are entitled to wait until their child is five but in practice, schools often want to admit children before they are five, even if the child has just turned four in August, for example. Schools do not have to hold a place if the parent wants to wait, so parents may fear they will lose their child's place. Although some schools may allow for deferred entry, the place must be taken in that academic year. If parents worry that their child is too young to start school, it is a good idea to discuss it with the head teacher.

Is it my legal right to choose a school for my child?

It is your responsibility to apply to primary and secondary schools on behalf of your child. The School Standards and Framework Act states that you have the right to state which primary and secondary school you want your child to attend

and the reasons for your preference. But the children's services (CS) – or in some cases the school – makes the decision about which children to admit. The CS must meet parents' wishes unless:

- This would prevent the best use of resources at the school. This argument is used when the school is already full or when a child with challenging behaviour applies outside the normal start of term
- This would exceed the limit on class size set by the Secretary of State (in infant classes up to 30 pupils to each qualified teacher)
- The school has a special identity, for example, a Catholic or Hindu school and your child does not have a link with that special identity

The **Advisory Centre for Education (ACE)** has published two helpful booklets on choosing a school and making an appeal. They can be downloaded for a charge at www.ace-ed.org.uk or bought – call **020 7825 2500**. ACE also gives free telephone advice, Monday to Friday.

- A child has been excluded from two or more schools in the last two years (this does not apply to exclusions that have been overturned or that took place before the child reached the age of five).

A parent has the right to appeal to an independent panel if their child is not offered a place in the chosen school. This does not apply to nursery schools. Information about choosing a school and about appeals should be available from Children's Services at your local authority, from schools and the local library. Since April 2007, the Education and Inspections Act 2006 requires local education authorities to provide advice and assistance to parents of children living in the area of the authority to help them choose a school for their child.

Is my child entitled to free school lunch?

Families who receive any of the support below are entitled to free school lunches:

- Income support
- Income-based Jobseekers Allowance
- Support under part VI of the Immigration and Asylum Act 1999
- Child Tax Credit (providing they do not also receive a Working Tax Credit and have an annual income that does not exceed £14,495).

Check with your child's school to find out how to claim.

Can schools charge for trips and activities?

Schools cannot make a compulsory charge for events and activities, including transport or admission costs to museums, swimming pools etc. However they are allowed to ask for a voluntary contribution towards the costs. No child whose parents are unable to pay should be prevented from joining in the activity. But if there are not enough voluntary contributions and the school can't make up the shortfall, they are allowed to cancel the activity.

Schools are allowed to charge parents compulsorily for residential trips or music lessons. However the governors must determine a charging policy, saying when any charges will be made and when the costs may be remitted.

What if my child has to miss school?

The law puts the responsibility for children attending school squarely on the shoulders of parents. If your child has to miss school for legitimate reasons, for example, a dentist's or doctor's appointment, you should inform the school. The DCSF does not accept that shopping or birthdays are good reasons for missing school.

Can I be prosecuted if my child truant?

By law, the parent is responsible for making sure their children (up to 16) get a full-time education. If your child does not attend school regularly, the local Children's Services (the CS) could take legal action against you. The CS is responsible for making sure that parents fulfil their responsibilities. Even if your child is missing school without your knowledge, you are still responsible, and could be committing an offence. Head teachers are now able to issue penalty notices of up to £100 to parents who fail to take responsibility for their child's regular school attendance.

The CS would usually offer support and help, perhaps from an Educational Social Worker to stop the child truanting. The parent of a truanting child may also be asked to enter into a Parenting Contract, which is a contract between the parent and the school (or Children's Services). The parent agrees to make sure the child arrives at school on time and goes to bed at a set time. However, the CS could prosecute a parent if all else fails. Parents could be fined up to £2,500 or imprisoned for up to three months for failing to ensure that their child attends school regularly. Magistrates can impose a Parenting Order, which means that a parent has to go to a parenting class.

What is the law on children being excluded from school?

There are two kinds of exclusions – fixed period and permanent. It is not lawful to exclude a child indefinitely. It must be for a specified time, or permanent. From September 2007 measures ensuring that parents take responsibility for their child whilst they are excluded or suspended will come into force. These measures will

The **Advisory Centre for Education (ACE)** has published two very detailed booklets for parents on what to do if your child is excluded. They can be downloaded for free from www.ace-ed.org.uk. Or call **020 7354 8318** to buy the booklets.

require parents to ensure that their child is not in a public place in the first 5 days of exclusion – the Local Authority will have to make arrangements for the child to receive suitable education from the sixth day of exclusion.

Fixed period

A child cannot be excluded for more than a total of 45 days in one school year. Government advice suggests one to three days. Only the Head can exclude a child, and it must not be for minor offences such as not wearing uniform correctly, wearing jewellery, not doing homework or truancy.

Permanent exclusion

This is a very serious issue and should be done only as a last resort if all other strategies have failed. Only the Head can exclude a child. First time or one-off offences can lead to permanent exclusion if they are serious enough, for example, supplying illegal drugs or carrying a weapon.

Does my child have to sit the SATs tests in school?

At present, all state schools in England have to set SATs tests at ages seven, 11 and 14, and publish the results. However, there has been strong criticism of the stress young children face taking SATs, and the Government has now made the tests for seven year-olds less formal and less stressful. From spring 2005, SATs were made less formal for seven year olds and now include an assessment of the child's progress over the year from their teacher. Tests for this age do not have to be taken in May. The Welsh Government has completely abolished SATs tests for all children. Strictly speaking, there is no law compelling children to take the tests, but schools and LAs will expect children to do so. Head teachers have limited powers to exempt children from SATs for exceptional reasons. If a child misses the tests on a particular day, they can be taken on another day. Every school year, schools must send



parents at least one written report about their child's progress. Parents also have a right to see and have a copy of their child's school record.

Bullying at school

Every child has a right to learn in a secure and safe environment. All schools must have a bullying policy to deal with all types of bullying. This should include details of what the school will do if bullying occurs and a clear statement of sanctions, as well as measures to prevent bullying.

5 Out and about

Playing out

There is no law prohibiting children from being out on their own at any age. It is a matter of judgement for parents to decide when children can play out on their own, walk to the shops or school. Many parents worry about letting their children out; the most common concerns are traffic, and the fear of their child being bullied or abducted. Many organisations give advice, for example, taking it in stages, giving children a feeling of independence bit by bit. A survey of parents by Kidscape found that most parents allowed children:

- From age 9 to cross local roads
- From age 11 to use local transport during the day
- From age 12 to go with a friend to the cinema
- From age 15 to be out with a friend in the evening.

It is helpful for parents to agree rules with children, for example, to stay with friends and not wander off alone, and what to do if they are approached. Some parents ask children to ring them when they arrive at their friend's house or when they are about to come home.

New laws could now make it difficult for young people to hang out in the neighbourhood. The Anti-Social Behaviour Act 2003:

- Gives the police powers to disperse groups of two or more people, even if no offence has been committed
- Gives the police powers to return to their homes young people under 16 who are out unsupervised in public places after 9.00pm, again even if no crime has been committed.

These powers apply only in specified areas, which must be notified in the local press. They are supposed to apply only to serious and persistent anti-social behaviour.



Swimming

There is no law on the age limit when a parent can take a child of the opposite sex into the changing rooms, although some pools set their limit at 8 years old to coincide with the age they let children swim unaccompanied. Parents should use their common sense and be aware of the wishes and feelings of their children; once they are over 10 or so, it makes more sense for them to use same-sex changing rooms.

Mobile phones

A child or young person under 18 can legally own a mobile phone, but cannot open a normal phone account, where a monthly charge and the cost of the phone calls are paid. This is because generally young people cannot enter into contracts on their own. A parent would have to either act as guarantor or put their name to the contract, which would mean that they are responsible for paying the phone bills.

A young person can legally buy a “pay as you go” scheme on a mobile phone, which does not involve making a contract.

Marketing and advertising through mobile phones will increase hugely over the next year or so. The Mobile Marketing Association has drawn up a code of conduct, based on legislation and regulation about advertising to children via mobile phones. Among other things it states:

- Advertisers cannot ask for personal details from children under 12 or send them any marketing or adverts unless the parent agrees
- Children's details cannot be passed on to other companies unless the parents have given specific consent
- Adverts involving pornography, gambling, or alcohol must not be directed at children and young people under 18.

For more information about the Code of Conduct, go to www.mmaglobal.co.uk.

Going to the cinema

Films shown in the cinema or available on DVD are all classified by the British Board of Film Classification. The BBFC's duties fall under various laws, including the Cinemas Act 1985 and the Video Recordings Act 1984. From August 2002, the classifications were amended, and they are set out below:

- U** This is an advisory classification. 'U' films should be suitable for audiences aged four years up. The BBFC states “works aimed at children should be set within a positive moral framework.”
- Uc** These films are particularly suitable for pre-school children.
- PG** Parental Guidance. Unaccompanied children of any age may watch. A 'PG' film should not disturb a child aged around eight or older. But parents need to think whether a younger child may find it too upsetting.
- 12A** The classification is 12A in the cinema, and '12' for DVD. No-one younger than 12 is allowed to see a '12A' film in a cinema unless accompanied by an adult. No-one younger than 12 is allowed to rent or buy a '12' DVD.
- 15** No-one younger than 15 can see a '15' rated film or rent/buy a DVD.
- 18** No-one younger than 18 can see an '18' film or rent/buy a DVD.
- R18** These films can be shown only in specially licensed cinemas to adults of 18 years upwards. They can be bought or rented only from licensed sex shops.

For a more detailed description of what levels of language, violence, sexual activity etc is allowed in each category – look on the BBFC's website, www.bbfc.co.uk to get their classification guidelines.

Hate crimes and racial harassment

Police forces are taking what are called 'hate crimes' increasingly seriously. This means a crime where the person committing the crime is doing so because of a hate or prejudice about the person or group being attacked. The victim might be attacked because of their race, their religion or because of homophobia; and the crime might range from harassment, stalking, and verbal abuse through to physical assault. There are specific laws against racial harassment, most recently in the Racial and Religious Hatred Act 2006 which comes into effect in autumn 2007. It will make it a criminal offence to use threatening words or behaviour with the intention of stirring up hatred against any group of people defined by religious beliefs or lack of religious beliefs.

Travelling

When should my child get their own passport?

All children, from new-born babies up, must now have their own individual passport. Once they become 16, they can have a standard ten year passport. Before then, children have a five year passport. Children who were already on their parents' passports before October 5 1998 can still travel abroad with that passport until either they reach 16, or the passport expires. All applications for passports, including those for babies and children, must be made with two photographs of the applicant taken against a white background.

For more information and online application forms, go to the UK Passport Office, www.passport.gov.uk. Forms can also be obtained from Post Offices. The waiting time is longer during busy holiday periods.

Seat belts

The law is very clear and specific about wearing seat belts. Everyone (with few exceptions) must wear a seat belt if there is one fitted. A driver can be prosecuted if a child under 14 is not wearing a seat belt. New laws controlling the use of seat belts and other child restraints came in in September 2006.

Under 3 years:

- You must use a child restraint appropriate for the child's age in all vehicles
- Rear facing baby seats must not be used where there are air bags
- The only exception is travel in taxis without a child restraint.

3 years to 135cms or to 12 years (whichever comes first):

- You must use (in front and back seats) the appropriate child seat or booster seat/cushion, where seat belts are fitted
- Three exceptions are for the rear seat of taxis without a child restraint; short distance trips of unexpected necessity (where a restraint is not available); and where there is no room in the back because two child seats are already there.

12/13 years and over:

- Must use an adult seat belt if there is no child restraint.

Fines range from £30 to £500, if the rules are not complied with.

Cycling

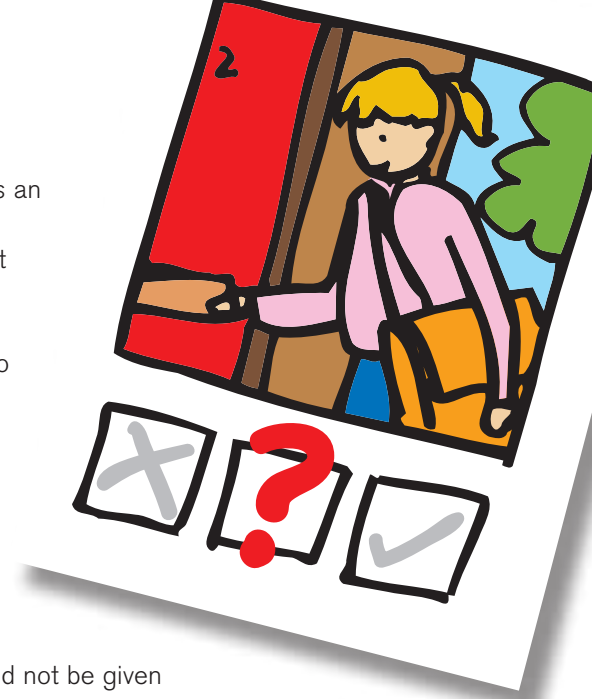
Under the Road Traffic Act 1988 it is an offence for anyone to cycle on the pavement, and the Police Reform Act 2002 has introduced fixed penalty notices to people caught cycling on the pavement. This offence applies to children and young people as long as they are judged to understand, which courts usually interpret as from age 10. If a young person is caught, they could be issued with a fixed penalty notice and their bike seized, and auctioned off by the police although policy guidelines state that fixed penalty notices should not be given to anyone under 16. It is already a crime to cycle in shopping centres and on paths in parks. Fines of £20 can be issued, and those who do not pay will be taken to court. Given that in some parts of the country, particularly traffic-heavy urban areas, it could be very dangerous for children to cycle on busy roads, it may be a good idea to ensure that at least, children go to a cycling proficiency course. In addition, it is worth finding out what cycle lanes your local authority provides. By law, they are responsible for creating cycle lanes, and the Government has promised to quadruple the number of cycle lanes by 2012.

Are children required by law to wear cycle helmets?

It is not compulsory to wear a cycle helmet. But cycling and road safety organisations strongly recommend that they should be worn, as they offer protection from falls.

Other laws about cycling

- You must ensure that your brakes are efficient
- You must always stop when required to do so by a traffic warden or police officer
- You must not ride dangerously



- You must not leave your cycle on the road so that it might be a danger to others
- You must not carry a passenger on a bike which is not built to carry more than one person
- You must make sure that your front and rear lights are lit at night and that your cycle has an effective red reflector.

Useful information can be found at www.bikeforall.net.

Using motorised scooters

It is illegal to drive motorised scooters on roads and pavements unless they are insured and taxed and registered with the DVLA. No-one under 16 can ride them, even though they are less than 50cc.

Driving motorbikes

A young person can obtain a licence for a moped from the age of 16, and for a motorbike from 17.

Driving cars

A young person can get a provisional driving licence for a car from the age of 17.

6 Growing up

Under the law, a child is a person under the age of 18. Once they reach 18, the law treats them as adults. The law offers special protection and provision to children under 18. But the law is inconsistent. Young people cannot vote until they are 18 but can fight in the army from 16. They must go to school until they are 16, and can be taken into care until 17, but are deemed criminally responsible at the age of 10. So, on the one hand the law considers them children in need of protection, and dependent on their parents, and on the other, as adults able to make, and be responsible for, their own decisions. The law offers confusing messages to both parents and children. The list below should help parents and children to know what they can do and when.



Voting

Young people can vote at 18. After a recent review on the issue of allowing young people to vote at 16, the Electoral Commission decided in 2004 that the law should not be changed. For more information, go to www.electoralcommission.gov.uk.

Bank accounts

A child can have a bank account (and own property) from birth, with the parents able to operate it. Banks normally allow children from 8-12 to make their own deposits and debit withdrawals. From 13, most banks offer cashpoint cards, and over 16s can get a chequebook. No-one under 18 can have an overdraft, or a credit card. The advice website of the National Association of Citizens Advice Bureaux (www.adviceguide.org.uk) has a useful section on young people, money and consumer rights.

Age of consent for sexual relationships

The age of consent for heterosexual and homosexual relationships is 16.

Contraception

Young people over 16 can obtain contraceptive advice and treatment without parental consent. Doctors can also provide advice and treatment to under 16s, if they believe that the young person is mature enough to understand. Other health professionals such as school nurses can also give contraceptive advice. Doctors usually encourage under 16s to tell their parents that they are seeking contraception. However, young people often want the service to stay confidential. Doctors owe a duty of confidentiality to their patients and may not tell a parent without the child's consent.

Marriage

A child can get married at 16 with the consent of the parents, and from 18 without parental consent. A marriage without the full and free consent of both people is a forced marriage and can be annulled as invalid. Force includes emotional pressure. If a young person under 18 is forced into a marriage and forced to consummate the marriage, then that is rape. For more information and advice, contact the Foreign and Commonwealth Office, Community Liaison Unit (email clu@fco.gov.uk or phone **020 7008 0230** 9.00am-5.00pm, and 020 7008 0135 out of office hours.) The website www.forcedmarriage.nhs.uk is also helpful.

Armed forces

A young person can join the Armed Forces from 16 with parental consent, and from 18 without parental consent.

Tattooing and body piercing

It is illegal to tattoo anyone under 18. It is legal for children to have their ears and other parts of their body pierced from birth, with parental consent. There is no minimum age at which children can have body piercings without parental consent; the law is not clear, and, like other decisions to do with health, young people are able to give consent if they are considered mature enough to understand the issues and consequences of their decision. However, female circumcision is illegal, even if the circumcision takes place outside the UK.

Airguns

Young people must be 17 before they can own or buy an airgun and ammunition for themselves. It is an offence to fire an airgun in any public place, defined as anywhere the general public has access.

Smoking

It is not against the law for a child to smoke (although the smokefree law applies to all), but it is illegal to buy cigarettes before the age of 16. It is also illegal for shops to sell cigarettes to children under 16. From October 2007, the legal minimum age to purchase tobacco will rise to 18 years.

Drugs

If a child of 10 or older buys or is given an illegal drug, he or she can be arrested and charged with possession of drugs, or with supplying drugs. If there is an illegal drug in your house, it is an offence and you could be charged with possession. The Misuse of Drugs Act 1971 classifies drugs according to their level of seriousness, with more severe penalties for the use of Class A drugs (ecstasy, LSD, heroin and cocaine) and less severe penalties for Class B (speed) and Class C drugs (some tranquillisers). Cannabis has until recently been a Class B drug, but from January 2004 has been reclassified as Class C. This means that although cannabis use and dealing is still illegal, it attracts reduced penalties. The Government has launched a drugs helpline and website for young people, parents and carers, called www.talktofrank.com. The national Frank helpline is **0800 77 66 00**.

Gases, Glues and Aerosols

It is not illegal for children and young people to use solvents, but a shopkeeper can be prosecuted for selling solvents to anyone under 18, if they know the solvents will be used for sniffing. No-one under 18 can buy a butane gas lighter. The Government has recently banned the sale of aerosols to all under 16 year-olds, with a maximum fine of £2,500 if they break the law. Police have powers to stop and search young people they believe are carrying spray paint. The reason for the Government's action is to try to reduce graffiti.

Alcohol

There is no law prohibiting children and young people from the age of five drinking alcohol at home. The Licensing Act 2003 has kept the legal age of drinking in pubs and licensed premises at 18. Children and young people under 16 cannot go into a pub on their own – they must be accompanied by an adult. 16 and 17 year-olds can drink beer, wine or cider with their meal if accompanied by an adult. The police have legal powers to confiscate alcohol from under 18s found drinking in public. Under the 2003 Act it is now illegal to sell liqueur chocolates to a child under 16. It is an offence for anyone to sell alcohol to a person under 18 on licensed premises or knowingly to allow another person to do so. The Licensing (Young Persons) Act 2000 also made it an offence to buy alcohol on behalf of a person under 18.

Gambling

The Gambling Act 2005 brought in new controls on children and young people playing fruit machines, effective from September 2007. By September 2009 all fruit machines will be phased out from take-away food shops and other non-arcade sites. Children under 18 can go into arcades but cannot play on machines giving more than £5 payout or a stake of more than 10p. From 16, young people can buy Premium Bonds or a National Lottery ticket and scratch card. Children must be 18 to go into a betting shop or to participate in a bingo game at a club, although they can go to the club as long as they do not play.

The **Children's Legal Centre** has produced a useful fact card *You and the Police, The Basic Facts*, available from their website www.childrenslegalcentre.com (50p each, free to children and young people).

Knives

Carrying a knife or similar object in a public place (including schools) is an offence. Shops must not sell knives or similar items to children under 16 (with the exception of small pocket knives). The Violent Crime Reduction Act 2006, expected to come into force in 2008, will restrict sale of such knives to over 18 year-olds only. It will also give new powers for a head teacher (or other authorised person e.g. another teacher) to search pupils and their possessions for knives, if they have reasonable grounds to believe the pupil has a knife at school.

Stop and search

It is unlikely that your child will be stopped and searched by police, but it is useful to know about it. Stop and search is the term used to describe the right of police officers to stop and search people to detect certain types of crime. They can stop and speak to anyone at any time. But they should only stop people to search them if they have good reason to suspect a person is carrying:

- Drugs
- Weapons
- Stolen property
- Tools to be used to commit a crime
- Or if the person matches a description.

No-one should be stopped and searched simply on the basis of their age, race, colour or looks. The police can only usually stop and search people in a public place, and can only ask people to take off their coat and jacket and gloves. They cannot ask people to take off any more clothing in public. Juveniles (children 10-17 years old) can be stopped and searched in the streets without an adult being present.



7 Children in trouble

The age of criminal responsibility in England and Wales is 10 years. This is the age at which children can be held responsible if they commit a crime, and it is one of the lowest in Europe. There is no common age in Europe – it ranges from 7 in Ireland to 18 in Spain. In Scotland it is 8; in France, it is 13, in Germany and Italy 14 and in Scandinavian countries, 15. The Crime and Disorder Act 1998 abolished the assumption in law that a child under 14 did not know the difference between right and wrong. The assumption now is that a child of 10 and over has sufficient understanding and maturity to realise they have done wrong.

Crimes committed by children under 10

If a child under ten commits an act which if he or she had been ten and over would have been an offence, the court can make a child safety order. The orders can also be made to prevent such behaviour, or if the child has behaved 'anti-socially' or is likely to cause alarm to others. The order means that a child can be placed under the supervision of a social worker or a Youth Offending Team worker to ensure that the child receives protection and support and is prevented from repeating the offence. Children under ten cannot be put in custody (that is, in prison or a secure training centre). They can be taken into local authority care.

A parenting order can be made at the same time as a child safety order. The aim of this is to provide support for the parents.

Crimes committed by children over 10

Government legislation has introduced a raft of measures aimed at cutting youth offending. However, that is only half the story. Young people are more at risk of crimes committed against them than any other part of the population. Whilst on the one hand, the Government are investing in a range of measures such as holiday playschemes, support for mentors and personal advisers for young people and funding education schemes to try to divert young people away from crime, they are, at the same time, bringing in more laws governing the behaviour of young people, which result in more young people getting caught up in the legal system.

Some of the measures which the Government has brought in are:

Antisocial Behaviour Orders

The Crime and Disorder Act 1998 introduced these Orders and they were expanded by the Anti-Social Behaviour Act 2003. They can be imposed by either the police or a local council against anyone from age ten upwards whose behaviour is considered antisocial.

This is defined as causing damage to property, doing graffiti or behaving in a way likely to cause harassment, alarm or distress to people. The Order restricts where a young person can go, and what they can do, and it is a criminal offence to break the order. Breach of an ASBO will often lead to a custodial sentence.

Child curfews

First introduced by the Government in the 1998 Crime and Disorder Act and expanded by the Anti-Social Behaviour Act 2003, these now give local councils the authority to impose a curfew in a particular area, banning unsupervised children under sixteen between 9.00pm and 6.00am, or at some other specified time. If a child of 10 is found outside at this time, a child safety order may be made. However it is not a crime to break the curfew – it is intended as a deterrent, and is not supposed to prevent young people going to youth clubs and other social activities.

Final warning system

The final warning system has replaced cautioning. A first offence will bring a reprimand or a final warning, depending on how serious it is. After one reprimand, the next offence will bring a warning or a charge. If a young person receives a final warning, they will be referred to the local Youth Offending Team.



Intensive supervision, surveillance and tracking

This programme, launched in 2001, targets persistent young offenders, aged 10 to 17, and is promoted as an alternative to prison. It combines intensive supervision by Youth Offending Teams, alongside surveillance such as electronic tagging to try to prevent re-offending. The maximum period it can last is six months.

Restorative justice

Under this scheme, the offender and the victim meet and the offender makes reparation, either to the victim or to the wider community, depending on the crime and what they agree at the meeting. The idea behind it is to give young offenders an understanding of the effects of their crime.

The Government has set up a new website for young offenders www.rizer.co.uk with information on the criminal justice system as it relates to young people.

Children and young people in custody

The Home Secretary now has the power to order children as young as 10 to be locked up. Children aged 12-14 can be sent to a secure training centre if they are persistent offenders. Children 14 and over can be sent to prison. The number of young people being locked up continues to increase, despite the Government introducing alternatives to custody. In October 2006, there were over 3,300 children held in custody in England and Wales, some of them a long way from home.

Are parents held responsible if their child commits a crime?

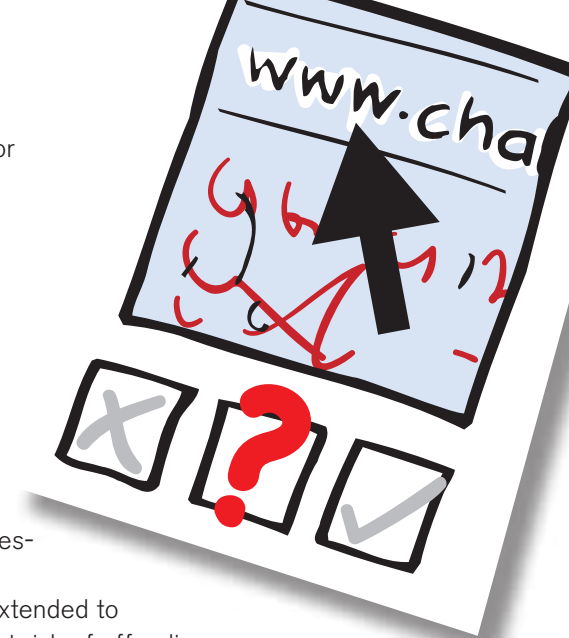
Parents are not held directly responsible for the criminal acts of their children. However, there is a belief that youth crime is partly caused by poor parenting, and so the Government and the Youth Justice Board are looking at ways to support parents and getting them to come on parenting courses. Parenting courses are offered by many organisations, for example, Parentline Plus, and many parents attend voluntarily. However, the Government has brought in Parenting Orders. These can be imposed where:

- A child safety or an anti-social behaviour order has been made
- A final warning has been issued
- A child has already committed an offence

- A parent has been taken to court for failing to make sure their child attends school
- A child has been excluded from school for serious misbehaviour
- A parent has refused to enter into a parenting contract or breached their parenting contract.

A Parenting Order means that a parent must attend a maximum of 12 parenting guidance or counselling sessions. If they do not, they can be fined. Parenting Orders have recently been extended to parents whose children are viewed as at risk of offending, even if they have not yet committed an offence. A Parenting Order could involve a residential weekend course for the parent. It can last for up to 12 months. Breach of a Parenting Order is a criminal offence and can result in a fine of up to £1000 and/or community service.

From September 2007, under the Education and Inspections Act 2006, schools will be able to apply for Parenting Orders.



8 Balancing parenting and employment

Right to ante-natal time off

All pregnant employees have the right to take reasonable amounts of paid time off work for ante-natal appointments, including the travelling and waiting time. The Government is thinking about whether to give fathers the right to take time off for ante-natal care.

Maternity leave

All women must take a period of compulsory maternity leave following childbirth. It is unlawful for an employer to allow a woman to work during her compulsory maternity leave, which is two weeks from the date of birth, or four weeks from the date of birth if the woman works in a factory. New rules have come in for all babies born on or after 1 April 2007. All women are entitled to 52 weeks maternity leave from April 2007, regardless of how long they have worked for their current employer. It is the mother's responsibility to notify her employers of her intention to take maternity leave by the 15th week before the week the baby is due. She will need to tell them that she is pregnant, the week the baby is expected to be born, and when she wants her maternity leave to start.

When she wants to return to work the mother must give her employer eight weeks notice. She is entitled to return to the same job.

Maternity pay

Women are either entitled to Statutory Maternity Pay (SMP) from their employer or Maternity Allowance from social security. SMP can be paid for 39 weeks. The first six weeks are paid at 90 per cent of her average weekly earnings. The remaining 33 weeks are paid at a flat rate, currently £112.75 a week (April 2007). To qualify for SMP, a woman must have been employed for 26 weeks up to her qualifying week and on average earn more than the lower earnings limit for social security (£87 as at April 2007). Maternity Allowance for women who are self-employed or otherwise not entitled to SMP through their employer is paid weekly by social security. The amount a woman receives depends on how much she earns, but to qualify, she has to have worked for

26 weeks during the 66 weeks before her baby is due. She must also have earned at least £30 a week in 13 of those weeks. It is paid for up to 39 weeks. The current rate is £112.75 a week or 90 per cent of normal wages if lower than £112.75 a week.

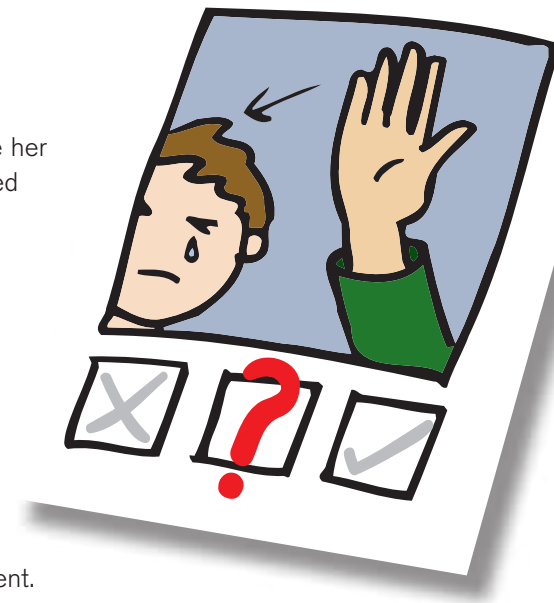
Adoptive parents now, from April 2007, have the same rights to maternity leave and pay as natural parents. The leave period is calculated from the date the adopted child is matched with the parent.

Paternity leave and pay

A right to two weeks paid paternity leave is now available for married, unmarried and all same sex partners who have been employed for at least 26 weeks at the 15th week before the baby is due. The leave has to be taken in a one or two week block and must be completed within 56 days of the birth, or an adopted child's placement. If the baby is born early, paternity leave must be completed within the period from the actual date of birth up to 56 days from the due date. The payment is the same as SMP (£112.75 as at April 2007). Following paternity leave, employees have the right to return to the same job. Notice has to be given to the employer at least 15 weeks before the baby is due. The Government intends to increase paternity leave some time in 2008.

Rights during birth

Everyone wants a baby to be born safely and the health services are committed to discussing birth options with prospective parents. All parents have a right to a birth at home, but circumstances may change and a hospital birth may be advised. Although most doctors and hospitals welcome birth plans, they do not have a legal obligation to follow them. There has been a huge growth in Caesarean births in recent years. In the past they have been performed if there was thought to be some danger to either child or mother. If parents are interested in choosing a Caesarean section, they should discuss it with the doctor. However, there is no legal right to a Caesarean. Equally it is against the law to force a sane woman to have a Caesarean against her will. For



more information on rights during childbirth, try www.aims.org.uk or www.nct.org.uk.

Registering your child

Parents must register their child's birth within 42 days of the birth. People usually go to the Register Office, which will have already been notified by the hospital. Parents receive, free of charge, a short birth certificate and a form to register the baby with the doctor. A longer birth certificate is available for a charge.

Vaccination

A parent is not compelled by law to vaccinate their baby; it is a matter of parental choice and judgement. Mass vaccinations have protected most children from childhood diseases which could be fatal. Parents are strongly advised to discuss vaccinations with their health visitor and doctor, and to ask for information on which to make a decision about vaccinations. In 2003, the courts ruled that two girls should be given the MMR vaccination against their mothers' wishes, after the separated fathers, who wanted the children vaccinated, had taken them to court. It is thought to be the first time the courts have ruled on MMR vaccinations.

Returning to work

All women have the right to return to the same job if they return at 52 weeks or earlier or in very exceptional circumstances, an equivalent job on the same or better terms and conditions.

Flexible working

Returning mothers have no legal right to work reduced or flexible hours on their return to work. But since April 2003, all parents of children under six (under 18 if the child receives disability living allowance) have had a right to request flexible working, and the right to have that request taken seriously. From April 2007, this right was extended to all carers. You must have already worked for 26 weeks for your employer and comply with other conditions before you can exercise the right. A particular procedure is laid out for employers to follow in considering these requests and they can only turn the request down on one of a list of set grounds. For more information, go to www.workingfamilies.org.uk.

The Department for Business, Enterprise and Regulatory Reform website gives details on how to apply for flexible working at www.berr.gov.uk/employment.

Parental leave

Both parents can take parental leave. The right exists if parents have been employed at least one year. Parents can take up to 13 weeks unpaid leave for each child (18 weeks if the child is disabled), to be taken in blocks of 1-4 weeks, up to the age of five (up to 18 if the child is disabled). Adoptive parents can take the leave up to five years from the date of placement of the child. Employers are not obliged to allow parents to take more than four weeks a year for one child. Parents can take parental leave for each child. There is flexibility between employer and employee to arrange parental leave to suit them, for example, a few days at a time, or even the whole 13 weeks at once.

Emergency Family Leave (time off for dependants)

This leave was introduced in December 1999 to help parents deal with domestic emergencies. Parents can take time off:

- when a dependant is ill or injured
- when childcare breaks down
- to deal with matters arising from the death of a dependant
- when a parent has to deal with an unexpected incident at school.

Employers are not legally obliged to pay for the leave. The amount of leave should be reasonable and not usually more than two days. This kind of leave is not meant to be used to cover a long illness. You cannot apply for this leave if you know about the event in advance, e.g. if you have to take your child to a hospital appointment in a week's time.

Working Families publish a range of free fact sheets on all of these topics, available from: Working Families, 1-3 Berry Street, London EC1V 0AA. Their website, www.workingfamilies.org.uk is full of information and advice. Their free legal helpline is **0800 013 0313**.

Taking children to work in an emergency

Occasionally parents may need to take their children to work, perhaps because the school is closed for the day. There is no law which prevents

parents taking their children into a workplace, but whether it is acceptable or not depends on the company or organisation. The Health and Safety at Work Act 1974 requires all employers to make sure that a workplace is safe for employees and anyone who visits the premises. If a child had an accident at the workplace, the liability would depend on the individual circumstances. Parents would need to talk to a solicitor.

Childcare

The law and pre-school education

Pre-school education is extremely varied. It includes childminders, school nurseries, private, local authority or voluntary day nurseries and playgroups. No matter who owns and runs them, they must all be registered and inspected by the Office for Standards in Education (Ofsted). All three and four year-olds are entitled to free part-time early education. From the start of the first term after they reach three, all children are entitled to three terms of free education. The minimum is five two and a half hour sessions a week for 33 weeks of the year. It can be in nursery schools, playgroups, day nurseries, accredited childminding networks. Parents can choose which is best for their child, although, on a note of caution, it may also depend on local availability.

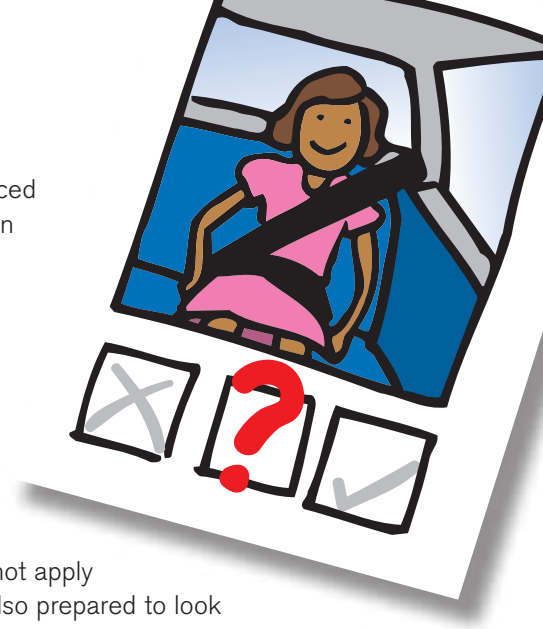
Although the Government is keen that all three and four year olds should have the benefit of early years play and education, there is no legal obligation on parents to send their child to early education. To find out how to claim your place, visit www.childcarelink.gov.uk. It is against the law for teachers, nursery workers and childcare workers to smack children.

The law and childminders

In law, anyone who looks after one child or more under eight, on domestic premises, for reward, for more than two hours a day must be registered as a childminder (unless they are related to the children). Childminders are registered with, and checked by, Ofsted. Childminders in England are not allowed to look after more than three children under five (including their own) and three children under eight and are checked by the Criminal Records Bureau. From September 2003 it became illegal for childminders to smack the children in their care.

Home childcarers

Home childcarers are a new idea introduced by Government. They look after children in the child's home, rather than their own home. This allows greater flexibility for parents, and also allows them to claim childcare allowance under the Working Tax Credit scheme. Currently, before a home childcarer can be approved they must already be a registered childminder. This means they will have already had training and safety checks as a childminder. Children's relatives cannot apply to be home childcarers unless they are also prepared to look after other children as childminders.



The law and nannies

Nannies are not covered by the same laws and regulations as childminders. There are no specific laws requiring them to be checked by the Criminal Records Bureau or to register with the local authority. Parents must make their own arrangements with nannies, but it is important to follow up all references. Nannies are bound by the general duty to ensure children are kept safe from harm. Many people are calling for nannies to be registered and checked like childminders. At present it is not against the law for nannies to smack the children in their care, as long as the parent agrees. See www.workingfamilies.org.uk for useful information about nannies, and other childcare options.

After school clubs and holiday playschemes

These clubs can be run by local authorities, voluntary organisations or private companies. They are usually run by session, and are inspected by Ofsted. Workers must be checked by the Criminal Records Bureau.

New legislation which aims to improve pre-school childcare services comes into force in 2008. Local authorities will have a duty to make sure that there is sufficient childcare in their area for all working parents who need it, especially

those on lower incomes and with disabled children. The care can be from the private or voluntary providers as well as schools etc.

Employment rights for parents with older children

Life can become significantly more difficult once children pass the age of five. If you have children over the age of six you do not have the legal right to ask to work flexibly or take parental leave. Yet, as every parent knows, covering school holidays can be a nightmare. However, mothers and to some extent fathers, have rights under the Sex Discrimination Act 1975 to be granted flexible working as long as there is no strong business justification for turning them down. Even as children become teenagers many argue that it is important that parents are there to talk things through and to be there for their children. Parents are entitled to take Emergency Family Leave throughout; in fact, the definition is quite broad, to allow time off to help elderly relatives for example.

9 Partners and parents

This section is a brief overview of some of the issues for couples in their role as parents, or future parents. It does not go into great detail about specific legal processes. It is always useful to know your legal rights before making any important decisions about your relationship. For more information, contact the organisations listed at the end.



Marriage, registered partnership and cohabitation

Cohabiting means living together without getting married or entering into a registered civil partnership (for gay couples). Cohabiting has increased substantially in recent years. A quarter of all children are now born to cohabiting couples. But cohabiting couples are inadequately protected by law. The law can treat them differently from married couples or those gay couples who have registered as civil partners. Even if you have lived a long time with your partner and you have had children together, you will not necessarily acquire the same rights. There is no such thing in law as 'common law wife/husband'. Common law marriage was abolished in 1753. Unlike in some other countries, there is little protection in law for cohabiting partners.

Registration of marriage or of a civil partnership

While couples may perform purely religious marriage ceremonies and deem themselves to be married, the marriage is only recognised in civil law if it is registered and performed by an authorized person at a place which is licensed to perform marriages.

Property

Many married couples own their property jointly and if a spouse dies, the surviving spouse will inherit it. However, some married couples still do not necessarily own their property jointly, and if their husband or wife dies, it will not automatically pass to the surviving spouse. It can still happen that the property is only owned by the husband, although there are now laws to protect the wife if this is the case.

Cohabiting couples can also own their properties jointly. If the property is jointly owned, it can in law be held in one of two ways, whether the couple is married or cohabiting or in a registered civil partnership.

- **Joint tenants:** The majority of properties are held this way. This means that if one legal owner dies, their share passes automatically to the survivor. However married spouses will not have to pay inheritance tax, whereas the surviving partner of a cohabiting couple will have to do so.
- **Tenants in common:** In this case, each person owns the stated share, and each may leave their share of the property to whoever they wish. The partner may have to pay tax.

Cohabiting couples must ensure they have made proper arrangements over ownership of property, and have recorded what they each intend if the relationship breaks up, or one partner dies.

Tax and benefits

If you cohabit, you and your partner are taxed as separate individuals. Married couples can transfer assets between themselves without having to pay Capital Gains Tax, and can inherit assets from each other without having to pay inheritance tax.

There is no distinction made between married and cohabiting couples or registered civil partners when being assessed for means-tested benefits, Working Tax Credit or Child Tax Credit. Both partners' resources and needs are jointly assessed. Child benefit is also paid irrespective of the couple's marital status. However, other benefits do take marital status into account, for example the Widowed Parents Allowance is only payable to widows who were married and to partners who have registered. Cohabiting partners cannot claim a widow's pension. Visit your local Citizens Advice Bureau for advice on specific tax and benefit claims.

Illness

If one partner becomes ill, or mentally incapable of dealing with their financial affairs, the cohabiting partner may find it difficult to arrange things for them. In hospital there can often be a problem deciding who is next of kin, particularly if there are family disputes. There is no legal term 'next of kin'; however cohabiting couples could sign a Health Care Proxy and Living Will form, which can give authority to the cohabiting partner to participate in decisions about treatment and medical care. It is available from hospitals and from the Terence Higgins Trust, www.tht.org.uk. Age Concern also offer advice about living wills and health proxies.

Pensions

The state pension is paid to individuals whether married or cohabiting who have paid sufficient National Insurance. The pension starts from the age of retirement – currently 60 for women and 65 for men, but from 2020 it will be 65 for all women, affecting women born after 1955 earlier. See www.thepensionerservice.gov.uk for further information. Married women who have not earned enough National Insurance can get a pension based on their husband's National Insurance, even if they are divorced. Cohabiting women who have not earned enough National Insurance to qualify for a full pension may get a proportion. However if they have earned very little National Insurance (less than 25 per cent) they will not receive any state pension.

When a spouse or a registered civil partner dies, the surviving spouse is likely to receive a proportion of the pension of the deceased, but this is not the case for surviving cohabiters.

Death

If you are married and you have not made a will, your entire estate on death goes to a surviving spouse, where there are no children, parents, brothers or sisters. If there is a surviving spouse and children, the spouse will get the personal possessions, and a fixed sum, currently £125,000 and a life interest on half of the rest of the estate. The other half will go to the children at age 18. The spouse will inherit any funds in a joint bank account. On their death, it will go to the children. The same rules apply to registered civil partners. If you are not married or a registered civil partner, you do not have the right to automatically register the death of your partner. If cohabiters have not made a will, the estate does not pass to the person you are living with, so it is vital to

make a will. Only jointly owned property held as joint tenants will go to the other co-owner. Get advice from a solicitor. Cohabiters are at a disadvantage in terms of inheritance tax, as unlike married couples, a surviving cohabiter will have to incur inheritance tax.

Children

As stated earlier, married and unmarried couples' parental responsibilities are treated differently in law, although the Adoption and Children Act 2002 gives parental responsibility to unmarried fathers when they sign the birth certificate. The Child Abduction Act 1984 makes it a criminal offence for a parent, guardian or any person with custody to remove a child from the UK without the consent of another person with parental responsibility. If your child has been taken out of the UK without your consent or you are worried that your child may be taken out of the UK by your partner or spouse, you can contact any of the addresses in the Helpfile at the back of this booklet.

Gay relationships

The Civil Partnership Act 2004 now gives gay partners increased legal rights, although the Government has drawn back from conferring the same legal rights to unmarried heterosexual partners. Gay couples who register have a new legal status as "registered civil partners" and acquire a package of rights and responsibilities. Ending the partnership involves going to court, to obtain an order for dissolution.

These rights include:

- Joint treatment for income-related benefits
- Joint state pension benefits
- Ability to gain parental responsibility for each other's children*
- Eligibility to claim a survivor pension and eligibility for bereavement benefits
- The right to register the death of a partner
- Recognition under inheritance rules
- Fair arrangements for property division on dissolution.

*Where children are involved, the civil partnership is in a similar position to a step-parent married to one of the child's parents. You can obtain parental responsibility for the child by agreement with the other parent with parental responsibility or by court order.

Separation and divorce

The differences in law and in policy between married and unmarried parents are set out below.

Splitting up

Married/registered civil partners:

The couple have to go through a legal procedure to obtain a divorce or in the case of a civil partnership, dissolution. No one can apply for a divorce within the first year of marriage.

Unmarried: The couple can split up at any time with no legal process necessary.

Grounds for separating

Married/registered civil partners: There is only one ground for divorce or dissolution – the irretrievable breakdown of the marriage or civil partnership, which must be evidenced by one of five facts:

- adultery
- unreasonable behaviour
- desertion
- separation for two years if both partners agree
- separation for five years if one partner opposes the divorce.

Unmarried: No grounds are needed for an unmarried couple to separate in law.

Finance & assets

Married/registered civil partners: Either partner can claim a share of the family assets, even if they are in the other's sole name. The court can make orders for the transfer of property and splitting of assets. It has the power to share a pension between the partners on divorce or dissolution. There are no fixed rules for dividing the money or other assets between the parties. It is up to the court to decide, or for the couple to reach their own agreement. There is no law which says that property must be split equally. There are laws which tell the court what it should take into account when deciding how to divide the assets. The first consideration is the welfare of any children of the household.



They will take into account the financial needs of the parties, the length of the marriage or civil partnership, the contributions both parties have made to the marriage or civil partnership (both financially and nonfinancially – particularly important to women who have stayed at home to bring up the children), the parties' earning capacity and the disability of any child.

Unmarried: One partner cannot automatically claim a share of the other partner's assets (for example, house or car) – only if it can be shown that either it is jointly owned, or that he or she has a stake in the property.

Maintenance for other partner

Married/ Registered civil partners: After divorce or dissolution the first call on the nonresident parent's income is for maintenance for children. The courts can decide how to divide the assets, and if and how much levels of maintenance should be. A married spouse or registered civil partner has a legal right to maintenance for themselves; courts will take various factors into consideration, like the income, earning capacity and financial resources of both partners, the contributions made to the welfare of the family, age and length of marriage and so on. Maintenance payments may be ordered for a certain period only. Sometimes couples adopt the "clean break" option, whereby courts impose a clean break financially for both partners. Maintenance for children is not affected by the clean break.

Unmarried: There is no legal right for one unmarried ex-partner to claim maintenance for themselves.

Maintenance for children

Married/Registered civil partners: The non-resident parent or registered civil partner has an obligation to maintain the children after divorce or dissolution.

Unmarried: The non-resident parent has an obligation to maintain the children after separation. The father's paternity may have to be proved. In both instances, if parents cannot agree a level of financial support, or if the parent with care receives income support, family credit or Jobseekers Allowance, they can make an application to the Child Support Agency for an assessment. The Child Support Agency is to be replaced with a streamlined body more focused on enforcement, but until the new organisation is set up the Child Support Agency will continue its work as normal. Their rules apply to both married and unmarried parents, and set out the amount of money a nonresidential parent must pay in

support of any child. The amount depends on the income of the non-resident parent. www.advicenow.org.uk has very practical advice on property and inheritance issues as well as on the rights of children of cohabiting couples.

Contact with children

The Children Act 1989 sets out the law relating to all children after divorce, dissolution or separation. As long as both parents have parental responsibility, the law does not distinguish between married and unmarried couples. The Children Act abolished the old rules of custody and access and simplified the law. Parents do not have to go to court to sort out arrangements for their children – the courts much prefer that parents and any other person with parental responsibility (e.g. civil partners) reach an amicable solution between themselves and their children. However, if no agreement is reached, the courts can intervene.

- The court makes its decision based on the best interests of the children.
- The Children Act sets out a checklist of things to be considered in reaching a decision over arrangements for a child. The wishes and feelings of the children are a factor and the court will want to find out what the children want.
- A residence order made by the court states where the child will live and with whom. These orders can allow shared parenting.
- A contact order made by the court requires the person the child is living with to allow the child to visit or stay with the person named in the order.

For more information about children and divorce, visit www.itsnotyourfault.org, or the website of National Family Mediation. Parentline Plus, the helpline for parents, have lots of information on divorce, separation and contact with children on their website, www.parentlineplus.org.uk.

The Child Support Agency is to be replaced with a streamlined body more focused on enforcement, but until the new organisation is set up the Child Support Agency will continue its work as normal. The Child Support Agency run a helpline (**08457 133 133**) to deal with any queries. They also publish a number of useful booklets, for example, For parents who live apart. See www.csa.gov.uk.

Helpfile

Legal Advice

- **National Association of Citizens Advice Bureaux**
Myddleton House, 115-117 Pentonville Road, London N1 9LZ
Phone: **020 7833 2181**
www.adviceguide.org.uk
- **Community Legal Service (CLS)**
CLS Directory Line: **0845 345 4 345**
www.clsdirect.org.uk
- **Children's Legal Centre**
University of Essex, Wivenhoe Park, Colchester, Essex C04 3SQ
General advice line: **01206 872466**
Young people's free phone number: **0800 783 2187**
National Education Law Advice Line: **0845 345 4345**
Child Law Advice Line: **0845 120 2948**
(advice for parents on legal issues, e.g. contact and residence)
Lines open Mon-Fri 9.30am - 5.00pm
They do not provide advice on criminal offences/juvenile justice.
www.childrenslegalcentre.com
- **Resolution First for Family Law**
PO Box 32, Orpington, Kent BR6 8QX
Phone: **01689 820272**
www.resolution.org.uk
- **Advice Services Alliance (Advice Now)**
Bramah House, 65-71 Bermondsey Street, London SE1 3XF
www.advicenow.org.uk

Marriage & Divorce

- **NCH** (It's Not Your Fault website)
www.itsnotyourfault.org
- **Relate**
Herbert Gray College, Little Church Street, Rugby, Warwickshire CV21 3AP
Appointments booking line: **0845 1 30 40 16**
Mon-Thu: 9.00am - 7.00pm;
Fri: 9.00am - 5.00pm;
Sat: 9.00am - 1.00pm
Email: **enquiries@relate.org.uk**
www.relate.org.uk
- **National Family Mediation**
7 The Close, Exeter, Devon EX1 1EZ
Phone: **01392 271610**
www.nfm.org.uk
- **Child Support Agency**
(The Child Support Agency is to be replaced with a streamlined body more focused on enforcement, but until the new organisation is set up the Child Support Agency will continue its work as normal)
National Helpline
PO Box 55, Brierley Hill DY5 1YL
Phone: **08457 133 133**
www.csa.gov.uk

Wills & Legacies

- **Age Concern**
Information Line: **0800 00 99 66**
www.ace.org.uk
- **Terence Higgins Trust**
www.tht.org.uk

Adoption

- **British Agencies for Adoption and Fostering**
BAAF, Saffron House, 6-10 Kirby Street, London EC1N 8TS
Phone: **020 7421 2600**
www.baaf.org.uk

Fostering

- **Fostering Network** (formerly National Foster Care Association)
87 Blackfriars Road, London SE1 8HA
Phone: **020 7620 6400**
Email: **info@fostering.net**
www.fostering.net

Childcare

- **National Childminding Association**
Royal Court, 81 Tweedy Road, Bromley, Kent BR1 1TG
Phone: **0845 880 0044**
Email: **info@ncma.org.uk**
www.ncma.org.uk

Child Protection

- **Childline**
45 Folgate Street, London E1 6GL
Phone: **020 7650 3200**
Helpline: **0800 1111**
www.childline.org.uk
- **NSPCC**
Weston House, 42 Curtain Road, London EC2A 3NH
Phone: **020 7825 2500**
Helpline: **0808 800 5000**
www.nspcc.org.uk

Child Abduction

- **Child Abduction Unit** (Office of the Official Solicitor and Trustee)
81 Chancery Lane, London WC2A 1DD
Phone: **020 7911 7045/7047**
- **The Foreign and Commonwealth Office**
Phone: **020 7008 8737**
www.fco.gov.uk (travel section – "What if it all goes wrong")
- **Reunite, International Child Abduction Centre**
Advice Line: **0116 2556 234**
www.reunite.org

Internet Safety

- **www.thinkuknow.co.uk**

Support For Parents

- **Parentline Plus**
Helpline: **0800 800 2222**
Textphone: **0800 783 6783**
www.parentlineplus.org.uk

Education

- **Advisory Centre for Education**
1C Aberdeen Studios, 22 Highbury Grove, London N5 2DQ
Phone: **020 7354 8318**
Advice line: **0808 800 5793**
(Mon-Fri: 2.00pm - 5.00pm)
www.ace-ed.org.uk

- **Education Otherwise**

PO Box 325, Kings Lynn PE34 3XW
Helpline: **0870 7300074** (gives out recorded details of volunteers able to take calls)

Email: eoemailhelpline@education-otherwise.org
www.education-otherwise.org

- **The Department for Children, Schools and Families (DCSF)**

The DCSF has a website for parents www.parentcentre.gov.uk. Useful for information about the school curriculum, tests, choosing a school and educating children at home.

School Attendance

- www.dcsf.gov.uk/schoolattendance

Health & Safety

- **Patients Association**

PO Box 935, Harrow,
Middlesex HA1 3YJ
Phone: **020 8423 9111**
Helpline: **0845 608 4455**
www.patients-association.com

- **Child Accident Prevention Trust**

4th Floor, Cloister Court, 22-26
Farringdon Lane, London EC1R 3AJ
Phone: **020 7608 3828**
Email: safe@capt.org.uk
www.capt.org.uk

- **Kidscape**

2 Grosvenor Gardens,
London SW1V 0DH
Phone: **020 7730 3300**
Helpline: **08541 205 204**
Mon-Fri: 10.00am - 4.00pm
www.kidscape.org.uk

- **Frank** (government drugs helpline)

Phone: **0800 77 66 00**
Email: frank@talktofrank.com
www.talktofrank.com

- **Brook** (sexual health advice and services)

421 Highgate Studios, 53-79
Highgate Road, London NW5 1TL
Phone: **0800 0185 023**
Mon-Fri: 9.00am - 5.00pm
(young people's information service)

Maternity

- **National Childbirth Trust**

Alexandra House, Oldham Terrace,
Acton, London W3 6NH
Phone: **0870 770 3236**
Enquiry Line: **0870 444 8707**
www.nct.org.uk

- **Association for Improvements in Maternity Service**

5 Ann's Court, Grove Road, Surbiton,
Surrey KT6 4BE
Helpline: **0870 765 1433**
www.aims.org.uk

Work

- **Working Families**

(formerly Parents At Work)
1-3 Berry Street, London EC1V 0AA
Phone: **020 7253 7243**
Legal Helpline for low income families: **0800 013 0313**
Email: office@workingfamilies.org.uk
www.workingfamilies.org.uk

Miscellaneous

- **British Board of Film Classification**
www.bbfc.co.uk

- **UK Passport Office**

Passport Adviceline: **0870 521 0410**
(24 hours a day, 7 days a week)
www.passport.gov.uk

- **Electoral Commission**

Trevelyan House, Great Peter Street,
London SW1P 2HW
Phone: **020 7271 0500**
www.electoralcommission.gov.uk

- Government advice and information for young people about the law, crime and the consequences of offending
www.rizer.co.uk

- **RSPCA**

Enquiries Service, Wilberforce Way,
Southwater, Horsham, West Sussex
RH13 9RS
Phone: **0870 33 35 999**
www.rspca.org.uk

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Family & Parenting
Institute



Family and Parenting Institute

430 Highgate Studios
53-79 Highgate Road
London NW5 1TL

Tel 020 7424 3460

Fax 020 7485 3590

Email info@familyandparenting.org

Web www.familyandparenting.org

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