



DEBATE PACK

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Parental rights of prisoners

Westminster Hall, Wednesday 13 December 2017, 9.30am

A Westminster Hall debate on Parental rights of prisoners is scheduled for Wednesday 13 December 2017 at 9.30am. The Member leading the debate is Carolyn Harris MP.

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Introduction

1.1 Parental responsibility in prison

Imprisonment does not automatically restrict or remove a mother or father's parental responsibility. This can only happen following a voluntary agreement or if the other parent takes the incarcerated parent to court. A court can grant a **prohibited steps order** or a **specific issue order**. These are explained within section 1.2 below.

For a more detailed description of parental responsibility and how it can be gained, restricted and lost, the Library paper on [Children: parental responsibility - what is it and how is it gained and lost \(England and Wales\)](#) will help.

The meaning of "parental responsibility"

Under the *Children Act 1989* as amended, the term "parental responsibility" is defined as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

In addition, where someone has the care of a child but who does not have parental responsibility for them, they may still, subject to the provisions of the *Children Act 1989*, "do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare".

In addition, whether or not someone has parental responsibility does not affect "any obligation which he may have in relation to the child (such as a statutory duty to maintain the child)", or "any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property".¹

The Family Rights Group, a charity,² notes that:

Each parent who has parental responsibility is entitled to make day to day decisions about the child independently of anyone else with parental responsibility, except for taking the child outside the UK.

However, it is still a good idea if a person with parental responsibility consults everyone else with parental responsibility about important decisions such as immunisations, medical treatment, change of school etc. This is particularly important if the decisions will affect contact arrangements. This is because it is usually best for the child if the adults in their life agree on arrangements made for them.³

¹ *Children Act 1989*, section 3

² Family Rights Group explains that it works "with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children unable to remain at home" [Family Rights Group, [About Us](#), webpage accessed on 9 August 2017]

³ Family Rights Group, [Parental Responsibility](#), factsheet 2, 29 October 2014, p5

Losing parental responsibility

The Library paper, [Children: parental responsibility - what is it and how is it gained and lost \(England and Wales\)](#) explains the circumstances in which parental responsibility can be lost. This is only in certain cases:

- When a child is adopted
- Where the child of a surrogate mother (and a married partner) is subject to a parental order
- Unmarried fathers/partners may obtain parental responsibility via a parental responsibility agreement, parental responsibility order or child arrangement order. In these circumstances, these rights can be removed should a court order it.
- Courts can order the removal of a step-parent's responsibility if obtained via a parental responsibility agreement or child arrangement order.
- Special guardians lose their responsibilities once their special guardianship order is discharged (i.e. when the child turns 18 years old)
- When a child arrangement order ceases to apply, parental responsibilities also cease

If none of these scenarios apply, an imprisoned parent will still retain parental responsibility, although a court can restrict these rights (see below).

1.2 Restrictions on the exercise of parental responsibility

The ability of a person (including a child's mother and father) to exercise parental responsibility can be restricted in certain ways, irrespective of how parental responsibility was acquired.

If a parent wishes to restrict the responsibilities of an imprisoned parent, and cannot reach an agreement, the case must be decided by the courts.

The child's welfare in court decisions

Courts will take into account a wide variety of evidence in order to make their decision: this will include the nature of the crime committed.

During the landmark case of *Gillick v West Norfolk and Wisbech Health Authority*, it was also made clear that the welfare of the child was the paramount consideration, and that this limited and governed the exercise of parental responsibility.

As Lord Scarman put it:

When a court has before it a question as to the care and upbringing of a child it must treat the welfare of the child as the paramount consideration in determining the order to be made. There is here a principle which limits and governs the exercise of parental rights of custody, care, and control. It is a principle perfectly consistent with the law's recognition of the parent as the natural guardian of the child; but it is also a warning that parental

right must be exercised in accordance with the welfare principle and can be challenged, even overridden, if it be not.⁴

The legal text *Children Law and Practice* notes that “it follows that such parental rights are not absolute but subject to the principle that the child’s welfare is the paramount consideration”.⁵

Prohibited steps order and specific issue order

If a parent wishes to prevent an incarcerated person with parental responsibility from making certain decisions in regards to their child, the court can issue a **prohibited steps order**. This an order that “no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court”. Such an order might, for instance, be issued to prevent a change in the child’s schooling, or prevent contact.

If parents cannot agree on a particular decision, such as the choice of religion for their child, the court can be used to make a final decision. This is called a **specific issue order**, which is an order “giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child”.⁶

1.3 Prisoners’ contact with their children

There are statutory minimum prison visit entitlements and standards that prisons must meet for visiting families, including children.⁷ Prison rules also require governors to encourage and promote family ties.⁸

Lord Farmer conducted a review for the Ministry of Justice on prisoners’ family ties which reported in August 2017. In the report, [The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime](#), he identified an unacceptable inconsistency of respect for family ties across the prison estate.

In a House of Lords debate on the Farmer Review, Baroness Vere, speaking for the Government, said that governors were being empowered to take control of how best to support prisoners with regard to family ties:

As part of our prison reform strategy, we are empowering prison governors. They are able to take the decisions that are most appropriate to their prisons. This means that prison governors now have control over their family service budget and the flexibility to spend their resources to best support prisoners to keep and develop important family ties.⁹

⁴ [1986 1 FLR 229](#), quoted in Hershman and McFarlane, *Children Law and Practice*, para A51

⁵ Hershman and McFarlane, *Children Law and Practice*, para A51

⁶ *Children Act 1989*, section 8

⁷ See [Prison Rule](#) 35(2)(b) and Prison Service Instruction: [Providing Visits and Services to Visitors](#), issued 28 April 2016

⁸ [Prison Rule](#) 4

⁹ [HL Deb 11 October 2017 c281](#)

Concerns were raised in the debate about the classification of children's visits to their parent in prison as a privilege within the [incentives and earned privileges \(IEP\) scheme](#) used in male prisons. Baroness Vere confirmed that the Government was reforming the current IEP framework to give governors greater discretion to encourage all prisoners, whether at enhanced or standard level within the scheme, to engage with their families and significant others.

Prisoners assessed as posing a risk to children

Prison Service Instruction (PSI) PSI 49/2011, [Prisoner Communication Services](#), states that "where a prisoner who is assessed as posing a risk to children wishes contact with a specific child, staff must refer to Safeguarding Children: Child Contact protocols in Chapter 2 of the Public Protection Manual." This is available on the gov.uk website: [Public Protection Manual, Chapter 2: Safeguarding children](#). Section 2 deals with child contact procedures and notes that contact includes that by phone/letter. The manual explains that a risk assessment of the prisoner and a "best interests" assessment for the child must be carried out in order to decide what, if any, form of contact is appropriate. It emphasises that the best interests and welfare of the child are paramount.

2. News articles

Times [Registration required]

[Lord Chancellor urged to strip paedophiles of parental rights](#)

27 November 2017

BBC news

[Sexual abuser 'still has parental rights' over his children](#)

24 November 2017

Independent

[Prisons using 'cruel' punishment that restricts inmates from seeing children](#)

22 August 2017

Huffington Post

[I raped you: now I want contact](#)

15 February 2017

Guardian

[Children denied visits to fathers in jail after rule changes – charity](#)

3 December 2015

Stowe Family Law

[Court terminates father's parental responsibility after domestic violence](#)

23 October 2013

BBC online

[Salford paedophile ex-wife's anger at parental rights](#)

26 August 2010

WBW Solicitors

[Sex offender stripped of parental responsibility](#)

Undated

3. Parliamentary Business

[Prisoners: Mothers](#)

Asked by: Baroness Fall

To ask Her Majesty's Government what provision is made for children aged under 18 whose mothers have been imprisoned to visit their mothers.

Answered by: Lord Keen of Elie | Ministry of Justice

Family engagement workers are in place in all public sector female prisons and meet all prisoners on induction to identify any support required to maintain or establish family contact. A new contract for family services was awarded across the female estate, excluding HMP Styal who elected to undertake a separate regional procurement exercise for family services, in October 2017. The new contract allows women's prisons to work closely with a single professional family services provider to develop innovative services including those to support children visiting imprisoned mothers. There are statutory minimum prison visit entitlements and standards that prisons must meet for visiting families, including children. Prison Rules also require Governors to encourage and promote family ties. Women's prisons are working to provide other support, beyond the statutory minimum, for improved family links. This includes family days, child-centred visits, homework clubs and specific relationship and parenting skills programmes. Family days can involve contributions from education providers, voluntary and third-sector agencies to support organised activities with the prisoners and their children. If they require it, families of female offenders can seek financial support for visits. The assisted prison visits scheme promotes family ties by contributing to the costs of prison visits by providing help with travel expenses to prisoners' close relatives, a partner or a friend (if classed as a sole visitor) who meet the qualifying rules on income. Children (under 18 years old) are included, providing that their responsible guardian is in receipt of a qualifying low income benefit on behalf of the child and is able to escort the child to the prison.

24 November 2017 | Written question | HL 3195

[Children visiting parents in prison](#)

Asked by: Lord Trefgarne

To ask Her Majesty's Government what are the principal rules relating to young children visiting their parents in prison.

Answered by: Lord Keen of Elie | Ministry of Justice

As set out in our 2016 White Paper on Prison Safety and Reform, we are committed to giving prisoners the support and help they need to maintain and strengthen family ties.

Lord Farmer was commissioned to undertake a review of family engagement, and to make proposals that will augment the Prison Safety and Reform agenda. The Ministry of Justice will consider his findings in due course.

Visits, where appropriate, by children to their parent in prison are central to maintaining the relationship during the sentence. Ethos, statutory entitlement and practices are detailed in secondary legislation and in Prison Service Instructions, as follows:

Prison Rules 1999, Rule 4 - 'Outside Contacts', requires Governors to encourage and assist prisoners to maintain relations with persons and agencies outside of the prison which may, in the opinion of the Governor, best promote the interests of his family and own social rehabilitation. Rule 35 'Personal Letters and Visits' sets out the statutory entitlement to visits and Governors may allow an additional privilege under Rule 8.

Prison Service Instruction 16/2011 'Providing Visits and Services to Visitors' sets out, among other things, guidelines to prisons on the management of family visits.

Prison Governors are accountable for the safeguarding and welfare of children during prison visits. This is set out through the statutory framework under the Children Act 2004. Prison Service Instruction 15/2011 'Management of Security at Visits' requires social visits to be conducted in a manner which ensures the safeguarding of children and provides arrangements for this.

Prisoners can earn additional visits by demonstrating good behaviour and commitment to their rehabilitation; this is detailed in Prison Service Instruction 30/2013 'Incentives and Earned Privileges'.

5 July 2017 | Written question | HL 26

[Prisons: Visits](#)

Asked by: Baroness Howe of Idlicote

To ask Her Majesty's Government what steps they are taking to improve the conditions for children visiting a parent in prison, in the light of Barnardo's recent report *Locked Out: Children's experiences of visiting a parent in prison*.

Answered by: Lord Faulks | Ministry of Justice

The Government agrees that strong family ties are an important part of helping prisoners turn away from crime, and the recommendations from the recent Barnardo's report are currently being considered in the context of the wider prison reforms.

All convicted prisoners have a long-standing statutory entitlement to a minimum of two visits every 28 days. In addition, prisoners may also be rewarded with additional visits for good behaviour and for engaging with their rehabilitation.

22 December 2015 | Written question | HL 4641

4. Further reading

Library briefing

[Children: parental responsibility - what is it and how is it gained and lost \(England and Wales\)](#), Commons Library Briefing SN02827, 9 August 2017

Government

Lord Farmer, [The importance of strengthening prisoners' family ties to prevent reoffending and reduce intergenerational crime](#), Ministry of Justice, August 2017

HM Inspectorate of Prisons, [Life in prison: contact with families and friends: a findings paper](#), August 2016

National Offender Management Service and HM Prison Service, [Public protection manual, chapter 2: Safeguarding children](#), 11 March 2009

Ministry of Justice and National Offender Management Service, [Prisoner Communication Services](#), PSI 49/2011, 26 September 2011

Charities, pressure groups and reports, by organisation

- Action for Prisoners' Families, [Supporting the families of sex offenders: findings from a symposium](#), 2013
 - Jane Evans, [Locked out: children's experiences of visiting a parent in prison](#), Barnardo's, 2015
 - Families Need Fathers, [Imprisoned fathers](#), Undated
 - Family Rights Group, [About us](#)
- Family Rights Group, [Parental responsibility](#), Advice Sheet 2, 29 October 2014
- Rona Epstein, [Mothers in prison: the sentencing of mothers and the rights of the child](#). What is Justice? Working Papers 3/2014. Howard League for Penal Reform, 2014

- Rights of Women and Mosac, [Children and the law: contact, residence and parental responsibility](#), Your Children, Your Rights, April 2013

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