

2009 No. 191

CHILDREN AND YOUNG PERSONS

**The Parental Responsibilities and Parental Rights Agreement
(Scotland) Amendment Regulations 2009**

Made - - - - *18th May 2009*

Laid before the Scottish Parliament *19th May 2009*

Coming into force - - *1st September 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 4(2) and 103(2) of the Children (Scotland) Act 1995(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Parental Responsibilities and Parental Rights Agreement (Scotland) Amendment Regulations 2009 and come into force on 1st September 2009.

Amendment of the Parental Responsibilities and Parental Rights Agreement (Scotland) Regulations 1996

2.—(1) The Parental Responsibilities and Parental Rights Agreement (Scotland) Regulations 1996(b) are amended in accordance with this regulation.

(2) In regulation 2 (form of parental responsibilities and parental rights agreement) for “the Schedule” substitute “Schedule 1”.

(3) After regulation 2 insert—

“3. The agreement between the mother and the other parent of a child under section 4A(1) of the Children (Scotland) Act 1995 (the acquisition of parental responsibilities and parental rights by that child’s second female parent by agreement with mother)(c) shall be in the form set out in Schedule 2 to these Regulations or in a form substantially to the like effect.”

(4) Renumber the Schedule (parental responsibilities and parental rights agreement under section 4(1) of the Children (Scotland) Act 1995) as Schedule 1.

(5) After the new Schedule 1 insert—

(a) 1995 c.36. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 103(2) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made.

(b) S.I. 1996/2549 as amended by S.S.I. 2006/255.

(c) Inserted by the Human Fertilisation and Embryology Act 2008 (c.22) Schedule 6(2) paragraph 51.

PARENTAL RESPONSIBILITIES AND PARENTAL RIGHTS
AGREEMENT UNDER SECTION 4A(1) OF THE CHILDREN
(SCOTLAND) ACT 1995

IMPORTANT

Making this agreement will affect the legal position of the mother and the other parent. Read the following information and the notes very carefully before you make the agreement.

You are strongly recommended to seek advice before you make the agreement from, for example, a Citizen’s Advice Bureau, a law centre or a solicitor. They can also help you if you have any problems making the agreement. If you need a solicitor’s advice you may be eligible for legal aid.

This agreement will give the other parent of a child parental responsibilities and parental rights in relation to the child where she does not already have them. The mother of the child will continue to have parental responsibilities and parental rights in relation to the child.

The mother of a child always has parental responsibilities and parental rights in relation to the child, unless she has been deprived of them by a court order. However the other parent of a child only has parental responsibilities and parental rights in relation to a child if–

- (a) she is treated as the child’s parent by virtue of section 42 (woman in civil partnership at time of treatment) of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”);
- (b) she is treated as the child’s parent by virtue of section 43 (treatment provided to woman who agrees that second woman to be parent) of the 2008 Act and is registered as a parent of the child under any of the following enactments–
 - (i) paragraphs (a), (b) and (d) of section 18B(1) and section 18B(3)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965;
 - (ii) paragraphs (a), (b) and (c) of section 10(1B) and of section 10A(1B) of the Births and Deaths Registration Act 1953; or
 - (iii) sub-paragraphs (a), (b) and (c) of Article 14ZA(3) of the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041);
- (c) she is given parental responsibilities and parental rights by a court order under section 11 of the Children (Scotland) Act 1995 (“the 1995 Act”); or
- (d) she is given parental responsibilities and parental rights by this agreement.

In deciding whether or not to enter into this agreement the mother should consider whether, in doing so, she would be fulfilling her parental responsibilities towards the child and, in particular, her responsibility in section 1(1)(a) of the 1995 Act–

“(a) to safeguard and promote the child’s health, development and welfare...but only insofar as compliance with this section is practicable and in the interests of the child.”

Furthermore, in terms of section 6 of the 1995 Act, the mother should–

“have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child’s age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the

child (and wishes to express those views); and a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.”

<p>See note 1</p>	<p>1. This is an agreement between</p> <p>(a) the child’s mother</p> <p>and</p> <p>(b) the child’s other parent</p>	<p>Name.. ..</p> <p>Address</p> <p>.....</p> <p>.....</p> <p>Name.. ..</p> <p>Address</p> <p>.....</p> <p>.....</p>
<p>See note 2</p>	<p>(c) regarding the child</p> <p>Name . ..</p> <p>Boy or Girl... ..</p> <p>Date of Birth.. ..</p>	
<p>See note 3</p>	<p>2. We agree that as from the date specified in paragraph 3 below, the child’s other parent shall have the parental responsibilities and parental rights in relation to the child named above which she would have if she were treated as the child’s parent by virtue of section 42 of the Human Fertilisation and Embryology Act 2008.</p> <p>3. The date specified is the date when this agreement is registered in the Books of Council and Session, unless on that date the mother no longer has the parental responsibilities and parental rights which she had when the agreement was made.</p>	
<p>See note 4</p>	<p>4. We agree to the registration of this agreement for preservation in the Books of Council and Session and we each request an extract.</p>	
<p>See notes 5-8</p>	<p>Signed (Mother)</p> <p>.....</p> <p>Date</p> <p>Place . ..</p> <p>In the presence of.....</p> <p>.....</p> <p><i>(Signature of Witness)</i></p> <p>Full name of Witness</p> <p>.....</p> <p>Address</p> <p>.....</p>	<p>Signed (Other parent)</p> <p>.....</p> <p>Date... ..</p> <p>Place.. ..</p> <p>In the presence of</p> <p>.....</p> <p><i>(Signature of Witness)</i></p> <p>Full name of Witness</p> <p>.....</p> <p>Address</p> <p>.....</p>

NOTES ABOUT THE PARENTAL RESPONSIBILITIES AND PARENTAL RIGHTS AGREEMENT

Who can make the agreement

1. This agreement can only be made if–
 - (a) the mother has not been deprived of any of her parental responsibilities and parental rights in relation to the child;
 - (b) the other parent does not have any parental responsibilities or rights in relation to the child because she is not treated as the child's parent by virtue of section 42 of the 2008 Act;
 - (c) the other parent does not have any parental responsibilities or rights in relation to the child because she is treated as the child's parent by virtue of section 43 of the 2008 Act but is not registered as a parent of the child under any of the following enactments–
 - (i) paragraphs (a), (b) and (d) of section 18B(1) and section 18B(3)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965;
 - (ii) paragraphs (a), (b) and (c) of section 10(1B) and of section 10A(1B) of the Births and Deaths Registration Act 1953; or
 - (iii) sub-paragraphs (a), (b) and (c) of Article 14ZA(3) of the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041).

The child

2. Put the name of one child only on the agreement. If the other parent is to have parental responsibilities and rights in relation to more than one child, you should make a separate agreement for each child.

When the agreement has effect

3. This agreement only has effect if–
 - (a) it is in the form prescribed by the Scottish Ministers; and
 - (b) it is registered in the Books of Council and Session while the mother still has the parental responsibilities and parental rights which she had when the agreement was made.

Signing the agreement

4. In signing this agreement, you are also consenting to its registration in the Books of Council and Session where it is then preserved.

5. The child's mother and the child's other parent must each sign the agreement, where indicated, in the presence of one witness who must be aged 16 or over. It is not necessary that the witness should be made aware of the contents of the agreement. The same person can witness both signatures.

6. After the agreement has been signed and witnessed, the agreement should be sent to–

The Keeper of the Registers of Scotland
Books of Council and Session
Meadowbank House
153 London Road
Edinburgh
EH8 7AU

You must also enclose the fee to cover the cost of registration and the sending of an extract of the agreement to you at the addresses you have given on the form. You can find out the fee by telephoning the Registers of Scotland on 0131 659 6111. Cheques or postal orders should be made out to the Registers of Scotland and crossed.

Ending the agreement

7. When an agreement has been made and has effect, it cannot be revoked by either the child’s mother or the child’s other parent but it can be brought to an end by a court order under section 11 of the 1995 Act. The court can also make an order under section 11 of the 1995 Act depriving a person of some or all of his parental responsibilities or parental rights.

Contact details

8. In case the Keeper of the Registers of Scotland needs to contact you about the agreement, you may wish to say who you would like him to contact:–

Please tick one

Mother Daytime telephone number		
Other parent Daytime telephone number		
Or Other Name Daytime telephone number		

”.

St Andrew’s House,
 Edinburgh
 18th May 2009

KENNY MACASKILL
 A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Parental Responsibilities and Parental Rights Agreement (Scotland) Regulations 1996 by prescribing the form for the agreement between the mother and other parent of a child that the other parent should have parental responsibilities and parental rights in relation to the child. This form is necessary because paragraph 51 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 has changed the Children (Scotland) Act 1995 to allow a child's other parent to acquire parental responsibilities and parental rights by agreement with the child's mother.

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