children and family breakdown a guide

A F COLHOUN & CO
A MEMBER OF THE LAW GROUP

Client briefing · October 2026 · residence, contact, parental responsibility, specific issues, courts and mediation

The third of three family law guides

When parents separate, the arrangements for their children matter more than anything else. This guide explains how the law in Northern Ireland approaches children on family breakdown: who has parental responsibility, where children live and how they see each parent, how decisions about schools, holidays abroad and moving away are made, which courts are involved, the role of social services and mediation, and the rights of grandparents. It is the companion to our guides Divorce in Northern Ireland and Money and property on divorce: ancillary relief.

The principles that guide every decision

The law is mainly in the Children (Northern Ireland) Order 1995. Article 3 sets out the principles every court must follow:

- The child's welfare is paramount. It outweighs the wishes of either parent.
- Delay is harmful. The court must avoid unnecessary delay, because a child's sense of time is different from an adult's.
- No order unless it helps. The court makes an order only if doing so is better for the child than making none.
- The welfare checklist. In contested cases, the court must consider a list of specific factors (see page 3).

Most parents agree arrangements themselves, sometimes with help from mediation or solicitors, and never need to go to court.

Quick answers

Question	Short answer
Is there a right to custody?	No. The court decides what is best for the child
Does the mother always get residence?	No. There is no presumption either way
Can a child refuse to see a parent?	Their wishes carry weight according to age and understanding, but do not decide the case alone
Do grandparents have rights?	Not automatically. They need the court's permission to apply
Who decides child maintenance?	Usually the Child Maintenance Service, not the court
Is mediation compulsory?	No, but it is strongly encouraged

Children first, conflict last

Research consistently shows that it is conflict between parents, more than separation itself, that harms children. Keep children out of adult disputes, never ask them to choose, and do not speak badly of the other parent in front of them.

If a child is at risk

If you believe a child is in immediate danger, call the police on 999. Concerns about a child's safety can also be reported to the Gateway team of your local Health and Social Care Trust, or to the NSPCC.

Agreeing

Most parents agree arrangements directly or through mediation. No court order is needed if the arrangement works.

When agreement fails

Either parent can apply to court. Solicitors can often still negotiate a settlement before a hearing.

Changing arrangements

Children's needs change as they grow. Arrangements, and court orders, can be reviewed and varied.

Parental responsibility, birth certificates and the key definitions

What is parental responsibility?

Parental responsibility means all the rights, duties, powers, responsibilities and authority that a parent has in relation to a child. In practice it means the right to be involved in important decisions: schooling, medical treatment, religion, name, and taking the child abroad.

More than one person can have parental responsibility at the same time. Each can usually act alone on day-to-day matters, but should consult on major decisions. Parental responsibility does not depend on where the child lives, and it is not lost when parents separate or divorce.

Who has parental responsibility?

Person	Parental responsibility?
The child's mother	Always, automatically
A father married to the mother at the birth, or who later marries her	Yes, automatically
An unmarried father named on the birth certificate, for a birth registered on or after 15 April 2002	Yes
An unmarried father not named, or for a birth registered before then	Only by a parental responsibility agreement with the mother, a court order, re-registration of the birth, or a residence order
A female second parent, through fertility treatment	Yes, if married to or in a civil partnership with the mother, or named on the birth certificate
A step-parent, grandparent or other relative	Only through a court order, such as a residence order, or by adoption

The orders the court can make

Under Article 8 of the 1995 Order, the court can make four kinds of order. Northern Ireland still uses these terms; the older words "custody" and "access" are no longer used in the legislation.

Order	What it decides
Residence order	Who the child lives with. It can be shared between both parents, even if the child spends more time in one home
Contact order	Who the child visits, stays with or has calls, video calls or letters with
Prohibited steps order	Stops a parent from doing something without the court's permission, such as removing the child from Northern Ireland
Specific issue order	Decides a particular question, such as which school, a medical treatment, or a change of name

Other definitions that matter

- **Child:** a person under 18. Article 8 orders usually last until 16, unless the circumstances are exceptional.
- **Child of the family:** in divorce, a child of both spouses, or any child treated by both as a child of their family, such as a stepchild. The court considers their arrangements, and can order maintenance for them.
- **Significant harm:** the threshold for the state to intervene through care or supervision orders. It is relevant where there are serious concerns about a child's safety.

Unmarried fathers

Make sure you are named on the birth certificate, or put a parental responsibility agreement in place. Without parental responsibility, a father may not be consulted about schooling, health or moving away.

Residence, contact, the welfare checklist and the family home

Who decides what is best for the child?

Ultimately the court, if parents cannot agree. In deciding, it must consider the welfare checklist in Article 3(3):

Factor	In practice
The child's wishes and feelings	Weighted by age and understanding; a teenager's view carries much more weight than a young child's
Physical, emotional and educational needs	Stability, schooling, health and emotional security
The likely effect of any change	The court is cautious about disrupting a settled arrangement
Age, sex, background and characteristics	Including culture, religion and any special needs
Any harm suffered or at risk	Including from domestic abuse, or from witnessing it
Each parent's capability	How well each can meet the child's needs
The range of powers available	The court can make any order it thinks right

Residence: "who gets custody?"

There is no presumption in favour of mothers or fathers. The court considers who can best meet the child's needs, usually favouring continuity with the parent who has been the main carer, and keeping brothers and sisters together. Shared residence orders are increasingly made where both parents are fully involved and live close enough.

Holidays and special days

Most arrangements share school holidays, and alternate or split Christmas, Easter and birthdays. Planning these well in advance avoids many disputes.

Contact: "access"

It is generally in a child's interests to have a meaningful relationship with both parents, so contact is the norm, unless it would put the child at risk. Contact can be:

- Direct: visits, days out, overnight stays and holidays.
- Indirect: phone or video calls, letters and cards, often a first step.
- Supervised or supported: at a child contact centre, or with an agreed family member present, where there are safety concerns.

Contact is the child's right, not a parent's reward. A parent cannot stop contact because maintenance is unpaid, and a parent cannot withhold maintenance because contact is refused.

Who can live in the family home?

Where there is violence or serious conflict, the court can make an occupation order under the Family Homes and Domestic Violence (NI) Order 1998, deciding who may live in the home, and a non-molestation order to protect a parent and children. The needs of the children for a stable home weigh heavily. Longer-term ownership is decided in the financial proceedings, or for unmarried parents under Schedule 1 to the 1995 Order.

Grandparents

Grandparents have no automatic right to see their grandchildren, and need the court's permission (leave) to apply for a contact order. The court considers their connection with the child, the nature of the application, and any risk of disruption. Most applications are made where a close relationship existed before the separation. Mediation is often the best first step.

Other relatives, and anyone the child has lived with for at least three years, may also apply, in some cases without needing permission.

Which court, social services, reports and domestic abuse

The three tiers of court

Court	Role
Family Proceedings Court	Part of the magistrates' court, sitting with a district judge (magistrates' courts) and lay magistrates. Most private law applications about children start here
Family Care Centre	The County Court tier, for cases transferred because of complexity, linked proceedings or the need for a longer hearing
High Court, Family Division	The most complex cases, international and abduction cases, wardship, and appeals

Where a divorce is under way, children's applications can also be heard by the court dealing with the divorce. Cases can move between tiers under the allocation rules.

The role of social services

The Health and Social Care Trust becomes involved in two main ways:

- Safeguarding checks: before the first hearing, the court may ask for police and social services checks on both households.
- Reports to the court: a Court Children's Officer, a social worker employed by the Trust, may be directed to prepare a welfare report under Article 4. They meet both parents and, where appropriate, the children, visit each home, and make recommendations.

Where there are serious concerns about harm, the court can direct the Trust to investigate under Article 56, and to consider whether to apply for a care or supervision order.

How long does it take?

A straightforward contact application may be resolved in a few months. Where reports, testing or a fact-finding hearing are needed, cases often take six months to a year. The court reviews interim arrangements along the way.

Other reports the court may order

- Drug and alcohol testing: hair strand tests show use over months; blood tests can indicate recent heavy drinking.
- Psychological or psychiatric assessments of a parent or child.
- Medical and school reports.
- In complex cases, a guardian ad litem from the Northern Ireland Guardian Ad Litem Agency may be appointed to represent the child.

Domestic abuse

Where domestic abuse is alleged, the court must consider the risk to the child and to the parent who cares for them before ordering contact. It may hold a fact-finding hearing to decide what happened. Contact may be indirect, supervised, conditional on a parent completing a programme, or refused. The court can provide protective measures at hearings, such as separate waiting rooms and screens. Domestic abuse, including coercive control, is a criminal offence in Northern Ireland.

Hearing the child

Children are rarely asked to come to court. Their wishes are usually conveyed through the Court Children's Officer's report. Older children may sometimes write to or meet the judge, and in exceptional cases be separately represented.

The first hearing

At the first hearing the court looks at the safeguarding information, identifies the issues, and encourages agreement. It may make interim arrangements, direct reports and testing, refer the parents to mediation or a parenting programme, and set a timetable. Many cases settle at or soon after this hearing.

Moving away, holidays abroad, schools, names and the border

Decisions both parents share

Where both parents have parental responsibility, important decisions about a child should be made together. If they cannot agree, either parent can ask the court for a specific issue order to decide a particular question, or a prohibited steps order to stop a step being taken without the court's permission.

- Schools: choice of school, including moving from one school to another.
- Medical treatment: where parents disagree about significant treatment or vaccinations.
- Religion and upbringing: where this becomes a genuine dispute.
- Change of name: a child's surname should not be changed without the agreement of everyone with parental responsibility, or the court's permission.

Holidays abroad

A parent with a residence order can take the child abroad for up to one month without the other parent's consent. Otherwise, the written consent of everyone with parental responsibility, or the court's permission, is needed. Taking a child out of the jurisdiction without consent can amount to child abduction.

Practical tip

Agree holiday dates well in advance, share the itinerary and contact details, and carry a signed letter of consent from the other parent. Airlines and border officials may ask for it.

Moving away with the children

A parent who wants to move a significant distance, or to another country, should seek the other parent's agreement first and, failing that, the court's permission. The court's focus is the child's welfare: the reasons for the move, the practical plans, the effect on the child's relationship with the other parent, and the arrangements for contact.

The border

Moving between Northern Ireland and the Republic is a move to another jurisdiction. Courts on both sides of the border apply international rules to return children taken without consent, and to recognise each other's orders. Families who live on one side of the border and work or attend school on the other should take advice before making changes.

If you fear a child will be taken

Act quickly. The court can make urgent orders preventing removal, and passports can be lodged with a solicitor or the court. Contact us, or the police in an emergency.

Child maintenance

Child maintenance is usually dealt with by the Child Maintenance Service, not by the courts, and court applications are possible only in limited circumstances. We do not generally advise on Child Maintenance Service calculations. For information on how maintenance is assessed, please contact the Child Maintenance Service directly or visit nidirect.gov.uk.

Family mediation, legal aid and getting the case right first time

Why mediation is recommended

Family mediation helps separated parents reach their own agreement about the children, and often about money, with an impartial, trained mediator. It is not compulsory in Northern Ireland, but courts and solicitors strongly encourage it, because:

- parents who reach their own agreements are more likely to keep to them;
- it is quicker, cheaper and less stressful than court;
- it protects the parents' ability to co-operate for years to come;
- arrangements can be flexible and change as children grow.

How it works

Individual meetings

Each parent meets the mediator separately, so the mediator can check mediation is safe and suitable.

Joint sessions

Usually two to four sessions, focusing on the children's needs and a parenting plan.

The child's voice

In child-inclusive mediation, a specially trained mediator may speak with the children.

The outcome

A written summary, which each parent takes to their solicitor. It can be turned into a binding order where needed.

The mediator does not take sides or give legal advice, and cannot impose a decision. Mediation is not suitable where there is domestic abuse, or a serious risk to a child.

Before you apply to court

The court will expect you to have tried to agree arrangements, unless it was unsafe to do so. Keep a record of proposals made, and of contact that has or has not taken place.

Who provides family mediation?

- Family Mediation NI, a charity providing mediation across Northern Ireland.
- Relate NI, which also provides relationship and family counselling.
- Accredited private family mediators, including solicitor mediators.

Legal aid in children's cases

Civil legal aid is available for some children's cases, subject to a means test and a merits test, through the Legal Services Agency Northern Ireland.

Our position on legal aid

We do not generally undertake children's cases on legal aid. The time and complexity involved in these cases is not matched by the current level of legal aid payments. Regrettably, where there are complex child issues in the Family Proceedings Court, we are not able to act on a legal aid basis. We can provide a list of firms that do, and we are happy to advise and act on a private, fee-paying basis.

Acting for you privately

When you instruct us privately, we give a clear estimate at the outset. The cost of a contested case can be substantial, and is rarely recovered from the other parent, as courts seldom order costs in children's cases. That is another reason to resolve matters by agreement where it is safe to do so.

A parenting plan

A written plan covering where the children live, school holidays, birthdays and Christmas, handovers, phone contact, new partners and how decisions are made can prevent many disputes. We can help you prepare one, whether or not you use mediation.

Worked example

Mark and Sinéad: alcohol, violence, and a father rebuilding contact

Mark and Sinéad are in their thirties and have two children, aged 6 and 9. Their marriage broke down because of Mark's dependence on alcohol, and there were incidents of violence towards Sinéad, one witnessed by the children. The children now live with Sinéad. Mark has stopped drinking, is attending an addiction service, and wants to see his children again. This illustrates how such a case is likely to develop.

Who gets involved

- The police and courts may already be involved through criminal proceedings and a non-molestation order protecting Sinéad.
- The Trust's social services may have been notified after the incident the children witnessed. They will assess the children's safety and Sinéad's ability to protect them.
- The Family Proceedings Court hears Mark's application for a contact order.
- A Court Children's Officer prepares an Article 4 report, speaking with both parents, the children if appropriate, and the school.
- Specialist services: Mark's addiction counsellor, and possibly a domestic abuse programme.

What social services and the court will consider

- The children's safety, and the emotional harm of witnessing violence.
- Whether Mark accepts responsibility for the violence and the drinking.
- Objective evidence of sobriety, such as hair strand or blood tests over several months.
- Engagement with addiction support and any perpetrator programme.
- The children's wishes and feelings, given their ages.
- The impact on Sinéad, and her ability to support contact safely.
- The previous relationship between Mark and the children.

How the court is likely to decide

The court will want the children to have a relationship with their father if that can be achieved safely. Because of the violence, it may first hold a fact-finding hearing. Contact is likely to be built up in stages, reviewed by the court:

Stage 1
Indirect contact: cards, letters, and possibly short video calls.

Stage 2
Supervised contact at a child contact centre.

Stage 3
Supported contact, then unsupervised daytime visits, with continued testing.

Stage 4
Longer visits and overnight stays, once the evidence shows sustained sobriety and the children are settled.

Handovers may take place at a contact centre or through a third party, so the parents do not need to meet. Any relapse is likely to halt progress.

How the children are protected

Welfare is paramount at every stage. The court can attach conditions to contact, such as no alcohol in the 24 hours before and during contact, regular testing, or no contact with certain people. Sinéad keeps the protection of the non-molestation order. The court can review and vary the arrangements at any time.

What Mark should do
Stay engaged with addiction support, accept testing, and complete any programme recommended.

What Sinéad should do
Keep the children safe, and support contact the court decides is safe.

What the children need
Safety, stability, and a chance to rebuild their relationship with their father.

Moving away, the border, names, schools, and our role

Other issues on separation

- **Moving away:** a parent who wants to move a long distance, or abroad, with the children needs the other parent's consent or the court's permission. The court looks closely at the impact on the child's relationship with the other parent.
- **Crossing the border:** taking a child to live in the Republic, or anywhere outside Northern Ireland, without consent can be child abduction. The Hague Convention allows a child wrongfully removed to be returned quickly. Short holidays are usually fine with consent, and a parent with a residence order can take the child abroad for up to a month.
- **Change of name:** a child's surname cannot be changed without the consent of everyone with parental responsibility, or a court order.
- **Schools and health:** both parents with parental responsibility can usually obtain school reports and medical information.
- **New partners:** introduce them gradually, and with thought for the children's feelings.
- **Social media:** never post about the case or the other parent. Children's cases are private, and publishing information can be contempt of court.

If an order is not obeyed

A parent who repeatedly breaks a contact or residence order can be brought back to court. The court can vary the arrangements, and in serious cases impose penalties. Enforcement is always weighed against the effect on the children.

Appoint guardians in your will

A parent with parental responsibility can appoint a guardian in their will, to care for the children if both parents die, or if the parent with a residence order dies. After separation, review your will to make sure it reflects your wishes for the children.

How we help

- Early advice on your rights, the realistic options and the likely outcome.
- Parental responsibility agreements and parenting plans.
- Negotiating arrangements with the other parent or their solicitor.
- Referral to and support alongside family mediation.
- Urgent protection: non-molestation, occupation and prohibited steps orders.
- Applications for residence, contact, specific issue and relocation orders, and representation at every hearing.
- Working with Court Children's Officers, social services and experts.
- Grandparents' and relatives' applications.
- Schedule 1 claims for housing or lump sums for children of unmarried parents.
- Cross-border and international cases, including abduction.

Bring to your first meeting

The children's full names and dates of birth, any existing court orders or agreements, details of any police or social services involvement, and a short note of the current arrangements and what you would like to achieve.

Our approach

We focus on what is best for your children, and on reaching lasting arrangements with as little conflict as possible. Where a child or parent needs protection, we act quickly and firmly.

A F Colhoun & Co Solicitors

The Old Library, 41 Dublin Road, Omagh, BT78 1HE · T +44 28 8224 2136

A member of The Law Group

Family law is rarely one size fits all, and it is not black and white. While the same legal principles apply, every case turns on its own facts and is decided on a case by case basis. This guide is reviewed and updated as the law changes. This briefing is general information on the law of Northern Ireland as at October 2026. The worked example is illustrative. Please take advice on your own circumstances. See also our guides on divorce and on ancillary relief.

THE LAW GROUP

INCLUSIVE LEGAL SERVICES