

Changing a child's name – Guidance Document

Introduction

It should be remembered that the registration or change of a child's surname is a serious thing whatever the age of the child.

When reading this document please remember that it is an outline of what you might need to know in your day to day practise. If you are really unsure about something ask. There are references at the bottom of the page to further reading if you are interested.

What is the position where a person wants to change a child's surname (when the local authority does not hold parental responsibility)?

1. It should be remembered that where a child's parents act jointly, they have the right to name and rename their child. This applies to all of the child's names. A surname is simply a name by which a person is known and may be changed by use of another name. A deed poll (or other official document) is simply proof of the maker's intention to change the name. So it is not necessary to execute a deed poll to change a child's name. But, it is sensible to complete the necessary paperwork to avoid problems in the future.
2. Different principles apply to given names (first names or names other than the surname). The forename(s) given to a child at registration of birth are less concrete than the surname as children get a statutory registered name at birth and also often receive different given names (for example a nickname) during the course of family life.
3. Where a change of name is being thought about the following points should be remembered:

First, the person wishing to change the child's name should speak about it with anyone who has parental responsibility (PR). This should take place whether or not there is a child arrangements order in force.

Secondly, where two or more people have PR for a child then one of those people can only lawfully cause a change of surname if all other people having PR agree.

Thirdly, if the consent of the other people is forthcoming then it is sensible for this to be put in writing. Note that if there is a child arrangements order in place saying who a child should live with then it is a requirement that all those with PR give written consent to a change of surname.¹ Written consent is also needed before enrolment of a deed poll, so in effect to formally change a child's surname written consent is needed.

¹ Section 13(1) Children Act 1989

Fourthly, the law is not totally clear about how important it is for the consent of a father who does not have PR to be obtained – in strict legal terms the person with PR could change the child’s surname without seeking consent. But it is a matter of good practise for other interested parties (e.g. a father who does not have PR) to be contacted – he may then bring the matter before the Court if he is unhappy.

4. If the change of name is disputed then it should be referred to Court (indeed the law stresses that where there is any sign of dispute about a child’s name then the court should be involved).^d
5. Now for some technicalities (in outline only – if you do not want to read this section move to paragraph 6).
 - a. If there is a child arrangements order in force, saying who a child should live with, a freestanding application for permission should be made under section 13 of the Children Act 1989. An application under section 8 of the Children Act 1989 is not appropriate;
 - b. Where there is no child arrangements order in force then an application should be made under section 8 of the Children Act 1989 – whether a prohibited steps order or specific issue order is sought will depend on the facts of the case: speak to someone if you are not sure which applies;
 - c. Ultimately, when the Judge looks at the application (under a or b above) s/he will consider the child’s welfare her/his paramount consideration.²
6. Just be aware of older children in these situations, particularly where they are over 16, as it may be that their view may be important.
7. Normally a change of surname should not be allowed without proof that it would improve the child’s welfare. But there may be reasons to go beyond this. For example:
 - a. In one case the court agreed to the children’s surname being changed due to the father’s course of harassment within private law proceedings and due to the threat of abduction to Mexico. The court felt that a change of surname to reduce the risk of abduction was in their interests.³
 - b. In another case the court granted a change of surname to prevent a violent father from tracking the children down. The Judge felt that the safety aspect of the children was critical, their surname was not common and the father had shown himself clever at trying to establish where they lived.⁴

² If you want a helpful summary of the present position on change of name cases see *Re W, Re A, Re B (Change of Name)* [1999] 2 FLR 930. It gives some helpful guidance.

³ *Re F (Contact)* [2008] 1 FLR 1163

⁴ *Re AA v BB and Children (through their children’s guardian)* [2014] 1 FLR 178

What about a change of name when the local authority has parental responsibility?

8. It is of course the case that where a care order is in force (interim or full) that the local authority who has the care order has PR for the child.
9. While a care order is in force with respect to a child, no person may cause the child to be known by a new surname without either the written consent of every person who has PR for the child or the leave of the court.⁵
10. If a change of surname is sought then an application may be made under section 33(7) of the Children Act 1989 seeking leave for a child's surname to be changed.
11. There is no definitive list of factors that point to when a court may or may not grant a change of surname where the local authority has PR.
12. According to the case law, the basic approach to private law (what has been discussed above) and public law (what we are considering here) is not fundamentally different, and the principles in private law change of surname cases should not be ignored. Therefore, on an application to change a child's surname, whether in private or public law proceedings, the child's welfare is the court's paramount consideration. On top of the welfare checklist in section 1(2) of the Children Act 1989 the court will look at:
 - c. The wishes, feelings, needs and objectives of the applicant;
 - d. The motives and stated objections of the respondents; and
 - e. The opinion of the guardian ad litem

By way of example, in one case, the child (a girl aged 12) had suffered serious abuse from her parents and was living with long term foster carers. She had expressed a clear view that she wanted to use the foster carers' name. Her parents did not know her whereabouts and there was an order that the parents should have no contact with her. The Court allowed the application for a change of surname. The Court also said that normally a child's parents should know about an application like this, but given the circumstances of the case it was acceptable not to notify them of the application (as these were exceptional circumstances).⁶

Another example was when a Court agreed that the children's names could be changed as they had suffered 'a reign of terror and tyranny' in their parents' care, they had requested a change of name, and were expressing great fear that their father, or wider family network or community, would seek them out and remove them from local authority care, and that they would be punished for breaking the community code of silence if they were traced. None of the children had contact with

⁵ Section 33(7) Children Act 1989

⁶ Re J (a minor) (change of name) [1993] 1 FLR 699

their parents, apart from receiving cards from their mother. The parents objected to the change of surnames but the Court decided they should be allowed to do so.

Law quoted as at 4th January 2017

END