



Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental Responsibilities and Rights

This short statement is intended to offer general advice to parents and carers whose children are the subject of orders made by a court relating to parental responsibilities and rights, for example in relation to contact or residence. During the current Coronavirus Crisis, it is understandable that there may be some concern regarding how court orders can safely be complied with. The circumstances of each child and family will differ, but the following general guidance suggests how to proceed appropriately.

1. Parental responsibility for a child who is the subject of any order relating to parental responsibilities and rights made by a Scottish court continues to rest with the child's parents or carers and not with the court.
2. During these unprecedented times, it is expected that all those caring for children will act sensibly, safely, and in line with [Scottish Government](#) and [UK Government](#) guidance.
3. The guidance makes the general position clear: it is no longer permitted for a person, including a child, to be outside their home for any purpose other than essential shopping, daily exercise, medical need or attending essential work.
4. Specific [UK Government guidance for families](#) establishes an exception to the general [stay at home requirement](#) for separated families. It explains that **"If you and your partner live in separate homes but take turns to look after your children, you can continue to do this"**. This does not mean that children **must** be moved between homes. If there is a court order or formal agreement in place, you should try to stick to the arrangements it sets out unless you and the other person with parental responsibilities and rights agree to vary these. If you have a more informal arrangement with the other parent or carer, you should discuss how best to approach the situation and make a decision on whether a child is to move between homes after a sensible assessment of the circumstances, including the child's present health, the risk of infection and the presence of any recognised vulnerable individuals in one household or the other.

5. Many people are very worried about Coronavirus and the health of themselves, their children and their extended family. Even if a parent thinks it is safe for contact to take place, the other parent or carer may, entirely reasonably, be concerned about this. At such times, communication between all parties is key to managing the situation and agreeing a sensible, practical solution.
6. Where parents, acting in agreement, exercise their parental responsibility to conclude that the arrangements set out in a court order relating to parental responsibilities and rights should be temporarily varied, they are free to do so. It would be sensible for each parent to record such an agreement in a note, email or text message sent to each other.
7. Where parents do not agree to vary the arrangements set out in a court order, but one parent is sufficiently concerned that complying with the court order would be against current Government advice, then that parent may exercise their parental responsibility and vary the arrangement to one that they consider to be safe. If, after the event, the actions of a parent acting on their own in this way are questioned by the other parent in court, the court is likely to look to see whether each parent acted reasonably and sensibly in the light of the Government guidance in place at that time, together with any specific evidence relating to the child or family.
8. Where, either as a result of agreement or as a result of one parent on their own varying the arrangements, a child does not get to spend time with the other parent as set down in the court order, the courts will expect alternative arrangements to be made to establish and maintain regular contact between the child and the other parent safely, for example remotely – by Face-Time, WhatsApp, Skype, Zoom or other video connection or, if that is not possible, by telephone.
9. Information regarding court hearings and urgent business can be found on the [Scottish Courts and Tribunal Service](#) website. No non-urgent business is currently being dealt with in court. For the avoidance of doubt, non-urgent child welfare hearings are not proceeding in court. In urgent cases, the court will consider an application for one to be fixed, but will have to be satisfied that it is essential. For child welfare hearings that do proceed, the normal rule is that parties must attend child welfare hearings except on cause shown – the Coronavirus Crisis will automatically be accepted as appropriate cause shown and parties are not required to attend child welfare hearings in person at this time.

Lord President

27 March 2020