

**GENERAL SYNOD
LEGAL ADVISORY COMMISSION**

Baptism: consent of parent

Involvement of parents, guardians and godparents

1. The canon law has never required the consent of a parent before a child is baptized. Indeed, had that been so, emergency baptism would have proved impossible. Although the *Common Worship: Christian Initiation: Emergency Baptism* (Note 2 at p. 105) provides that it is the parent's responsibility to request emergency baptism, it also recognizes that the parents may be absent and that they may not even have named the child (see Note 3 at p. 105). The *Ministration of Private Baptism in Houses* in the BCP also seems to envisage the possibility of the absence of the parents. In relation to a healthy infant, however, Canon B 22 envisages some involvement of the child's parents or guardians as the minister is required to instruct them in their responsibilities.

2. However, Canon B 22 must be construed in relation to the general law applicable in England and the word 'parent'¹ must therefore now be construed as referring only to a person having parental responsibility for the child². The Children Act 1989, section 3(1), defines 'parental responsibility' as

‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child’

And, although the Act does not further define the scope of this responsibility, subsequent case law has made it clear that it embraces both the right to determine a child's religion and to change a child's name. This being so, the decision whether or not to baptize a child is in the Commission's view also part of parental responsibility.

¹ The word 'guardian' must similarly be construed in relation to the general law applicable in England.

² If one or both parents of the child are, or have been, resident other than in England and Wales since the birth of the child, it may be that different considerations apply and advice in such cases should therefore be sought from the diocesan registry.

In consequence, no person (other than one authorized by a civil court) can lawfully authorize a child's baptism unless that person has at the relevant time parental responsibility for that child³. Nevertheless, more than one person may have parental responsibility at any given time (CA 1989, s 2(5)), although each of them may act alone in carrying out that responsibility unless there is any enactment to the contrary (CA 1989, s 2(7)). In addition, a person who has parental responsibility may arrange for some or all of his or her responsibility to be met by one or more persons acting on his or her behalf (CA 1989, s 2(9)). In the latter circumstance a minister should not baptise the child until he or she is satisfied by reference to the original document making such an arrangement that the person applying for the baptism to take place does, indeed, have the requisite authority.

3. The Commission recognises the pastoral situation of the minister when asked to baptise a child and that any enquiries as to parenthood and who has parental responsibility requires sensitivity. Nevertheless, it is necessary for the minister to make some enquiry into these matters as to proceed without the requisite authority could in theory amount to an assault on the child. For this reason it may be best practice to provide a simple questionnaire to be filled out by those bringing the child to baptism. Such a questionnaire should include simple questions as to who are the natural parents of the child and who has parental responsibility for the child. (A table as to who in law has parental responsibility is set out in the Appendix but in the case of any complication the advice of the diocesan registry should be sought before proceeding further.)
4. Although any one person having parental responsibility may in law act alone (see above) and therefore may bring a child to baptism without the knowledge or agreement of others having contact with or responsibility for the child, the minister should not proceed without attempting first to ascertain the views of those other people. To act otherwise may cause a difficult pastoral situation and in any event it is always open to another person to apply to the civil courts for an order preventing the

³ Nonetheless, the exercise of parental responsibility may be subject to an order of the civil courts and in certain circumstances a local authority is entitled to exercise parental responsibility to the exclusion of any others having that responsibility. The unusual case arising in relation to section 3(5) of the Children Act 1989 is referred to later in this opinion.

baptism. In the event of any disagreement the minister should seek the direction of the diocesan bishop.

5. There is also the duty under Canon B 22, paragraphs 3, to instruct the parents or guardians that “the same responsibilities rests on them as are in the service of Holy Baptism required of the godparents”⁴ and this may prove difficult if others having parental responsibility are not involved from the outset. In addition, in a case such as the natural father who may not have parental responsibility but nevertheless has involvement with the upbringing of the child, the spirit of the Canon would suggest that such persons should similarly be instructed. In all such cases, if that person should refuse to be instructed, the direction of the diocesan bishop should again be sought.
6. In English law, including the ecclesiastical law, a child is any person under the age of 18. Therefore, although Canon B 24 (Of the baptism of such as are of riper years) makes no mention of an actual age, it must be read as referring to adults, rather than to older children. The relevant rite in the Book of Common Prayer is entitled *The Ministration of Baptism to such as are of Riper Years and Able to Answer for Themselves* but the latter words should not be read as referring to children who are able to answer for themselves as the final rubric to that rite makes clear.

Who has parental responsibility?

7. Unfortunately, the question who has parental responsibility in any given circumstance in English law may often be complicated: see the Appendix. Where there is any doubt, guidance should always be sought in the first instance from the diocesan registrar. This is particularly so in cases where care proceedings are ongoing or the mother has undergone treatment for assisted reproduction and the creation of the embryo carried by the mother was not brought about by the sperm of the other party to the relationship (see CA1989, s 2(1A)(1B); Human Fertilisation and Embryology Act 2008, ss 35, 42 & 43) and also in cases of surrogacy (HFEA 1990, s 30).

⁴ See, too, Canon B 23, paragraph 2.

8. Those having parental responsibility may in certain circumstances lose that responsibility (for example, when the child is adopted by some other person or persons or by order of a civil court) or have the power to exercise that responsibility restricted by order of a civil court. The responsibility is similarly lost if the original order which conferred the parental responsibility of the person concerned ceases to have effect, for example, if it is revoked by the court.

9. There are also some rare occasions (for example, when not all the above conditions required in law as to surrogacy have been fulfilled) where there has been no court order, no-one holds parental responsibility and a child remains in the everyday care of a person or persons who is, or are, not his biological parents and with whom he or she has no kinship relationship. In the last situation section 3(5) of the Children Act 1989 provides that he or she may (subject to the other provisions of the Act) _

“do what is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the child's welfare.”

In effect, such a person stands in loco parentis and within a Christian context this would seem to embrace bringing a child to baptism.

10. Usually a child will be brought to baptism by the natural or adoptive parents or the guardian or guardians. However, as has been seen, circumstances can vary widely and it may happen that only one parent, or only one person having parental responsibility, may bring a child to baptism; the other parent or person having parental responsibility may have died; the natural parents may never have married or may now be divorced; the other parent may have a different religion or be an atheist or agnostic; the other person may object to the baptism or merely be uninterested. The minister can only discover the true state of affairs by making enquiries; in the first instance this will be from the person who requests the baptism. In any case where a claim to parental responsibility depends upon any written documentation (such as a court order, birth certificate or arrangement) the minister should not perform the baptism without first seeing written evidence in support of that contention. It is the Commission's view that in all these cases “due notice” within the meaning of Canon B 22, paragraph 1, includes the provision of such written documentation or other proof that the person

has legal authority to request the baptism. (It is always good practice to keep a copy of any such documentation.)

11. Even though section 2(7) of the Children Act 1989 permits one person having parental responsibility to act without the authority of another such person, if the child is brought by one such person alone, the minister remains under a duty (save in an emergency) to instruct those having parental responsibility in the responsibilities that rest upon them (Canon B 22, paragraph 4). The minister should therefore enquire as to the reason for the absence of the other natural parent or person having parental responsibility and, if there is another such person who cannot be located, the minister must endeavour to instruct them all⁵. In order to do so the minister may postpone the baptism (save in an emergency) (Canon B 22, paragraph 3).
12. If the other person or persons having parental responsibility cannot be found, the minister is entitled then to baptise the child. On the other hand, if they do not agree to a baptism, or refuse to be prepared or instructed, the minister should apply to the diocesan bishop for guidance and directions under Canon C 18. If the minister learns that a court order to prohibit baptism has been made or is being sought, the minister should refuse baptism until the matter has been resolved by the court; in the meantime the minister should inform the bishop of the reasons for refusal.
13. If the child is brought for baptism by persons other than those with parental responsibility, the minister's obligations in relation to those having parental responsibility still remain under Canon B 22, paragraph 3, to prepare or instruct them.
14. If the minister refuses to baptise the child, or unduly delays in so doing, a person having parental responsibility who brought the child to baptism or authorised that someone to do so may apply to the bishop under Canon B 22, paragraph 2, and after consultation with the minister the bishop may give such directions as he or she thinks fit.

⁵ It is the Commission's view that in the case of a local authority the minister's duty will be fulfilled if he or she draws its attention to the fact that ecclesiastical law places on those exercising parental responsibility the same responsibilities as are required of godparents in the service of Holy Baptism (see Canon B 22, paragraph 3).

Emergency baptism

15. Canon B 22, paragraph 6, provides:

‘No minister being informed of the weakness or danger of death of any infant within his cure and therefore desired to go to baptise the same shall either refuse or delay to do so.’

There is no exception to the duty upon a minister having the cure of souls to attend upon an emergency under Canon B 22, paragraph 6, for example, to await the presence of those having parental responsibility or godparents or to give instruction; indeed, the summons may come from someone entirely unconnected with the family. However, if upon attendance the minister were to find that the child was perfectly healthy, he would not be under any obligation to administer baptism then and there, as private baptism should only occur ‘in case of great danger’ (see the rubric at the end of The Ministration of public Baptism to such as are of Riper Years in the BCP) or ‘emergency’ (see Note 1 of *Common Worship: Christian Initiation: Emergency Baptism* at page 105). Canon B 22, paragraph 6, obliges the minister to attend without refusal or delay rather than expressly to administer the Sacrament.

16. Nevertheless, if the child is in danger of death, or will remain at risk (which would seem to be the purpose of the word ‘weakness’ in Canon B 22 paragraph 6), there is a clearly implied duty (subject to what is said below) to administer the Sacrament (see Canon B 22, paragraph 7) unless there is an order from the civil courts forbidding such a baptism. In this regard the minister should be guided by any available medical opinion. The minister should not claim medical expertise unless actually qualified to make such a claim. If there is any doubt as to the emergency, the child should still be baptised. The decision as to whether the child should be baptised is in no way dependent upon whether it is ‘within his cure’; these words only delineate upon whom the duty of attendance falls.

17. If told of the existence of an order of the court forbidding the baptism, or an application for such an order, a minister who nevertheless administered baptism would be in danger of having to answer to the civil court.

18. Does the duty to baptise in an emergency exist in relation to every child irrespective of the views or religion of one or more of those having parental responsibility? The duty to attend under Canon B 22, paragraph 6, is absolute and only when present will the minister be able to appreciate the situation. Hospital admission records or other information may reveal that those having parental responsibility are not Christian and in those circumstances the minister's duty to baptise has to be considered within the context of the significance of baptism in the universal Church. Baptism is the Sacrament instituted by Christ for those who wish to become members of his Church (see *The Welcome and Peace in Common Worship: Christian Initiation: Holy Baptism* at pages 75 and 120) and, as such, the congregation '... shall receive him as one of the flock of true Christian people (rubric after the questions to those who bring a child to church after emergency baptism in the *Ministration of Private Baptism of Children in Houses* in the BCP). This being so, and especially as baptism is not a prerequisite of ultimate salvation⁶, it can no longer be argued that baptism ought to be administered against the wishes or beliefs of those having parental responsibility for the child on the ground that the salvation of the child must be of paramount concern. Therefore, although there is no exception expressly mentioned in Canon B 22, paragraph 6, it can nevertheless be implied that the minister should not baptise a child in an emergency where it is likely to be contrary to the wishes of those having parental responsibility.

19. In an emergency anyone may lawfully baptise (see, e.g., Note 1 at page 105 in *Common Worship: Christian Initiation*), although the duty under Canon B 22, paragraph 6, only falls upon a minister having a cure of souls. Subject to the general cure of the bishop, it is usually only the incumbent who has an exclusive cure of souls within a parish (*Halsbury's Laws of England*, 5th edn, 2011, vol. 34, at para 452), although the minister of a conventional district has a cure of souls, as does a vicar in a team ministry where a special cure of souls in respect of the parish has been assigned to that team vicar by a scheme under the Mission and Pastoral Measure 2011 or by a licence from the bishop. A priest-in-charge licensed to a parish during a vacancy has the cure of souls in that parish (*see also Clergy: priest-in-charge*). On the other hand, an assistant curate has no cure of souls except as the minister in charge of the

⁶ See *Common Worship: Christian Initiation* Emergency Baptism (Note 2 at page 105).

parish by reason of a vacancy. Moreover, hospital chaplains who are licensed under the Extra-Parochial Ministry Measure 1967 are to be regarded as having a cure of souls within the meaning of Canon B 22.

APPENDIX

The circumstances (other than those concerning assisted reproduction and surrogacy) giving rise to parental responsibility are as follows:

- (a) Mother: a mother always has parental responsibility (CA 1989, s 2(1)(2)) unless the child has subsequently been adopted or a parental order⁷ is made.
- (b) Father: a father has parental responsibility if _
- (i) he and the mother were married⁸ at the time of the child's birth (CA 1989, s 2(1)); or
 - (ii) (ii) they were unmarried at the time of the birth but (subject to certain exceptions) his name has been registered on the birth certificate (CA 1989, s 4(1)(a)); or
 - (iii) they were unmarried but he and the mother have made a parental responsibility agreement⁹ providing for him to have such responsibility (CA 1989, s 4(1)(b)); or
 - (iv) they were unmarried but he has obtained a court order granting him parental responsibility (CA 1989, s 4(1)(c)); or
 - (v) they were unmarried but he has been named by the court in a child arrangement order as a person with whom (α) the child is to live (CA 1989, s 12(1)) or (β) the child is to spend time or have contact with him and the court decides it is appropriate to grant him parental responsibility (CA 1989, s 12(1A)).

Additionally, the father may gain parental responsibility by marrying the child's mother, being appointed as its guardian or by adoption (CA 1989, s 4(1)).

- (c) Other female parent (save for cases involving fertilisation): A female who is not a parent has parental responsibility if _

⁷ This latter provision only applies where there has been assisted reproduction: see HFEA 2008, s 54.

⁸ References to whether a father and mother were married to each other at the time of the child's birth must be read with section 1 of the Family Law Reform Act 1987 (which extends its meaning): see CA 1989, s 2(3).

⁹ The agreement must be in the prescribed form and recorded in the Principal Registry of the Family Division: CA 1989, s 4(2)(a).

- (i) her name is registered on the birth certificate (CA 1989, s 4ZA(1)(a)); or
 - (ii) she has entered into a parental responsibility agreement³ with the mother (CA 1989, s 4ZA(1)(b)); or
 - (iii) she has on her application obtained a court order for parental responsibility (CA 1989, s 4ZA(1)(c)); or
 - (iv) she is named in a child arrangements order as a person with whom (α) the child is to live (CA 1989, s 12(1)) or (β) the child is to spend time or have contact with her and the court decides it is appropriate to grant her parental responsibility (CA 1989, s 12(1A)).
- (d) Step parent: A step-parent has parental responsibility where _
- (i) a child's parent who has parental responsibility for a child is married to, or is the civil partner of, a person who is not the child's parent (the step parent), and the child's parent or parents having parental responsibility have by a parental responsibility agreement³ with the step parent provided for the step parent to have parental responsibility (CA 1989, s 4(1)(a)); or
 - (ii) on the application of the step parent the civil court has ordered that the step parent shall have parental responsibility (CA 1989, s 4(1)(b)).
- (e) A person with whom the child is to live: Where the court makes a child arrangements order and a person who is not the parent or guardian of the child concerned is named in the order as a person with whom the child is to live, that person has parental responsibility while the order remains in force so far as providing for the child to live with that person (CA 1989, s 12(2)).
- (f) Guardian: A guardian if _
- (i) he or she is appointed guardian by the court when no-one has parental responsibility or a parent, guardian or special guardian who was named in a child arrangements order as a person with whom the child was to live and has died while that order was in force (CA 1989, s 5(1)); or

- (ii) a parent having parental responsibility has appointed¹⁰ him or her guardian in the event of that parent's death (CA 1989, s 5(3)); or
 - (iii) a guardian or special guardian of a child has appointed³ another individual to take his or her place in the event of their death (CA 1989, s 5(4)).
- (g) Special guardian: A special guardian has parental responsibility if he or she is appointed as special guardian by the court (CA 1989, s 14A)).
- (h) Local authority: The local authority has parental responsibility
- (i) if there is a care order or an interim care order in force¹¹ (CA 1989, s 33(3)(a)); or
 - (ii) while an emergency protection order is in force and the local authority assumes responsibility for the order (Emergency Protection Order (Transfer of Responsibilities) Regulations 1991, reg. 2).
- (i) Emergency protection order: An authorised person has parental responsibility if he or she has been granted an emergency protection order (CA 1989, s 44(4)(c)) as long as the local authority has not assumed responsibility for the order (see above).
- (j) Adoption: An individual or individuals obtain or obtains parental responsibility _
- (i) on the making of an adoption order by the court giving that person parental responsibility (Adoption and Children Act 2002, s 46(1)); or
 - (ii) while a child is placed for adoption¹² or an adoption agency is authorised to place a child for adoption or a placement order is in force in respect of the child, parental responsibility is given (a) to the adoption agency; (b) to the prospective adopters while the child is

¹⁰ The appointment must be in accordance with the provisions of section 5(5) of the CA 1989. The appointment will only take effect if on the death there is no other parent with parental responsibility or immediately before the death a child's arrangements order was in force in which the person was named as a person with whom the child was to live was the child's only or last surviving special guardian.

¹¹ In this case the local authority has the power in certain specified circumstances to determine the extent to which (i) a parent, guardian or special guardian of the child, or (ii) a person who by reason of section 4A has parental responsibility for the child, may meet his or her parental responsibility (CA 1989, s 33(3)(b)).

¹² Under section 19 of the Adoption and Children Act 2002.

placed with them (although the adoption agency has the power to restrict the extent of the parental responsibility) (ACA 2002, s 25); or (iii) on the application of the persons who intend to adopt a child under the law of a country or territory outside the British Isles the High Court may make an order giving them parental responsibility (ACA 2002, s 84(1)).

(See, too, **Baptism of Children: parental responsibility and same sex couples:** retitled as **Baptism and Same Sex Parents**) If a person has acquired a new gender under the Gender Recognition Act 2004 his or her status as the father or mother of a child is nevertheless unaffected: see section 9 of the Act.