På det civilretlige område vil verserende sager og sager, der er indledt inden overgangsperiodens udløb, fortsætte i henhold til EU-retten. E-Justice-portalen vil – i overensstemmelse med en aftale med Det Forenede Kongerige – fortsat indeholde relevante informationer vedrørende Det Forenede Kongerige indtil udgangen af 2024.

Parental responsibility - child custody and contact rights

Gibraltar

1 What does the legal term "parental responsibility" mean in practical terms? What are the rights and obligations of a holder of parental responsibility?

For the purposes of Gibraltar law, parental responsibility would refer to the custody, care and control of a child, normally exercised by a parent or parents or by an appointed guardian. Generally, a parent or guardian is responsible for the custody and upbringing of a child and for the administration of any property belonging to a child or held in trust for the same.

The term parental responsibility extends to the father, mother or any appointed guardian who fulfils his or her parental responsibilities in relation to a particular child. Parental responsibility also extends to control either directly or by providing guidance, in a manner appropriate to the stage of development of the child. It also extends to the child's upbringing, if the child is not living with him, to maintain personal relations and direct contact on a regular basis; and to act if required as the child's legal representative.

2 As a general rule, who has the parental responsibility over a child?

Generally, in relation to the custody or upbringing of a child and the administration of any property, a mother has the same rights and authority as a father. Such rights and authority of a mother and father are equal and can be exercised by either without the other. These general rights are subject to any order imposed by the Gibraltar courts.

Where a child's father and mother were married to each other at the time of his birth, according to Gibraltar law each parent has parental responsibility over the child. If however they had not, only the mother would have parental responsibility at birth. This is not a strict or absolute rule as Gibraltar law recognizes that if the father is registered as "the father" by the mother he would acquire parental responsibility over the child. Also if ordered by the Court.

One, two or more persons however could also have parental rights in respect of a child. They may not exercise however that right without the consent of the other or, as the case may be, of any of the others, unless stated by any order of the court, deed or agreement.

3 If the parents are unable or unwilling to exercise parental responsibility over their children, can another person be appointed in their place?

On the death of a parent, the surviving parent becomes the child's guardian either alone or jointly with any guardian appointed by the deceased parent. If the deceased parent had not appointed a guardian or the nominated guardian is either dead or refuses to act, then a guardian can be appointed by a court if it thinks fit.

A court may, on the application of the mother or father of a child, make an order regarding the residence of the child and the right of contact to the child of his mother or father. The court also has power to give the residence of the child to any person (whether or not one of the parents). However, the grant of residence to one parent is unenforceable while both parents are living together.

4 If the parents divorce or split up, how is the question of parental responsibility determined for the future?

In the case of a divorce, the Supreme Court of Gibraltar has the power exercisable either before or after the final decree, to make provision for the custody, maintenance and education of the children of the marriage or even direct that proceedings be taken to place the children under the protection of the Court. The Supreme Court cannot make absolute a decree of divorce unless it is satisfied that satisfactory arrangements have been made for any children.

Where the parents separate, an agreement may be entered between the parties whereby one of them may choose to give up all or some of their parental rights. Such an agreement however, shall not be enforced by a court if the court is of the opinion that it would not be for the benefit of the child to give effect to it.

5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?

As indicated in question 4 above, where a parent enters into a separation agreement whereby he or she purports to give up all or some of his or her parental rights, such agreement will only be enforced by a court where it is of the opinion that to give effect to it would be for the benefit of the child.

6 If the parents cannot come to an agreement on the issue of parental responsibility, what are the alternative means for solving the conflict without going to court?

If the issue of parental responsibility has been raised within the context of divorce proceedings, then the determination of this issue comes within the jurisdiction of the Supreme Court of Gibraltar. However, some social assistance may be obtained through marriage counselling. A marriage counselling service is provided by the Roman Catholic Church in Gibraltar. It may also be possible to deal with some of the issues through mediation.

7 If the parents go to court, what issues can the judge decide upon relating to the child?

The judge can decide any issue that he deems may affect the welfare of the child.

8 If the court decides that one parent shall have sole custody of a child, does this mean that he or she can decide on all matters relating to the child without first consulting the other parent?

Once full custody is granted to a parent, he or she can then decide on all matters relating to the child without first consulting the other parent unless doing so constitutes a breach of an existing court order; for example, an order concerning access to the child.

9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?

Joint custody of a child means that both parents have equal rights and responsibilities in relation to the child. These rights can be exercised jointly or severally.

10 To which court or authority should I turn if I want to lodge an application on parental responsibility? Which formalities must be respected and which documents shall I attach to my application?

If the application for parental responsibility is made in relation to or as a consequence of divorce proceedings, then the application should be made to the Supreme Court of Gibraltar. An application is made by way of summons, supported by affidavit evidence. Upon the filing of these papers, the Supreme Court Registry would proceed to set a date for the hearing of the application.

Applications for a child in need of care to be made a ward of court should also be made to the Supreme Court of Gibraltar.
Where the issue of parental responsibility does not arise out of divorce proceedings, then an application can be made to the Magistrates' Court of Gibraltar. The application should be in the form of a written complaint setting out the relief sought and the grounds on which it is based. A copy of the child's birth certificate should also be included with the application as well as a copy of the marriage certificate, where applicable. Upon receipt of the complaint, the Court would proceed to list the matter for hearing and inform the parties of the return date.

11 Which procedure applies in these cases? Is an emergency procedure available?

In all cases, either the Supreme Court or Magistrates' Court would proceed to set a date for the hearing of the relevant application and inform the parties. Parties should attend court on the date set together with their legal representatives if applicable.
There are emergency procedures available where it appears that a child may be in need of care.

12 Can I obtain legal aid to cover the costs of the procedure?

In both the Magistrates' Court and the Supreme Court, legal assistance may be available subject to a means test. Applications for legal assistance in either court should be made to the Supreme Court and application forms are available from the Supreme Court Registry.

13 Is it possible to appeal against a decision on parental responsibility?

Where a decision on parental responsibility is made by the Magistrates' Court, an appeal may be made to the Supreme Court. Where the decision is made by the Supreme Court, it may be possible to appeal to the Court of Appeal.

14 In certain cases, it may be necessary to apply to a court to have a decision on parental responsibility enforced. Which court should I use in such cases and which procedure applies?

An application should be made to the Court that made the original order of parental responsibility. If the court was the Magistrates' Court, then a complaint should be filed setting out the grounds of the complaint. In the Supreme Court, a Summons should be filed, supported by affidavit evidence where appropriate.

15 What should I do to have a decision on parental responsibility that is issued by a court in another Member State recognised and enforced in this Member State?

A judgment on parental responsibility given in a Member State arising out of divorce, legal separation or annulment proceedings can be recognised in Gibraltar. In order to enforce such a judgment, an application should be made to the Magistrates' Court for a declaration of enforceability.

16 To which court in this Member State should I turn to oppose the recognition of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?

The decision on the application for a declaration of enforceability may be appealed against by either party. An appeal lies to the Supreme Court if the decision was made by the Magistrates' Court.

17 Which law does the court apply in a proceeding on parental responsibility where the child or the parties do not live in this Member State or are of different nationalities?

The Courts of Gibraltar will apply Gibraltar law, which includes local legislation, as well as any Acts or other provisions extended to Gibraltar from time to time.

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