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Parental responsibility - child custody and contact rights

Netherlands

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

The term 'parental responsibility' means having the authority over a minor and responsibility for raising and caring for that child.

Article 247 of Book 1 of the Civil Code (*Burgerlijk Wetboek*) stipulates the following on this subject:

1. Parental authority shall comprise the duty and right of parents to care for and raise their minor child.
2. 'Care for and raise' shall include caring and taking responsibility for the mental and physical welfare and safety of the child and promoting the development of the child's personality. The parents may not use mental or physical violence or any other humiliating treatment in caring for and raising the child.
3. Parental authority shall include the obligation of the parent to promote the development of the bond of the child with the other parent.
4. A child over whom the parents exercise joint custody shall remain entitled to be cared for and raised in an equivalent way by both parents after dissolution of marriage other than by death, after legal separation or after dissolution of registered partnership other than by death, or after termination of cohabitation if an annotation was made as referred to in Article 252(1).
5. For the implementation of paragraph 4, parents may take account in an agreement or parenting plan of practical obstacles that may arise in connection with the dissolution of marriage other than by death, after legal separation or the dissolution of registered partnership other than by death, or the termination of cohabitation if an annotation was made as referred to in Article 252(1), but only if and as long as the relevant obstacles exist.

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

The parents have the authority and the responsibility for caring for and raising their child. However, there are exceptions to this rule.

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

If the parents are unwilling or unable to exercise parental authority or responsibility, parental authority can be transferred to another person by the court.

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

Following a divorce, both parents retain parental authority over their children. Both continue to be responsible for raising and caring for the children.

However, there are exceptions to this rule. It is possible in certain cases that, on application, the court assigns custody to one parent. Parenthood (which by definition is not equivalent to parental authority) and the associated rights and duties can also be regulated differently in the parenting plan, which is drawn up in the case of divorce.

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

In cases of divorce, the agreed arrangements are laid down in a parenting plan that is reviewed by the court. The court pronounces the divorce.

Also see: <http://www.rijksoverheid.nl/onderwerpen/scheiden/vraag-en-antwoord/scheiden-en-kinderen.html>

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?

Mediation is a possibility to resolve parenthood disputes.

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

The court decision covers all elements of the parenting plan, including custody, the division of tasks with respect to caring for and raising the child, and the principal place of residence 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?

No. The parent with custody of the child is obliged to keep the parent without custody informed of important issues regarding the person [HM-B1] and the assets of the child and to consult the latter parent on decisions concerning the child. However, the parent with custody ultimately decides.

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

This means that both parents have the same rights and duties as belong to a parent with custody (see question 1), if the parents have agreed a different division of tasks with respect to caring for and raising the child in the parenting plan.

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?

To obtain custody of a child, an application must be made to the court with jurisdiction for the place of residence of the child. The documents to be submitted depend on the situation of the parent and the child. Information concerning the necessary documents can be found in the

[Rules of procedure \(procesreglement\)](#) Custody and access (*Gezag en omgang*). A lawyer can help with this.

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

There are no particular procedures for the situations mentioned. Yes, proceedings for interim measures are possible.

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

Yes, legal aid is possible, although it is subject to certain conditions. [More information](#) can be found on this subject on the Legal Aid Council (*Raad voor Rechtsbijstand*) website.

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

Yes, appeals can be made to the Court of Appeal (*gerechtshof*).

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?

The ordinary court procedure applies in this case.

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?

In principle, no action needs to be taken. This occurs automatically if the Member State is a party to the Brussels IIa Regulation. This Regulation is applicable in all Member States of the European Union, with the exception of Denmark.

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?

Appeals must be lodged with the court in the country in which the decision was issued.

An appeal in a family matter in the Netherlands requires the assistance of a lawyer. The lawyer can lodge the appeal with the [Registry](#) of the Court of Appeal. After the court has ruled in a family case, the lawyer has three months in which to appeal. The Court of Appeal applies this time limit strictly. The date on which the Registry receives the application to lodge the appeal is the official date on which the appeal has been lodged.

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 Dutch courts apply only Dutch law.

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