Parental responsibility - child custody and contact rights

Rootsi

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

‘Parental responsibility’ covers, among other things, rights and obligations in connection with taking care of the child’s physical person and property and includes questions relating to custody of the child, where the child lives, contact with the child and guardianship.

Custody refers to the legal responsibility for the child’s physical person. The person with custody has a right and an obligation to take decisions concerning personal matters in relation to the child, such as where the child is to live and which school they are to attend. The person with custody is responsible for ensuring that the child’s needs for care, security and a good upbringing are met. The person with custody of the child is also responsible for ensuring that the child receives the necessary supervision in consideration of their age, development and other circumstances and must monitor whether the child is receiving satisfactory support and education. As the child grows and develops, the person with custody of the child must increasingly take account of the child’s own views and wishes.

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

Usually, it is the child’s parents or one of them who is the legal guardian of the child. If the child’s parents are married to each other at the time of birth, they automatically have joint custody. If the parents do not marry until later, they automatically gain joint custody through marriage. If a child’s parents are not married to one another when the child is born, it is the mother who has custody of the child. However, the parents can easily obtain joint custody by means of registration. The parent who does not have custody may also go to court to obtain joint custody or sole custody of the child.

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

In certain cases the custody of a child may be transferred from the child’s parents, or from one of them, to a specially appointed guardian. A transfer of this nature may become relevant if a parent is guilty of abuse or neglect or otherwise fails in their care of the child in a way that poses a permanent risk to the child’s health or development. A transfer may also become appropriate if one or both of the parents are permanently prevented from exercising custody of the child.

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

If the parents get divorced, the joint custody continues without the court needing to take any decision on this in connection with the divorce. If either of the parents wants a change in the custody, they must apply for the joint custody to be dissolved.

If either of the parents wants a change in the custody, the issue of custody may be settled in court. The child’s parents must have participated in an information interview with the Social Welfare Board before bringing any court case concerning custody, residence and rights of access (see also Section 6 below).

If the parents are in agreement about a change, they can settle the matter in an agreement, without the involvement of a court. Such an agreement must be approved by the Social Welfare Board in order to be valid. The same applies to questions concerning which of the parents the child should live with and how contact with the other parent should be arranged.

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

The agreement must be in writing and be signed by both parents. Furthermore, it must be approved by the Social Welfare Board of the municipality where the child is registered.

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?

The municipality has an obligation, through the Social Welfare Board, to offer parents professional mediation with the aim of reaching agreement in matters relating to custody, residence and contact. Mediation is voluntary. It therefore requires both parents to jointly ask for it. If the parents can agree in matters relating to custody, residence and contact, they may sign an agreement which, once approved by the Social Welfare Board, will have the same effect as a court judgment.

As a general rule, as from 1 March 2022, the child’s parents must first have participated in information sessions with the municipality before it is possible to bring proceedings before a court. This means that the parents must first turn to the municipality to try to resolve the dispute with the aid of the municipal Social Welfare Board (often a department known as the family law department). It is the Social Welfare Board of the municipality in which the child is registered that is responsible for ensuring that these sessions can be held. At the information sessions, the parents receive relevant information aimed at finding the best solution for the child in matters of custody, residence and access. The parents are, as a starting point, offered mediation and, as needed, are offered or guided towards support and assistance in other forms. After the session, a report is issued which is used if the parents have still not agreed and choose to bring the matter before a court. If, after the information session, the parents go to court, the court can refer them to the Social Welfare Board for mediation if such mediation has not previously taken place and the court considers there to be scope for reaching amicable solutions. If the parents have undergone mediation but have not reached an agreement, the court may instead appoint someone to mediate between the parents. The court has a general duty to work towards amicable solutions in cases of custody, residence and contact.

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

The court may decide on (sole or joint) custody, the residence of the child (which of the parents the child should live with or whether the child should live alternately with both parents), and access rights (the child’s right of access to the parent they do not live with).

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?

Parents who have sole custody of their child have the right to make decisions alone concerning personal matters in relation to the child. The person with custody does not have to consult the other parent or seek their approval in such matters. However, the child has the right to have contact with the other parent, and the person with custody has a duty to provide for that right. The person with custody also has a duty to provide the other parent with information to facilitate contact with 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 means that the parents must take decisions about the child's personal affairs together. The starting point is that the parents must agree on all matters relating to the child. However, disagreement on matters relating to contact and the child's residence can be settled by a court (see above).

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?

In matters relating to custody, residence or contact, a parent can bring an action before the district court (tingsrätt) where the child is domiciled. If there is no competent district court, Stockholm District Court (Stockholms tingsrätt) has jurisdiction. Matters relating to custody, residence and contact can also be addressed in divorce proceedings.

Applications for summons must be made in writing and be personally signed by the applicant or his/her representative. The application must contain information about the parties, a specific claim (i.e. what matter the court is being asked to decide on), the background to the claim, information about the evidence adduced and what each piece of evidence is intended to prove, and information about the circumstances through which the court has jurisdiction. The written evidence adduced should be submitted together with the application.

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

Matters relating to custody, residence and contact are non-discretionary.

In general, matters relating to custody, residence and contact must be considered promptly. The court may take an interim decision on custody, residence or contact. An interim decision may, for example, relate to where the child is to live while the dispute is in progress and apply until the matter has been settled by a decision which has gained legal force.

Although there is no special formal procedure to expedite consideration of matters relating to custody, residence and contact, an assessment is made in each individual case of how urgent the matter is.

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

In cases concerning custody, residence and contact, the general rule is that each party bears its own legal costs.

Legal aid may be granted if the relevant conditions are met.

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

A district court's judgment or decision regarding custody, residence or contact may be appealed to the court of appeal (hovrätt). However, for the court of appeal to consider the appeal, leave to appeal must first be granted.

A judgment or decision of the court of appeal may be appealed to the Supreme Court (Högsta Domstolen). For the Supreme Court to consider the appeal, leave to appeal is required.

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?

It is possible to enforce judgments, decisions or agreements about custody, residence or contact. Enforcement is sought at the district court in the place where the child is domiciled. If there is no competent court, the matter of enforcement is considered in Stockholm District Court.

The district court can decide on various measures. In the first place, the court will usually seek to have the child handed over voluntarily. Should that not be possible, the court may ultimately decide on a conditional fine or recovery of the child. The imposition of a conditional fine means that the person who is looking after the child is threatened with having to pay a considerable sum of money if he or she does not hand over the child. Recovery of the child is a very unusual measure, which is adopted only if it is not possible to resolve the situation in any other way and in order to prevent the child from suffering serious harm. It entails the police recovering the child and handing him or her over to the person with custody.

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 certain cases the Brussels II Regulation applies. In the case of decisions to which the Regulation applies, the starting point is that the decision is recognised and, where appropriate, enforceable without any special procedure.

In other cases, for countries that have signed the 1980 European Convention and the 1996 Hague Convention, those conventions apply. Under the 1980 European Convention, applications for enforcement are made to the district court in the place where the child is domiciled. Under the 1996 Hague Convention, applications for enforcement are made to the district court.

For decisions that are or have been declared enforceable in Sweden, an application for enforcement may be made (see Section 15).

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

In certain cases the Brussels II Regulation applies. For decisions to which the Regulation applies, the starting point is that the decision is recognised and, where appropriate, enforceable without any special procedure. There is, however, the possibility of applying in Sweden for a decision adopted abroad not to be recognised or enforced in Sweden. There is also the possibility of applying for a declaration that there are no grounds for refusing recognition of a decision adopted abroad. The application is made to the district court.

A district court decision on a question of refusal of recognition or enforcement under the Brussels II Regulation may be appealed to the court of appeal, the decision of which may in turn be appealed to the Supreme Court.

An objection that a decision is not applicable or is not enforceable may also be made in cases in which the issue arises.

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?

In principle, the law of the country in which the child is domiciled is applied.

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