Otvoreni postupci u području građanskog pravosuđa koji su započeti prije isteka prijelaznog razdoblja nastavit će se na temelju prava EU-a. Na temelju uzajamnog sporazuma s Ujedinjenom Kraljevinom na portalu e-pravosuđe do kraja 2024. ostat će dostupne informacije povezane s Ujedinjenom Kraljevinom.

Parental responsibility - child custody and contact rights

Sjeverna Irska

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 Children (Northern Ireland) Order 1995 defines parental responsibility as all the rights, duties, powers and responsibilities which, by law, a parent has in relation to his child. The Order does not list what those rights and responsibilities are. However, it has been recognised that those with parental responsibility have:

a duty to protect, provide a home and care for the child;
the ability to determine where the child should live;
the ability to decide who may have contact with the child;
a duty to secure the child's education;
the right to consent to the granting of a passport;
a duty to secure medical treatment or assistance and the right to consent to such treatment or assistance;
the right to name the child;
the right to secure religious instruction for the child.

Parental responsibility should, at all times, be exercised in the best interests of the child and all those with parental responsibility should be consulted before an important decision is made. However, if agreement cannot be reached, the court may be asked to resolve the issue.

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

If a child's parents were married to each other at the time of his birth, they will each have parental responsibility for him.

If a child's parents were not married to each other at the time of his birth, the mother will automatically have parental responsibility for him and the father may acquire parental responsibility for him by:

marrying the mother;
asking the court to make a parental responsibility order in his favour;
entering into a parental responsibility agreement with the mother (see question 5 below); or
being registered as the child's father (this only applies to births registered within the U.K. after 15th April 2002).

If an unmarried father has acquired parental responsibility by court order, agreement or registration, that responsibility can only be brought to an end by an order of the court.

If a court grants a residence order to an unmarried father, it must, if he would not otherwise have parental responsibility, also make a parental responsibility order in his favour.

A non-parent may acquire parental responsibility for a child by virtue of a court order.

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

A person who has parental responsibility for a child cannot surrender or transfer that responsibility. She or he can, however, arrange for someone else to discharge that responsibility on his or her behalf.

In addition, a non-parent may acquire parental responsibility for a child by obtaining a court order (for example, a residence order, emergency protection order or care order).

As a general rule, a parent does not automatically lose parental responsibility for a child simply because someone else acquires it. However, an adoption order transfers parental responsibility from the natural parents to the adoptive parents.

If a parent has parental responsibility for a child, she or he may appoint another person to be the child's guardian in the event of his or her death.

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

Parental responsibility for a child continues post-divorce and is limited only to the extent that a voluntary agreement or court order settles issues between the parents or the parents and third parties.

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

If the parents are unmarried, they can enter into a parental responsibility agreement. This must be:

in the form set out in the Children (Parental Responsibility Agreement) Regulations (Northern Ireland) 1996;
witnessed; and
filed, together with two copies, in the Office of Care and Protection in the Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

If the parents were married, but have separated or divorced, they can agree how they will meet their parental responsibilities and have that agreement made an order of court, which may be varied at a later stage to take account of changed circumstances.

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?

In Northern Ireland there are a number of agencies that provide mediation services and can assist in the amicable resolution of disputes. Information can be found on the websites of the UK College of Family Mediators, Family Mediation Northern Ireland, Barnado's Northern Ireland, Family Support Northern Ireland, Dispute Resolution Service Northern Ireland and Mediation and Counselling Northern Ireland.

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

The courts in Northern Ireland have a broad range of powers at their disposal and, in particular, can resolve issues relating to –

a child's removal from Northern Ireland
residence (where, and with whom, a child should live);
contact (when, where and with whom a child may have contact);
financial provision;
education;
religious instruction;
medical treatment;
the administration of the child's estate.

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?

The courts have recognized the need for flexible and practical arrangements wherever possible. So if a child is being looked after by one parent, that parent needs to be able to take the decisions that have to be taken while the child is in his or her care.
At the same time, there is an expectation that major decisions will be discussed with the other parent and resolved amicably. However if agreement is not reached the court can grant a specific issue order (which resolves a particular question) or a prohibited steps order (which specifies the type of decision that cannot be taken without the consent of the court).
If a residence order is in force with respect to a child, no person may cause the child to be known by another surname or remove him/her from the United Kingdom for one month or more without the written consent of every person who has parental responsibility or the consent of the court.

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

When the child is with one parent, that parent will make required routine decisions. However, it is expected that the other parent will be consulted about major decisions.

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?

Ordinarily, an application for an order that will confer parental responsibility should be commenced in a Family Proceedings Court. However, if there are other family proceedings relating to the child pending in another court, the application may be commenced in that court.
Proceedings commenced in a Family Proceedings Court may be transferred up to a Family Care Centre or the High Court on a number of grounds (for example, if they are complex or involve a question of general public interest).
The addresses and telephone numbers of the courts can be found on the website of the Northern Ireland Courts and Tribunal Service.
There are a number of forms that must be completed and lodged in the relevant court office. Most of these are in a standard form. The court office will be able to provide copies of the forms and explain how to complete them. However, court staff cannot give legal advice or tell you what to say. A court fee will also be payable.

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

When the application is lodged, the court office will set a date for the hearing and the other party will be notified of that date. If the matter is not resolved before the date set for hearing, a magistrate or judge will hear the evidence and reach a decision. There are no emergency procedures for obtaining parental responsibility.

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

You are entitled to apply for legal aid. However, the level of financial assistance provided (if any) is subject to a financial means assessment. Even if you are assessed as being financially eligible, you may have to make a financial contribution towards the costs. By agreement this contribution may be repaid to the Legal Services Agency over a period of time. In addition to the financial eligibility criteria you must also satisfy a merits test i.e. that there must be a reasonable grounds for bringing, or defending, the proceedings and it must be reasonable in all the circumstances to do so.

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

An appeal lies:
from a Family Proceedings Court to a Family Care Centre; and
from a Family Care Centre to the High Court
against the making or refusal to make an order.
On appeal, the High Court may, upon the application of a party, state a case on point of law for the opinion of the Court of Appeal. Otherwise, the High Court's decision is final.
The Court of Appeal's decision on the case stated by the High Court is final.

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?

In a Family Proceedings Court (where most matters relating to children are dealt with) an application may be made to address a specific issue relating to the exercise of parental responsibility. Contact details are noted above.

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?

Council Regulation (EC) No 2001/2003 ("Brussels IIa) provides for certain decisions on the exercise of parental responsibility given in one Member State to be enforced in another Member State.
The decision must have been declared enforceable in that other State. In Northern Ireland you must apply to have the decision registered in the High Court.

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?

You would have to oppose the recognition in the court in the other Member State under the procedure applicable in that 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?

Proceedings must be brought in the court in the jurisdiction where the child is habitually resident.
If the court in Northern Ireland decides it has jurisdiction to deal with the proceedings, it will apply the law in Northern Ireland.

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