În materie de drept civil, procedurile și acțiunile în curs intentate înainte de încheierea perioadei de tranziție vor continua în temeiul legislației UE. În baza unui acord reciproc între UE și Regatul Unit, Portalul e-justiție va păstra informațiile legate de Regatul Unit până la sfârșitul anului 2024.

Parental responsibility - child custody and contact rights

Anglia şi Ţara Galilor

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 means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. This refers to any obligation which he may have in relation to a child (such as the duty to maintain) and any rights which, in the event of the child's death, he may have in relation to the child's property. Under the law of England and Wales, parental responsibility has not been held to include decisions on who a child should live with and who a child should spend time with.

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

If the parents of a child are married or in a civil partnership, both the mother and father (or second female parent) will have parental responsibility. Mothers always have parental responsibility and unmarried fathers or a second female parent who is not married to or in a civil partnership with the child's mother can acquire it by agreement with the mother, by court order or by registering the birth jointly with the child's mother. A step-parent may have parental responsibility by agreement with the child's parent or parents who have parental responsibility or by court order. A person who has a child arrangements order about with whom the child should live and when, has parental responsibility for the duration of the order, or sometimes longer. The making of an adoption order confers parental responsibility without limit of time, unless it is revoked. Special guardians (see the answer to question 3 below) have parental responsibility for the duration of the order. A local government authority has parental responsibility for a child if the child is the subject of a care order. A person with parental responsibility under Article 16 of the 1996 Hague Protection of Children Convention retains that parental responsibility when the child becomes habitually resident in England and Wales; the exercise of that parental responsibility is according to the law of England and Wales.

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

A special guardian may be appointed by the court to exercise parental responsibility if the parents are unable to take care of a child. A parent with parental responsibility may appoint a person to be the child's guardian in the event of the parent's death. The local authority (social welfare authority) will have parental responsibility if the child is in their care.

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

Parental responsibility is not affected if a couple separate, whether or not they are married. The court may restrict the exercise of parental responsibility if the court considers it appropriate to do so. In some cases the court may remove parental responsibility completely (although it cannot be removed from parents who are married to each other).

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 made in a Parental Responsibility Agreement form.

Details of the addresses of courts can be found on the website of Her Majesty's Courts and Tribunals Service (HMCTS). The form is accompanied by notes for guidance. As the making of the agreement will seriously affect the legal position of both parents, they are both advised to seek legal advice before completing the form. They can obtain the name and address of a solicitor in the location required in England and Wales from the Law Society Find a Solicitor Service (00 44 (0)20 7242 1222) or from:

their local family court

a Citizens Advice Bureau

a Law Centre

a local library.

In some circumstances they may also be eligible for legal aid.

The parents must provide evidence of identity and their signatures must be witnessed by an authorised officer of the court. The mother should take with her to the court proof that she is the child's mother, so a copy of the child's full birth certificate will be needed. She will also need to take proof of her identity, showing a photograph and signature (for example, a photocard, official pass or passport). The father will need to take proof of his identity, showing a photograph and signature (for example, a photocard, official pass or passport).

When the form has been signed and witnessed 2 copies should be made. The original Agreement form and the copies can be taken or sent to

The Central Family Court ,

First Avenue House,

42-49 High Holborn,

London WC1V 6NP.

The Central Family Court will record the Agreement and keep the original. The copies will be stamped and sent back to each parent at the address on the Agreement. The Agreement will not take effect until it has been received and recorded at the Central Family Court. There is no fee for registering a Parental Responsibility Agreement. If there is more than one child in question, a separate form should be completed for each 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?

Mediation services are available to help parents reach a satisfactory arrangement for the future parenting of the child. Any agreement reached must be registered with the court. Registration is needed to validate the agreement and to make the agreement enforceable.

More information on family mediation can be found on the website of the Ministry of Justice.

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

The judge can decide with whom the child is to live and when. The judge can also decide with whom the child is to spend time or otherwise have contact and when. Parents are encouraged to reach agreement on contact. Courts will not decide maintenance payments for children as, if the parents cannot agree between themselves, this is undertaken by the Child Maintenance Service. Parents usually agree what school the child will attend; this can be decided by the judge making a specific issue order if agreement cannot be reached. A child retains their own name unless directed otherwise by the court. The court can also prevent a person exercising part of their parental responsibility, by making a prohibited steps order. The court can also decide on permanent removal from the jurisdiction and change of surname (see question 8 below).

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 court expects parents to take decisions together by agreement. If both parents have parental responsibility, the parent with a child arrangements order about who the child is to live with must have the consent of the non-resident parent (and anyone else with parental responsibility) to remove the child permanently from the United Kingdom, or have the permission of the court. The parent with whom it is ordered the child is to live can move within the jurisdiction (England & Wales). The consent of everyone with parental responsibility, or the permission of the court, is required for the child's surname to be changed.

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

Parents will share residence. The child will spend part of their time with each as ordered by the court. There may be practical effects on the amount of child maintenance payable.

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?

Application can be made to the family court under Section 4 of the Children Act 1989. Details of court contact details are available from Her Majesty's Courts and Tribunals Service website. The application form is also available from that website. Every person with parental responsibility must be sent a copy of the application form. Documents will be filed later, as directed by the court.

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

The procedure is as detailed above. There are no emergency procedures for obtaining parental responsibility.

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

Legal aid will only be available where evidence of domestic violence has been shown.

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

Yes. Decisions on parental responsibility can be appealed from a judge of District Judge level to a judge of Circuit Judge level. Appeals from a District Judge of the High Court are to a judge of High Court level.

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?

Parental responsibility is a right and cannot of itself be enforced. Failure to exercise parental responsibility can be dealt with by application to the family court to address the specific issue in dispute, such as the obligation to maintain the child. Details of the addresses of courts can be found here.

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?

If you wish to enforce an order on rights of access or on Article 11(8) from another Member State under Council Regulation (EC) No 2001/2003 (Brussels IIa) you should obtain the certificate required under the Regulation from the court that made the decision and apply to the Principal Registry at the address of the Central Family Court for recognition or enforcement of the order. For registration, recognition or non-recognition of other orders, you should apply to the Principal Registry.

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 making of the order in the court of the originating jurisdiction **before the order is made**. If the law of that State so provides, anyone with an interest in the case should be informed that the court is hearing an application for an order. The law of that Member State will say what action you can take to oppose the order being made.

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 proceedings must be brought in the court in the jurisdiction where the child is habitually resident.

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