

[Home](#) > ... > [Family Matters & Inheritance](#) > [Parental Responsibility - Child Custody and Contact Rights](#) Ireland

Parental responsibility - child custody and contact rights

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(in civil and commercial matters)



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 legal term “parental responsibility” – referred to in Ireland as “guardianship” – refers to the possession of all rights and duties relating to a child which have been given under law or by the court, or by virtue of legal agreement. The holder of parental responsibility possesses rights of custody and access amongst others pertaining to the welfare of the child.

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

Generally, married parents of a child hold parental responsibility jointly over their child. Where parents are not married the mother is the general holder of parental responsibility but the natural father may be appointed as a guardian by agreement between the parents or by the court.

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

Yes. The Health Service Executive, through their Child and Family Service division TUSLA, can apply to the District Court for such care orders necessary for children under eighteen years. In exceptional circumstances, the court may appoint a guardian to exercise the functions of parental responsibility where a parent is unwilling or unable so to do. A Testamentary Guardian may be appointed upon the death of a parent where one has been elected by virtue of a will or codicil or may be appointed by the court. In the absence of such election, the Health Service Executive, through their Child and Family Service division TUSLA, can apply to the District Court for such care orders necessary for children under eighteen years if the parents of a child are deceased or incapable of taking care of their child.

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

Where the parents of a child divorce or “split up”, custody and access arrangements can be decided by agreement by the parents. Where agreement cannot be reached, parents can apply to court where a judge can make custody or access orders. Where both parents are guardians of the child, this is not affected by divorce or splitting up, although the guardianship of a non-marital father may – in highly exceptional circumstances and only where the welfare of the child requires it – be terminated by the court.

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

Parents who conclude an agreement on the question of parental responsibility are required to put same before the court and obtain an order reflecting such to make the agreement legally binding. The court must be satisfied that the rights of the child are adequately protected by any agreement and can refuse to make an order where it is not satisfied that either or both parents are discharging their obligations towards the child. Such an agreement cannot terminate the guardianship status of either parent.

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?

Individuals can have recourse to non-legal methods of conflict resolution such as mediation or through counselling.

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

The judge may decide upon all such issues pertaining to the welfare of the child including but not limited to issues as to guardianship, custody and access. See also Q. 4 and Q. 5 above – the guardianship of married parents or a natural mother may not be terminated by the court although the court may place conditions on a person's exercise of their parental responsibilities.

8 If the court decides that one parent shall have single 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. While the parent who has sole custody of a child has the ability to decide upon the day to day care and control of the child, a non-custodial parent who is the child's guardian possesses a right to be consulted on all matters affecting the welfare of the child including, but not limited to, where the child should be educated and where the child should live.

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

Joint custody is granted to parents in the absence of deep hostility between parties and enables them to mutually make decisions pertaining to the substantial welfare of the child and regarding its day to day care. This does not mean that each parent has a right to equal time with the child; rather, it ensures that both parents have corresponding duties and obligations to the child.

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?

Normally parties who wish to lodge an application on parental responsibility do so before the District Court; however, for certain applications ancillary to matrimonial proceedings it may be necessary to apply to the Circuit or High Court. The High Court has exclusive jurisdiction in issues pertaining to Child Abduction.

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

Yes. It is possible to apply to the court *ex parte*, which means without notice to the other side, where circumstances would place a child at risk should an applicant put the respondent on notice in the usual manner.

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

Yes. Legal Aid is obtained through the Civil Legal Aid Scheme. This scheme is means tested.

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

Yes. It is possible to appeal a decision of the court of first instance i.e. the court where the proceedings commenced; however, it is usually not possible to appeal the judgment of any appellate court.

14 In certain cases, it may be necessary to apply to a court or another authority to have a decision on parental responsibility enforced. Which procedure applies in such cases?

Individuals attempting to enforce a decision on parental responsibility should consult the rules of the respective courts or institution. Excluding *ex parte* applications, it is necessary to inform the respondent of your intention to take any procedure with a view to enforcing a judgment.

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?

Please see reply to Q. 14.

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 High Court, which has full and original jurisdiction.

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 *Protection of Children (Hague Convention) Act 2000* gives legal force to the 1996 *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* which applies in this area; further, *Council Regulation (EC) No. 2201/2003 concerning Jurisdiction and Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility (Brussels II bis)* is also applicable in this area.

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