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Parental responsibility - child custody and contact rights

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(in civil and commercial
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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 comprises all duties and obligations of a parent towards the minor as per Maltese Civil Code, Cap. 16 Laws of Malta. The term “parental responsibility” which in Maltese legislation is referred to as “parental authority” comprises custody and access, decisions about issues such as place of residence, travel, maintenance obligations, education, major health related decisions and administration of property belonging to children.

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

The birth parent or in case of adoptions, the adoptive parents upon finalisation of the adoption procedures. Furthermore, a single mother has parental responsibility unless the father registers the birth jointly with the child's mother.

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

When a child is placed under a care order or a court order, the care and custody is vested in the Minister according to the Children and Young Persons (Care Orders) Act Cap. 285, Laws of Malta.

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

In case of divorce or separation, it is determined by a court decision or settled through mediation. It may also be determined through a legally binding enforceable document between the parties signed in the presence of a notary.

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 such agreement is concluded outside separation proceedings for it to be legally binding, it has to be ratified in Court and filed in the Public Registry. On the other hand, if an agreement on parental responsibility is reached during separation or divorce proceedings, the agreement is presented before the court hearing such proceedings and a court decree is delivered, approving or otherwise the agreement.

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?

An alternative mean in such instances is the process of mediation. If the parents still do not reach an agreement during this process, proceedings will be instituted before the Civil Court (Family Section).

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

The judge can decide on all major decisions considered important for the child's welfare, for instance, residence of the child, which parent is to have custody, visiting and access rights, and the obligation to pay maintenance for 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?

The court rarely grants full care and custody to one parent but this depends on a case by case. Having said that, in case the court grants full care and custody to one parent some matters still have to be discussed with the consent of the other parent, in particular matters relating to access or removal of minor to a third country which would directly involve the access rights of the non-custodial parent.

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

It means that both parents discuss and take decisions related to the child jointly. This would not include day to day activities but only the major decisions involving place of residence, education and health issues. Article 136 (3) of the [Civil Code](#) makes reference to acts of extraordinary administration, whereby such acts require the consent of both parents.

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?

Where mediation is not successful, an application is filed before the Civil Court (Family Section). There is no formal list of required documents thus any pertinent documentation and certificates can be attached to the application, in particular, those providing proof of parental authority, including any agreements on care and custody, or decrees given.

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

The application is set for hearing on a particular date. During the hearing of the case the judge will hear the parties and other witnesses the parties summon. The Court may also appoint social workers and psychologists to draw up a report on the child if it recognises such need. A report will be drawn up by the experts appointed by the Court after they consult the parents, the child and other professional persons connected in some way with the case. Emergency procedures are resorted to if the party submitting the application indicates sufficient valid reasons which show urgency. If it is in the interest of the minor, an interim decree is given of the issue calling for urgency, for instance an impediment of departure, care and custody, etc.

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

Yes, one can apply for legal aid, however the applicant has to undergo a means test as per Title X of Book Third of the Code of Organisation and Civil Procedure ([Cap 12](#) of the Laws of Malta). Further detail on legal aid can be obtained from the [section on legal aid](#).

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

It is only possible to appeal if a point of law is involved, that is for example one of the parties is not given the right to produce a witness without the court giving a valid reason. In such cases, an appeal can be lodged before the Court of Appeal.

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?

A decision by the Civil Court (Family Section) is automatically enforceable however in cases where such a decree is not followed by one of the parents, the parent being restricted the parental authority can file a report before the police who will subsequently proceed with criminal proceedings before the Court of Magistrates to effect enforcement together with a fine (multa) and/or imprisonment. Furthermore, an application may be lodged in front of the Civil Court (Family Section) asking for the alteration of the court decree.

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?

The applicable procedure to be followed is that which is found in Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II bis) namely that a certificate is filled in by the competent judge which together with the court sentence and an application asking for the recognition and enforcement of such a decision is filed before the Civil Court (Family Section). An address for notification purposes must also be identified. All documents are to be translated into Maltese or English.

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?

An opposition can be made before the same court and in the acts of where the application for enforcement and recognition has been filed. The opposition will contain reasons why such recognition and enforcement should be withheld and this is done by a reply to the application.

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 applicable law is Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

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