



Putting the Child First

**A leaflet about custody,
the child's place of residence,
contact, the child's rights,
child welfare counselling,
family mediation and
couple counselling**

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Introduction

Even though you as parents are divorced or no longer live together, both of you are still obligated to care for and take responsibility for your child.

Your child has a right to two parents, and it is your responsibility to make sure your child continues to have close, regular contact with both of you – also after you have split up.

This leaflet is aimed at parents who need more information about the rules regarding custody, contact and where their child is to live. It also provides information about the help available from the regional state administration if you disagree on these issues.

It is also a good idea to read the leaflet about children and divorce 'Når samarbejdet er svært' (in Danish only). You can download the leaflet from the regional state administrations' website at www.statsforvaltning.dk or the Department of Family Affairs' website at www.familiestyrelsen.dk.



Custody

If you have joint custody for your child, and stop living together, you will still have joint custody. This also applies if you separate or get divorced.

If your child is unborn, in some cases you will automatically be given joint custody once your child's paternity has been established. You also automatically have joint custody if you are married when your child is born.

If you do not automatically obtain joint custody, you can always make a joint custody agreement.

You can read more about the rules regarding paternity in the leaflet 'Faderskab' (in Danish only). You can download the leaflet from the regional state administrations' website at www.statsforvaltning.dk or the Department of Family Affairs' website at www.familiestyrelsen.dk.

Decisions about your child when you share custody

Having joint custody for your child means you have to agree on important decisions regarding your child. For example, decisions about which school or after-school care facility they should attend, moving abroad (but not moving within Denmark), choosing a name, what religion the child should be brought up in and if the child is allowed to participate in high-risk activities (such as diving, boxing, motor sports, mountain climbing and similar activities).

The parent who lives with your child (the resident parent) can make unilateral decisions about general matters pertaining to your child. You do not need to agree on these decisions. Examples are where the child is to live, your child's daycare facility and day-to-day welfare, and whether he or she needs to see the school psychologist.

If the resident parent decides to move with the child to another location in Denmark, he or she must inform the other parent about the impending move not later than six weeks before the moving date. You can read more about providing advance notice of a move on page 7.

As regards day-to-day decisions relating to your child, the parent with whom the child is staying at the time makes this decision exclusively. You do not need to agree on these decisions. Examples are decisions about food, clothes, bedtimes, friends and non-risk leisure activities.

Changing custody

You are always free to agree on changes to custody for your child. For example, you can agree to have joint custody if you do not already have it. You can also agree to terminate joint custody and transfer responsibility to one of you exclusively. If you make an agreement about custody for your child, you must make it in writing on a form available from the regional state administration.

If you cannot agree on custody, your regional state administration will help you resolve your difficulties by offering advisory guidance, child welfare counselling or family mediation. You can read more about child welfare counselling and family mediation on page 13 of this leaflet.

If you fail to reach agreement, the regional state administration will have the option of closing the case and bringing it to court. Prior to this step, however, you will be required to attend a meeting at the regional state administration's offices.

If a custody case is brought to court, the court will decide where to place custody based on your child's best interests. The court will consider which parent is best at cooperating and thus ensuring that your child has contact with both of you.

You should be aware that the court can only terminate joint custody on the basis of compelling grounds in your child's interests. The general premise is that joint custody should be maintained because your child has the right to two parents, and because you both share responsibility for the care of your child.

If a custody case is brought to court, and you also disagree about where your child is to live and/or contact, you can ask the court to consider these issues as well. In this way you can get an overall assessment of all the issues from the same authority.

If necessary, you can ask the authority handling your case – the regional state administration or court – to make a decision about which of you should have sole custody while the case is ongoing. This is known as a temporary decision about custody.

At the same time, you can ask for a temporary decision about where your child is to live and/or contact, if you also disagree on these matters.

If you do not share custody

If you do not have joint custody, the parent who does not have custody has the right to be informed about your child's education, health and welfare.

The parent who does not have custody has to contact the relevant institution (school, daycare facility, social and healthcare system, private hospitals, private GPs or dentist) him- or herself to ask for the information. You cannot demand to receive written information about your child unless the information is already set down in documents at the school or daycare facility. You are entitled to receive these documents, but do not otherwise have the right of access to personal files.

The parent who does not have custody is also entitled to be kept informed about and to take part in general social activities at your child's school or daycare facility. Examples of such activities are parents' meetings providing general information about events at the school or daycare facility, and festive occasions. General social activities do not, however, include parent-teacher consultations.

Once the parent who does not have custody has asked the school or other daycare facility for updates about general social activities, the school or daycare facility is required to inform both parents every time an event of this kind is scheduled.

The school, daycare facility, social health system, private hospitals, private GPs and dentists can refuse to give specific information about your child to the parent who does not have custody. The school or daycare facility can also refuse to hand over documents about your child and refuse to provide information about general social activities and taking part in them.

Before refusing to provide information, a school or daycare facility must have assessed that passing on information, documents or updates about general social activities and allowing the parent who does not have custody to take part in them, would be damaging to your child.

If the school, institution or other body refuses wholly or partially to pass on specific information, one or both parents may appeal this decision to the Regional State Administration for Southern Denmark (*Statsforvaltningen Syddanmark*), regardless of where in Denmark you live.

In special cases, the regional state administration can deny the parent who does not have custody access to information, documents or briefings about social activities. You can appeal this decision to the Department of Family Affairs (*Familiestyrelsen*).

The child's place of residence

You can always decide for yourselves which parent your child is to live with. You do not need to involve the regional state administration.

If you have made your own agreement about where your child is to live, you can decide to have the agreement executed with the help of the enforcement court. You can do this by inserting a special condition about execution by the enforcement court (an enforcement clause) in the agreement. Execution means that the enforcement court can help implement the agreement if one of you fails to comply with it.

If you want the regional state administration to be informed about the agreement regarding your child's place of residence, you can choose to make the agreement before the regional state administration.

Perhaps you cannot agree about which parent your child should live with – either during the period in which you stop living together or later on. If you cannot agree about where your child should live, your regional state administration will help you resolve your difficulties by offering advisory guidance, child welfare counselling or family mediation. You can read more about child welfare counselling and family mediation on page 13 of this leaflet.

If you fail to reach agreement, the regional state administration will have the option of closing the case and bringing it to court. Prior to this step, however, you will be required to attend a meeting at the regional state administration's offices.

If a case about your child's place of residence is brought to court, the court will decide where your child is to live. This means you can obtain a decision solely on your child's place of residence while maintaining joint custody. In this way both of you will still share responsibility for important decisions relating to your child. The court will make its decision based on your child's best interests. In determining which parent should obtain a residence order, the court will consider which parent is best at cooperating and thus ensuring that your child has contact with both of you.

If a case about your child's place of residence is brought to court, and you also disagree about custody and/or contact, you can ask the court to consider these issues as well. In this way you can get an overall assessment of all the issues from the same authority.

If necessary, you can ask the authority handling your case – the regional state administration or court – to make a decision about which of you your child should live with while the case is ongoing. This is known as a temporary decision about the child's place of residence.

At the same time, you can ask for a temporary decision about custody and/or contact, if you also disagree on these matters.

Advance notice of impending move

If either of you plans to move, you must inform the other parent of your intention no later than six weeks before the impending move.

This duty to provide advance notice of a move has been introduced because both of you are responsible for ensuring that your child continues to have contact with both of you. The duty to provide advance notice of a move applies to both parents – both the one who lives with the child and the one who does not.

If the parent planning to move does not inform the other parent, this failure may be invoked in any possible later case in which the court has to decide for example which of you your child should live with.

The parent planning to move must provide proof that the other parent was informed about the move not later than six weeks before the move.

You should be aware that the duty to provide advance notice is a matter between the two of you as parents, and that the regional state administration is not required to be involved or to acknowledge that advance notice has been given.

Contact

Your child has the right to both parents and therefore the right to contact with the parent with whom he or she does not live (the non-resident parent).

As parents, you have a duty to make sure your child has close, regular contact with the non-resident parent and that the arrangement works well for your child.

Naturally, it is best if you yourselves can agree on contact arrangements, that is, how often and how much time your child should spend with the non-resident parent.

If you can agree on these arrangements, you do not need to involve the regional state administration. This also applies to agreements to change contact arrangements, whether the arrangements were agreed on yourselves or contact was decided by the regional state administration or ordered by the court at an earlier date.

However, if you would like the regional state administration be informed about your contact agreement, you can always ask the staff there to make a note of it in a contact document.

Disagreement about contact

If you cannot agree on contact, your regional state administration will help you resolve your difficulties by offering advisory guidance, child welfare counselling or family mediation. You can read more about child welfare counselling and family mediation on page 13 of this leaflet.

If you fail to reach agreement, you can ask the regional state administration to make a decision about contact.

If you also disagree about custody and/or where your child is to live, and the regional state administration has brought your case before the court, you can alternatively ask the court to consider these issues as well. In this way you can get an overall assessment of all the issues from the same authority.

If necessary, you can ask the authority handling your case – the regional state administration or court – to make a temporary decision about contact.

At the same time, you can ask for a temporary decision about custody and/or where your child is to live, if you also disagree on these matters.

A temporary decision on contact will apply until a final decision or agreement about contact is made.

If a case regarding custody and/or the child's place of residence has not been brought to court, and you want a decision about contact to be made, you should get in touch with the regional state administration.

Assessment of contact

If you have asked the regional state administration or the court to make a decision regarding contact because you cannot reach an agreement yourselves, one of these authorities will assess which type of contact arrangements would be best for your child.

The regional state administration or the court will involve your child in this assessment in order to work out the best form of contact for your child.

There is no limit on the age at which a child must be involved in cases regarding custody, its place of residence or contact. In other words, there is no rule stating that only children above a certain age may be involved.

This is because the regional state administration or the court always involve children in order to get a clear idea of the child's views. Your child also has a right to voice his or her opinion.

It is up to the regional state administration or the court to decide how to involve your child in the case, by interviewing your child, scheduling a child welfare examination or in some other way.

If you reach an agreement on contact arrangements while your case is being processed, you must inform the regional state administration or the court of your decision. The authority in question can then make a note of your contact agreement if you wish.

If you continue to disagree about contact, the regional state administration or the court will make a decision regarding contact.

The regional state administration or court can decide on a pattern of contact that could be anything from half-hour sessions to a 50/50 contact scheme. As the term implies, a 50/50 contact scheme is one in which your child spends equal amounts of time with each of you.

The regional state administration or court must always work out a solution that best meets your child's particular needs.

The regional state administration or court can decide to set some conditions for contact if they consider this to be best for your child. Supervised contact is an example of such a condition.

The regional state administration or court can also decide not to grant contact rights if they consider this to be in your child's best interests.

When deciding the type of contact arrangements best for your child, the regional state administration or court will consider the following factors, among others:



- your child's age and stage of development
- your child's attitude to contact
- your child's daily routines, recreational activities and so on
- your child's prior contact with the parent he or she does not live with
- your child's contact with siblings, including half-siblings
- your ability to cooperate
- your work and personal circumstances
- the distance between your homes
- other practical matters.

Changing contact

If you ask the regional state administration or court to make a change, either to contact arrangements agreed yourselves or to those set out by the deciding authority at an earlier date, the arrangements can only be altered if there has been a significant change in circumstances.

This means, for instance, that you will have to find a solution to one-off changes in contact. Perhaps the parent with care wants to be with the child on a date where he or she would normally have been visiting the non-resident parent, at a special family occasion, for example. However, if you have difficulty agreeing, the regional state administration or court can help you by offering child welfare counselling and family mediation.

It is your responsibility as parents to resolve such disagreements.

Transport in connection with contact

As parents you are jointly responsible for ensuring that your child has contact and that the contact arrangements work well for him or her.

For one thing, this presumes that you will cooperate about your child's transport to visit the other parent, and share the costs.

The parent with whom your child has contact will pick up the child at the start of the visit and pay the related transport costs. This includes paying the child's transport costs as well as those of any person accompanying the child.

The parent with whom your child lives will pick up the child at the end of the visit and pay the related transport costs. This includes paying the child's transport costs as well as those of any person accompanying the child.

In exceptional cases, the regional state administration may decide on a different allocation of responsibility and transport costs. You can always make your own agreement about sharing transport costs.

What happens if a contact visit is cancelled?

If a contact visit is cancelled, the regional state administration can order a new visit in place of the cancelled one.

When making a decision about a replacement contact visit, the regional state administration will attach weight to the reason for the cancellation as well as whether the cancelled visit is likely to affect the child's contact with the non-resident parent.

If the parent with whom the child lives attempts to disrupt contact by refusing to hand over the child, the regional state administration will normally order a replacement visit. A replacement visit is also normal procedure if, for example, contact is very limited to start with and a visit has been cancelled.

If a contact visit is cancelled because your child is ill or has to attend a school camp or similar event, a replacement visit will not normally be ordered.

If the parent whom the child is due to visit cancels contact, a replacement visit will not normally be ordered.

If the parent whom the child is due to visit repeatedly cancels contact, contact visits may be shortened or the right to contact withdrawn.

What happens if the child is not handed over for contact?

If the parent with whom the child lives refuses to hand over the child, the other parent can ask the enforcement court for help with having the child handed over. In this connection, the parent with the right to contact can ask the enforcement court to order a replacement visit.

If you have made your own contact agreement, you can decide that the enforcement court can help implement the agreement. You can do this by inserting a special condition about execution by the enforcement court (an enforcement clause) in the agreement. You should be aware that if the enforcement court is to help enforce a contact agreement, the agreement must state pick-up times and places clearly.

If the regional state administration has prepared a contact document, this will also contain an enforcement clause.

Other forms of contact

The non-resident parent can ask for other forms of contact with the child such as telephone calls, letters or e-mails.

If you cannot agree about this form of contact, you can ask the regional state administration to make a decision.

Contact with people other than the parents

In a few special circumstances, contact may be ordered with near relatives to whom the child is closely attached.

This can be done in the following two situations:

- If one parent dies, or both parents are dead.
- If the child does not have contact with the non-resident parent or only has very limited contact with this parent.

The child's closest relatives can apply to the regional state administration for contact rights to the child.

The child's rights

Your child comes first in any decisions about parental responsibility, the child's place of residence and contact.

It is therefore important that you as parents always put your child first.

Your child will always be the main focus of the authorities (the regional state administration and the court) handling cases about parental responsibility, the child's place of residence and contact.

The authorities always involve your child when handling these types of case. This is one of your child's rights.

Children also have other rights.

For example, you may have come to an agreement about contact arrangements that you believe are best for your child, but your child may want something else.

Your child may find it difficult to tell you because he or she does not want to make you unhappy. You can read more about this in the leaflet about children and divorce 'Når samarbejdet er svært' (in Danish only). You can download the leaflet from the regional state administrations' website at www.statsforvaltning.dk or the Department of Family Affairs' website at www.familiestyrelsen.dk.

If your child is ten or older, he or she can get in touch with the regional state administration and ask for both of you to be called in to a meeting to talk about contact arrangements. Your child can also contact the authority if he or she wants you to discuss parental responsibility or place of residence. If your over-ten child contacts the regional state administration, he or she will get a child welfare consultant to talk to.

Children's groups

Your child can also choose to join a children's group.

Children get together in these groups to talk with other children in the same situation. They get to hear each other's stories and realise there are other children with the same problems. Talking about their situation provides great relief and gives children a better understanding of what is going on in their own family.

This opportunity to take part in children's groups is offered by the regional state administration.

You can read more about children's groups on the regional state administrations' website www.statsforvaltning.dk.

Website for children of divorced parents

The regional state administrations have also made a Danish website for children of divorced parents, www.morogfarskalskilles.dk. Children can read more about their rights – and what it means to have divorced parents – on the website.

Child welfare counselling

If you disagree about parental responsibility, where your child is to live and/or contact, the regional state administration can offer you and your child free child welfare counselling.

The child welfare counselling service can help you work out the best possible arrangements for your child.

The service can also support and help take some of the pressure off your child.

The counsellors are psychologists, psychiatrists or case workers with special experience in helping families. They are bound by professional secrecy, and any information they learn during a counselling session will not be passed on to your case worker at the regional state administration without your express permission.

The counsellor will – when the counselling session is ended – tell the case worker if you have reached an agreement, or if the regional state administration should continue the case.

Counselling sessions normally take place on the regional state administration's premises. It is also the regional state administration that invites parents to counselling, and organises the practical arrangements.

Family mediation

The regional state administration also offers free family mediation to parents who cannot resolve their differences about parental responsibility, their child's place of residence or contact.

The sessions are facilitated by a child welfare counsellor and a lawyer who are trained mediators.

Mediation is a special way of helping you as parents find solutions to your conflicts that both can accept. Family mediation can help you become better at making agreements about your child and keeping to them.

The mediator's job is not to find solutions to the problems you want to solve. By using a special questioning technique, the mediator will help you work out the solutions that you as parents find best.

The mediators are also bound by professional secrecy, meaning that information will not be passed on to the case worker at the regional state administration.

The mediator will - when the mediation session is ended - tell the case worker if you have reached an agreement, or if the regional state administration should continue the case.

If you wish, you can always ask for the case worker at the regional state administration to be informed about the agreement you make during family mediation.

Couple counselling

Parents with children under 18 have the option of receiving couple counselling against a payment of only DKK 300 for a full course of counselling.

The purpose is to offer a preventive course of action to parents who want to save their relationship or who want their separation to cause as little distress as possible, particularly to their children.

Twelve projects covering most of Denmark have been selected. These pilot projects will run until the end of 2008. Unfortunately, this opportunity cannot be offered to everyone who would like couple counselling.

More details (in Danish) about couple counselling can be found on the Department of Family Affairs' website at www.familiestyrelsen.dk/parraadgivning, which tells you where couple counselling is offered.

Where can I send an appeal?

You may lodge an appeal against decisions made by the regional state administration with the Department of Family Affairs. The letter informing you of the regional state administration's decision explains the appeal procedure.

The regional state administration's decision applies until the Department of Family Affairs decides otherwise.

Finding out more

If you have other questions or want more guidance, you are always welcome to contact the regional state administration.

You will find forms and other information on the regional state administrations' website at www.statsforvaltning.dk.

The rules about parental responsibility, child's place of residence and contact are set down in the Danish Act on Parental Responsibility (act no. 499 of 6 June 2007). You can find the act and other information on the Department of Family Affairs' website at www.familiestyrelsen.dk.

Addresses

You are welcome to contact your regional state administration for more information. Read more on www.statsforvaltning.dk and on www.morogfarskalskilles.dk

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