

NORWAY

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A. New Developments in the field of Divorce (since September 2002)

B. New Developments in the field of Maintenance between former spouses (since September 2002)

Apart from the fact that couples of the same sex are allowed to enter into a marriage since 2008,¹ no important legal developments have taken place in the field of divorce and maintenance between spouses since September 2002.² However, as early as 1993 two persons of the same sex could obtain the same rights as married couples throughout the legal system by registering their partnership.³ The Registered Partnership Act was repealed when the Marriage Act was opened for inclusion of same-sex couples in 2008. Existing partnerships still remain in force, but registered partners may have their partnerships converted into marriage if they both agree.⁴

C. New Developments in the field of Parental Responsibilities (since December 2004)

Several new legal developments in the field of parental responsibilities have taken place since December 2004, both with regard to parental responsibility, the child's place of residence, relocation, and the right to access:

Parental responsibility

The law on parental responsibility with regard to unmarried parents was amended in both 2006 and 2017. Until 2006, unmarried mothers alone had parental responsibility at the time of the child's birth, but from that year on, unmarried parents living in a de facto relationship were attributed joint parental responsibility at the time of the child's birth. Ten years later, the law went a step further. About 12 per cent of children in Norway are born to single mothers and the Conservative Government was of the opinion that fathers of these children should take part in parental responsibilities beginning at the birth of the child. A proposition to this effect was enacted into law in

¹ The Marriage Act 1991 section 1. The amendment was enacted on 27 June 2008, and went into force on 1 January 2009.

² The Marriage Act 1991 has not undergone any major changes since 2004. A minimum marriage age of 18 years with no exception was signed into law on 15 June 2018, in section 1 a. A new chapter 18 containing procedural provisions was added in 2020, and went into force on 1 January 2021.

³ The Registered Partnership Act 1993.

⁴ The Marriage Act 1991 § 111. This provision was moved from § 95 as of 1 January 2021.

2017. As a result, *all parents* have joint parental responsibilities as a starting point.⁵ However, if the parents do not live together when the child is born, the mother may obtain sole parental responsibility if she notifies the National Population Register within a year after the child's birth. If the father does not want parental responsibility, he may notify the Register under the same conditions. In the Green Paper, the Ministry of Children and Equality stated that joint parental responsibilities might contribute to increased contact between the father and child in cases where the parents do not live together and that such contact normally is in the child's best interest.⁶

If the parents disagree as to who shall have parental responsibility after the relationship has broken down, either of them may institute legal proceedings.⁷ However, there are few such cases, as most parents now continue to share parental responsibilities after separating. Thus, the majority of intra-family disputes concern the child's residence (custody) and access (contact rights). Pursuant to the Children Act section 48, decisions 'on parental responsibility, international relocation, custody and access, and procedure in such matters, shall first and foremost have regard for the best interests of the child'. In order to further emphasize the child's right to a secure environment, a second paragraph was added to section 48 in 2006: 'When making such decisions, regard shall be paid to ensuring that the child is not subjected to violence or in any other way treated in such a manner as to impair or endanger his or her physical or mental health.'

The child's place of residence (custody)

Before 2010, the court could not decide that the child should reside with both parents on an alternating basis, e.g. every other week, month etc., unless both parents accepted such a solution by mutual agreement. This is still the main rule, but since 2010, the courts may decide that the child shall have permanent residence with both parents against the will of one or both of the parents as long as 'special reasons so indicate'.⁸

A small amendment with regard to the question of where the child shall reside permanently was enacted into law in 2017. The law states that the 'parents may jointly decide that the child shall reside either with both of them (joint custody), or with one of them (sole custody)'.⁹ The option of joint custody was moved to the beginning of

⁵ The Children Act 1981 section 35. This amendment was enacted on 31 March 2017 and entered into force on 1 January 2020.

⁶ Consultation paper from 25. June 2015 (Proposals to amend the Children Act to promote equal parenthood).

⁷ The Children Act 1981, section 56.

⁸ The Children Act 1981, section 36. This amendment is described in T. SVERDRUP, 'Equal Parenthood: Recent Reforms in Child custody cases', in W. Atkin (ed.), *The International Survey of Family Law* (Jordan Publishing, 2011) pp. 303-312.

⁹ Children Act 1981, section 36, first para.

this sentence and by doing so the Ministry hoped that parents would become more aware of the shared residence option when entering into an agreement.¹⁰

Relocation with the child

According to the Children Act 1981 section 37, the parent that have sole custody are allowed to make decisions concerning the place in the country where the child shall live, even if the parents have joint parental responsibility.¹¹ This provision has been perceived as discriminatory against fathers because the right of access can be made illusory when a child is moved across great distances within Norway.¹² In 2010, after a heated debate, the provision was upheld, but the resident parent was obliged to notify the other parent of the change of residence.¹³ The issue was debated again a few years later and the right to relocate was upheld one more time. However, the period of notification was extended and a new provision on mediation was enacted. If one of the parents intends to relocate within Norway or abroad, and rights to access have been determined by an agreement or decision, the parent who intends to relocate with the child shall notify the other parent no later than three months prior to relocation. If the parents disagree regarding relocation, the parent who intends to relocate with the child must request mediation, and the parents are then obliged to attend one hour of mediation paid by the government.¹⁴

Access

The rights to access (contact rights) are paramount, and they will be denied only under special circumstances. Previously, the Children Act 1981 did not contain any provisions regarding denial of access, but in 2006 the following sentence was added to the Act section 43 first para.: 'If access is not in the best interests of the child, the court must decide that there shall be no access'. In 2012, the Ministry wanted to lower this threshold and guide the courts further about when to decide that there shall be no parental access, not even under supervision. This was not done by means of an amended provision, but by guidance through the preparatory works. The Ministry stated that the child's subjective experiences should be given greater weight and that

¹⁰ Prop.161 L (2015-2016) *Endringer i barnelova mv. (likestilt foreldreskap)*, p. 64.

¹¹ The Children Act 1981, section 37.

¹² T. SVERDRUP, 'The Strengthening of Fathers' Rights in Norwegian Child Law and Other Recent Reforms', in M. Brinig (ed.), *International Survey of Family Law* (Intersentia, 2018), pp. 385 - 398.

¹³ T. SVERDRUP, 'Equal Parenthood: Recent Reforms in Child custody cases', in W. Atkin (ed.), *The International Survey of Family Law*, (Jordan Publishing, 2011) 2.2.

¹⁴ The Children Act 1981, section 42 a, second para. In force on 1 January 2018.

no access should be determined against the will of the child until the situation of the family has been adequately investigated.¹⁵

Conditions for access may be imposed both in agreements and in court decisions pursuant to the Children Act 1981 section 43. Supervision is the most common condition for access, but the law was amended in 2013 to make it clear that other conditions could be imposed as well.¹⁶ Control of substance abuse and participation in anger management programs are mentioned as examples in the preparatory works.¹⁷ In exceptional cases, the court may decide that access shall take place under supervision by a publicly appointed person paid by the authorities. A new provision, section 43 a, was added to the Children Act 1981 in 2013, emphasizing that the need of the child should determine the type of supervision to be imposed. Supervised access could take the form of either (1) *protective* supervision when the child needs to be watched over continuously during access, or (2) *supportive* supervision in order to provide support for the family during access.¹⁸

D. New Developments in the field of Property relations between spouses (since August 2008)

No important new developments in legislation, case law etc. have taken place in the field of property relations between spouses since August 2008.

E. New Developments in the field of De Facto Partnerships (since February 2015)

No important new developments in legislation, case law etc. have taken place in the field of de facto partnerships since February 2015. De facto partners with common children have the same right to inheritance as previously, and the same goes for the right to postpone the settlement and keep part of the deceased's estate undivided. However, the Inheritance Act 1972 is now repealed, and these provisions are found in the new Inheritance Act 2019, Chapters 4 and 6.¹⁹ The definition of de facto partnerships (cohabitation) is the same as before, now found in the Inheritance Act 2019 section 2 third paragraph.

¹⁵ Prop.85 L (2012-2013) Endringer i barnelova (barneperspektivet i foreldretvister), ch. 7.2 and Innst.374 L (2012-2013) Innstilling fra familie- og kulturkomiteen om endringer i barnelova (barneperspektivet i foreldretvister) p. 5.

¹⁶ The Children Act 1981, section 43, third para.

¹⁷ Prop.85 L (2012-2013) Endringer i barnelova (barneperspektivet i foreldretvister), ch. 7.3.4.

¹⁸ T. SVERDRUP, 'The Strengthening of Fathers' Rights in Norwegian Child Law and Other Recent Reforms', in M. Brinig (ed.), *International Survey of Family Law* (Intersentia, 2018), pp. 385 – 398.

¹⁹ The Inheritance Law 2019 was enacted on 14 June 2019 and went into force on 1 January 2021.