

NATIONAL REPORT: SWEDEN

Maarit Jäntereä-Jareborg
&
Anna Singer & Caroline Sörgjerd

University of Uppsala, Sweden

A. GENERAL

1. Having regard to the concept of parental responsibilities as defined by the Council of Europe (see above), explain the concept or concepts used in your national legal system.

The concept of parental responsibilities is not used in autonomous Swedish legislation.¹ Instead, Swedish law distinguishes between the concepts of custody (*vårdnad*, Chapter 6 Swedish Children and Parents Code) and guardianship (*förmynderskap*, Chapters 9-15 in part Swedish Children and Parents Code). Seen together, the content of these two concepts corresponds to the Council of Europe's definition of the concept of parental responsibilities.

In Swedish law, custody refers to the legal responsibilities a custodian has for the child, including the duty to provide for the child's needs for care and protection, good upbringing, education and maintenance. In personal affairs, the custodian represents the child and also determines the child's residence. Normally, custody also involves the actual care of the child, meaning that the custodian personally lives with and looks after the child. However, it is not necessary for the child to live with a custodian. The child's parents have a joint responsibility to ensure that the child's right of contact with the parent the child is not living with is met. The custodian(s) shall ensure that the child's right of contact with any other person particularly close to the child is met.

Guardianship refers to administration of the child's property and legal representation of the child's financial matters. Normally a child's parents are both the child's custodians and guardians. If custody is transferred from a parent or parents to one or two specially appointed custodians, they normally also become the child's guardians. As long as either of the parents has custody, it is not possible to appoint any other person as the child's custodian.

¹ The introduction of the concept of parental responsibilities was considered, but rejected in Sweden in the 1970's and 1980's. The issue of terminology re-emerged in the mid 1990's. The present terminology, consisting of concepts such as custody, contact, the child's residence, and guardianship was each time found adequate and well-established. See Å. SALDÉN, *Barn och föräldrar*, Uppsala: iustus Förlag, 2001, p. 71-72.

2. Explain whether your national concept or concepts encompass:

(a) Care and protection

According to Chapter 6 Sec. 1 Swedish Children and Parents Code, children are entitled to care, security and a good upbringing. They shall be treated with respect and may not be subjected to corporal punishment or any other humiliating treatment. A person who has custody of a child shall ensure that the above-mentioned needs of the child are met, Chapter 6 Sec. 2 Swedish Children and Parents Code. The custodian's obligation to protect the child encompasses the necessary supervision of the child and assuring that the child does not cause damage to any other person.

(b) Maintenance of personal relationships

In assessing the best interests of the child, particular attention shall be paid to the child's need of close and good contact with both parents, Chapter 6 Sec. 2a Swedish Children and Parents Code. The child's parents have a joint responsibility to ensure that, as far as possible, the child's right of contact with the parent the child is not living with is met (Chapter 6 Sec. 15 para. 2). Furthermore, a person with custody of the child has a responsibility to ensure, as far as possible, that the child's right of contact with any other person particularly close to the child is met (Chapter 6 Sec. 15 para. 3).

(c) Provision of education

The obligation to see to that the child receives an adequate education is included among the duties of the custodian, Chapter 6 Sec. 2 para. 2 Swedish Children and Parents Code.

(d) Legal representation

In matters relating to the personal affairs of the child, the custodian acts as the child's legal representative. The guardian acts as the child's legal representative in matters relating to the economic affairs of the child. Normally, in Swedish law both parents are the custodians and the guardians of their children. This means that they jointly represent their children in personal and economic affairs.

(e) Determination of residence

Parents sharing the custody of a child may enter into an agreement concerning the child's residence. In addition, a court may, on application of one or both parents sharing custody, decide with which of the parents the child is to live. Such a decision can include residing with both parents on an alternate basis. The relevant rules are found in Chapter 6 Sec. 14a Swedish Children and Parents Code.

(f) Administration of property

The guardian of a child is responsible for administrating the child's property and representing the child in legal proceedings concerning that property, Chapter 12 Sec. 1 Swedish Children and Parents Code.

3. In what circumstances (e.g. child reaching majority or marrying) do parental responsibilities automatically come to an end?

The custodian's responsibilities end when the child reaches the age of eighteen, which in Sweden is the age of majority,² or when the child enters into marriage or registered partnership, if younger than eighteen, Chapter 6 Sec. 2 Swedish Children and Parents Code. The responsibilities of the guardians, however, do not come to end until the child reaches the age of majority, even if the child contracts a marriage or a registered partnership before eighteen, Chapter 9 Sec. 1 and Chapter 10 Sec. 4 Swedish Children and Parents Code.

4. What is the current source of law for parental responsibilities?

In Swedish domestic law, the provisions on parental responsibilities are found in the Swedish Children and Parents Code (1949:381), adopted in 1949 but subject of numerous later amendments. The provisions concerning custody, residence and contact are found in Chapter 6. The rules concerning guardianship are scattered throughout Chapters 9-15, which also includes incapacitated adults. Provisions on the enforcement of judgments and agreements on custody, contact and residence are found in Chapter 21 of the Swedish Code.

5. Give a brief history of the main developments of the law concerning parental responsibilities.

The present Swedish legislation concerning parental responsibilities can be traced back to the end of the 1910's and the 1920's when a number of Acts, commonly referred to as "the Child Acts", were passed.³ In 1949, these Acts were merged into a comprehensive code, called Swedish Children and Parents Code (*Föräldrabalken*), which entered into force on 1 January 1950.⁴ This Code is still in force, but has been the subject of numerous amendments over the course of years. Most of these amendments have concerned issues relating to parental responsibilities, in particular the attribution and exercise of the custody of a child.⁵

In 1966, the parents' right to use corporal punishment was abolished. In 1979, an explicit provision prohibiting it was inserted in Chapter 6 Sec. 1 Swedish Children and Parents Code. In 1973, a major divorce law reform that included abolishing, fault as a ground for divorce was enacted. As a consequence, fault to marriage breakdown also became irrelevant to the outcome of disputes on parental

² The age of majority was lowered to 18 years in 1974, compared with the previously applicable 20 years (1969-1974). Before 1969, a child reached majority at the age of 21.

³ These enactments consisted of Act on marital birth (1917), Act on children born out of wedlock (1917), Act on adoption (1917), Act on children born in wedlock (1920) and Act on guardianship (1924).

⁴ The main *travaux préparatoires* consist of the following committee reports (SOU) or Governmental Bills (Prop.): SOU 1946:49 Ärvdabalkssakkunnigas förslag till föräldrabalk, Prop 1949:93. See also LU 1949:34 Första lagutskottets utlåtande i anledning av dels Kungl. Maj:ts proposition med förslag till föräldrabalk, m.m., dels ock i ämnet väckta motioner.

⁵ For a comprehensive enumeration of the legislative steps taken, see Å. SALDÉN, *Barn och föräldrar*, Uppsala: Lustus förlag, 2001, 4th Edition, p. 13-26.

responsibilities. In 1973, the prospects for transferring custody from the child's mother to the child's father, when the parents had not been married to each other, were improved by introducing the same test of suitability to the father as to the mother. Until then, custody could be transferred to the father only if the mother was found unsuitable as a custodian. In 1976, all remaining differences in the legal treatment between children born in and out of wedlock were abolished. Furthermore, joint custody of children became available to both divorced and unmarried parents. Until then divorced or unmarried parents could only have sole custody of a child. In the case of divorce, it had been up to the courts to settle the parents' disputes and award one of them sole custody of the children. In order to strengthen the child's right to contact with the parent with whom the child is not living, since 1983 the law has explicitly stated that it is the child who has the right to contact.⁶ Issues of contact re-emerged in 1993, when provisions were enacted obliging the court to regard the risk of child abuse, kidnapping or other harm when contact with a non-custodial parent or other person particularly close to the child takes place.⁷

Since the 1990's, the trend has been to encourage parents to reach agreements concerning their children. With this purpose in mind, in 1990 so-called co-operation discussions were introduced to facilitate agreements between the parents.⁸ Since a 1998 law reform, a court may also order joint custody against the wish of one of the parents whereas before the reform, joint custody could only be ordered if neither of the parents opposed it.⁹ However, the 1998 reform primarily aims at keeping parental responsibilities issues out of court by encouraging parents to reach agreements on custody, contact and the child's residence. Such agreements must be confirmed by the local social welfare committee, if they are compatible with the best interests of the child.

Finally, the enactment of the Registered Partnership Act in 1994,¹⁰ granted a same-sex couple with a registered partnership the same legal rights as a married couple. Originally, the rules concerning parental responsibilities were not applicable to registered partnership, however, since 2003 registered partners may jointly adopt a child, and a registered partner may adopt his or her stepchild. Registered partners may also jointly be appointed as special custodians to a child.

6. Are there any recent proposals for reform in this area?

In June 2002 a parliamentary committee was appointed by the Government to evaluate the effects of the 1998 reform,¹¹ which allows entrusting joint custody to parents even when one parent is against it. The committee is also to evaluate how the local social welfare committees have succeeded in their task to approve parental agreements on custody, contact and the child's residence. The rules on

⁶ Prop 1981/82:168, p. 41 *et seq.*

⁷ Prop 1992/93:139.

⁸ Prop 1990/91:8. See: Chapter 6 Sec. 18 Swedish Children and Parents Code, revised in 2001.

⁹ Prop 1997/98:7.

¹⁰ Registered Partnership Act (1994:1117). The Act entered into force on 01.01.1995.

¹¹ Kommittédirektiv 2002:89 Vårdnad, boende, umgänge.

enforcement of decisions and agreements on custody, residence and contact are also to be reconsidered. The committee is expected to present its report and proposals by March 2005.

The Ministry of Justice is currently considering proposals put forth in three memorandums, namely Ds 1999:57,¹² Ds 2002:13,¹³ and Ds 2004:19,¹⁴ on specific issues connected to the attribution and exercise of parental responsibilities. The 1999 memorandum proposes introducing a provision automatically granting unmarried parents joint custody of their child three months after the determination of paternity, provided that neither of the parents expressly opposes joint custody. The 2002 memorandum concerns legislative measures that need to be taken in order to enable Sweden's planned ratification of the European Convention on the Exercise of Children's Rights.¹⁵ The 2004 memorandum proposes that lesbian couples who have registered a partnership or who are cohabiting with each other should be allowed access to artificial insemination at public hospitals in Sweden. If such an insemination results in the birth of a child, both the woman giving birth and her registered partner or cohabitee should be regarded as the child's legal parents, also sharing the parental responsibilities.

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

7. Describe what the contents of parental responsibilities are according to your national law including case law.

Swedish law distinguishes between the concepts of custody (*vårdnad*, Chapter 6 Swedish Children and Parents Code) and guardianship (*förmynderskap*, Chapters 9-15 in part Swedish Children and Parents Code).

Custody refers to the legal responsibilities that a custodian has for the child's personal circumstances. These include a duty to ensure that the child's needs for care and protection, good upbringing and education are provided. The custodian also has a responsibility to see to that the child is maintained. In personal affairs, the custodian represents the child, and it is the custodian who determines the child's residence. Normally, custody also involves the actual care of the child, meaning that the custodian lives with and looks after the child. However, it is not necessary for the child to live with the custodian. Custody does not necessarily entail an obligation to personally fulfil the responsibilities of a custodian, only to make sure that they are carried out by someone.

A person who has custody of a child is also responsible for ensuring that the child receives necessary supervision, having regard to his or her age, development and other circumstances. In order to prevent the child causing detrimental damage to

¹² Gemensam vårdnad för ogifta föräldrar samt en språklig och redaktionell översyn av 6 kap. föräldrabalken ("Joint custody for unmarried parents").

¹³ Utövandet av barnets rättigheter i familjerättsprocesser ("The exercise of the rights of the child in family law proceedings").

¹⁴ Föräldraskap vid assisterad befruktning för homosexuella ("Parenthood in connection with artificial fertilisation of homosexuals")

¹⁵ European Treaty Series, No. 160.

any other person, the person with custody shall ensure that the child is kept under supervision or that other appropriate steps are taken, Chapter 6 Sec. 2 para. 2 Swedish Children and Parents Code. The child's parents have a joint responsibility to ensure that the child's right of contact with a parent with whom the child is not living is living is met. The custodian shall also ensure that the child's need of contact with any other person particularly close to the child is met, Chapter 6 Sec. 15 Swedish Children and Parents Code.

Guardianship refers to administration of the child's property and legal representation of the child in legal proceedings concerning the property, the Chapters 10, 11 and 13 Swedish Children and Parents Code,. Normally a child's parents are both custodians and guardians to the child. If custody is transferred from a parent or parents to one or two specially appointed custodians, they normally also become guardians to the child. The guardian is obligated to regard the child's needs when determining the appropriate capital needed for education and other expenses.¹⁶

8. What is the position taken in your national law with respect to:

(a) Care

The custodian's responsibility for the care of the child is expressly stated in the Chapter 6 Sec. 1 Swedish Children and Parents Code,. The term "care" encompasses responsibility to satisfy the child's material, psychological and mental needs, and to decide important issues concerning the child. In this context the custodian's responsibility for the child should not be confused with *de facto* care of the child. In particular in situations where the child's parents have joint custody but do not live together, both parents are jointly responsible for the care of the child, whereas the *de facto* care is normally exercised by the parent with whom the child lives.

It is up to the custodian to ensure that the child's individual needs are met. Thus, the legislature has abstained from introducing an exhaustive list of the custodian's duties. From the introductory provision concerning custody, residence and contact, found in Chapter 6 Sec. 1 Swedish Children and Parents Code: "Children are entitled to care, security and a good upbringing. They shall be treated with respect for their person and their distinctive character and may not be subjected to corporal punishment or any other humiliating treatment." The person who has custody of the child is responsible for the child's personal affairs and shall ensure that the child's above-mentioned needs are met.¹⁷ A child's right to security includes the right to live in a stable relationship with an adult whom the child can trust. The right to care and a good upbringing refer to experiencing a feeling of affinity and to develop personal resources in order to gradually gain independence from the custodian. Furthermore, the custodian is to treat the child with respect, being attentive of the child's individuality and growing needs of personal integrity. All forms of corporal punishment and demeaning treatment are prohibited by law and can constitute a criminal offence.

¹⁶ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 12:3.

¹⁷ Chapter 6 Sec. 2 para. 2 Swedish Children and Parents Code.

(b) Education

The custodian is responsible for ensuring that the child receives a satisfactory education, having regard to the child's age, development and other circumstances, Chapter 6 Sec. 2 para. 2 Swedish Children and Parents Code.

(c) Religious upbringing

In Swedish law, a custodian can normally act alone only in matters relating to the daily care of the child. Decisions concerning religious upbringing and membership in a religious community are considered to be of such far-reaching significance for the child's future that they must be made by both parents if the child is under their joint custody.¹⁸ Correspondingly, if the parents' custody rights have been transferred to two specially appointed custodians, they must make the decisions relating to the child's religious upbringing together. If parents sharing custody rights (or the two specially appointed custodians) cannot agree, it is, e.g., not possible to register the child as a member of a religious community or as a pupil in a religious school. This position is confirmed by Art. 2 Additional protocol 1 to the European Convention on Human Rights.¹⁹ It has been suggested in Swedish legal literature that any kind of religious upbringing, such as teaching the child to pray or to follow any religious traditions, requires the consent of both custodians.²⁰

Since custodians are to pay regard to the child's wishes depending on the child's age and level of maturity, it follows that the child at a certain point acquires the freedom to make decisions on its own as regards religion. If the child has reached the age of 12 years, the child's consent, in addition to that of the custodian(s) is necessary for entry into or withdrawal from a religious community, the Swedish Act (1998:1593) on Religious Communities (*Lag om trossamfund*) Section 4. However, it is claimed that in practice not all religious communities in Sweden follow the law in this respect.²¹

(d) Disciplinary measures and corporal punishment

The Children and Parents Code explicitly prohibits subjecting children to corporal punishment or any other humiliating treatment. Neither may this be done in reaction to actions or omissions by the child, Chapter 6 Sec. 1. Such measures can constitute a criminal offence and they may not be used by the custodian as a method of raising the child.²²

¹⁸ J. SCHIRATZKI, *Barnets bästa i ett mångkulturellt Sverige*, Stockholm: Skrifter utgivna av Juridiska fakulteten vid Stockholms universitet, 2000, p. 152-155.

¹⁹ Nordisk Børneret II, Forældreansvar, Et sammenlignende studie af dansk, finsk, islandsk, norsk og svensk ret med drøftelser af harmoniseringsmuligheder og reformbehov, Copenhagen: Nordisk Ministerråd, 2003, p. 108.

²⁰ J. SCHIRATZKI, *Barnets bästa i ett mångkulturellt Sverige*, Stockholm, Skrifter utgivna av Juridiska fakulteten vid Stockholms universitet, 2000, p. 154.

²¹ J. SCHIRATZKI, *Barnets bästa i ett mångkulturellt Sverige*, Stockholm: Skrifter utgivna av Juridiska fakulteten vid Stockholms universitet, 2000, p. 152-153.

²² See: Prop 1978/79:67. Corporal punishment of the child is criminalised if it corresponds to such assault against another person that is criminalised in the Swedish Penal Code. See: G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:6.

Regarding other forms of disciplinary measures, the law prohibits demeaning treatment of a child, the content of which may differ depending on the age and maturity of the child. Measures such as systematically reading a child's mail²³ or confining the child to his or her room (room arrest) may constitute demeaning treatment, particularly with older children. The prohibition of demeaning treatment aims at measures that can endanger the child's personal development, e.g. through ridicule or systematically ignoring the child.²⁴ A custodian who subjects the child to corporal punishment and other forms of unsuitable treatment shall be deprived of the custody of the child, if the behaviour is considered to constitute a lasting danger to the child's health or development, Chapter 6 Sec. 7 Swedish Children and Parents Code.

(e) Medical treatment

Decisions concerning medical treatment of a child fall within the responsibility of the custodian, to be jointly exercised by parents sharing custody. Nevertheless, it is possible that some decisions could fall under the residential parent's authority to make decisions concerning the child's daily life, e.g., a decision to vaccinate the child. In respect to certain types of medical treatment, the child may decide on its own, on condition that the child is considered to have reached a sufficient level of maturity in relation to the issue. For example, a child considered mature enough has the right to request and be granted contraceptives or an abortion without the knowledge or consent of the custodians.²⁵ In other areas, such as treatment of mental problems, the consent of the custodians is normally required.²⁶

(f) Legal representation

The custodian acts as the legal representative of the child in regard to the child's personal affairs, Chapter 6 Sec. 11 and 12 Swedish Children and Parents Code. This includes matters concerning the establishment of parentage and maintenance, as well as the right to medical treatment and education. In matters concerning the administration of the child's property and financial affairs (other than maintenance) the child is represented by his or her guardians, Chapter 12 Sec. 1 Swedish Children and Parents Code. When both parents have rights of custody and guardianship, they have joint authority to represent the child. In some situations, the child may act on his or her own e.g. in respect of property which the child has acquired through his or her own labour, Chapter 9 Sec. 3 Swedish Children and Parents Code.

In certain public law proceedings aimed at providing protection for the child, the law provides for appointing a separate representative for the child. This is the case, e.g. in proceedings initiated by a local social welfare committee concerning the

²³ This prohibition is also included in Art. 16 United Nations Convention on the Rights of the Child.

²⁴ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:6-6:7.

²⁵ See: E. RYNNING, *Samtycke till medicinsk vård och behandling*, Uppsala: Iustus Förlag, 1994, p. 285-289.

²⁶ J. SCHIRATZKI, "Custody of Children in Sweden - Recent Developments", *Scandinavian Studies in Law*, Volume 38, Legal Issues of the Late 1990s, p. 262, with reference to *The Yearbook of the Parliamentary Ombudsmen*, 1992/93, p. 439.

removal of the child from the parents' care without their consent, when the child is under 15 years of age and there is reason to believe that the interests of the custodians and the child are in conflict, Sec. 39 and 36 Swedish Act on the Care of Young Persons (1990:52). On the other hand, a child who has reached the age of 15 years is entitled to speak on his or her own in such proceedings. It is also possible to appoint a separate legal representative to protect the interest of the child, instead of having the (other) custodian representing the child in criminal proceedings against a custodian based on alleged abuse of the child, Swedish Act on Special Legal Representative for Children (1999:997).

9. What is the position taken in respect of the child's right to be heard with regard to the issues mentioned under Q 8 (a)-(f). What relevance is given to the age and maturity of the child?

The child's right to be heard is a fundamental principle in Swedish family law. In assessing questions concerning custody, residence and contact, regard shall be made to the wishes of the child, taking into account the child's age and maturity, Chapter 6 Sec. 2b Swedish Children and Parents Cod. Furthermore, in decisions concerning the child's personal affairs, the person with custody of the child shall, in keeping with the increasing age and maturity of the child, also take the child's views and wishes increasingly into account, Chapter 6 Sec. 11 Swedish Children and Parents Code. As regards the child's economic affairs, the guardian shall hear the child where appropriate if the child is at least 16 and the matter is important, Chapter 12 Sec. 7 Swedish Children and Parents Code. The underlying ideology is that the child is the expert of his or her own situation, all the more so with increasing age and maturity. From this, it follows that very small children are not considered to be able to have clear opinions. Mature children, on the other hand, exercise a considerable autonomy in respect to certain types of medical treatment and participate in the decision-making in other respects.

10. Do(es) the holder(s) of parental responsibilities has(have) the right to administer the child's property?

The right to administer the child's property belongs to the child's guardian(s), unless the child, by law or otherwise, has acquired a right of disposition. Where property has been given to the child, e.g., as a gift or through a testamentary disposition, the donor or testator may stipulate that the property shall be administered by a person other than the child's guardian, Chapter 12 Sec. 1 Swedish Children and Parents Code.

11. If yes, explain the content of this right.

The guardian is responsible for taking care of the child's property and representing the child in legal proceedings regarding the property, Chapter 12 Sec. 1 Swedish Children and Parents Code. As a main rule, although the guardian is free to decide how the assets shall be handled, the guardian shall carry out his or her duties prudently, always favouring the best interests of the child.²⁷ The guardian is liable

²⁷ Chapter 13 Sec. 1 and Chapter 12 Sec. 3 Swedish Children and Parents Code.

to compensate the child for any intentional or negligent damage, Children and Parents Code, Chapter 12, Section 14.

The child's property to a reasonable extent shall be used for his or her living expenses and education, with the remaining part invested in a manner that safeguards the value of the property and provides profits, Chapter 12 Sec. 4 Swedish Children and Parents Code. The guardian's administration of the child's property is supervised by the Chief Guardian (*Överförmyndaren*) who also may order the guardian to account for the administration, Chapter 13 Sec. 18 Swedish Children and Parents Code.

12. Are there restrictions with respect to:

(a) Certain goods and/or values (inherited property, gift...)

The guardian's right to administer the child's assets may be restricted through stipulations by a third party. This is the case when the child receives property as a gift or through a testamentary disposition on the condition that the property shall be administered by a person other than the guardian.²⁸ The guardian is also excluded from the right to administer the child's assets if the child has been given the right to dispose of the property.²⁹ Exceptionally, however, property the child disposes himself or herself may be administered by the guardian. This requires permission from a body supervising administration of the minor's property, the so-called Chief Guardian, if the child has reached the age of 16 years. Such permission should only be granted if it is necessary for the child's upbringing or welfare. The permission may, furthermore, be granted only after the child has been heard.

There are also restrictions on the guardian's administration of the child's property based on the value of the property. The guardian(s) is free to administer the child's property, without involvement of the Chief Guardian, only if the value of the child's property does not exceed the sum of eight so-called "base amounts", annually fixed by social security law.³⁰ In 2003, this amounted to approximately €36,000.³¹ If the value of the child's property exceeds this amount, the assets must be placed in a manner stipulated by the law, see Chapter 13 Sec. 2 to 7 Swedish Children and Parents Code. Exceptions may, however, be granted by the Chief Guardian. The guardian must give the Chief Guardian a yearly accounting of the administration of the assets.

A person who gives the child property *e.g.* through a gift or a testamentary disposition, may always stipulate that the administration of that property shall be subject to the same provisions as property exceeding the value of eight base amounts, irrespective of the value of the property.³²

²⁸ Chapter 12 Sec. 1 Swedish Children and Parents Code.

²⁹ See: Chapter 12 Sec. 1 with reference to Chapter 9 Sec. 3-4 Swedish Children and Parents Code.

³⁰ This is a result of a law reform carried out in 1994. See G. WALIN and S. VÅNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 12:2.

³¹ In 2003, one base amount was fixed to 38,600 SEK *i.e.* approximately €4,200.

³² Chapter 13 Sec. 2 Swedish Children and Parents Code.

(b) Salary of the child

A child who has reached the age of 16 years may dispose of property he or she has acquired through his or her own labour if the custodian(s) consent.³³ The guardian may, with the permission of the Chief Guardian, take over the administration of such acquisitions, provided it is necessary for child's upbringing or well-being. Permission should be granted only after the child has been heard.³⁴

(c) Certain transactions

Irrespective of the value of the property, certain transactions always require the consent of the Chief Guardian. Dispositions concerning real property of the child, as well as the use of the child's assets for support of family or others close to the child always require the consent of the Chief Guardian. The consent of the Chief Guardian is, furthermore, required for investments in shares. Such a permission is also required if the child is to run a business in his or her name. The relevant provisions are found in the Chapter 13 Sec. 10-13 Swedish Children and Parents Code.

13. Are there special rules protecting children from indebtedness caused by the holder(s) of parental responsibilities?

The guardian needs the consent of the Chief Guardian to any transaction that presupposes contracting debts for the child, Chapter 13 Sec. 12 Swedish Children and Parents Code. The same applies if the guardian wants the child to warrant for somebody or the child's property to provide security for the child's or another person's transactions. A consent should only be granted if the measure is necessary to secure the child's other assets, education or living, or for some other special reason. An action taken by the guardian without the consent of the Chief Guardian is not valid, Chapter 12 Sec. 10 Swedish Children and Parents Code.

Although the law aims at protecting children from indebtedness caused by the guardians, parental actions still indebt many children. In many cases in Sweden, the child's debt refers to cars registered by the parents in the child's name *e.g.* unpaid parking tickets. Furthermore, a significant proportion (about 50%) of children's debts originate from the parents' transactions with the child's capital *e.g.* stock investments with the resulting taxes left unpaid. This problem has only recently received the attention of the legislature. Since October 2004, an authority called the Enforcement Service has the duty to report to the Chief Guardian every time a person under the age of 18 years is registered for unpaid fees, etc. The Chief Guardian should then take the measures required by the situation to secure the interests of the child. This entails convincing the parents to take responsibility for debts that are not the child's. The Chief Guardian can also appoint a guardian *ad litem* to initiate court proceedings to have the debts removed or declared invalid. The problem may have accelerated due to parents' lack of knowledge of the law, as well as the limited resources of the Chief Guardian.

³³ Chapter 9 Sec. 3 Swedish Children and Parents Code.

³⁴ The child's right to take employment with the consent of the custodian is expressed in Chapter 6 Sec. 12 Swedish Children and Parents Code and the prerequisites of the child's right to handle that property is expressed in Chapter 9 Sec. 3 Swedish Children and Parents Code.

14. Do the contents of parental responsibilities differ according to the holder(s) of parental responsibilities (e.g. married, unmarried, parents not living together, stepparents, foster parents or other persons). If so, describe in some detail how it differs.

In Swedish law the contents of parental responsibilities do not differ according to the family status of the holder(s). In part this is due to the fact that a child cannot have more than two custodians at a time. The custodians are always either the child's parents *or* one or two specially appointed custodians. As long as either one of the parents has custody, no additional person can be appointed as a special custodian. There are no means (other than adoption in certain cases) for example, a step-parent to become a holder of parental responsibilities together with a parent with custody rights.

C. ATTRIBUTION OF PARENTAL RESPONSIBILITIES

I. Married Parents

15. Who has parental responsibilities when the parents are

(a) Married at the time of the child's birth

Parents who are married to each other at the time of the child's birth automatically obtain joint custody of the child, Chapter 6 Sec. 3 para. 1 Swedish Children and Parents Code. Married parents who have reached the age of majority (18 years) also automatically become the guardians of the child.

(b) Not married at that time but marry later

When the parents of a child marry after the birth of the child, they both shall have custody of the child from then on, unless a court has previously entrusted custody to one or two specially appointed custodians, Chapter 6 Sec. 3 para. 1 Swedish Children and Parents Code.

16. How, if at all, is the attribution of parental responsibilities affected by:

(a) Divorce

According to the main rule, the parents' joint custody also continues after divorce, Chapter 6 Sec. 3 para. 2 Swedish Children and Parents Code. The court shall remind the parents in the divorce decree that joint custody still applies. Under certain conditions, however, the joint custody may be dissolved, and sole custody be entrusted to one of the parents.

(b) Legal separation

Legal separation has not existed in Swedish law since 1974.

(c) Annulment of the marriage

Marriage annulment has not existed in Swedish law since 1974. A marriage can only be dissolved by divorce or the death of a spouse.

(d) Factual separation

The factual separation of parents does not in itself affect the previously existing custody. The main rule is that parents who are married to each other have joint custody of their children, irrespective of the living arrangements.

17. To what extent, if at all, are the parents free to agree upon the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage? If they are, are these agreements subject to scrutiny by a competent authority.

Parents are free to enter into agreements concerning the attribution of parental responsibilities after divorce. The agreement is valid if it is in writing and approved by the local social welfare committee or by the court, Chapter 6 Sec. 4, 5 and 6 Swedish Children and Parents Code.

The social welfare committee or court should approve the parents' agreement on *joint custody*, if joint custody is compatible with the best interests of the child. The social welfare committee should also approve an agreement providing for the *sole custody* of one of the parents, if sole custody is in the best interests of the child. The court formally remains free to decide, based on the best interests of the child, between joint custody or sole custody, even if the agreement stipulates sole custody. Joint custody can not be granted, however, if *both parents* are opposed to it, Chapter 6 Sec. 5 para. 2 Swedish Children and Parents Code.

18. May the competent authority attribute joint parental responsibilities to the parents of the child even against the wish of both parents/one of the parents? To what extent, if at all, should the competent authority take account of a parent's violent behaviour towards the other parent?

Since the 1998 law reform, the court may order joint custody of a child against the wish of one of the parents but not if *both* parents object to it, Chapter 6 Sec. 5 Swedish Children and Parents Code. When deciding the suitable custody position, the court shall regard the best interests of the child. In its judgment *NJA 1999 p. 451* the Swedish Supreme Court stated that the present legislation presupposes that joint custody is, as a rule, in the best interests of the child. The *travaux préparatoires*, however, emphasize that there are cases where joint custody is not desirable. This is the case if one of the parents is guilty of violence towards the child or the other parent. Neither is joint custody appropriate in cases where conflict between the parents is so severe and deep that it is impossible for them to cooperate in matters concerning the child.³⁵ An example of how these exceptions are assessed is provided by the judgment of the Swedish Supreme Court, *NJA 2000 p. 345*. In the Supreme Court's opinion, the fact that the father had been found guilty of the assault of the mother in 1999 did not make him unfit as a custodian at the time of the proceedings a year later. However, the assault was found to reflect the parents' profound difficulties to cooperate, making it impossible for them to cooperate in issues concerning the children. Custody was therefore granted to the mother alone, with reference to the best interests of the children.

³⁵ Prop. 1997/98:7 p. 49.

19. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.

The most recent statistics regarding attribution of custody after divorce refer to parents who divorced in 2002.³⁶ After divorce, the parents had joint custody of 23,512 children; almost 97% of all the concerned children. The mother had sole custody of 759 children; about 3%. The father was entrusted sole custody of 104 children, amounting to approximately 0.4% of the concerned children.

Joint custody, however, does not necessarily say anything about the actual care of the child. Most children lived with their mother after divorce (as well as after separation between unmarried parents).³⁷ By the end of 2002, 430,070 (83%) of all children with divorced or separated parents lived with their mother (or with the mother and her new partner). 78,636 children lived with their father (or with the father and his new partner), which is about 15% of the concerned children.³⁸ It was estimated that in 2002 approximately 17% of all children with divorced or separated parents lived alternately with both parents.

II. Unmarried Parents

20. Who has parental responsibilities when the parents are not married?

The unmarried mother has sole custody, *ex lege*, of the child from the child's birth, Chapter 6 Sec. 3 para. 1 Swedish Children and Parents Code. Unmarried parents with the father's approved acknowledgement of paternity who are in agreement can obtain joint custody by means of registration with the tax authority (the authority in charge of population records in Sweden) after joint notification to the social welfare committee, Chapter 6 Sec. 4 para. 2 Swedish Children and Parents Code.

21. Does it make a difference if the parents have formalised their mutual relationship in some way (registered partnership, civil union, pacte civil de solidarité...).

At present, *ex lege* effect is only given to the parents' marriage. A proposal is under consideration that would automatically grant unmarried parents joint custody of the child three months after the determination of paternity, on the condition that neither of the parents opposes joint custody.³⁹

³⁶ Statistics Sweden, www.scb.se.

³⁷ Statistics Sweden, www.scb.se.

³⁸ Statistics Sweden, www.scb.se, 9,171 (almost 2%) of all children with divorced or separated parents lived with a person other than a parent.

³⁹ See Ds 1999:57, above under Q 6.

22. Under what condition, if at all, can

(a) The unmarried mother obtain parental responsibilities

The unmarried mother automatically becomes the (sole) custodian of a child from the child's birth, Chapter 6 Sec. 3 para. 1 Swedish Children and Parents Code.

(b) The unmarried father obtain parental responsibilities

Unmarried parents can obtain joint custody through a court order or through registration with the tax authority, Chapter 6 Sec. 4 Swedish Children and Parents Code. This registration can be done after a joint notification to the social welfare committee in connection with the father's acknowledgement of paternity, or, in certain cases, through a joint application directly to the tax authority.⁴⁰

If the father alone wishes to change the existing custody position, he must initiate court proceedings, demanding sole or joint custody, Chapter 6 Sec. 6 Swedish Children and Parents Code.

23. How, if at all, is the attribution of parental responsibilities affected by the ending of the unmarried parents' relationship?

The ending of the unmarried parents' relationship does not affect the attribution of parental responsibilities. The existing custody position remains after a separation. For it to be changed, a court order or an approved agreement between the parents is necessary.

24. May the competent authority attribute joint parental responsibilities to the parents also against the wish of both parents/one of the parents? To what extent, if at all, may the competent authority take into account a parent's violent behaviour towards the other parent?

Unmarried parents are subject to the general rules regarding any change in the custody position. The court may, upon application, also order joint custody against the wish of one of the parents, but not if both parents are opposed to joint custody, Chapter 6 Sec. 5 Swedish Children and Parents Code. A parent's violent behaviour towards the other parent may be a reason not to grant joint custody, at least in conjunction with a conflict between the parents so severe and deep that it makes it impossible for them to cooperate in matters concerning the child, see *NJA 2000 p. 345*.⁴¹

25. To what extent, if at all, are unmarried parents free to agree upon the attribution of parental responsibilities after the ending of their relationship?

⁴⁰ A requirement is that no custody order has previously been issued and that the child and the parents are Swedish citizens.

⁴¹ This Supreme Court judgment was described above under Q 18. Although the judgment concerned children of parents that had been married to each other, there is no reason to assume the outcome would have been different had the parents never been married to each other.

Upon and after the termination of their relationship, unmarried and married parents have the same right to enter into agreements concerning custody, residence and contact.⁴² Such an agreement must be in writing and approved by the social welfare committee. The parents' agreement may also be confirmed by court order.

26. Provide statistical information available regarding the attribution of parental responsibilities for unmarried parents.

The most recent statistics regarding the attribution of custody after separation of unmarried parents refers to parents who separated in 2002.⁴³ The unmarried parents who separated that year had joint custody of 16,157 children; almost 89% of the concerned children. The mother had sole custody of 1,987 children; about 11%. The father had sole custody of 46 children; 0.3%. Swedish statistics show that joint custody is the most common form of custody for both divorced and separated parents, the figures being slightly higher among divorced parents than among separated parents who have not been married to each other.⁴⁴

III. Other Persons

27. Under what conditions, if at all, can the partner of a parent holding parental responsibilities obtain parental responsibilities, when, he/she is:

(a) Married to that parent

According to Swedish law parental responsibilities are almost exclusively a right and an obligation of the *parents*. A child can have no more than two legal custodians or guardians at a time. As long as one or both parents are fit custodians, no other custodian can be appointed. It follows that it is not possible for a step-parent to obtain parental responsibilities as long as these belong to a parent. Adoption of the child is the only exception to the rule, Chapter 4 Sec. 3 Swedish Children and Parents Code. This requires, in addition to the general conditions for adoption, that the other spouse is the sole custodian of the child and consents to the adoption.

(b) Living with that parent in a formalised relationship (registered partnership, civil union, *pacte civil de solidarité*...);

Since 2003, a registered partner may adopt his or her partner's child and thereby obtain full parental responsibilities.⁴⁵ The same conditions apply as when a spouse wishes to adopt the other spouse's child.

(c) Living with that parent in a non-formalised relationship

A person living in a non-formalised relationship with the child's parent is excluded from obtaining parental responsibilities in respect of the child.⁴⁶ In Swedish law, cohabitants cannot adopt each other's children.

⁴² See answer to Q 17.

⁴³ Statistics Sweden, www.scb.se.

⁴⁴ See the statistics provided above under Q 19.

⁴⁵ SFS 2002:603.

⁴⁶ The only exception relates to a duty to maintain the child, under certain conditions. Issues of maintenance, however, fall outside the scope of this Report.

28. Does it make any difference if the partner of the parent holding parental responsibilities is of the same sex?

Since 2003, there are no differences in treatment between heterosexual and homosexual step-parents as regards parental responsibilities.

29. How, if at all, is the attribution of parental responsibilities in the partner affected by the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Questions 27 and 28.

In Swedish law, it is only through adoption that a step-parent can obtain full parental responsibilities over a child. Where an adoption has taken place, the end of the relationship between the parent and his or her partner has no legal effect on the adoptive parent's parental responsibilities.

A child, on the other hand, has the right to contact with persons particularly close to him or her. The person with custody of the child is responsible for ensuring that the child's need of contact is met, Chapter 6 Sec. 15 Swedish Children and Parents Code. The child's right to contact primarily aims at ensuring contact between the child and his or her relatives *e.g.* grandparents, but can also include other persons emotionally close to the child, such as a former step-parent.⁴⁷ It should be noted that a step-parent⁴⁸ who wishes to have contact with the child does not have an independent right to initiate proceedings to obtain a contact order. Proceedings can be initiated only by the local social welfare committee, Chapter 6 Sec. 15a Swedish Children and Parents Code. There are no published cases on this.

The legal nature of the former step-parent's (former) relationship to the holder of parental responsibilities is irrelevant in these respects.

30. To what extent, if at all, is the parent holding parental responsibilities and his/her partner free to agree upon the attribution of parental responsibilities after the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Questions 27 and 28.

Unless the child was adopted by the parent's spouse or registered partner, no such agreements can be entered into. A custodial parent cannot validly attribute custody rights to a former step-parent.⁴⁹

⁴⁷ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:33.

⁴⁸ The term "stepparent" is used here to describe the partner of a parent holding parental responsibilities, regardless of the status of the relationship. Thus step-parenthood denotes the "social parenthood" between the adult and the child due to marriage, cohabitation or partnership registration between the child's parent and the stepparent. For a discussion concerning the role of social parenthood *de lege lata* and *de lege ferenda*, see: A. SINGER, *Föräldraskap i rättslig belysning*, Uppsala: Iustus Förlag, 2000, p. 536-542.

⁴⁹ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:34 and 6:61.

31. Under what conditions, if at all, can other persons not being a parent or a partner of a parent holding parental responsibilities, obtain parental responsibilities (e.g. members of the child's family, close friends, foster parent...)? Specify, where such other persons may obtain parental responsibilities, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

According to Swedish law a child cannot have more than two legal custodians at a time. Entrusting custody to persons other than the parents denotes a transfer of custody, the existing holder(s) of parental responsibilities being substituted by other custodians.

Custody can be entrusted to a non-parent in three situations: (1) when the parents are unfit to exercise custody, (2) when the child has been cared for in a home other than the parental home and it is in the best interests of the child that custody be transferred to the persons who have been caring for the child, and (3) when the parents die. (This last situation is dealt with under Q 33.)

The first situation arises when the parent exercising custody of a child is guilty of abuse or neglect or is otherwise behaving in a manner that entails an enduring risk to the child's health or development, Chapter 6 Sec. 7 Swedish Children and Parents Code. If both parents have custody and this behaviour only applies to one of them, the court shall entrust sole custody to the other parent. If both parents are wanting in their behaviour, the court shall transfer custody to one or two specially appointed custodians. In practice it is very seldom that custody is transferred from the parent(s) on this ground; the child is considered to be sufficiently protected through child protection measures such as placing the child in another home for care.⁵⁰ The person receiving the child for care will be in charge of the daily care of the child. The local social welfare committee has the duty to contribute to the child's good care and upbringing, a favourable living environment and suitable education. To this end, the social welfare committee shall provide the custodians and the persons caring for the child with advice, support and other necessary assistance, Chapter 6 Sec. 7 Swedish Social Services Act. It should however be emphasised that neither the person receiving the child for care in another home nor the social welfare committee obtain parental responsibilities according to the Children and Parents Code.⁵¹

The second situation arises when social welfare authorities place the child for care in another private home according to the Swedish Social Services Act (2001:453) or the Swedish Care of Young Persons Act (1990:52). Normally, such a placement is also the result of the parents' abuse or neglect of the child and the placement often becomes of long duration. On the condition that it is manifestly in the best interests

⁵⁰ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del 1, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, pp. 6:38-6:39; A. SINGER, *Föräldraskap i rättslig belysning*, Uppsala: Iustus Förlag, 2000, p. 474.

⁵¹ Swedish law could be criticised for leaving the child in a "legal vacuum". Legal custody, which carries with it the responsibility for the custodian to care for the child's personal affairs, is not in line with the real situation where somebody else cares for the child.

of the child to secure continuity in the caring of the child, the court may transfer the custody of the child to the person(s) in charge of the child's care ("family home parents"), Chapter 6 Sec. 8 Swedish Children and Parents Code. The "family home parents" (foster parents) will in this case be specially appointed custodians for the child.⁵² This possibility of transferring custody is only rarely used in practice.⁵³ This has to do with an unwillingness to deprive parents of custody (thus regarding them unsuitable), as well as a fear that transferring custody from the parents would negatively affect the child's contact with them. In addition there is an overall uncertainty as to how the child's best interests should be assessed in a situation like this. Thus, the 2003 reform of the Swedish Care of Young Persons Act obliging the social welfare committee to consider, as soon as the placement of the child in a particular private home has lasted for three years, if there are reasons to transfer custody to the foster parents, has had a limited effect.⁵⁴ Questions concerning transfer of custody to foster parents will be considered by the court on application of the social welfare committee. The foster parents cannot by themselves initiate a transfer of custody, but they have to consent to a transfer.

Normally, a specially appointed custodian normally also becomes the child's guardian, but exceptionally another person can be appointed as guardian, Chapter 10 Sec. 3 Swedish Children and Parents Code. It is also possible to appoint several guardians *e.g.* if the child's economic affairs are complex, or if the parents with custody are not suitable to act as guardians, Chapter 10 Sec. 8 Swedish Children and Parents Code.

32. Under what conditions, if at all, can a public body obtain parental responsibilities? Specify, where it is so obtained, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

When a child, through measures taken by social welfare committee, is removed from the parents' care in order to protect the child from abuse or neglect, the daily care of the child is entrusted to the person in charge of the home receiving the child.⁵⁵ In most cases, however, the parents retain their legal custody of the child. The social welfare committee has the duty to contribute to the child's good care and upbringing, a favourable living environment and suitable education. To this end, the social welfare committee shall provide the custodians and the persons caring for the child with advice, support and other necessary assistance, Social Services Act, Chapter 6, Section 7.

In these situations it might be possible to claim that the social welfare committee obtains certain parental responsibilities, but not according to provisions of the

⁵² Chapter 6 Sec. 8 Swedish Children and Parents Code. Special regard is to be paid to the wishes of the child.

⁵³ See: SOU 2000:77, p. 252 *et seq.* According to statistics from the late 1990's, custody was transferred from the parent(s) only in approximately 50 cases pro year.

⁵⁴ Sec. 13 Swedish Care of Young Persons Act. See also: Prop. 2002/03:53. Oral information by the National Board of Health and Welfare, SUZANNE JUHLIN.

⁵⁵ Such placements take place in accordance with the Swedish Social Services Act (2001:453) or the Swedish Care of Young Persons Act (1990:52).

Children and Parents Code.⁵⁶ Generally speaking, however, the idea of entrusting parental responsibilities to a public body does not fit at all into the Swedish system and terminology, based on a division of rights to custody and guardianship.

33. To whom are the parental responsibilities attributed in the case of:

(a) The death of a parent holding parental responsibilities

If both parents have custody of a child and one of them dies, the other parent becomes sole custodian of the child, Chapter 6 Sec. 9 Swedish Children and Parents Code. If the sole custodian of a child dies, the court shall, upon the application of the other parent or upon notification by the social welfare committee, entrust custody to the other parent. In the latter case, if it is considered more appropriate, the court may instead entrust custody to one or two specially appointed custodians. In an appellate court decision *RH 1983:53*, the sole custodial parent of an eleven-year-old boy died. The dead father's cohabitee was appointed as custodian of the child in accordance with the child's wishes.

The person having custody of the child is also guardian to the child, Chapter 10 Sec. 2 to 3 Swedish Children and Parents Code.

(b) The death of both parents of whom at least one was holding parental responsibilities at the time of the death

If both parents die, the court shall, upon notification by the social welfare committee or when the situation otherwise becomes known, entrust custody to one or two specially appointed custodians, Chapter 6 Sec. 9 para. 1 Swedish Children and Parents Code.

34. To what extent, if at all, may the holder(s) of parental responsibilities appoint a new holder(s) upon his/her/their death? If such an appointment is permitted, must it take place in a special form, e.g. will?

If the court is to appoint a custodian after the death of the child's parents and the parents (or one of them) have made known who they wished to be appointed custodian, the court shall appoint that person, unless it is inappropriate to do so, Chapter 6 Sec. 10a para. 4 Swedish Children and Parents Code. Although the parents' wishes are normally respected, the best interests of the child must be the primary consideration of the court. If the child has reached a sufficient degree of maturity and is opposed to the appointment of the person chosen by the parents, it is not appropriate to appoint that person.⁵⁷ It is also possible that the circumstances changed to such an extent, after the stipulation was made, that it is no longer appropriate to follow it.

The provision regarding guardianship in case of the death of both parents is identical to the one on custody and found in Chapter 10 Sec. 7 Swedish Children and Parents Code. The persons suggested by the parents shall be appointed guardian, unless it is inappropriate to do so.

⁵⁶ See answer to Q 31.

⁵⁷ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:47.

The manifestation of the parents' will concerning custody and guardianship does not have to take place in a special form, but it does need to be expressed with reasonable certainty.⁵⁸

D. THE EXERCISE OF PARENTAL RESPONSIBILITIES

I. Interests of the Child

35. In exercising parental responsibilities, how are the interests of the child defined in your national legal system?

The best interests of the child are the primary consideration when determining issues concerning custody, residence and contact. No specific definition is given on how the notion of the best interests of the child is to be understood because its content may vary depending on the prevailing values and morals of the society as well as the circumstances of the individual case. The point of departure is found in Children and Parents Code, Chapter 6, Section 1, stating that children are entitled to care, security and good upbringing. Children are furthermore to be treated with respect and may not be subjected to corporal punishment or other humiliating treatment.

Certain basic considerations characterise the Swedish position, i.e., (1) respect of the child's human dignity and need of special protection due to his or her vulnerable position,⁵⁹ (2) assessing the child's best interests on the basis of the circumstances of each individual case,⁶⁰ and (3) having regard to the wishes of the child while taking into account the child's age and maturity.

The present legislation is based on the assumption that joint custody, generally speaking, is in compliance with the best interests of the child and that the child needs close and good contact with both parents. Parental agreements are encouraged, the aim being to keep parental disputes out of court as far as possible.

II. Joint Parental Responsibilities

36. If parental responsibilities are held jointly by two or more persons, are they held equally?

When parents have joint custody of their child, parental responsibilities are equally held, and the parents are, in principle, obligated to decide all issues concerning the child jointly, Chapter 6 Sec. 13 Swedish Children and Parents Code. The same applies as regards guardianship, Chapter 12 Sec. 12 Swedish Children and Parents Code.

⁵⁸ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 10:12.

⁵⁹ Huvudbetänkande från Barnkommittén, SOU 1997:116 *Barnets bästa i främsta rummet*, p. 127-129.

⁶⁰ Prop 1997/98:7 p 34 and 105. See also: *Vårdnad, Boende och Umgänge*, Stockholm: Socialstyrelsen (National Board of Health and Welfare), 2003, p. 74.

37. If parental responsibilities holders cannot agree on an issue, how is the dispute resolved? For example does the holder of parental responsibilities have the authority to act alone? In this respect is a distinction made between important decisions and decisions of a daily nature? Does it make any difference if the child is only living with one of the holders of the parental responsibilities?

The starting point is that parents with joint custody (or specially appointed custodians) shall jointly decide on issues concerning the child, Chapter 6 Sec. 13 Swedish Children and Parents Code. If they cannot agree on relevant issues, the ultimate solution is to apply for a court order on sole custody of the child.⁶¹

When the child lives with only one of the parents having joint custody, the residential custodian may make decisions of a daily nature without the consent of the other custodian. This right includes decisions regarding the child's meals, clothing, bed-time routines and leisure-time activities. A suggestion to clarify the decision-making power of the residential parent was turned down in connection with the law reform of 1998, and uncertainty remains as to its scope.⁶²

The child's guardians are also to act jointly. The law does not give one of the guardians the right to make decisions alone. However, in case of disagreement it is possible to turn to an authority called "Chief Guardian" (*överförmyndaren*) for a decision.

38. If holders of parental responsibilities cannot agree on an issue, can they apply to a competent authority to resolve their dispute? If applicable, specify whether this authority's competence is limited to certain issues e.g. residence or contact.

Parents with joint custody can receive assistance in the form of cooperation discussions, supervised by the local social welfare committee, to enable them to agree on issues concerning custody, residence and contact, Chapter 6 Sec. 18 Swedish Children and Parents Code. If the parents fail to reach an agreement on such an issue, the remaining option is to take the matter to court.

There is no authority competent to resolve disputes *other* than attribution of custody or concerning residence and contact, e.g., the child's education or religious upbringing. The only solution is to apply for sole custody.⁶³ It is, however, not certain that the court will grant such an application, unless both parents are opposed to joint custody.

If the guardians are in disagreement about what actions are to be taken in respect to the child's property, the matter can be referred to the Chief Guardian, Chapter 12 Sec. 12 Swedish Children and Parents Code. The opinion supported by the Chief Guardian will then prevail.

⁶¹ See also answer to Q 39.

⁶² See: Prop 1997/98:9, p. 55.

⁶³ Å. SALDÉN, *Barn och föräldrar*, Fourth Edition, Uppsala: Iustus förlag, 2001, p. 77.

39. To what extent, if at all, may a holder of parental responsibilities act alone if there is more than one holder of parental responsibilities?

If owing to absence, illness or some other reason, one of the persons with custody is prevented from participating in custody decisions relating to the child and the decision cannot be postponed without inconvenience, the other person may make such a decision alone, Chapter 6 Sec. 13 para. 2 Swedish Children and Parents Code. However, that person may not make a decision alone that has far-reaching significance for the child's future unless it is manifestly required by the best interests of the child.

When the child is living with only one of the parents it is acknowledged that the residential custodian has the right to make certain decisions regarding the daily life of the child, without the consent of the co-custodian.⁶⁴ Decisions regarding the child's economic interests are to be made jointly by the guardians. The law does not give one of the guardians the right to decide alone.

40. Under what circumstances, if at all, may the competent authority permit the residence of the child to be changed within the same country and/or abroad (so called relocation) without the consent of one of the holders of parental responsibilities?

If the custodians cannot reach an agreement on the child's residence the question of who the child will live with can be referred to the court, Chapter 6 Sec. 14a Swedish Children and Parents Code. The court's power is limited to decide with whom the child will reside, and does not include deciding *where* the child will live. In deciding who the child will live with, the court shall consider the best interests of the child, including possibilities of contact with both parents. A change of the child's residence within the same country or abroad requires the consent of the co-custodian.⁶⁵ If such consent cannot be received, application of sole custody remains the ultimate solution. In Swedish law, a sole custodian is in principle free to change the child's residence, even if it means moving to another country, but should respect the child's right to a close and good contact with the other parent. Relocation orders permitting *e.g.* a child to move abroad with a custodial parent, are not possible under Swedish law.

41. Under what conditions, if at all, may the competent authority decree that the child should, on an alternating basis, reside with both holders of parental responsibilities (e.g. every other month with mother/father)?

If both parents have joint custody of a child, the court may, upon the application of one or both of them, decide with which of them the child shall live, Chapter 6 Sec. 14a, para. 1 Swedish Children and Parents Code. The court may also decree that the child shall live with both parents alternately. The best interests of the child shall be decisive. Alternate living normally presupposes that the parents live close to one another, considering that frequent travelling is tiresome and challenging for a child

⁶⁴ See above, Q 37.

⁶⁵ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:55.

and that a child needs continuity in school attendance and in relations with friends.⁶⁶ Where the parents live close to each other it is not uncommon in Sweden that children live on a weekly basis alternating between both parents.

Swedish research shows that a prerequisite for a functioning alternate living with both parents is that the parents can cooperate in questions concerning custody.⁶⁷ This is seldom the case when the parents are not able to agree on alternate living arrangements for the child. In Sweden, the suitability for children under the age of three to live with both parents alternately has been questioned.⁶⁸

Parents are free to agree on alternate living arrangements concerning their children, but to be valid such an agreement must be in writing and approved by a local social welfare committee, Chapter 6 Sec. 14a para. 2 Swedish Children and Parents Code.

III. Sole Parental Responsibilities

42. Does a parent with sole parental responsibilities have full authority to act alone, or does he/she have a duty to consult:

(a) The other parent

A sole custodian, as a rule, has full authority to act alone in all matters concerning the child. If the child has the same surname as the non-custodial parent, the child's surname can only be changed by consent of the non-custodial parent or by decision of a court, Sec. 6 Swedish Act on Names (1982:670). An application by the custodial parent's spouse or registered partner to adopt the child can only be granted after hearing the non-custodial parent (and on condition that all the other conditions for adoption are met), Chapter 4 Sec. 10 para. 3 Swedish Children and Parents Code.

(b) Other persons, bodies or competent authorities

The sole custodian's authority can be limited by the child's own right to decide in certain issues, a right which increases with the child's increasing age and maturity.

E. CONTACT

43. Having regard to the definition by the Council of Europe (see above), explain the concepts of contact used in your national legal system.

Rules on contact were first introduced into Swedish law in 1915, the purpose being to ensure, by court order, the non-custodial parent's right to see the child. The concept of contact in modern Swedish law focuses on the child's need to close and good contact with both parents, Chapter 6 Sec. 2a Swedish Children and Parents Code. The child's need of contact with relatives and other important persons in the

⁶⁶ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:59.

⁶⁷ G. EWERLÖF, T. SVERNE, A. SINGER, *Barnets bästa. Om föräldrars och samhällets ansvar*. 5:e uppl. Stockholm: Norstedts Juridik 2004 p. 57.

⁶⁸ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:60.

child's life is also to be met. The interests of a parent are not explicitly considered when deciding in contact issues.⁶⁹ It is the best interests of the child that shall prevail over all other concerns in matters regarding contact. The child's own wishes shall be taken into account, increasingly with the increasing age and maturity of the child.

Basically the same approach also prevails in legislation protecting children. When a child is placed in care in another home, the social welfare committee has the duty to ensure, as far as possible, that the child's need of contact with parents and custodians is met, Sec. 14 Swedish Care of Young Persons Act.⁷⁰

44. To what extent, if at all, does the child have a right of contact with:

(a) A parent holding parental responsibilities but not living with the child;

A child has the right to contact with a parent with whom the child is not living, irrespective of whether that parent has custody rights or not, Chapter 6 Sec. 15 para. 1 Swedish Children and Parents Code. The child's parents have a joint responsibility to ensure that the child's need of contact with a parent with whom the child is not living is met.

(b) A parent not holding parental responsibilities

The child's right to contact with a parent with whom the child is not living also applies when that parent does not have custody rights, Chapter 6 Sec. 15 para. 1 Swedish Children and Parents Code. The child's parents have a joint responsibility to ensure that the child's need of contact with a parent with whom the child is not living is met. When a child is placed for care in another home, the social welfare committee has the duty to ensure, as far as possible, that the child's need of contact with parents and custodians is met, Sec. 14 Swedish Care of Young Persons Act.⁷¹

(c) Persons other than parents (e.g. grandparents, stepparents, siblings etc...)

A person with custody of a child has a responsibility to ensure that, as far as possible, a child's need of contact with any other person particularly close to the child is met, Chapter 6 Sec. 15 para. 3 Swedish Children and Parents Code. This provision aims at encouraging the child's contact not only with persons the child knows well and misses, but also with, e.g., relatives who enrich the child's development. If contact is requested by a person other than the parents and the custodian does not agree, proceedings may only be initiated by the social welfare committee, Chapter 6 Sec. 15a para. 1 Swedish Children and Parents Code. Such proceedings are very rarely – if ever – initiated, mainly because a contact order against the will of the parents is feared to increase the level of conflict, which would be detrimental to the interests of the child.

⁶⁹ *Vårdnad, Boende och Umgänge*, Stockholm: Socialstyrelsen (National Board of Health and Welfare), 2003, p. 74.

⁷⁰ See also: Chapter 6 Sec. 1 and 5 Swedish Social Services Act (2001:453).

⁷¹ See also: Chapter 6 Sec. 1 and 5 Swedish Social Services Act (2001:453).

45. Is the right to have contact referred to in Q 43 also a right and/or a duty of the parent or the other persons concerned?

The starting point in Swedish law is that contact is the right of the *child*; the parents are responsible to ensure that this right is met, Chapter 6 Sec. 15 para. 2-3 Swedish Children and Parents Code.

Nevertheless, in regard to enforcing the right to contact it remains more accurate, in a parent-child relationship, to describe contact as a right of the *parent* not living with the child. Only a parent not living with the child can initiate proceedings concerning contact, Chapter 6 Sec. 15a Swedish Children and Parents Code. That parent also has an exclusive right to request enforcement of agreements or court decisions concerning contact.⁷² The child has no corresponding, legally recognised right! The parent with whom the child lives may, according to a judgment by the Supreme Court, *NJA 1994 p 128*, initiate court proceedings if the purpose is to *restrict* a previously determined contact with the other parent, in the best interests of the child.

If contact with the child is requested by any other person and the custodian does not agree to it, a court order remains the only solution. Court proceedings can, however, only be commenced by the social welfare committee, Chapter 6 Sec. 15a Swedish Children and Parents Code, which rarely happens. It follows that the rights and duties concerned remain weak.

46. To what extent, if at all, are the parents free to make contact arrangements? If they can, are these arrangements subject to scrutiny by a competent authority?

If the parents have joint custody of a child, or if one of them has sole custody, they may enter into an agreement concerning the child's right to contact with the non-residential parent. The agreement is valid if it is in writing, signed by both parties and approved by the social welfare committee. The social welfare committee shall approve of the agreement if it complies with the best interests of the child, Chapter 6 Sec. 15a Swedish Children and Parents Code.

47. Can a competent authority exclude, limit or subject to conditions, the exercise of contact? If so, which criteria are decisive?

When deciding issues concerning contact, the best interests of the child shall always be the primary consideration. In this respect, the law mentions certain factors to be taken into account, Chapter 6 Sec. 2a and b Swedish Children and Parents Code. These include the child's need for close and good contact with both parents, and the risk of the child abuse, kidnapping or other harm. Regard shall be given to the child's wishes, taking into account the child's age and maturity. Therefore, ensuring of the best interests of the child presupposes a right for the court to submit the exercise of contact to certain conditions and, in some cases, to even exclude contact with a parent.

⁷² J. SCHIRATZKI, "Custody of Children in Sweden - Recent Developments", *Scandinavian Studies in Law*, Volume 38, 1999, p. 258.

Decisive criteria for excluding contact include the risk of the child being abused, unlawfully removed or detained, or otherwise suffering harm. It has been suggested in the legal literature that the risk of unlawful removal or detention of the child might lead to full exclusion of contact.⁷³ Also a conflict deep and ongoing enough to prevent them from cooperating regarding the child may result in the exclusion of contact, at least for a limited time.⁷⁴ Furthermore, the child's opinion shall be regarded, bearing in mind that a decree on contact generally cannot be enforced against the wish of a child who has reached the age of twelve.⁷⁵

Swedish courts are generally very reluctant to exclude contact with a parent altogether, since such a decision is perceived as an infringement on the child's right to a close and good contact with both parents. The balance between the child's need of contact with both parents and the risk the contact might entail arose in a case examined by the Supreme Court, *NJA 2003 p. 372*. The father of a three-year-old girl requested contact; the mother had sole custody. In the Court's opinion the father's personality (at the time of the decision) entailed a concrete risk that the child could be psychically harmed by contact with the father. This risk could, however, be neutralized if contact were limited to three hours every other week, which the Court also ordered. In addition the Court ordered that the contact should take place in the presence of a representative from the social welfare committee. Such restrictions are not unusual measures, ordered to prevent abusive contact. The court can also stipulate conditions regarding where the contact shall take place, Chapter 6 Sec. 15 para. 3 Swedish Children and Parents Code. In case the non-residential parent lives abroad, it might be necessary for the court to order that contact may only take place within the country of the forum.

When parents contact the social welfare committee for approval of their agreement on contact, all of the stipulations must be approved by the committee, save stipulations for travel costs resulting from the exercise of contact.⁷⁶ The social welfare committee can, with reference to the best interests of the child, require that certain issues are regulated in detail in the agreement.⁷⁷

48. What if any, are the consequences on parental responsibilities, if a holder of parental responsibilities with whom the child is living, disregards the child's right to contact with:

(a) A parent

The child's right to contact with the non-residential parent is considered very important. In several relatively recent judgments, the Supreme Court has addressed what effect is to be given to the residential parent's disregard of the

⁷³ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:69.

⁷⁴ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:67.

⁷⁵ Chapter 21 Sec. 5 Swedish Children and Parents Code.

⁷⁶ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:71-6:72.

⁷⁷ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:61.

child's contact with the other parent. In *NJA 1989 p. 335* concerning a custody dispute between the parents of a seven-year-old girl, (sole) custody was entrusted to the father since the mother had obstructed contact between the child and her father and it was assumed she would continue to do so, if custody continued to be entrusted to her. Of relevance to the outcome was that the child was considered to be able to deal with the changes resulting from moving to the father.

However, with the best interests of the child as the primary consideration, factors other than obstruction of contact may be considered more important. The decision of the Supreme Court in *NJA 1998 p. 675*, concerning custody of a three-year-old boy, illustrates this. The boy had lived all of his life with his mother, who systematically denied contact between the boy and his father. The father requested a court order granting him sole custody. The Court found that the boy had a great need for contact with his father but that a transfer of custody to the father would entail a total change of the boy's life, which would not be in accordance with his best interests. As a result, the mother maintained sole custody of the child.

(b) Other persons

A person with custody of a child has a responsibility to ensure that, as far as possible, the child's need for contact with persons particularly close to the child is met.⁷⁸ If a custodian neglects this duty, it is up to the social welfare committee to initiate court proceedings. A condition is that the committee finds contact to be in the best interests of the child.⁷⁹ There are no published cases where contact has been granted as a result of a social welfare committee's decision to take the issue to court.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

49. To what extent, if at all, may the holder(s) of parental responsibilities delegate its exercise?

A custodial parent may, in co-operation and with approval of the local social welfare committee, entrust the care of the child to persons in a private home other than the parental home according to the Swedish Social Service Act (2001:453). Although the child in this case does not live with the custodial parent, the parent retains his or her legal right of custody. The daily care of the child, on the other hand, is entrusted to the person(s) in the home that has received the child for care and is supervised by the social welfare committee.

50. To what extent, if at all, may a person not holding parental responsibilities apply to a competent authority for a delegation of parental responsibilities?

If only one of the parents has custody of the child and the other parent wishes the custody to be changed, he or she can make an application to court asking for joint or sole custody, Chapter 6 Sec. 5 Swedish Children and Parents Code. This right

⁷⁸ Chapter 6 Sec. 15 para. 3 Swedish Children and Parents Code.

⁷⁹ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:63.

applies only to the child's parents. The only situation in Swedish law where another person may request the right to take part of parental responsibilities is when a person close to the child contacts the social welfare committee, asking it to initiate court proceedings for the establishment of contact.⁸⁰

F. DISCHARGE OF PARENTAL RESPONSIBILITIES

51. Under what circumstances, if at all, should the competent authorities in your legal system discharge the holder(s) of his/her/their parental responsibilities for reasons such as maltreatment, negligence or abuse of the child, mental illness of the holder of parental responsibilities, etc.? To what extent, if at all, should the competent authority take into account a parent's violent behaviour towards the other parent?

The court shall entrust custody to the other parent alone or to one or two specially appointed custodians if the parent who is exercising custody of a child is guilty of abuse or neglect or is otherwise behaving in a manner that incurs an enduring risk to the child's health or development, Chapter 6 Sec. 7 Swedish Children and Parents Code.⁸¹

The transfer of custody stipulated by this provision to one or two specially appointed custodians is very rarely used.⁸² Restriction of its application is, instead, recommended. It is normally considered sufficient for social welfare authorities to take measures to protect the child *e.g.* removing the child from the abusing or negligent parents' care. The child is then placed in care in a private home authorised to receive children for care. The child is considered to be sufficiently protected through these measures, stipulated in the Swedish Social Services Act (2001:453) and Swedish Care of Young Persons Act (1990:52), and the parents retain their legal custody.

Furthermore, a transfer of custody according to Chapter 6 Sec. 7 Swedish Children and Parents Code, presupposes that there is a person willing to take over the responsibility. That person must also have a close relationship with the child, so that the child accepts him or her as a custodian. A decision to immediately discharge a parent of custody is usually only made if the other parent is suitable to take sole custody of the child. If this is not the case, custody is usually not transferred unless the child has resided in another home for at least three years,⁸³ the placement has worked out satisfactorily and the person in charge of the child's care is willing to be entrusted custody.⁸⁴

⁸⁰ See answer to Q 48b.

⁸¹ If custody has been entrusted to one or two specially appointed custodians, questions concerning transfer of custody are governed by Chapter 6 Sec. 10b and 10c Swedish Children and Parents Code.

⁸² G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:38-6:39; A. SINGER, *Föräldraskap i rättslig belysning*, Uppsala: Iustus Förlag, 2000, p. 474.

⁸³ Sec. 13 para. 4 Swedish Care of Young Persons Act (1990:52), as revised by Act 2003:406.

⁸⁴ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:39.

Often the issue of what effect a parent's behaviour will have on custody of the child (and contact) arises in connection with a custody dispute between the parents. The Supreme Court judgment, *NJA 2000 p. 345*, concerns the effect to be given to a parent's violent behaviour towards the other parent. The Court stated that a parent's violent behaviour towards the child or the other parent constitutes a factor making that parent unfit as a custodian. However, one prior case of assault on the child's mother was not considered enough to make the father unfit as a custodian.⁸⁵

52. Who, in the circumstances referred to in Q 51, has the right or the duty to request the discharge of parental responsibilities?

Questions concerning a change of custody in these circumstances shall be considered by the court, on the application of the social welfare committee, Chapter 6 Sec. 7 para. 4 Swedish Children and Parents Code. In divorce cases between the parents or when the custody otherwise is being considered by the court, the court shall on its own motion consider any necessary change in custody. A parent wishing to discharge the other parent of parental responsibilities may furthermore apply for sole custody in court, Chapter 6 Sec. 5 Swedish Children and Parents Code.

53. To what extent, if at all, are rights of contact permitted between the child and the previous holder of parental responsibilities after the latter has been discharged of his/her parental responsibilities?

When the child is placed in care due to measures taken by the social welfare committee, the committee has an obligation to ensure, as far as possible, that the child's need for contact with the parents and custodians is met, Sec. 14 Swedish Care of Young Persons Act. If necessary, the social welfare committee may decide upon *how* the child's contact with the parents (and custodians) shall be exercised. The social welfare committee may also decide that the child's residence shall not be disclosed to the parents or custodians.

When a parent has lost custody of the child, sole custody having been entrusted to the parent with whom the child is living, the reasons the parent was discharged of custody is given weight. A factor such as a parent's violent behaviour towards the child or the other parent can be decisive to the outcome in contact proceedings, justifying contact to be limited or subjected to certain conditions.⁸⁶ The point of departure is always to ensure the child's right to contact with a parent with whom the child is not living, Chapter 6 Sec. 15 Swedish Children and Parents Code. This duty rests on the custodial parent or, where special custodians have been appointed, on the latter.

⁸⁵ See: Chapter 3 Sec. 6 Swedish Social Services Act (2001:453). This condition was applied in *NJA 1995 p. 727*, in order to prevent the father from unlawfully removing the children abroad.

⁸⁶ See answer to Q 18.

54. To what extent, if at all, can the previous holder(s) of parental responsibilities, who has been discharged of his/her parental responsibilities, regain them?

If custody has been transferred to one or two specially appointed custodians according to Chapter 6 Sec. 7 Swedish Children and Parent Code, and one of the parents wishes custody to be transferred to him or her, or both so wish, the court shall decide in accordance with the best interests of the child, Chapter 6 Sec. 10 Swedish Children and Parents Code. Questions concerning transfer of custody in this situation shall be considered on the application of one or both parents or on the application of the social welfare committee.

A parent who has lost custody, residence or contact in a dispute with the other parent, for whatever reason, is free to commence new proceedings concerning the matter and request a change in the current position at any time, Chapter 6 Sec. 5 and 15a Swedish Children and Parents Code.

H. PROCEDURAL ISSUES

55. Who is the competent authority to decide disputes concerning parental responsibilities, questions of residence of the child or contact? Who is the competent authority to carry out an investigation relating to the circumstances of the child in a dispute on parental responsibility, residence or contact?

Disputes concerning custody, residence or contact shall be considered by the district court in the place where the child habitually resides or, if raised in conjunction with an application for divorce, by the competent divorce court, Chapter 6 Sec. 17 para. 1 Swedish Children and Parents Code. The court shall ensure that questions concerning custody, residence and contact are properly investigated, Chapter 6 Sec. 19 Swedish Children and Parents Code. Before deciding such an issue, the court shall give the social welfare committee the opportunity to submit information. The committee has the duty to supply the court with any information which could be of significance for the assessment of the question. If further inquiries are necessary, the court may instruct the social welfare committee or some other body to appoint a person to investigate the child's situation. The court may lay down guidelines for this investigation and set a date by which it is to be completed.

Questions concerning change of guardian are decided by the district court, Chapter 10 Sec. 13 Swedish Children and Parents Code. Questions concerning the guardians' administration of the child's assets are handled by the Chief Guardian in the community where the child has his or her habitual residence, Chapter 16 Sec. 2 Swedish Children and Parents Code.

56. Under what conditions, if any, may a legally effective decision or agreement on parental responsibilities, the child's residence or contact, be reviewed by a competent authority? Is it, e.g., required that the circumstances have changed after the decision or agreement was made and/or that a certain period of time has time has passed since the decision or agreement?

In principle, a party unhappy with a court decree on custody, residence or contact, is free to initiate new court proceedings on the same issue at any time. The fact that the court's decision is legally effective and, as a result, enforceable does not in any way limit the right to initiate new proceedings. An agreement between the parents on custody, residence and contact, approved by the social welfare committee and, thus, enforceable may also be replaced at any time by a new agreement between the parents. To be legally effective, the new agreement must also be approved by the social welfare committee.⁸⁷ A valid agreement between the parents on custody, residence and contact does not prevent a parent from taking the issues to court. It is also possible to alter a previous court decree through an agreement, on the condition that the agreement is approved by the social welfare committee.⁸⁸

Swedish law does not require for circumstances to have changed after the decision or agreement was made, or that a certain period of time has passed after the initial decision or agreement.⁸⁹ According to the Swedish outlook any other approach could be detrimental to the interests of the child. However, it can be assumed that a parent needs to claim that the circumstances have changed *in some respect*, although the burden of proof in this respect must be kept low. According to the Chapter 42 Sec. 5 Swedish Code of Civil Procedure (*Rättegångsbalken*), the court may give a judgment without conducting a full hearing when it is clear that the claim is unfounded. This provision can be used to prevent a parent from abusing the right to initiate court proceedings without reason.

As regards the parents' right to replace an earlier agreement with a new agreement, there are no explicit provisions stating that a certain period of time must have passed. However, agreements concerning parental responsibilities should aim at providing long-term solutions for the child and should therefore be carefully prepared before they are approved by the social welfare committee. Agreements concerning contact are often limited in time and more frequently renegotiated, which is justified due to the fact that a child's need of contact with the non-residential parent may vary depending on the child's age.⁹⁰

⁸⁷ In addition, an agreement on parental responsibilities must always be in writing and signed by the parents.

⁸⁸ Prop 1997/98:7 p. 83.

⁸⁹ Prop 1997/98:7 p 85. See also the ruling of the Supreme Court in *NJA 1993 p. 226*.

⁹⁰ *Vårdnad, Boende och Umgänge*, Stockholm: Socialstyrelsen (National Board of Health and Welfare), 2003, p. 133.

57. What alternative disputes solving mechanisms, if any e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child's residence or contact?

Parents can receive assistance in form of cooperative discussions with a view to reaching an agreement on questions of (attribution of) custody, residence and contact, Chapter 6 Sec. 17a and 18 Swedish Children and Parents Code.⁹¹ The court where an issue on custody, residence or contact is pending may instruct the social welfare committee to arrange for cooperative discussions and adjourn the case for a certain period of time.⁹² The parents can also receive counselling, focusing on their relationship and trying to solve their conflicts.⁹³ The cooperative discussions are voluntary and the parents cannot be forced to participate. If the parents cannot reach an agreement, the court must decide.

At present, applications for enforcement of a court decree or an agreement on custody, residence or contact are handled by administrative courts.⁹⁴ Although the court is expected to act speedily, it is also recognised that it is always in the best interests of the child to seek voluntary solutions. The court may therefore instruct a member of the social welfare committee, or certain other persons, to ensure that the person with the child in his or her care voluntarily carries out the decision or agreement, Chapter 21 Sec. 2 Swedish Children and Parents Code. A person given such instructions should report back to the court within two weeks on steps that have been taken and on any other circumstances that may have emerged.

58. To what extent, if at all, is an order or an agreement on parental responsibilities, the child's residence or contact enforceable and in practice enforced? Describe the system of enforcement followed in your national legal system. Under what conditions, if at all, may enforcement be refused?

Court orders, as well as agreements between the parents on custody, residence and contact are enforceable.⁹⁵ An agreement must, however, be in writing, signed by both parents and approved by the social welfare committee to be enforceable. At present, applications of enforcement are sent to administrative county courts. It is possible that a future law reform will transfer issues of enforcement to the district courts.

Enforcement shall be effected speedily and, as far as possible, voluntarily with the assistance of the social welfare committee. If voluntary efforts are found to be fruitless, the county administrative court may attach a penalty of a fine for non-compliance with the enforcement order, or decide that the child is to be collected

⁹¹ This provision, as revised in 2001, refers to Chapter 5, Section 3 Swedish Social Services Act (2001:453).

⁹² Chapter 6 Sec. 18 para. 2-3 Swedish Children and Parents Code.

⁹³ *Vårdnad, Boende och Umgänge*, Stockholm: Socialstyrelsen (National Board on Health and Welfare), 2003, p. 109.

⁹⁴ It is however expected that issues of enforcement will in the future be transferred to the general courts, in charge of disputes on parental responsibilities.

⁹⁵ The relevant provisions are found in Chapter 21 Swedish Children and Parents Code.

by the police authority, Chapter 21 Sec. 3 para. 1 Swedish Children and Parents Code. As to custody, residence or surrender of a child, a decision regarding collection of the child may be given if enforcement cannot be achieved in any other way or if collection is necessary to prevent the child from suffering serious harm, Chapter 21 Sec. 3 para. 2 Swedish Children and Parents Code. As regards a judgment or decision concerning contact between the child and a parent with whom the child is not living, collection of the child may be ordered on the condition that it is the only way to achieve enforcement and the child has a particularly strong need for contact with that parent, Chapter 21 Sec. 3 para. 3 Swedish Children and Parents Code.⁹⁶

The administrative county court may refuse enforcement if the circumstances have manifestly changed after the judgment or decision on custody, residence or contact was made or after the parents' agreement was approved by the social welfare committee and it is in the best interests of the child that the issue is reviewed (in this case by the district court). A review by the district court presupposes an application by a person who was a party to the case concerning enforcement at the county administrative court or an application by the social welfare committee, Chapter 21 Sec. 6 para. 1 Swedish Children and Parents Code. The county administrative court also may refuse enforcement if there is a significant risk of harm to the child's physical or mental health, Chapter 21 Sec. 6 para. 2 Swedish Children and Parents Code. The extent of the court's authority to refuse enforcement is limited, the main principle being that a decision or an agreement shall be enforced unless circumstances have manifestly changed or the child's best interests demand a review.⁹⁷

In cases concerning enforcement of agreements or court orders regarding custody, residence or contact, special attention shall be paid to the child's own wishes. Consequently, Chapter 21 Sec. 5 Swedish Children and Parents Code provides that enforcement against the wishes of a child who has reached the age of twelve, or a corresponding level of maturity, cannot be ordered unless it is necessary with regard to the best interests of the child. The provision is applicable when the administrative county court decides questions concerning enforcement of orders or agreements on custody, residence or contact, as well as when the police execute decisions on collection in these cases.⁹⁸

59. To what extent, if at all, are children heard when a competent authority decides upon parental responsibilities, the child's residence or contact, e.g., upon a dispute, when scrutinising an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?

Regard shall be paid to the wishes of the child, taking the child's age and maturity into account, Children and Parents Code, Chapter 6, Section 2 b. The obligation to

⁹⁶ Chapter 21 Sec. 3 Swedish Children and Parents Code.

⁹⁷ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del II, 14-21 kap. och internationell föräldrarätt*, Stockholm: Norstedts Juridik, 2002, p. 21:26.

⁹⁸ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del II, 14-21 kap. och internationell föräldrarätt*, Stockholm: Norstedts Juridik, 2002, p. 21:23.

investigate the wishes of the child, as far as possible, applies to court proceedings concerning custody, residence and contact, as well as to the work of the Social Welfare Committee.⁹⁹

Paying regard to the wishes of the child does not, however, necessarily entail that the child is personally heard. The court shall ensure that questions regarding custody, residence and contact are properly investigated by instructing the social welfare committee to appoint a person to make inquiries into the matter, Chapter 6 Sec. 19 Swedish Children and Parents Code. The person conducting inquiries shall, if it is not inappropriate, seek to ascertain the views of the child and report them to the court (para. 4). In less complicated matters *e.g.* in connection with cooperative discussions where there is no deep conflict between the parents, an indirect picture of the child's situation through the parents' descriptions can be sufficient. However, direct contact with the child is often required in order to secure the child's right to be heard in matters concerning the child.¹⁰⁰ Furthermore, the child may be heard before the court if there are special reasons for doing so and it is clear that it will not harm the child to be heard (para. 5). Research indicates, however, that children are not heard to the extent desirable.¹⁰¹ In 2002, a parliamentary committee was appointed to consider rules guaranteeing children the opportunity to be heard and have their wishes taken into account.

As to enforcement, the present law contains no explicit provision on the child's right to be heard, save the provision in Chapter 21 Sec. 5 Swedish Children and Parents Code. According to this provision, enforcement may not be ordered contrary to the wishes of a child who has reached the age of twelve years, unless the administrative county court considers the enforcement necessary for the best interests of the child. The same also applies in respect to a younger child who has attained such a degree of maturity that his or her wishes should be taken into account.

60. How will the child be heard (e.g. directly by the competent authority, a specially appointed expert or social worker)?

The child can be heard in various ways. Most frequently one or both parents report the opinion of the child to the deciding authority. The social welfare committee may decide to talk with the child on its own initiative, *e.g.*, in connection with cooperative discussions taking place between the parents.¹⁰² When deciding upon custody issues, residence and contact the court may instruct the social welfare committee to appoint somebody to make inquiries, including the child's opinions unless it is inappropriate, and report it to the court.¹⁰³ The child may also be heard by the court, if there are special reasons for doing so and it is clear that it will not harm the child. This possibility is to be applied restrictively, the idea being that it

⁹⁹ G. WALIN and S. VÄNGBY, *Föräldrabalken, En kommentar, Del I, 1-13 kap.*, Stockholm: Norstedts Juridik, 2002, p. 6:22.

¹⁰⁰ *Vårdnad, Boende och Umgänge*, Stockholm: Socialstyrelsen (National Board of Health and Welfare) 2003, p. 83.

¹⁰¹ See: L. DAHLSTRAND, *Barns deltagande i familjerättsliga processer*, Uppsala 2004.

¹⁰² Cooperation discussions are described under Q 57.

¹⁰³ Chapter 6 Sec. 19 para. 3 and 4 Swedish Children and Parents Code.

is normally sufficient to present the child's viewpoint through an inquiry conducted by e.g. a social worker.¹⁰⁴

61. How, if at all, is the child legally represented in disputes concerning:

(a) Parental responsibilities

According to Swedish law, the child is not a party to disputes concerning custody, residence or contact, but has the right to be heard. The interests of the child are protected by the court, which has the duty to ensure that questions concerning custody, residence and contact are properly investigated through assistance of the social welfare committee. Disputes on parental responsibilities are outside the parties' rights of disposal and the court must ex officio regard the child's best interests, independently of the requests of the parties.

The child's legal representation is somewhat different in proceedings governed by the Social Services Act (2001:453) and the Care of Young Persons Act (1990:52). Parties to such proceedings are the child's custodians and the social welfare committee. Children who have reached the age of 15 years are entitled to speak on their own in the proceedings.¹⁰⁵ Younger children have the right to a legal representative of their own, replacing the custodian as the child's legal representative. These children also have the right to be heard if it can benefit the investigation and it can be presumed that the child will not suffer harm from being heard.¹⁰⁶

Normally, the custodian is also the guardian of a child. The guardian represents the child in proceedings concerning the child's property, Chapter 12 Sec. 1 Swedish Children and Parents Code. A child who has reached the age of sixteen has the right to apply to court for the discharge or appointment of a guardian. The child may be heard in the case, but he or she is not a party to the proceedings, Chapter 10 Sec. 18 Swedish Children and Parents Code.

(b) The child's residence

The child is not a party to the dispute but has the right to be heard. The court protects the child's interests ex officio, see above under Q 61a.

(c) Contact

The child is not a party to the proceedings but has the right to be heard. The court protects the child's interests ex officio, see above under Q 61a.

62. What relevance is given in your national legal system to the age and maturity of the child in respect of Q 59-61?

According to Chapter 6 Sec. 2b Swedish Children and Parents Code, the child's wishes, with the child's age and maturity taken into account, shall be regarded when determining questions concerning custody, residence and contact. There is

¹⁰⁴ *Vårdnad, Boende och Umgänge*, Stockholm: Socialstyrelsen (National Board of Health and Welfare), 2003, p. 87.

¹⁰⁵ Sec. 36 para. 1 Swedish Care of Young Persons Act (1990:52).

¹⁰⁶ Sec. 36 para. 3 Swedish Care of Young Persons Act (1990:52).

no explicit age-limit specifying when the wishes of the child should be given special regard. In a case decided by the Supreme Court, *NJA 1995 p. 398*, the clearly expressed wishes of a thirteen-year-old girl were decisive for entrusting her father with sole custody, in spite of the fact that there were doubts, according to the Court, as to the father's suitability as a custodian.

The weight given to the child's wishes in this case is in line with the rules concerning enforcement of court orders or parental agreements on custody, residence and contact. According to Chapter 21 Sec. 5, enforcement may not be ordered against the wishes of a child who has reached the age of twelve or a corresponding level of maturity, unless enforcement is necessary with regard to the best interests of the child. The same applies when the police authority is to execute a decision on collection of the child. The relevance given to the wishes of a child under the age of twelve is assessed individually. There are no official guidelines in this respect.