

NATIONAL REPORT: DENMARK

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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 Danish concept is *forældremyndighed* which is best translated as parental authority.¹ The holder(s) of parental authority have certain duties and powers and decisions must be made from the perspective of the child's interests and needs, Art. 2(1) Danish Act on parental authority and contact.² The holder(s) of parental authority is/are also the child's guardian(s), which entails a right to act on behalf of the child in legal and financial matters.

It has been considered on a number of occasions whether the concept of parental authority should be changed into a concept which better reflects the responsibility of the holder(s).³ When the Act was changed in 1985 the concept of parental authority was retained, the underlying reasoning being that a change in concept would not change the legal content of the concept. It was further stressed that the concept of parental authority entailed not just a right to decide for the child, but also a duty to protect and care for the child.⁴

In general it is the parents or one of the parents who is/are the holder(s) of parental authority. Parental authority can be transferred to a non-parent (for example, a step-parent) or to two non-parents (this must be a married couple), but there can never be more than two holder(s) of parental authority at the same time, Art. 11 Danish Act on Parental Authority and Contact. If child protection measures are taken, the holder(s) of parental authority retain parental authority but their rights and duties are accordingly restricted. When a child is taken into care as a child protection measure, the local authorities and/or the foster parents with whom the

¹ There are no official translations of Danish legislation. At <http://www.jur.ku.dk/biblioteker/infosoeg/> a number of unofficial translations of different acts can be found. The Danish Act on parental authority has not been translated. However, the unofficial translation of an older version of the Act on the formation and dissolution of marriage, Act No. 148 of 08.03.1991 with later amendments, uses the concept of custody. The concept of custody can also be found in a number of older articles and governmental reports. The concept of parental authority is chosen as a better direct translation of the Danish concept *forældremyndighed*.

² *Lov om forældremyndighed og samvær*, Act No. 387 of 14.06.1995 with the following amendments No. 752 of 15.08.1996, No. 416 of 10.06.1997, No. 147 of 09.03.1999, No. 461 of 07.06.2001 and No. 446 of 09.06.2004.

³ S. DANIELSEN, *Lov om forældremyndighed og samvær*, Copenhagen: Jurist- og Økonomforbundets Forlag, 1997, p. 54.

⁴ Commission report No. 985/1983, p. 24-25.

child is placed are not endowed with parental authority. Their rights and duties stem from the care order.

2. Explain whether your national concept or concepts encompass:

(a) Care and protection

Care and protection are the core elements in the Danish concept of parental authority. They are directly mentioned in Art. 2 Danish Act on Parental Authority and Contact.

(b) Maintenance of personal relationships

The maintenance of personal relationships (between the holder(s) of parental authority and the child) is not mentioned in the Danish Act on Parental Authority and Contact or in legal doctrine as an aspect of parental authority. Considering that the holder(s) of parental authority has/have the right to decide where the child should live and the right and duty to care for the child, one may argue that there is an inherent right to maintain personal relationships.

(c) Provision of education

The provision of education is not directly mentioned in the Danish Act on Parental Authority and Contact. It follows from the *travaux préparatoires* that the holder(s) of parental authority has/have a duty to provide education taking into account the child's abilities and interests.⁵

(d) Legal representation

The holder(s) of parental authority is/are also almost always the guardian(s) of the child. The holders(s) of parental authority and the guardian(s) are the child's legal representative, Art. 2 Danish Act on Parental Authority and Contact.⁶

(e) Determination of residence

The holder(s) of parental authority has/have the right to decide where the child should reside/live. This right is only restricted where the authorities have decided that the child should be taken into care.

(f) Administration of property

The holder(s) of parental authority is/are also almost always the guardian(s) of the child. The guardian(s) has/have the right to administer the child's property.⁷

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

Parental authority automatically comes to an end when the child becomes 18 or enters into a marriage or a registered partnership, Art. 1 Danish Act on Parental Authority and Contact.⁸

⁵ Commission report No. 985/1983, p. 60.

⁶ Danish Act on Guardianship, *Værgemålsloven*, Act No. 388 of 14.06.1995, Art. 1 and 2.

⁷ Danish Act on Guardianship, *Værgemålsloven*, Act No. 388 of 14.06.1995, Art. 1 and 2.

⁸ A child under the age of 18 needs the consent of the holder(s) of parental authority and permission from the administrative authorities in order to marry or enter into a registered partnership. If permission is granted the child is no longer subject to parental

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

The main source is the Danish Act on Parental Authority and Contact, *Lov om forældremyndighed og samvær*, Act No. 387 of 14 June 1995 as amended by the following acts; No. 752 of 15 August 1996, No. 416 of 10 June 1997, No. 147 of 9 March 1999, No. 461 of 7 June 2001 and No. 446 of 9 June 2004. Under the authority of the Act, Art. 17, 4 and 31, the Minister of Justice can issue rules regarding the way in which the administrative authorities and the courts hear cases under the Act, and he/she can also issue rules regarding the conditions under which agreements on joint parental authority may be registered and rules regarding supervised contact. Such rules have been issued and can be found in Departmental order No. 874 of 24 October 2002. A number of guidance notes and instructions lay down the rules and practices followed by the administrative authorities in cases concerning parental authority and contact.⁹

A child under 18 is also subject to guardianship and these rules may be found in the Danish Act on Guardianship, *Værgemålsloven*, Act No. 388 of 14 June 1995.

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

The first law reform regarding parental authority was the Act on incapacity and guardianship, *Lov om umyndighed og værgemål*, from 1922.¹⁰

The 1922 Act contained provisions regarding parental authority and contact. The Act was one of the results of the Family Law Commission's work. The Commission was established in 1910 and carried out its work in close co-operation with similarly established commissions in Norway and Sweden.

The main feature of the 1922 Act was that spouses were bestowed with joint parental authority. The father was no longer superior in relation to the children.¹¹ In the case of divorce parental authority was granted to one of the parents solely. The primary criterion for granting sole parental authority to one parent was the child's well being and only where both parents were equally capable of raising the child was a fault criterion used in order to give parental authority to the parent who was not to blame for the break-up of the marriage.

The parent who was not given parental authority had a principal right to contact. For children born outside of marriage, the situation remained the same as before the law reform; the mother had full parental authority while the father had no right to contact. As late as in 1964 the Supreme Court confirmed the difficult position of the unmarried father. It was established that, regardless of the circumstances and

authority. Such permission may stipulate that the child is still subject to guardianship, Art. 1 Danish Act on Guardianship.

⁹ Guidance notes, *Vejledninger*, No. 11049 of 1999 and No. 214 of 20.12.1995. Instructions, *Skrivelser*, No. 9555 of 08.11.2002, No. 9556 of 28.10.2002, No. 11491 of 12.11.1997, No. 11195 of 23.04.1997, No. 11271 of 28.06.1996, No. 10357 of 28.06.1996, No. 11092 of 08.12.1995 and No. 10360 of 02.10.1995.

¹⁰ Act No. 277 of 30.06.1922.

¹¹ The father remained the sole guardian of the children until 1958.

the father's connection with the child, the father was not granted any contact rights with his child against the mother's wishes.¹²

At the end of the 1960s and in the 1970s three changes to the 1922 Act were designed to give unmarried fathers better rights. In 1969 it was made possible for the unmarried father to obtain a contact order. The conditions were that it was in accordance with the child's well-being and that special circumstances, especially the father's prior contact with the child, indicated that this was beneficial for the child.¹³ In 1972 it became possible for the unmarried father to obtain parental authority if the mother had consented to give the child up for adoption. The conditions were similar to those adopted in 1969 regarding contact rights.¹⁴ Finally in 1978 there was a significant improvement for the unmarried father. It was now possible to transfer parental authority to the father, where this was necessary for the well being of the child.¹⁵

In 1986 the 1922 Act was thoroughly revised on the basis of a Commission report.¹⁶ The main feature of the revision was¹⁷ that joint parental authority became possible after divorce and for unmarried parents. The underlying reasoning was that joint parental authority after divorce was becoming possible in the US and in other Scandinavian countries. Joint parental authority was considered to improve co-operation between parents and to enhance the sense of responsibility as far as parents were concerned. Further, a principal right for all parents to have contact with their children was introduced. Finally, the opinion of a child older than twelve should be obtained before a decision regarding parental authority and contact was made and the authorities now had to offer counselling when there was disagreement on issues of parental authority and contact.

In 1996 the Act was again changed on the basis of a further Commission report.¹⁸ This time the provisions relating to parental authority and contact were placed in a separate Act, namely the Danish Act on Parental Authority and Contact, *Lov om forældremyndighed og samvær*.

The substantive changes introduced by the 1996 Act were the following: the strengthening of the unmarried father's position regarding parental authority, the strengthening of the parents' right to have contact with their child, as well as "other" contact rights such as the exchange of letters and improved rights to counselling.

The unmarried father who did not have parental authority over his child, but who had cohabited with the mother for a longer period, was given an equal right to be awarded parental authority when this was applied for and when it had an immediate connection with the break-up of the relationship.

¹² Højesteret, Supreme Court, 24.03.1964, *Ugeskrift for retsvæsen* 1964.801H.

¹³ Act No. 257, 04.06.1969.

¹⁴ Act No. 280, 07.06.1972.

¹⁵ Act No. 244, 08.06.1978.

¹⁶ Commission report No. 985/1983.

¹⁷ Act No. 230, 06.06.1985.

¹⁸ Commission report No. 1247/1994.

In 2002 an amendment to the Danish Children Act, *Børneloven*,¹⁹ regarding maternity and paternity had implications for the rules on parental authority. A statement made by the parents to the effect that they will care for and be responsible for their child before or at the time of birth establishes paternity. When such a statement is made the unmarried parents automatically have joint parental authority. The procedure is not limited to cohabitating unmarried parents, however.

At the same time a change was made to the effect that it is no longer required, as a formal part of the divorce proceedings, to make a decision regarding parental authority over the children. Joint parental authority continues automatically.²⁰ The change was suggested by the Justice Department with the following reasoning:²¹

"The Justice Department has in that connection stressed that there is no requirement for unmarried cohabitating parents to decide on the issue of parental authority in the case the relationship breaks down. In the light of the general principle of equality between married couples and unmarried cohabitating couples, which forms the basis of the Children Act Proposal, it may seem less appropriate to retain a requirement for married couples to make such a decision. Furthermore, it is a fact that a considerable number of married couples divorcing or legally separating, already agree on joint parental authority".

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

Major reform is not expected in the near future. Two areas concerning parental authority and contact are currently being scrutinized and commission reports have been published or are expected to be published, which may result in an amendment to the Danish Act on Parental Authority and Contact.

The first report²² concerns cooperation between the appropriate authorities. In Denmark decisions concerning parental authority are made by the administrative authorities and the courts²³ and contact orders are exclusively determined by the administrative authorities.²⁴ Child protection measures are decided by another

¹⁹ Act No. 460, 07.06.2001.

²⁰ Act No. 461, 07.06.2001.

²¹ Notes to the Act, No. 198, p. 11, *Forslag til ændring af retsplejeloven og forskellige andre love*.

²² *Forsøgsprojekt om øget samarbejde mellem kommune og statsamt i sociale og familieretlige sager*, Civilretsdirektoratet, February 2004.

²³ The general principle is that cases of conflict are dealt with by the courts and non-conflict cases by the administrative authorities, C.G. JEPPESEN DE BOER, "A comparative analysis of contact arrangements in Denmark and the Netherlands", in: K. BOELE-WOELKI, *Perspectives for the unification and harmonisation of family law in Europe*, Antwerp: Intersentia, 2003, p. 378-401 at 389.

²⁴ The fact that the administrative authorities have exclusive powers means that their decisions are only subject to limited judicial review, i.e. a review limited to ascertaining whether the decision is against the relevant Act or against fundamental administrative principles. In the field of contact only a few cases have been tried and none have been found to be contrary to an Act or administrative principle, S. DANIELSEN, *Lov om forældremyndighed og samvær*, Copenhagen: Jurist- og Økonomforbundets Forlag, 1997, p. 325-329.

authority: the local authorities. The report describes the degree to which cooperation between the administrative authorities and the local authorities presently takes place and it contains recommendations for the future. Some of the recommendations found in the report may be implemented without changes to the present legislation while others require change.

Secondly, Denmark has acceded to the Hague Convention on jurisdiction, applicable Law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.²⁵ In order to transpose this convention into Danish law, the Ministry of Justice has established a commission that will draft a report covering the necessary changes. An aspect that the commission must consider is whether persons other than parents (for example, grandparents) should have a right to contact.²⁶ The commission must also consider whether Denmark should accede to the Council of Europe Convention on contact concerning children.²⁷

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

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

The holder(s) of parental authority must care for the child and they have the authority to make decisions regarding the child's personal circumstances from the perspective of the child's interests and needs. The holder(s) of parental authority must treat the child respectfully and they have the duty to protect the child against physical and mental harm and other offensive treatment, Art. 2 Danish Act on Parental Authority and Contact.

The content of parental authority is not further elaborated in the Act. It has been considered, however, whether this subject should be further elaborated in the Act. This notion was dismissed, on the one hand, because it was considered difficult to list all duties and powers and to weigh the importance of these various duties and powers against each other. On the other hand, it was also considered that the legal value of such listed duties would be limited as they would be non-enforceable.²⁸

The fact that the courts do not have competence to decide on conflicts, for example, concerning residence, the choice of education and medical treatment, between parents who have joint parental authority means that case law offers little guidance as to the content of parental authority.

²⁵ 19 October 1996, Denmark acceded on 1 April 2003.

²⁶ *Kommisorium for udvalget til gennemførelse af Haagerkonventionen af 19. oktober 1996 om jurisdiktion, lovalg, anerkendelse, fuldbyrdelse og samarbejde om forældreansvar og beskyttelsesforanstaltninger i forhold til børn, Tidsskrift for familie- og arveret, 2004.89.*

²⁷ ETS 192, opened for signature 15.05.2003.

²⁸ Commission report No. 985/1983, p. 61.

The duty to care for the child does not necessarily entail that the holder(s) of parental authority have the final financial obligation towards the child. This financial obligation is based on legal parenthood and not on parental authority.²⁹

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

(a) Care

The holder(s) of parental authority must care for the child. This is directly mentioned in the provision on the content of parental authority, Art. 2. According to the *travaux préparatoires* and legal doctrine caring for the child entails feeding and clothing that child, providing him/her with a home, caring for the child in the case of illness and protecting the child against physical and mental harm.³⁰

(b) Education

Although education is not directly mentioned in the Danish Act on Parental Authority and Contact, it is generally considered that providing the child with a suitable education is included in the concept of care. According to the Danish Constitution, *Grundloven*, all children have the right to receive free education in a state school. The holder(s) of parental authority is/are obliged to provide education for their children, but are not obliged to send them to school. The obligation can also be fulfilled through teaching the children at home.³¹ As such it is not an obligation to attend school but an obligation to learn. The obligation commences in the year that the child becomes 7 years of age and ends when the child has received education for nine years.³²

(c) Religious upbringing

The holder(s) of parental authority can decide on the child's religion. The holder(s) can decide to baptize the child, to allow him/her to join a particular church/religion or to withdraw the child from a particular church/religion, as the case may be. According to the regulation on the establishment or cession of membership of the Danish State Church a child of 15 must consent to such a move.³³

(d) Disciplinary measures and corporal punishment

The child has the right to care and safety. It must be treated respectfully and must not be subjected to physical punishment or other demeaning treatment, Art. 2(2) Danish Act on Parental Authority and Contact. This provision was introduced in 1997 and was intended to clearly abolish the unregulated right to smack children, *revselsesretten*. The right to smack meant that parents subject to certain limits could punish their children without risking a conviction for violence. The change to the Act means that violence against children will be punished in the same way as

²⁹ Art. 13 Danish Act on the Support of Children, *Lov om børns forsørgelse*, Act No. 352 of 15.05.2003.

³⁰ Commission report No. 985/1983, p. 60, I. LUND-ANDERSEN, N. MUNCK & I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 9 and L. NIELSEN, J. VORSTRUP RASMUSSEN and F. TAKSØE-JENSEN, *Familieretten*, Copenhagen: Gad Jura, 2001, p. 438.

³¹ Art. 76 Act No. 169, 05.06.1953 and Art. 35 Act on State Schools, *Lov om Folkeskolen*, Act No. 870, 21.10.2003.

³² Act on State Schools, Art. 34(1).

³³ Act No. 57, 24.01.1992, Art. 8.

violence against other persons. It also serves to remind parents that physical violence is an unacceptable tool in bringing up children. The same applies to other demeaning treatment such as emotional exclusion or deprivation of liberty for longer periods of time.³⁴

(e) Medical treatment

The holder(s) of parental authority is/are entitled to take decisions concerning the medical treatment of the child. There are no obligatory medical programmes such as, for example, a compulsory vaccination programme. When the child reaches the age of 15 he/she practically has a free choice regarding medical treatment. He/she can decide whether or not to receive treatment.³⁵ A child of 15 can, for example, go on a hunger strike which must not be interrupted, refuse to have a blood transfusion and refuse treatment when the treatment cannot cure the illness but only prolong his/her life.³⁶ The holder(s) of parental authority must also receive relevant information concerning the medical treatment and be informed of the child's position on the matter. If a child of 15 is considered not to understand the consequences of his/her decision, consent to the treatment may be given by the holder(s) of parental authority. Children may be given advice on contraception without the consent of the holder(s) of parental authority having been given. A child under the age of 18 needs the consent of the holder(s) of parental authority to obtain an abortion. If such consent cannot be obtained, it is possible to obtain permission from the local authorities instead.

(f) Legal representation

In matters concerning the child which are of a personal nature the holder(s) of parental authority is/are the legal representative(s), Art. 2 Danish Act on Parental Authority and Contact. In matters concerning financial and legal issues, the guardian(s), who are most likely also the holder(s) of parental authority is/are the legal representative(s).³⁷

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?

There is no general rule giving the child the right to be heard concerning the aforementioned issues. The Danish Act on Parental Authority and Contact provides that decisions must be made from the perspective of the child's interests and needs, but it does not prescribe that the child should be heard, Art. 2(1). In legislation covering issues such as medical treatment, the child practically has a free choice at the age of 15 as he/she must consent to treatment.³⁸ In matters relating to religion a child of 15 must consent to the decision of the holder(s) for

³⁴ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 101.

³⁵ *Lov om patienters retsstilling*, Danish Act on the Legal Position of Patients, Act No. 482, 01.07.1998, Art. 8(1).

³⁶ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 102.

³⁷ Danish Act on Guardianship, Art. 1(2) and (3).

³⁸ Danish Act on the Legal Position of Patients, Act No. 482, 01.07.1998, Art. 8(1).

that decision to be valid.³⁹ In matters concerning legal representation, when this concerns the legal and financial matters covered by guardianship, the guardian(s) in principle has/have to consult a child older than 15 before important decisions can be made.⁴⁰ In matters of education the child has, in principle, no autonomy and no right to be heard.

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

The holder(s) of parental authority is/are almost always also the guardian(s) of the child. The guardian(s) has/have the right to administer the child's property.⁴¹

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

The guardian(s) must carry out his/her/their duties in the interest of the child. Income/interest may be used to support the child.⁴² In the Guardianship Act there are rules concerning the administration of the child's property and it is also stipulated that transactions regarding property other than the use of income/interest must be approved by the administrative authorities.⁴³

12. Are there restrictions with respect to:

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

Transactions whereby the property is dispersed must be approved by the administrative authorities.⁴⁴ If certain conditions are laid down in a will or deed of gift then the guardian(s) must respect these.

(b) Salary of the child

A child of 15 is free to spend the salary that he/she has earned as well as any inheritance or gift where this has been stipulated in the will/deed of gift and money which the guardian(s) has/have given him/her to spend.⁴⁵

(c) Certain transactions

Transactions whereby the property is dispersed must be approved by the administrative authorities. There are specific rules stipulating how the property must be administered.⁴⁶

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

There are no special rules. The general principle in Danish law is that the indebtedness of a person does not affect the property of a spouse or children. If the

³⁹ Act No. 57, 24.01.1992, Art. 8.

⁴⁰ Danish Act on Guardianship, Art. 26(1).

⁴¹ Danish Act on Guardianship, Art. 1(2).

⁴² Danish Act on Guardianship, Art. 25(2).

⁴³ Danish Act on Guardianship, Chapter 5.

⁴⁴ Danish Act on Guardianship, Art. 39.

⁴⁵ Danish Act on Guardianship, Art. 42(1).

⁴⁶ Danish Act on Guardianship, Chapter 5.

child's property can be properly identified it will not be affected by the indebtedness of the holder(s) of parental authority.

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

The content does not differ.

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

They have joint parental authority. If the parents were legally separated at the time of birth the mother has sole parental authority by operation of the law, Art. 4 Danish Act on Parental Authority and Contact.

(b) Not married at that time but marry later

When the parents marry they acquire joint parental authority if they did not already have joint parental authority, Art. 4 Danish Act on Parental Authority and Contact.

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

(a) Divorce

Joint parental authority continues after divorce.⁴⁷ Parents who no longer live together or intend to live separately can demand that the joint parental authority be terminated, Art. 8 Danish Act on Parental Authority and Contact.

(b) Legal separation

Joint parental authority continues after (legal) separation.⁴⁸ Parents who no longer live together or intend to live separately can demand that the joint parental authority be terminated, Art. 8 Danish Act on Parental Authority and Contact.

(c) Annulment of the marriage

A marriage may be annulled where the parties are within prohibited degrees of consanguinity, in the case of bigamy, and in some cases where there is a lack of sound mind or deceit.⁴⁹ The legal consequences are the same as for divorce, that is,

⁴⁷ This rule came into force on 1 January 2002, Act No. 461 of 07.06.2001, Art. 2 and 10. Before then a decision regarding parental authority (sole or joint) had to be made in connection with the divorce, Danish Act on Parental Authority and Contact, Art. 7 (old).

⁴⁸ This rule came into force on 1 January 2002, Act No. 461 of 07.06.2001, Art. 2 and 10. Before then a decision regarding parental authority (sole or joint) had to be made in connection with the separation, Danish Act on Parental Authority and Contact, Art. 7 (old).

⁴⁹ Danish Act on Formation and Dissolution of Marriage, *Lov om ægteskabs indgåelse og opløsning*, Act No. 147, 09.03.1999, Art. 6, 9, 23 and 24.

the joint parental authority continues after the annulment.⁵⁰ Parents who no longer live together or intend to live separately can demand that the joint parental authority be terminated, Art. 8 Danish Act on Parental Authority and Contact.

(d) Factual separation

Joint parental authority continues after factual separation. Parents who no longer live together or intend to live separately can demand that the joint parental authority be terminated, Art. 8 Danish Act on Parental Authority and Contact.

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, whether married or not, are free upon the termination of the relationship to make agreements concerning joint or sole parental authority, and such agreements are not subject to judicial scrutiny, Art. 6, 9(1) and 11(1) Danish Act on Parental Authority and Contact. The agreement is only binding when it has been reported to the administrative authorities, Art. 6, 9(1) and 11(1) Danish Act on Parental Authority and Contact.

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?

Joint parental authority cannot be attributed to the parents who no longer live together or intend to live separately against the wish of one or both parents, Art. 8 Danish Act on Parental Authority and Contact.

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

Such statistical information should contain details relating to agreements on parental authority and the judgements by the courts. This information does not exist, however. But statistics do show that 75% of parents who became divorced or legally separated in 1999 agreed on joint parental authority. Since 2002 joint parental authority automatically continues after divorce, so a higher rate is now expected.⁵¹ In 2001 a study showed that the father was awarded parental authority over 42% of the total number of children and the mother over 58% of the total number of children in cases before the lower courts and that the father was awarded parental authority over 36% of the total number of children and the mother over 64% of the total number of children in cases before the appeal courts.⁵²

⁵⁰ Danish Act on Formation and Dissolution of Marriage, *Lov om ægteskabs indgåelse og opløsning*, Act No. 147, 09.03.1999, Art. 25(1).

⁵¹ S. DANIELSEN, *Nordisk børneret II*, Copenhagen, Oslo, Uppsala: Nord, 2003, p.87.

⁵² M. HØJGAARD PEDERSEN, "Når den fælles forældremyndighed skal ophøre", *Tidsskrift for familie- og arveret*, 2002, p. 81. The numbers relate to the total number of children involved in the cases and not to the number of cases. A parent may be given parental authority over some but not all of the parents' children.

II. Unmarried Parents

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

If the parents are not married, they have joint parental authority if they have made a statement that they will care for and be responsible for the child together, Art. 5(1) Danish Act on Parental Authority and Contact. The statement on care and responsibility is typically made in connection with the establishment of paternity and the registration of birth.⁵³ The establishment of paternity is not a matter left solely to the parents. The mother is required to provide information about the potential father(s) and the administrative authorities will initiate proceedings concerning paternity if such proceedings are not initiated by the mother, the potential father or the child's guardian.⁵⁴ It is also possible for unmarried parents to make an agreement on joint parental authority, Art. 6 Danish Act on Parental Authority and Contact. If no statement relating to care and responsibility or an agreement on joint parental authority have been made then the mother has sole parental authority, Art. 5(2) Danish Act on Parental Authority and Contact.

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*...).

The only way of formalizing a relationship under Danish law, besides marriage, is to register a partnership. However, a registered partnership is only open to same-sex partners.⁵⁵ A registered partnership is therefore of no relevance to the attribution of parental authority to opposite-sex parents. The only way for two same-sex persons to be parents under Danish law, is if one partner has adopted the other person's child, in other words so-called stepchild adoption, *stedbarns adoption*. The conditions are the following: the child has not been adopted from a third country and the couple are registered as partners. If this has taken place they have joint parental authority.⁵⁶

22. Under what condition, if at all, can

(a) The unmarried mother

The unmarried mother either has sole parental authority or joint parental authority, Art. 5 Danish Act on Parental Authority and Contact. If the mother has agreed to transfer parental authority to the father or to another person, or parental authority has been transferred to the father by a court order, the only way to re-obtain parental authority is by means of an agreement with the holder(s) of parental authority (sole or joint) or by a court order (sole), Art. 6, 11 and 13 Danish Act on Parental Authority and Contact. The criteria for transferring sole parental authority by a court order are strict. Special reasons must be present and it must be

⁵³ Danish Children Act, *Børneloven*, Act No. 460 of 07.06.2001, Art. 2, 14(1), 14(3) and 19.

⁵⁴ Danish Children Act, *Børneloven*, Act No. 460 of 07.06.2001, Art. 4-7.

⁵⁵ Danish Registered Partnership Act, *Lov om registreret partnerskab*, Act No. 372, 07.06.1989, Art. 1.

⁵⁶ Danish Registered Partnership Act, *Lov om registreret partnerskab*, Act No. 372, 07.06.1989, Art. 4(1) and Danish Act on Parental Authority and Contact, Art. 4.

considered to be the best solution for the child, especially due to changed circumstances, Art. 13 Danish Act on Parental Authority and Contact.

(b) The unmarried father

The unmarried father who does not have joint parental authority can obtain joint parental authority with the agreement with the holder (the mother) of parental authority, Art. 6 Danish Act on Parental Authority and Contact. He can also obtain sole parental authority by way of an agreement with the holder(s) of parental authority, Art. 11 Danish Act on Parental Authority and Contact. Further, he can obtain sole parental authority by way of a court order. There are three separate procedures. The father who has cohabitated with the mother for a longer period, but not shared parental authority, and who applies for sole parental authority immediately after the break-up has an equal right to obtain sole parental authority as the mother, Art. 12(1) Danish Act on Parental Authority and Contact. This procedure gives the unmarried cohabitating father without parental authority the same legal position at the time of the relationship termination as the unmarried cohabitating father who shares joint parental authority with the mother and even as the married father. Secondly, if the father has not cohabitated with the mother for a longer period or seeks sole parental authority long after the relationship has broken up, he may only obtain a court order where the change is better for the child, Art. 12(2). Thirdly, if the father has had sole parental authority and has lost it through an agreement or a court order and seeks to re-obtain sole parental authority, the criteria are strict; special reasons must be present and it must be considered to be the best solution for the child, especially due to changed circumstances, Art. 13 Danish Act on Parental Authority and Contact.

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

The attribution is only changed in the sense that the parents may apply for sole parental authority on the basis of the relationship's termination, Art. 8 and 12 Danish Act on Parental Authority and Contact.

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?

Joint parental authority cannot be attributed to parents who no longer live together or intend to live separately against the wish of one or both parents, Art. 8 Danish Act on Parental Authority and Contact.

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?

Parents whether married or not, are free upon the ending of their relationship to make agreements about joint or sole parental authority, and such agreements are not subject to judicial scrutiny, Art. 6 and 9 Danish Act on Parental Authority and Contact.

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

Such statistical information should contain details relating to of care and responsibility statements resulting in joint parental authority, agreements on parental authority and judgements by the courts. This does not exist, however. What is known is that 44.9% of all children born in 2003 were born to unmarried mothers.⁵⁷ Statistics from the administrative authorities from 1999 showed that 81% of unmarried parents who lived together chose joint parental authority at the time of birth.⁵⁸ This was before the care and responsibility procedure was introduced and it is expected that more unmarried parents now have joint parental authority.

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

The married partner of a parent who has sole parental authority can obtain parental authority by agreement with the parent. The agreement must be approved and approval is granted if it is not considered to be inconsistent with what is best for the child, Art. 11 Danish Act on Parental Authority and Contact. Permission cannot be expected if the other parent does not consent to the transfer of parental authority.⁵⁹

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

It is not possible.

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

It is not possible.

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

Yes, only married partners may obtain parental authority and marriage is only open to opposite sexes.

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 Q 27 and Q 28.

Joint parental authority between a parent and his/her partner is only possible when they are married and marriage is only open to opposite-sex partners. If they have obtained joint parental authority and they end their relationship, the situation is the same as for married parents. Joint parental authority continues after legal

⁵⁷ Statistics Denmark.

⁵⁸ S. DANIELSEN, *Nordisk børneret II*, Copenhagen, Oslo and Upsala: Nord, 2003, p.92.

⁵⁹ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 76.

separation, divorce and the termination of the relationship. When they no longer live together or intend to live separately, they can demand that the joint parental authority be terminated, see the principle in Art. 8 Danish Act on Parental Authority and Contact.

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 Q 27 and Q 28.

Joint parental authority between a parent and his/her partner is only possible when they are married and marriage is only open to opposite-sex partners. If they had made an agreement on joint parental authority which had been approved, they would be free to continue this agreement. They could also agree on attributing sole parental authority to one parent, see the principle in Art. 9(1) Danish Act on Parental Authority and Contact.

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.

If such other persons were to obtain parental authority it would be in substitution of existing holder(s) of parental authority. The only way for such persons to obtain parental authority would be by agreement with the holder(s) of parental authority, and such agreement would need to be approved, Art. 11 Danish Act on Parental Authority and Contact, or upon the death of one or both holder(s) of parental authority, Art. 14 Danish Act on Parental Authority and Contact.

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.

A public body cannot obtain parental authority.

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

(a) The death of a parent holding parental responsibilities

If both had parental authority and the child resided with the surviving parent, parental authority remains with this parent, Art. 14(1) first sentence Danish Act on Parental Authority and Contact. If, however, the child did not reside with the surviving parent then another person may apply for parental authority. The application from a third party will only be accepted if it is considered to be not consistent with what is best for the child to allow parental authority to remain with the surviving parent, Art. 14(1) second and third sentence Danish Act on Parental Authority and Contact.

If the deceased parent had sole parental authority, then parental authority must be placed with the remaining parent or others. If the remaining parent applies for parental authority he/she is given priority, Art. 14(2) Danish Act on Parental Authority and Contact.

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

When both parents are deceased, sole parental authority may, upon application, be granted to a family member or friend, or joint parental authority may be granted to a married couple, who has/have close personal relationships with the child. If there is more than one application, a decision will be made considering what is best for the child, Art. 14(2), first sentence. If there are no applications for parental authority, the local authorities must assist in finding a suitable person/married couple to fulfil this role.⁶⁰

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?

The holder(s) of parental authority cannot appoint a new holder(s) upon death but can make a statement stating his/her/their intention/preference upon death. This statement will be respected unless it is against what is best for the child, Art. 15 Danish Act on Parental Authority and Contact. A statement does not alter the priority given to the surviving parent. The statement is not required to have a special form such as in a will. However, the statement is often contained in a will to ensure its existence at the time of death.

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?

There is no general definition of the best interests of the child with respect to the exercise of parental authority. The Danish Act on Parental Authority and Contact does, however, specify that decisions must be made from the perspective of the child's interests and needs, Art. 2.

II. Joint Parental Responsibilities

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

Yes, although there may be differences in their rights based on parenthood, for example, the right to obtain a contact order based on parenthood and not parental authority.

⁶⁰ S. DANIELSEN, *Lov om forældremyndighed og samvær*, Copenhagen: Jurist- og Økonomforbundets Forlag, 1997, p. 279.

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 basic principle is that the holder(s) of parental authority must agree on all issues of importance. If they cannot agree they must seek sole parental authority. The only exception concerns contact, here the parent who does not live with the child can apply to an authority for an order also when they have joint parental authority, Art. 16 Danish Act on Parental Authority and Contact.

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.

Neither the courts nor the administrative authorities have competence to settle disputes between parents. The only exception is that disputes regarding contact can be decided by the administrative authorities, Art. 16 Danish Act on Parental Authority and Contact.

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?

The competence of one holder of parental authority is not regulated, unlike the situation with regard to guardianship.⁶¹ It is generally accepted that decisions of a daily nature such as clothing and feeding the child and attending to his/her health can be made by one parent while decisions such as a change of school, medical treatment which is not eminent, for example an eye correction operation or the use of strong medication, must be decided jointly.⁶²

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?

It is not possible for a holder of parental authority to obtain permission from a competent authority to relocate. The notion is that the holder(s) must agree on all matters, when they have joint parental authority, including the child's residence or, if this is not possible they will have to seek sole parental authority. If a parent relocates without the consent of the other, the other parent can seek sole parental authority, Art. 8 Danish Act on Parental Authority and Contact. If one or both of the parents want(s) to have sole parental authority and they disagree on this issue, they must both consent to the child leaving the country, Art. 3 Danish Act on Parental Authority and Contact. Any relocation abroad is in this situation illegal.

⁶¹ Danish Act on Guardianship, Art. 3.

⁶² S. DANIELSEN, *Nordisk Børneret II*, Copenhagen, Oslo and Uppsala: Nord, 2003, p. 107.

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)?

This is not possible.

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

There is no duty to consult.

(b) Other persons, bodies or competent authorities.

There is no duty to consult.

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.

The Danish concept is *samvær* which is best translated as contact. It typically encompasses the child staying with the parent with whom he/she does not live for a certain amount of time. It may also encompass other forms of contact such as correspondence by letter or telephone conversations. A parent who has no parental authority has the right to obtain information about the child from schools, childcare institutions, health and social authorities, private hospitals, doctors and dentists, Art. 19(1) Danish Act on Parental Authority and Contact.

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

The child's right to contact with both parents is sought to be maintained by allowing the parent to have a right of contact. The child has no right of contact. A parent who does not live with the child has a right of contact, Art. 16 Danish Act on Parental Authority and Contact. It is not relevant if that parent has parental authority or not.

(b) A parent not holding parental responsibilities

The child's right to contact with both parents is sought to be maintained by allowing the parent to have a right of contact. The child has no right of contact. A parent who does not live with the child has a right of contact, Art. 16 Danish Act on Parental Authority and Contact. It is not relevant if that parent has parental authority or not.

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

In Denmark only parents have a right of contact with their children. No provisions provide for the possibility of contact with other family members irrespective of the role they may have played in the child's life. Grandparents, aunts, uncles, step-

parents or siblings who may have played an active role in the child's life or even have raised the child for a considerable time, have no right of contact. A step-parent recently made a request for contact. The administrative authorities as well as the administrative appeal authority *Civilretsdirektorat* denied the request because Art. 8 of the ECHR, which has been incorporated into Danish law by an Act, "did not empower the administration to make a decision on contact".⁶³ The issue of contact rights to persons other than parents has been considered by various Danish Commissions preparing legislation in the field of parental authority and contact legislation and this has been rejected, not because it was not seen as important for a child to have contact with close relatives, but because contact was only seen to be in the best interests of the child when it is arranged in accordance with the parent who has parental authority. Further, it was stressed that more controlled contact arrangements may result in hesitation as it may be difficult for the child to have normal leisure time when he/she has to use up many weekends in order to meet the requirements of several contact arrangements.⁶⁴

45. Is the right to have contact referred to in Q 44 also a right and/or a duty of the parent or the other persons concerned?

No.

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?

Parents are free to make contact arrangements and these are not subject to public scrutiny. In practice many cases at the administrative authorities are solved through an agreement between the parents resulting in a decision with the consent of the parents. An agreement allocating each parent half of the time will not be accepted as a contact arrangement, because the child is considered to be living with both parents.⁶⁵

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

The administrative authorities can exclude the exercise of contact if this is necessary for the child, Art. 17(3) Danish Act on Parental Authority and Contact. In 2001 statistics from the administrative authorities showed that a decision on contact was made in 96% of first time applications for contact and that contact was rejected in 6% of cases.⁶⁶ Statistics from 2003 show that exclusions contained a reference to the following main groups: the child's own opinion 57%, the child's age 29%, special circumstances relating to the contact parent 22%, lack of previous contact 8%, special circumstances relating to the child 19%, expert evidence 19%, sibling-

⁶³ *Civilretsdirektoratet*, 14.05.2001, No. 2000-540-2707, *Tidsskrift for familie- og arveret*, 2001, p. 500.

⁶⁴ Commission report 1279/94, p. 125-127

⁶⁵ *Civilretsdirektoratet*, 13.12.1996, *Tidsskrift for familie- og arveret*, 1998.132.

⁶⁶ Statistical report from *Civilretsdirektoratet*, June 2002, p. 10.

related issues 6%, violence/incest 2%, risk of abduction 1%, the contact parent's inactivity 15%, other reasons 9%.⁶⁷

The administrative authorities decide on the amount of contact and how this should be exercised, Art. 17(1) Danish Act on Parental Authority and Contact. Consequently, contact may be limited or subjected to conditions such as supervised contact. Supervised contact may only be ordered where unsupervised contact is not possible, and should only be used where it is necessary for the child.⁶⁸ The administrative authorities may also impose other conditions for the exercise of contact such as conditions concerning the costs and manner of transportation.⁶⁹ More unusual conditions are sometimes stipulated, such as the stipulation that the contact parent should not take the child to a religious event during contact.⁷⁰

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

If a parent disregards the child's or rather the other parent's right to contact, the other parent may turn to the enforcement court. Enforcement measures consist of fines, detention of the guilty parent or the physical fetching of the child.⁷¹ These measures do not directly affect parental authority. The other parent may, however, seek sole parental authority or seek to have parental authority transferred from the guilty parent. In 1996 the obstruction of contact was inserted in the provision concerning the transfer of parental authority as the only mentioned consideration.⁷² The general criterion of the provisions on the transfer of parental authority is what is best for the child, Art. 12 and 13 Danish Act on Parental Authority and Contact. A number of high-profile cases concerning the transfer of parental authority have since 1996 dealt with the obstruction of contact, but in none of the cases has parental authority been transferred on the basis of obstruction alone.⁷³

(b) Other persons

Other persons do not have a right of contact. Disregarding a child's contact with such persons will not have any direct impact on parental authority, although disregarding contact may have a bearing on the parent's parenting abilities.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

⁶⁷ Statistical report from *Civilretsdirektoratet*, February 2004, p.16.

⁶⁸ Departmental order No. 874 of 24.10.2002, Art. 27(1).

⁶⁹ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 83.

⁷⁰ *Civilretsdirektoratet*, 10.04.2001, No. 1998-540-84, *Tidsskrift for familie- og arveret*, 2001.419.

⁷¹ Danish Civil Procedural Act, *Lov om rettens pleje*, No. 815 of 30.09.2003 with later amendments, Art. 497(2).

⁷² This consideration was not contained in the first draft of the Act but was added in the course of the parliamentary debate on the Act, although it was mentioned amongst other considerations in the comments, Commission report 1279/94, p. 145. The consideration is popularly known to be the hallmark of fathers' rights movements.

⁷³ For example, *Højesteret*, Supreme Court, 30.10.2000, U2001.153H.

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

Parental authority cannot be delegated. If a child younger than 14 is to stay for longer than 3 months with persons other than the parents, the local authorities must approve the foster parents.⁷⁴

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?

That is not possible. Foster parents have no independent rights in respect of parental authority over the child.

G. 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 local authorities are obliged to supervise the conditions of children living in the area.⁷⁵ If a child is being maltreated, neglected or abused it may be necessary to intervene with child protection measures and possibly to place the child in care. Such a measure can be voluntary as far as the parent is concerned or it can be enforced.⁷⁶ Such a measure diminishes the powers and duties of the holder(s) of parental authority, but does not as such discharge the holder(s) of their parental authority. If the maltreatment, neglect etc. is being carried out by one of the parents and the parents do not live with each other, the other parent may seek sole parental authority or seek to have the (sole) parental authority transferred, Art. 8, 12 and 13 Danish Act on Parental Authority and Contact. It is possible to discharge the holder(s) of guardianship of their rights as guardians, for example in the case of the incapacity of one or both guardians.⁷⁷

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

Parental authority cannot be discharged, but the other parent may seek sole parental authority or to have the (sole) parental authority transferred, Art. 8, 12 and 13 Danish Act on Parental Authority and Contact. A decision to place the child in care is made by a standing committee under the local authorities and is subject to administrative as well as court review. Such a care order does not, however, discharge the holder(s) of his/her/their parental authority.

⁷⁴ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 200, p. 105.

⁷⁵ Danish Act on Social Services, *Lov om social service*, Act No. 708 of 29.06.2004, Art. 6.

⁷⁶ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 111-120.

⁷⁷ Danish Act on Guardianship, Art. 2.

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?

Parental authority cannot be discharged, but the other parent may seek sole parental authority or to have the (sole) parental authority transferred, Art. 8, 12 and 13 Danish Act on Parental Authority and Contact, or the child may be placed in care by the local authorities. If the child lives with the other parent, the parent may seek a contact order, which will only be excluded if it is necessary for the child, Art. 17(3) Danish Act on Parental Authority and Contact. If the child has been placed in care by the local authorities, the parents/holder(s) of parental authority retain the right to contact and the local authorities are obliged to facilitate this contact.⁷⁸

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?

Parental authority cannot be discharged, but the other parent may seek sole parental authority or to have the (sole) parental authority transferred, Art. 8, 12 and 13 Danish Act on Parental Authority and Contact, or the child may be placed in care by the local authorities. If the child lives with the other parent who has sole parental authority, the parent may seek to have the parental authority transferred, Art. 13 Danish Act on Parental Authority and Contact. The criteria for transfer are strict. If the child has been placed in care, the holder(s) of parental authority can have the child returned when the reasons for the care order are no longer present.⁷⁹

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?

An administrative authority, the *Statsamt*, has sole competence in matters of contact, Art. 17 Danish Act on Parental Authority and Contact. The *Statsamt* may make use of expert evaluations and opinions concerning the parent-child relationship.⁸⁰ Decisions of the *Statsamt* may be appealed to another administrative authority.⁸¹ Competence in the field of parental authority is split between the

⁷⁸ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets forlag, 2003, p. 121.

⁷⁹ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets forlag, 2003, p. 122.

⁸⁰ The experts may have a background as psychologists, psychiatrists, social workers or similar and may be employees of the *Statsamt* or external.

⁸¹ On 2 August 2004 the field of family law was transferred from the Ministry of Justice to the new Ministry for Family and Consumer Affairs. The administrative appeal authority used to be Department of Private Law, *Civilretsdirektoratet*. All administrative appeal matters relating to family law have now been transferred to a new administrative body

ordinary courts and the *Statsamt*. The general principle is that non-conflict cases are dealt with by the *Statsamt* and conflict cases by the courts. When joint parental authority must end and the parents do not agree as to which of them should have parental authority, the decision is always made by the court, Art. 19(2) Danish Act on Parental Authority and Contact. An enforcement court decides whether measures enforcing contact should be taken. The Enforcement Court may deny enforcement where the child's mental or physical health is subject to serious danger and it may require an expert opinion and postpone enforcement where there are doubts.⁸² The courts use external (private practice) experts.

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 passed since the decision or agreement?

If the parents have joint parental authority and they no longer live together or intend to live separately each parent can demand that the joint parental authority be terminated, Art. 8 Danish Act on Parental Authority and Contact.

If one parent has sole parental authority on the basis of an agreement or a judgement by the court, the court can transfer parental authority to the other parent, only where there are special reasons, if it is best for the child and especially when conditions have substantially changed. Obstructing the other parent's contact is a consideration, which is taken into account, Art. 13(1) Danish Act on Parental Authority and Contact.

Contact orders and agreements can be amended if the change is best for the child especially when conditions have substantially changed, Art. 17(2) Danish Act on Parental Authority and Contact.

No authority has the power to make decisions on residence and agreements on residence cannot be reviewed.

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?

Experiments in counselling⁸³ in relation to contact and parental authority started at the beginning of the 1980s. Since 1986 the administrative authorities must offer counselling in cases concerning contact and parental authority, Art. 28(1) Danish Act on Parental Authority and Contact. The offer is directed towards parents and children, is free of charge and is available at all stages. It is not a condition that both parents and/or the child participate. Counselling may take place with one parent

called Department of Family Affairs, *Familiestyrelsen*, under the new Ministry for Family and Consumer Affairs.

⁸² Danish Civil Procedural Act, Art. 536(1).

⁸³ *Børnesagkyndig rådgivning* (Children expert counselling).

and/or the child alone. Counselling takes place at the administrative authorities.⁸⁴ The offer can be made during divorce proceedings if the divorce is administrative or in the course of a contact case. Counselling is independent of the decision making of the administrative authorities and the result of the counselling is not reported to the case officer unless the parents agree otherwise or the case officer has participated in the counselling upon the request of the parents. Counselling has been a success in Denmark. In approximately 60% of cases a positive outcome has been reported.⁸⁵ From 2001 mediation has been offered as an alternative to counselling. Both parents must participate and it is a condition that a case concerning contact has terminated before mediation may take place.⁸⁶ In 64% of mediations a complete solution has been found and in 18% of cases the conflict has been partly solved.⁸⁷ Alongside the offers of counselling and mediation offered by the administrative authorities, mediation experiments have started in some courts.⁸⁸

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?

An Enforcement Court, the *fogedretten*, decides whether measures enforcing parental authority or contact should be taken. The Enforcement Court may deny enforcement where the child's mental or physical health is subject to serious danger and it may require an expert opinion and postpone enforcement where there are doubts.⁸⁹ A recent report from the Ministry of Justice's research unit investigated 1224 cases concerning parental authority and contact from the Enforcement Court.⁹⁰ Some 13.6% concerned parental authority and some 72.5% contact. The outcome of the cases were that 46.8% were settled, 19.1 resulted in a judgement, 8.3% of cases were rejected, 24.1% of cases were called back, and 1.65 had another outcome. Of the judgements 4.1% contained the decision that contact must be continued, 6.9% imposed a fine, in 1.6% of cases the child was physically fetched by the Enforcement Court, in 4.2% of cases enforcement was rejected and 2.3% of cases had a different outcome.⁹¹

⁸⁴ The counsellors will have special expertise regarding children. Counsellors are most often psychologists or social workers.

⁸⁵ Statistical report from *Civilretsdirektoratet*, February 2004, p. 42.

⁸⁶ *Konfliktmægling* (Mediation) on the website of the *Statsamt* www.statsamt.dk.

⁸⁷ Statistical report from *Civilretsdirektoratet*, May 2003, p. 39.

⁸⁸ For example, the lower court in Copenhagen, *Årsberetning for Københavns byret*, 2001.

⁸⁹ Danish Civil Procedural Act, Art. 536(1).

⁹⁰ *Justisministeriets forskningsenhed, Undersøgelse af fogedretternes praksis i samværs- og forældremyndighedssager*, May 2004.

⁹¹ *Justisministeriets forskningsenhed, Undersøgelse af fogedretternes praksis i samværs- og forældremyndighedssager*, May 2004, p. 12.

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 scrutinizing an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?

A child aged 12 or older must be heard before a decision is taken in a case concerning parental authority or contact unless this is considered detrimental to the child or without importance to the case, Art. 29 Danish Act on Parental Authority and Contact. If the child is younger than 12 he/she must be heard if the child is sufficiently mature and it is relevant for the case, Art. 29(2) Danish Act on Parental Authority and Contact. The provision also applies to decisions concerning enforcement. If the holder(s) of parental authority reaches/reach an agreement, the child is not heard as this does not constitute "a decision". Appointing (a) new holder(s) of parental authority will constitute "a decision". Parental authority cannot be discharged, but if child protection measures are taken, such as the placement of the child in care, the child must be heard regardless of his/her age the sufficient maturity of the child being the only criterion.⁹² If the child is 15 or older he/she also has a right to legal representation in cases concerning child protection measures.⁹³

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

The idea is that it takes the form of a conversation, Art. 29 Danish Act on Parental Authority and Contact. The child will be heard by the judge or in cases before the administrative authorities by a caseworker. It is possible in more complicated cases to have assistance from a social worker or an appointed expert. In some cases the expert may hear the child alone. For older children experts are used less often.⁹⁴

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

(a) Parental responsibilities

The child has no other legal representation than the general representation of the holder (s) of parental authority.

(b) The child's residence

It is not possible to bring a dispute concerning residence before a court or administrative authority.

(c) Contact

The child has no other legal representation than the general representation of the holder (s) of parental authority.

⁹² Art. 58 Danish Act on Social Services.

⁹³ Art. 60(3) Danish Act on Social Services.

⁹⁴ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 88-89.

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

Age and/or maturity are the relevant criteria which determine a child's right to self-determination, the right to be heard and the right to legal representation. The criteria, are found in various different acts and these are not always congruent. Nor are the results always logical, for example, a child of 15 almost has complete autonomy in respect of medical treatment, but in theory no rights in respect of education choices.⁹⁵

⁹⁵ I. LUND-ANDERSEN, N. MUNCK and I. NØRGAARD, *Familieret*, Copenhagen: Jurist- og Økonomforbundets Forlag, 2003, p. 103.