Family law in Denmark: overview

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JURISDICTION AND CONFLICT OF LAW

Regulatory framework

1. What are the primary sources of law in relation to marriage, marital breakdown and the welfare of children and give a brief overview of which courts will have jurisdiction to hear the dispute?

Sources of law

The primary sources of law in relation to the breakdown of marriage are:

- The Formation and Dissolution of Marriage Act (Ægteskabsloven).
- The Legal Effects of Marriage Act (Retsvirkningsloven). From 1 January 2018, this Act will no longer be effective and a new Act on Financial Relationship between Spouses (lov om ægtefællers økonomiske forhold) will come into force.
- Act on Division of Matrimonial Property (Ægtefælleskifteover).
- Act on Registered Partnership (lov om registrerede parforhold). During the period from 1 October 1989 to 15 June 2012, this Act allowed same-sex couples to form a registered civil partnership. Since 14 June 2012, same-sex couples can marry and therefore no longer form registered partnerships.
- Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (EU Maintenance Regulation) is applicable in Denmark. However, Denmark has not ratified the Hague Protocol on the law applicable to maintenance obligations 2007. The rest of the EU regulations dealing with family law are not applicable.

Denmark has ratified a number of international conventions dealing with the international aspects of family law, including the:


In the area of the welfare of children, the Act on Parental Responsibility (Fædreindersværelseroven) is the primary source of law. As a large part of cases dealing with children are not dealt with in court but by administrative authorities, there are also administrative guidelines on the subject.


Denmark has also ratified the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Court system

There are no family courts in Denmark. Different types of disputes in family law are dealt with in different processes and by different authorities. All types of family law proceedings are held in private.

Disputes relating to divorce and custody arrangements are heard by the civil courts.

Disputes relating to asset division and compensation are dealt with by the probate court (Skifteretteren).

Disputes relating to contact with children are resolved by the State Administration, which is an administrative authority. The State Administration also makes decisions on child support and the size of spousal maintenance.

Jurisdiction

2. What are the main requirements for local courts to have jurisdiction in relation to divorce, property and children proceedings?

Divorce

In Denmark, issues of property division and issues of children are not dealt with within a divorce case, but in separate processes. There is also a separate process for determining the size of a spousal maintenance. The divorce and the length of a possible spousal maintenance obligation are dealt with in the courts if the spouses cannot agree. The courts have jurisdiction in relation to divorce on the following grounds (Article 448C, Danish Administration of Justice Act (Retsplejeover):

- The respondent has his or her domicile in Denmark.
- The petitioner has his or her domicile in Denmark and has had this Danish domicile for the past two years or for a longer period before.
- The petitioner is a Danish subject and it is proven that because of this citizenship he or she cannot file for divorce where he or she resides.
- The petitioner and the respondent are both Danish subjects and the respondent does not oppose that the divorce is handled in Denmark.
- The petitioner and respondent have obtained a legal separation from Danish authorities within the past five years.

These are the requirements that apply to international jurisdictions in general. When it comes to Nordic subjects, there is a Nordic convention that applies and which sets up jurisdictional grounds.
that are identical to the grounds found in Regulation (EC) 2201/2003 concerning jurisdiction and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

**Property**

Division of property is dealt with in the Probate Court (Skifteret). The court’s international jurisdiction to hear claims about property division and compensation is regulated in sections 4 and 5 of the Act on Division of Matrimonial Property (Rigeferaelkeskifteover) on the following grounds:

- If the petitioner or the respondent has his/her residence in Denmark.
- If either the petitioner or the respondent has a connection with Denmark the parties can agree on Danish jurisdiction when the dispute arises.

Finally, there is jurisdiction to handle assets situated in Denmark if they are not included in a property division handled outside Denmark.

**Children**

Jurisdiction in relation to children is governed by the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996 Hague Convention) in relation to countries that are parties to this 1996 Hague Convention. According to Articles 5 to 14 of the 1996 Hague Convention, jurisdiction can be based on grounds mostly relating to the habitual residence of the child. There is a possibility within the Convention for a court in one state to invite a court in another state to take jurisdiction if they find that this other state is in a better position to consider the child’s best interests (under Articles 8 and 9).

The 1996 Hague Convention entered into force in Denmark on 1 November 2011 and applies to cases started after that date.

In relation to other countries, section 448f of the Administration of Justice Act (Retsplejelovover) governs jurisdiction for cases relating to children in a way that is very similar to the 1996 Hague Convention, as the following jurisdictional grounds are accepted:

- The child has his or her habitual residence in Denmark. This does not apply if the habitual residence is based on a wrongful removal or retention, unless the habitual residence has been in place for more than one year and the parent left behind has not asked for the child’s return within that one year, or unless the parent left behind has asked for a return but the application has been rejected.
- The child is wrongfully removed or retained in another country and the child had his or her habitual residence in Denmark just before the wrongful removal or retention. This does not apply if more than one year has passed since the parent with parental rights was aware of where the child is, and that parent has not asked for the child’s return within that one year and the child is now adjusted to that new country.
- The child is exiled from his or her home country due to disturbances and the child is present in Denmark.
- The child is present in Denmark and the child’s habitual residence is not known. As with the first point above, this does not apply if the habitual residence is based on a wrongful removal or retention, unless:
  - the habitual residence has been in place for more than one year and the parent left behind has not asked for the child’s return within that one year; or
  - the parent left behind has asked for a return but the application has been rejected.

- The child is present in Denmark and the case is so urgent that it is not possible to wait for a decision from the country of the child’s habitual residence.

**Domicile and habitual residence**

3. How do the concepts of domicile and habitual residence apply in relation to divorce, financial arrangements, and children?

In Danish law texts, there is no distinction when reference is made to simple residence, habitual residence or domicile. Regardless of which concept is to be used, the law only refers to the “residence”. Therefore it is necessary to consult preparatory documents or case law to find out whether the specific use of the term “residence” in a particular law refers to the concept of simple residence, habitual residence or domicile.

However, so far case law indicates that there is only one concept of simple residence, one concept of habitual residence, and one concept of domicile. In other words, the concept does not change its meaning or content depending on whether it relates to divorce, finances and children.

In Denmark all people register at a central register where they live. This applies regardless of the nationality of the person. When a person moves, he or she must change the registration to the new address within a limited period of time. If this is not done in time, the person can be fined. This obligation to register means that the registration is often taken as important evidence when proof is needed about where a person had his or her residence, habitual residence or domicile.

The mere fact that a person has registered at an address in Denmark is not enough to prove habitual residence or domicile. However, it can often be concluded that a person has his/her simple residence in Denmark if he/she is registered here. This is because the concept of the simple residence is the place where a person lives. In most situations, it is solely a factual concept (there are exceptions for diplomats working temporarily abroad that keep their Danish residence). A person can have more than one residence in different countries at the same time.

Habitual residence is mostly used in Danish family law in relation to children. In relation to applications for return under the Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Child Abduction Convention), there are two leading judgments:

- The first is a judgment from the Supreme Court in 2007 (Case U.2007.1205H). In this case, the parents entered into a written agreement in February 2004 that their four-year-old daughter should reside in Denmark with her mother until 1 May 2005, when they would return to Australia. However, when the agreement expired, the mother refused to return the daughter to Australia. The Supreme Court ruled that the girl should be returned, as the habitual residence had not changed from Australia to Denmark during the child’s stay there.
- The second is a judgment from the Supreme Court in 2014 (Case U.2014.2463H). In this case, the mother and children stayed in Denmark for more than two years before the father sought the return of the children to the US. The father argued, based on the 2007 judgment above, that his consent for the children to stay in Denmark was only given for a limited time. The mother disagreed. The Supreme Court ruled that the children should not be returned, as their habitual residences had changed, despite the fact that the parents did not have a common understanding of the purpose of the stay in Denmark and how long it was intended to be. The Supreme Court said that a decision about habitual residence must be based on an overall assessment, which must include:
partly the parents’ potential mutual intentions and agreements on the purpose and duration of the stay in Denmark; and

partly the child’s situation, including the duration of the stay in Denmark and the child’s connection to the present and previous place of residence.

To form the conclusion in this case, the Supreme Court noted that the mother had established herself and the children in an apartment from the very beginning of the stay in Denmark. The mother had begun to study and the children were enrolled in kindergarten and school. The father was aware of this and visited them in Denmark, but did not oppose the stay in Denmark until the children had been in Denmark for more than two years.

Under Danish law, a person has his or her domicile where that person resides with the intention of staying there. If a person changes his or her residence, but only with the intention of staying there for a limited period of time then the domicile is not changed. A person can only have one domicile. There is case law to support the interpretation that a person cannot be without a domicile. The concept seems to put a lot of emphasis on subjective factors, however, objective elements must support the intention described. Therefore, if a stay abroad (and away from the original domicile) is for the long term, the domicile will change regardless of the person’s intentions. There is no time limit but a guideline would be that a stay abroad for more than two years indicates a change of domicile. However, if the stay abroad includes moves between different countries there might not be such an indication.

Conflict of law

4. What procedure applies for a party applying to stay proceedings in favour of a foreign jurisdiction? What factors do local courts take into account when determining forum issues?

Procedure

Danish courts generally apply the principle of lis pendens meaning that the jurisdiction in which the proceedings were commenced first has priority to deal with the proceedings and those started second are halted. The principle is applied as a general principle, but in some areas, for instance in cases about maintenance, Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (EU Maintenance Regulation) forms the basis. In cases of separation or divorce, there will often also be a reference to Article 12 of the 1970 Hague Convention on divorce about the application of the principle of lis pendens.

Danish courts do not apply principles of forum conveniens.

Factors

In addition to establishing that a foreign procedure is first in time (see above, Procedure), two other factors are considered when deciding whether to apply lis pendens:

- The first is whether the judgment from the foreign jurisdiction can be recognised in Denmark.
- The second is whether there is identity between the case in Denmark and the foreign case.

PRE- AND POST-NUPITAL AGREEMENTS

Validity of pre- and post-nuptial agreements

5. To what extent are pre- and post-nuptial agreements binding?

Pre-nuptial as well as post-nuptial agreements are legally binding in Denmark if they meet the requirements stipulated by law. The agreements must be in writing and signed by both spouses. The agreement also needs to be submitted to the court for registration in order to be valid.

In Denmark it is possible for spouses to contract in pre- or post-nuptial agreements for different property regimes, that is, separate property in different forms. It is also possible for the spouses to make agreements that provide that pension rights are divided upon divorce (which they are not as a general rule under the default regime).

It is not possible for spouses to make binding agreements about spousal maintenance obligations or lump sum compensations. This principle applies regardless of whether the agreement on spousal maintenance or compensation would provide better for the weaker spouse than the law.

However, agreements based on the EU Maintenance Regulation can be included in a pre- or post-nuptial agreement and can be registered. Until 1 January 2018, pre- and post-nuptial agreements cannot specify a particular foreign law to be applied to the division of property. There are some exceptions to this rule.

After 1 January 2018, this rule will change when the new Act on the Financial Relationship between Spouses (lov om ægtefæller økonomiske forhold) comes into force. Spouses will be able to choose the law of the country where one of them is resident to govern their property regime. They can also choose to apply the law of the country in which one of them is a citizen. If no choice of law is made, the Danish choice of law rule will apply, meaning that the property regime will be determined by the law of the state where the spouses live when they marry, or if they do not live in the same country when they marry, then the law of the state where they have their first communal residence as spouses will be applied. If no communal residence is established, then the law of the state where they are both citizens will be applied. If they are not citizens of the same state, then the law of the state to which they have their closest connection will apply.

Regardless of what the default regime is according to the above, the law sets out a rule stipulating that after five years of communal residence in Denmark, the property regime shifts to Danish law. The law does not specify whether this means that all assets will be under Danish law regardless of when they were acquired or if it only takes effect from the moment the five years have passed.

There is case law where the validity of pre- and post-nuptial agreements is challenged based on principles of contract law. So far the courts have been very reluctant to declare nuptials not to be binding, and they have for example not required in general that the parties have obtained independent legal advice or for full disclosure to have been made. However, if the agreement is made as a post-nuptial agreement at a time where one or both spouses is aware that there is a real risk that the marriage is breaking down, the courts tend to demand more proof that the consequences of such an agreement are understood by the spouse that is giving up property rights under the agreement.
DIVORCE, NULLITY AND JUDICIAL SEPARATION
Recognition of foreign marriages/divorces/civil partnerships

6. Are foreign marriages/divorces/civil partnerships recognised?

**Marriages**

Danish law recognises a marriage entered into abroad if it complies with the formalities of the country in which it was entered into. This includes marriages between partners of the opposite sex and same-sex partners. Therefore, if a marriage is properly conducted, it will usually be recognised in Denmark. This includes religious marriages, even if the equivalent Danish religious authority does not have the right to conduct marriages. The recognition also includes recognition of a same-sex marriage, provided the jurisdiction where the marriage was conducted has the same legal effects as a marriage.

However, Denmark will not recognise a foreign marriage if it was conducted under circumstances that are against Danish public order. The following two conditions apply as a minimum:

- The spouses must both be at least 15 years of age when they are married.
- The spouses must both be present when the marriage is conducted.

When a person resides in Denmark, that person can register his or her foreign marriage with Danish authorities. If there are doubts about the validity of the foreign marriage, the Division of Family Affairs at the National Social Appeals Board can be asked for advice/its opinion.

Denmark does not permit polygamous marriages. Marrying a second person without dissolving a previous marriage constitutes bigamy which is a criminal offence.

**Divorces/annulment**

Denmark is a party to Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations and also recognises divorces ordered abroad in many other circumstances.

However, Denmark may not necessarily accept the specific financial terms of the divorce, if Denmark would have had jurisdiction to divorce the spouses.

**Civil partnerships**

A civil partnership is recognised in Denmark if it is accepted as a union similar to marriage under the law of the country where it was registered.

**Divorce**

If both spouses agree to the divorce, they can obtain a direct divorce (without a period of judicial separation). However, if the spouses do not both agree to the divorce, direct divorce is only available on the following grounds:

- Adultery.
- Severe violence against the spouse or his/her children.
- Bigamy.
- Child abduction out of Denmark.
- The spouses have been living apart for two years due to disagreements.

- The spouses have been judicially separated for six months.

In relation to adultery, violence, bigamy and child abduction, only the "victim" party can apply. For adultery and child abduction, the application must be made within certain time limits.

The divorce based on six months of judicial separation is a no-fault divorce.

**Nullity**

A marriage can be declared a nullity by judgment if the spouses are related (in the direct line of ascent or descent), or if one of the spouses is already married. A marriage can also be declared a nullity by judgment if it was entered into under duress, deceit or similar circumstances. Given the range of possibilities for divorce (see above, Divorce), the rules on nullity are not used in practice.

**Judicial separation**

Both parties are entitled to judicial separation, regardless of the position of the other party. A judicial separation is given by an order from the authorities (possibly the court) and the legal consequence is a suspension of the marriage. The judicial separation suspends all rights of inheritance and any obligation to maintain the other spouse. If the parties start to cohabit after a judicial separation (but before a divorce), the separation terminates and the parties continue their marriage.

**Finances/capital and property**

8. What powers do the courts have to allocate financial resources and property on the breakdown of marriage?

The court dealing with the separation/divorce can only make orders about the length of time the spousal maintenance must be paid for, and only when this is applied for. Orders about the size of the obligation are made by the State Administration, also upon application.

The power to allocate property on the breakdown of marriage lies with the probate court. The probate court is competent both to divide marital property and to decide that compensation (a lump sum payment) should be paid if the spouses have separate property.

9. What factors are relevant to the exercise of the court's powers?

The standard rule for calculating the size of the spousal maintenance is one-fifth of the difference of the income of the payer and the payee. However, there is a ceiling for the income of the payee of DKK290,000 to DKK350,000 per year. If the income of the payee (including the maintenance calculated as explained above) exceeds this ceiling the maintenance obligation is reduced.

The concept of income under Danish law includes all types of income. This means that income generated in a company of which the payer owns the shares is included. Not all trusts are recognised under Danish law as legal entities. Therefore income from a trust can in some situations be attributed to either the settlor or the beneficiaries.

Danish authorities always apply Danish law when dealing with maintenance issues.

For the choice of law rule regarding property see Question 4.

From 1 January 2018, two types of lump sum compensation will be available upon divorce, as follows:

- For the spouse who during a long marriage has contributed to the other spouse building up his/her wealth (the choice of law
for this type of compensation follows the choice of law for the property regime).

- For the spouse who is in a position of “grave financial hardship” (the choice of law regarding this type of compensation is Danish law).

Before the new law, the compensation available was the same in substance, but the legal basis did not distinguish between two types of compensation and the choice of law rules were not clear.

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10. What is the court’s current position on the division of assets?

On divorce the value of the marital property is divided equally between the spouses. Any property that is separate property is not included when the division is made.

The starting point in Danish law is that all property is marital property, regardless of whether the asset was acquired before or after the marriage. However, pension rights are treated according to special rules and are not divided (as a general rule).

Also, spouses can have separate property that applies (in whole or in part) to all assets of the parties, including joint assets. Separate property can be created according to:

- A pre- or post-nuptial agreement.
- A deed of gift, where the donor has specified that the gift should be the separate property of the beneficiary.
- A last will, where the testator has specified that the inheritance is the separate property of the heir.

There is still little case law on asset division as, until 2012, this was mainly dealt with privately. This was due to the fact that until 2012 the fees for the courts for handling an asset division case were very high and the process was very inefficient.

Since March 2012, the court has had the power to appoint (on application) an independent property division executor to carry out the asset division. The executors are all lawyers. The task of the executor is to make an inventory of the assets (based on his or her legal judgement) and assist the spouses with practical issues.

The new system is much more efficient and less expensive. However, this has not greatly increased court rulings in relation to the division of assets as the executor is also in a position to suggest compromise solutions to the spouses.

Most existing case law concerns situations where separate property or money has been invested in an asset that has been included in the community of property. Historically, the position in Danish law has been that an asset cannot be partly community property and partly separate property. It must be one or the other. As a consequence, if the asset was deemed community property, the spouses who also invested separate property money in the same asset had to raise a claim for “compensation”. As of 1 January 2018, the new Act will change this legal position, and it will be possible for an asset to be held partly as separate property and partly as community property, if it is acquired for both types of money. However, if the “combination” is a result of a subsequent investment for instance of separate property money in a community property asset, then the result is the same as before, namely because the asset continues to be part of the community of property and the investment is compensated by a lump sum claim.

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11. How does ongoing spousal maintenance operate following marital breakdown?

The right to spousal maintenance after the breakdown of a marriage and the length of that obligation must be decided on and agreed. If the parties reach an agreement, no authority checks will be needed if the agreement is in accordance with case law. In the absence of an agreement, a decision is made by the court. The parties cannot obtain a legal separation or divorce if there is no agreement or decision on the length of a possible spousal maintenance right/obligation.

An obligation that is limited in time has a maximum duration of ten years. In this regard case law is often divided into two categories:

- One category of short obligations of up to five years (in practice mostly one, two or three years).
- One category of long obligations of eight or ten years.

The court can also set up an obligation that maintenance is for the joint lives of the parties. However, such obligations are only set up if the marriage has lasted more than 20 years (although in practice today the requirement is closer to 25 years of marriage).

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12. Is it common for maintenance to be awarded on marital breakdown?

Short obligations are not uncommon, but long obligations are very rare. This is because maintenance obligations are only set up if the weaker spouse has no ability to create an income of her or his own and cannot be expected to achieve an income in the period when the maintenance is to be paid.

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13. What is the court’s current position on maintenance on marital breakdown?

The criteria considered when deciding maintenance are:

- The ability to pay by the payer.
- The lack of ability to create an income of his or her own by the payee.
- The length of the marriage.

Within the last few years a further requirement has been developed, namely that the lack of ability to work needs to be due to the marriage. The requirement is sometimes referred to as “cohabitation damage”. This means that maintenance is mainly awarded if one party has given up work due to family life. This can be as a result of childcare commitments or because they had followed their spouse abroad for work. If one party is working part-time and can provide for him- or herself, then it is unlikely that he or she will be able to successfully claim maintenance. The mere fact that the weaker party cannot support herself or himself at the same standard that the parties had enjoyed during the marriage does not give grounds for maintenance.

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14. What financial claims are available to parents on behalf of children within or outside of the marriage?

A parent who is not married to the other parent can only raise a claim for child support. No capital claims are available.
15. On what basis is child maintenance calculated?

If the child spends a maximum of five days out of 14 days with the non-resident parent, child maintenance is calculated solely based on the income of the non-resident parent and the number of minor children that the resident parent is supporting. Decisions are taken by the State Administration which calculates the support based on standard rates.

Danish authorities always use Danish law regarding child support. The minimum child support is DKK1,333 per month or DKK15,996 per year. If there is only one child, the non-resident parent must pay:

- Two times the minimum amount if he or she earns more than DKK 490,000.
- Three times the minimum if he or she earns more than DKK 700,000.
- Four times the minimum if he or she earns more than DKK1.2 million.

It is possible to make orders for five times the minimum. There are no examples of orders above five times the minimum regardless of the income of the non-resident parent.

16. What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?

Child maintenance will last until the child reaches 18 years of age. After that, a support for education can be established up to the age of 21. The amounts paid for education are reduced compared to normal child support.

17. Can a child make a claim direct against their parents?

A child cannot make an independent claim neither for child support nor for education support.

Reciprocal enforcement of financial orders

18. What is the legal position on the reciprocal enforcement of financial orders?

Denmark only enforces financial orders when required to by either EU regulation or international convention.

Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation) applies in Denmark. Therefore, all orders about maintenance (in the EU sense of the word) are enforced based on this regulation.

Denmark has ratified the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, and the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations 1973. Therefore, maintenance orders from states party to these conventions are also enforced.

Denmark has no international system of enforcement of financial orders from states that have no convention base. This also applies to orders on division of assets.

19. What powers are available to the court to make orders following a foreign divorce?

There are no general powers for Danish courts to make financial orders following a foreign divorce.

However, if a foreign divorce has been obtained but there has been no order for the division of assets, and there is Danish jurisdiction to deal with the matter, the Danish probate court can divide the assets. This is, however, not a specific power to deal with overseas matters – it is simply a consequence of the fact that the processes are not interlinked in Denmark.

It is possible based on Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation) to commence a standalone application in relation to spousal maintenance if the question has not been dealt with in the separation or divorce case.

It is also possible, based on the Maintenance Regulation, to commence a standalone application to vary spousal maintenance granted abroad if the maintenance could be varied under the law of the country where is was granted.

Jurisdiction for child support is regulated by the Maintenance Regulation and is always a standalone process under Danish law.

All claims related to spousal maintenance or child support are dealt with based on Danish law.

CHILDREN

Custody/parental responsibility

20. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage?

Upon divorce in Denmark, parents will have joint legal custody of a child or children. However, when the parents do not live together they cannot continue to share the child’s residence (physical custody). Decisions regarding legal custody or residence are always dealt with in separate proceedings and only if specifically requested by one or both parents. No automatic orders are made about the children upon divorce.

The court can decide that the parents will remain having joint legal custody and make a decision about the residence (physical custody) of the child accordingly. Sole legal custody is only awarded if it is considered to be in the best interest of the child. There is a presumption for shared physical custody meaning that the parent who asks for sole legal custody must prove that the level of conflict is so high that it is in the best interest of the child to establish sole legal custody.

All cases about custody and residence start as an application to the State Administration. The matter can only proceed to court upon application if the parents cannot agree about residence or custody.

The State Administration can make temporary orders for custody and residence if necessary, but not final orders. Final orders can only be made by the courts.

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21. What is the legal position in relation to access/contact/visitation following the breakdown of a relationship or marriage?

The jurisdiction to set up contact orders lies with the State Administration. A normal visitation schedule for a child above three years is called a "9/5 arrangement", meaning nine days out of 14 with the resident parent (and five days with the contact parent). The State Administration can also set up less or more contact, up to a "7/7 arrangement".

Holidays are usually split 50/50. It is difficult to obtain a different split even if the contact parent lives abroad and therefore has less every day or weekend contact.

All orders about children are made to meet the best interest of the child. The duration of an order depends on the age of the child. If an order is made about a child aged ten to 12 years old, the order would normally be in force until the child turns 18 with no modifications necessary. If the child is younger, the authorities can make orders whereby contact is changed over time. Normally, these changes will only be what can be foreseen within the next one to two years.

The children do not have separate legal representation, but if the child is considered mature enough, the child will be called for an interview with a child expert. This is regardless of whether the parents find this necessary or not. A summary of the interview is sent to both parents afterwards.

International abduction

22. What is the legal position on international abduction?

Denmark has ratified both the Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Child Abduction Convention) and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children 1980. With regard to the latter, Denmark has reserved the right, in cases covered by Articles 8 and 9, to refuse recognition and enforcement of decisions relating to custody on the grounds provided under Article 10. Both conventions are implemented in Danish law in the Act on Child Abduction (Barnebortfæresesloven). The Ministry of Social Affairs and Integration is the Central Authority for both conventions.

In the Danish courts, cases regarding abduction are dealt with in the enforcement court in the local area where the child is being retained. The Danish central authority will, when they receive an application from a foreign central authority, send the application to the local court. However, it is the parent left behind, not the Central Authority, who will act as the applicant at the return hearing in court. The parent left behind is entitled to legal aid without having to fulfil the normal financial criteria. If the left-behind parent has not chosen a lawyer himself or herself, the court will appoint a lawyer. There is a list of nine lawyers practising in different areas of Denmark who have been appointed as experienced in abduction cases, created by the Ministry of Justice.

The timeframe for an abduction case in the first instance is about two to six months, depending on the circumstances of the case. In the first instance, there will normally be a hearing where both parents are expected to give evidence.

The timeframe for an appeal is about two to three months. A hearing on appeal is only granted upon application if the appeal court finds it necessary. This is very rare.

The issues discussed in court today in abduction cases are:

- The "habitual residence" of the child.
- The "grave risk defence".

With regard to the habitual residence issue, the Supreme Court found in 2007 that the habitual residence of a child had not changed to Denmark despite a residence of one year and three months in Denmark with the Danish mother, because the parents had agreed in writing before the mother and the child left Australia that the child would return after that period, (Case U.2007.12054). However, in 2014, the Supreme Court found that the habitual residence of two children had changed to Denmark after a residence of more than two years in Denmark with the Danish mother, despite the fact that the mother could not prove that the father had accepted that the children should stay in Denmark without a time limitation (Case U.2014.2469). See also Question 3.

With regard to the grave risk defence, this is often raised but rarely on its own leads to non-return orders being made. However, with children of the age of ten and upwards sometimes the "grave risk" together with claims that the child objects to being returned are combined to form grounds for denial and return. With small children abducted by the primary caretaker it is difficult to predict what the court will decide.

If a child has been abducted from a non-convention country there is no legal basis for ordering a return. Therefore, the legal steps are firstly to "create" jurisdiction for a custody/leave to remove case and then to pursue a return based on an evaluation of the child's best interest in that case. This can be a rather long process.

Leave to remove/applications to take a child out of the jurisdiction

23. What is the legal position on leave to remove/applications to take a child out of the jurisdiction? Under what circumstances can a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

Since 2007, the law in Denmark has provided for shared parental responsibility regardless of whether one party argues against it. Since that time it is possible for the courts to make decisions on leave to remove in cases where the parents share parental responsibility. Before that time, an application to remove the child from Denmark would necessarily involve claims for sole custody.

A parent can always apply for an order to remove the child. An order is only granted if it is considered to be in the child's best interest. In that test, it is an important factor if a continued residence in Denmark provides the possibility for "normal" contact with the other parent. In such cases it can be difficult to move children aged between three and ten, provided there is normal contact with the parent that intends to stay in Denmark. This applies even if the grounds for the move are acceptable, that is, a foreign parent wanting to move back home due to difficult integration or lack of network in Denmark.

With older children, their own opinions are important for the result of the proceedings.

SURROGACY AND ADOPTION

Surrogacy agreements

24. What is the legal position on surrogacy agreements?

Agreements about surrogacy are not valid and cannot be enforced under Danish law. However, it is possible after the birth of a child for the biological mother (who gives birth to the child) to transfer custodial rights to the receiving couple by agreement that is binding, provided the child has also been handed over. The biological father of the child is the only parent who will have

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recognised parental rights. The intended mother or second intended father will have no parental rights under Danish law, as surrogacy is considered against Danish public order.

In a recent case, it was decided that the intended mother or second intended father could not obtain a share in parental rights through stepchild adoption due to the surrogacy involved. This decision (which was administrative) is now pending before the courts.

Adoption

25. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

Adoption of a child that you do not know beforehand is only available for married couples or individuals. Neither cohabiting persons nor registered partners can adopt together. Adoption is only possible if the parents have been approved as adoptive parents by the Danish Authorities.

The general requirements for approval are:

- The age difference between child and applicant must not exceed 40 years.
- The adoptive parents should as a minimum have lived together for two and a half years and they must be married at the time of approval.
- The adoptive parents' physical and mental health must not be such that it could have a negative influence on the child's situation.
- The adoptive parents must have adequate housing.
- The adoptive parents' financial situation must be adequate.
- The adoptive parents must not be convicted of any offences that may raise doubts as to whether they are suitable adopters.

There are special rules for adoption of relatives, for example adopting the child of your spouse. In those situations no official approval is necessary.

Registered partners can adopt children of their partner if the child is conceived based on artificial insemination and that happened while the partners were living together.

COHABITATION

Cohabitation

26. What legislation (if any) governs division of property for unmarried couples on the breakdown of the relationship?

There is no legislation governing the division of property for unmarried couples on the breakdown of the relationship. There are court procedures that can result in compensation being granted, but it is difficult to obtain such compensation.

FAMILY DISPUTE RESOLUTION

Mediation, collaborative law and arbitration

27. What non-court-based processes exist to resolve disputes? What is the current status of agreements reached through mediation, collaborative law and arbitration?

There are not many non-court-based processes currently available. Under Danish law, parties can in any kind of agreement include a clause of enforceability, with reference to the Danish Civil Procedure Act. Such a clause has the effect that the agreement (to the extent it is precise enough) can be enforced in the enforcement court without obtaining a judgment. If this clause is included in an agreement reached by mediation, collaborative law or arbitration, it is enforceable.

28. What is the statutory basis (if any), for mediation, collaborative law and arbitration?

Parties are not required to try family dispute resolution, but all cases regarding divorce and children start in the State Administration and start with an information meeting. Depending on the parties and the caseworker at the meeting, the meeting can have a format that looks a bit like mediation, but it is not always so.

CIVIL PARTNERSHIP/SAME-SEX MARRIAGE

29. What is the status of civil partnership/same-sex marriage? What legislation governs civil partnership/same-sex marriage?

From 1989 to June 2012, under Danish law same-sex couples could register a civil partnership which had the same legal effects as marriage. From June 2012, same-sex couples can marry, and the possibility to register a civil partnership no longer exists. Couples who entered into a civil partnership before 2012 can convert their civil partnership into a marriage. However, couples who do not do this are still civil partners.

MEDIA ACCESS AND TRANSPARENCY

30. What is the position regarding media access to and press reporting of family law cases?

All family cases in court are heard in private. No members of the press or other persons have access.

CONTROVERSIAL AREAS AND REFORM

31. What areas of the law (if any) are currently undergoing major change? Which areas of law are considered to be particularly controversial?

There have been discussions for a long time on whether the current system tackles conflict divorces in a good way. The fact that many different authorities have jurisdiction to deal with different parts of the process in relation to children has been particularly criticised. The minister has recently set out a plan for a new system, where conflict cases are to be dealt with in court as one case. At the moment there is no draft law available to show the details of how this will be carried out.
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