



European Family Law

Parental Responsibility / Authority

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Parental Authority

Parentage v. Parental Authority/Responsibility

- Distinction made between legal parentage on the one hand and parental authority on the other.
- Some rights, duties, obligations are attached to *legal parentage*:
 - Nationality
 - Name Law
 - Maintenance obligations, *etc*
- Other rights are attached to those who possess *parental authority*:
 - Right to choose a school, religion etc
 - Discipline
 - Providing a home for a child, *etc*

Terminology

Shift in Terminology

Shift in terminology from parental *power* to parental *responsibility*.

England & Wales:	Parental power → parental responsibility
The Netherlands	ouderlijke macht → ouderlijk gezag
Germany	elter Gewalt → elterliche Sorge

But in The Netherlands the choice has still been for parental authority (*gezag*) and not parental responsibility (*verantwoordelijkheid*).

England and Wales

Definition of Parental Responsibility

England and Wales

Superficial attraction to providing general definition. Why?

- Constant need for alterations
- Would vary with age and maturity of the child
- *But* some useful guidance would be good.

Section 3(1), Children Act 1989

“Parental responsibility” means all the rights, duties, powers, responsibility and authority which by law a parent of a child has in relation to the child and his property.”

England and Wales

Who has Parental Responsibility?

Two distinctions need to be drawn:

First distinction:

- 1) Automatic acquisition of parental responsibility
- 2) Determined act to acquire parental responsibility

Second distinction:

- 1) Married parents
- 2) Unmarried parents
- 3) Non-parents

England and Wales

Automatic Acquisition of PR

(1) Married parents

s.2(1), CA89: if father and mother married to each other at child's birth, then each will exercise parental responsibility over the child. Read in conjunction with s.1 Family Law Reform Act 1987, which legitimates children born to people who subsequently wed.

(2) Unmarried parents

s.2(2), CA89 provides that only mother will have parental responsibility for the child.

(3) Non-parents

No other person gains parental responsibility automatically.

England and Wales

Acquiring Parental Responsibility

(1) Unmarried father

s.2(2)(b), CA89 states that he can acquire PR by:

- subsequently marrying the mother;
- becoming the guardian of the child;
- Making parental responsibility agreement with the mother;
- Obtaining parental responsibility order;
- Obtaining residence order (section 8 order)
- Registering as father on the birth certificate (since ACA02)

England and Wales

Methods Used

(a) Subsequent marriage

By doing so, the father brings himself within s.2(1), CA89

(b) Parental responsibility agreements

s.4(1)(b), CA89, the father and mother may make a PR agreement. Only if in the prescribed form and recorded in the prescribed manner. These are set out in the Parental Responsibility Agreement Regulations 1991.

- Child does not have to be present or habitually resident in Eng.
- Balance achieved between pressure exerted on mothers/formal procedure
- No test of whether in the child's best interests

England and Wales

Method Used (cont.)

(c) Parental responsibility order

s.4(1)(a), CA89, the court may upon the application of an unmarried father order that he have PR over a child. Paternity will have to be proved if in doubt or disputed: *Re F (A Minor)(Blood Tests: Parental Rights) (1993)*.

- In deciding whether to issue an order, must take child's welfare as paramount consideration: s.1(1), CA89 and that would be better for the child than not to make an order: s.1(5), CA89. Do not have to consider the welfare checklist in s.1(3), CA89 (*cf* s.8 orders in Session 8)

England and Wales

Methods Used (cont.)

Re H (Minors)(Local Authority: Parental Rights)(No 3) (1991)

The followings factors will be taken into account:

- The degree of commitment which the father has shown towards the child
- The degree of attachment which exists between father and child
- The reasons for the father applying for the order

Re H (Parental Responsibility)(1998)

Although these criteria are important, they are not the only considerations to be made. Thus even if satisfied, the court still has a duty to apply the paramountcy test in s.1(1)

England and Wales

Methods Used (cont.)

Examples of when rejected:

- Inappropriate motives to undermine mother's care: *Re P (1998)*
- Father treated mother with hatred and violence: *Re T (1993)*

Of the 8,653 disposals in 1996 only 6% were refused.

(d) *Residence Orders*

See Session 8.

(e) *Birth Certificate*



England and Wales

Non-Parents

Those people who are not even legal parents of the child may apply for PR:

- They have the office of guardian
- In possession of a residence order
- In possession of an emergency protection order
- Local authorities (care order)



The Netherlands

Things to be remembered

Different categories to be dealt with:

- (1) Married person
- (2) Registered partner
- (3) Unmarried/unregistered partner but legal parent
- (4) Unmarried/unregistered partner but biological parent
- (5) Unmarried/unregistered partner nor biological parent

The Netherlands

Married Couples

(1) Man-woman

Source: Article 1:251, Dutch Civil Code

Result: Automatic, joint, parental authority

(2) Woman-Woman

Source: Article 1:253sa, Dutch Civil Code (since 1st January 2002)

Result: Automatic, joint parental authority

(1) Man-Man

Source: Not applicable

Result: Not automatic

The Netherlands

Registered Partners

(1) Man-woman

Source: Article 1:253aa, Dutch Civil Code (since 1st January 2002)

Result: Automatic, joint, parental authority

(2) Woman-Woman

Source: Article 1:253sa, Dutch Civil Code (since 1st January 2002)

Result: Automatic, joint parental authority

(1) Man-Man

Source: Not applicable

Result: Not automatic

The Netherlands

Unmarried and Unregistered Persons

(1) Mothers

Source: Articles 1:253b and 1:253ha

Result: Adult mother → automatic, sole parental authority
Minor mother → not automatic, must first be declared of age

◆ Legal Father [Recognition: 1:199(c) or judicial determination: 1:199(d)]

Source: Article 1:252, Dutch Civil Code

Conditions: Joint request and must satisfy conditions in Art. 252(2)

The Netherlands

Unmarried and Unregistered Persons (cont.)

(a) Others

Source: Article 1:253t, Dutch Civil Code (since 1st January 1998)

Conditions: Need a close personal relationship with child: Art. 253t(1)

If legal familial ties exist with another then:

- Need to jointly care for the child for one year: 1:253t(2)
- Other parent has had sole parental authority for 3 yrs: 1:253t(2)
- If not in best interests of child, will be rejected: 1:253t(3)

The Netherlands

Ending of Parental Authority

- ◆ Article 1:251(2), Dutch Civil Code

Joint parental authority continues after divorce, unless request to do otherwise, then will be a decision on the basis of the best interests of the child (SC 21/11/1997)

- ◆ Article 1:253aa(2), Dutch Civil Code

Above mentioned article expressly excluded for RPs: But SC 28/3/2003.

- ◆ Article 1:253n, Dutch Civil Code

Court procedure for the changing of PA on joint or unilateral request. This is thus applicable in ending PA founded on basis of Art. 253aa, 253sa, 253v.

Done on the basis of a change of circumstances. Not every change of circumstances is enough.