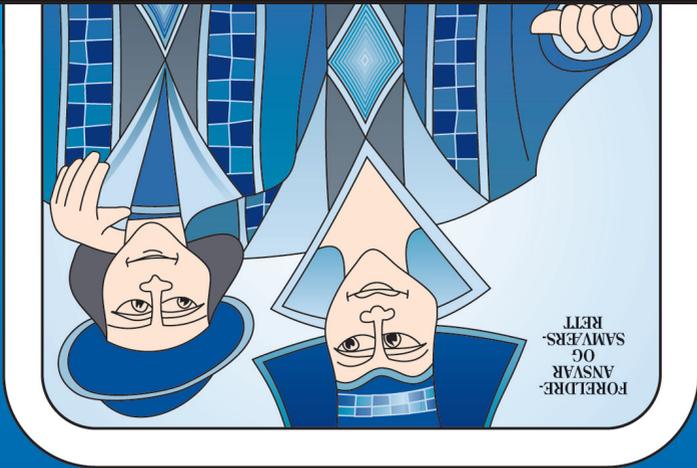




# PARENTAL RESPONSIBILITY AND RIGHT OF ACCESS



NORWEGIAN MINISTRY OF CHILDREN,  
EQUALITY AND SOCIAL INCLUSION

## ADVICE AND ASSISTANCE

### FAMILY COUNSELLING OFFICES

The family counselling offices provide a free low-threshold service for help with various types of partnership and relationship problems. Family counselling offices (*familievernkontoret*) can help parents to reach agreements concerning the children following the breakdown of a relationship, and offer up to seven hours of free mediation. They can also provide help and guidance to improve cooperation between the parents regarding the children, as well as therapy and discussion groups. For further information, see [www.bufetat.no](http://www.bufetat.no).

### THE COUNTY GOVERNOR

The County Governor (*fylkesmannen*) can help parents discuss practical and legal questions related to parental responsibility, where their child is to live permanently and right of access.

### NAV

Information concerning child maintenance, child benefit and benefit schemes for single parents can be obtained from local offices of the Norwegian Labour and Welfare Service (NAV). For further information, see [www.nav.no](http://www.nav.no)

### SOCIAL WELFARE OFFICES

Social welfare offices (*sosialkontorer*) and clergymen (*prester*) can also offer advice and assistance in dealing with the reactions and needs of children during family crises.

### PP-TJENESTEN OG BUP

The Educational-Psychological Service (PP-tjenesten) or child and adolescent psychiatry outpatient clinic (BUP) can in some cases provide assistance in the form of treatment, advice and guidance in connection with mental health, learning difficulties and behaviour problems. For further information, see [www.shdir.no](http://www.shdir.no)

### CHILDRENS WELFARE SERVICES

Parents who need help, owing, for example, to difficult circumstances of life or special needs of the child, can obtain help from the childrens welfare services in the form of advice, guidance and remedial measures.

### LAWYER

In some cases, it may be appropriate to take contact with a lawyer to obtain assistance with legal matters. For further information, see [www.advokatenhjelperdeg.no](http://www.advokatenhjelperdeg.no)

## FREE LEGAL AID

Free legal aid (*fri rettshjelp*) is a scheme established to help people with low incomes. Free legal aid consists, first of all, of free legal advice. This means that your expenses for seeking counsel from a lawyer are covered wholly or partly. Free legal aid also covers free conduct of a case. This means that you can have your lawyer's expenses and court costs covered in connection with a law suit, if you have a low income.

For further information concerning the free legal aid scheme, you should contact the county governor's office in your county or a lawyer.

Information can be obtained from the Ministry of Children, Equality and Social Inclusion website. [www.regjeringen.no/bld](http://www.regjeringen.no/bld). See also [www.bufetat.no](http://www.bufetat.no).

## FREE LEGAL ADVICE

You can obtain free advice and counsel from law students by contacting:

Juss Buss, Arbinsgt. 7, 0253 Oslo, Tel. 22 84 29 00  
Juridisk Rådgivning for Kvinner (JURK), Arbinsgt. 7,  
0253 Oslo, Tel. 22 84 29 50  
Jussformidlingen, Sydneshaugen 10, 5007 Bergen,  
Tel. 55 58 96 00  
Juss-Hjelpe, Universitetet i Tromsø, Breivika senter,  
9037 Tromsø, Tel. 77 64 45 61

## RELEVANT ACTS

Only a very general summary has been provided in this brochure. You will find more detailed information in

Act No. 47 of 4 July 1991 relating to Marriage  
Act No. 7 of 8 April 1981 relating to Children and Parents  
Act No. 19 of 28 February 1997 relating to National Insurance  
Act No. 2 of 17 February 1989 relating to Advance Payment of  
Maintenance Contributions  
Act No. 4 of 8. March 2002 relating to Child Benefit

These acts can be obtained from [www.lovdاتا.no](http://www.lovdاتا.no)  
Copies of these Acts can be purchased at or ordered through a bookstore.

# INTRODUCTION

When the relationship between two people breaks down, a large number of questions and problems usually have to be solved.

This brochure focuses particularly on questions related to parental responsibility (*foreldreansvar*), where children are to live permanently and right of access (*samværsrett*). For questions such as these, there are no standard solutions that suit everyone. One solution may be the right one for some people, while another solution is better for others. We have tried to offer advice and guidance, but it is up to the individual parents to find the solution that is best for their children.

There are references in this brochure to the Act relating to Children and Family (the Children Act). An English translation of the Act can be obtained at, <http://www.regjeringen.no/en/doc/Laws/Acts/the-children-act.html?id=448389>

This brochure was first published in 1988. The brochure has since been revised several times, most recently in July 2010. The Ministry of Children, Equality and Social Inclusion has also published brochures entitled “Mediation for Parents”, “Separation and Divorce” and “Property Relations between Spouses”, “*Reisekostnader ved samvær*” [Travel costs in connection with access] (available in Norwegian only), “*Barnefordelingssaker der det er påstander om vold – Psykologfaglig informasjon til dommere, advokater og sakkyndige*” [Child custody cases involving allegations of violence – information for judges, lawyers and experts concerning psychological factors] (available in Norwegian only), all of which contain useful information for parents undergoing a separation or divorce. The brochures “Children when parents move apart” and “Haven’t I got a say?” concern children’s right to state their opinions in connection with the breakdown of a relationship. These brochures can be obtained from the Ministry of Children, Equality and Social Inclusion website, [www.regjeringen.no/bld](http://www.regjeringen.no/bld)

# CHILDREN'S NEED FOR ACCESS TO THEIR PARENTS

## CHILDREN'S RIGHT OF ACCESS

Under the Children Act, children have the right to have access to both parents, even when the parents are not living together. Parents are free to agree upon the kind of access arrangements they wish to have, based on what is best for the child. Children are entitled to state their opinions concerning the kind of access arrangements they want.

Children's need for access to their parents differs depending on their age. Parents may also live so far apart that it is impractical for them to agree on "ordinary right of access". An access agreement must take into account special factors such as seasonal work, shiftwork, difficult living conditions, etc.

## CHANGES IN ACCESS ARRANGEMENTS

As a rule, it is important for children, whatever their age, to have contact with both their mother and their father. The role and importance of the mother and the father may vary as the child grows older. This is also affected by the kind of relationship the child has with other children and adults. Because children's needs as regards their mother and father may change, it is a good idea to adjust the access agreement at regular intervals.

It is also an advantage for parents to have access arrangements that function as smoothly as possible. This kind of arrangement offers practical relief for the parent with whom the child lives.

Another aspect is the fact that children who do not know one of their parents often fantasise about their unknown mother or father. Such fantasies are often unrealistic and may be used against the parent that they do know.

When a family breaks up, the children will always be affected. The collapse of family relationships means change, and change can cause insecurity. It can be difficult, particularly where very young children are concerned, to explain that both their mother and their father still love them, and that the children will continue to stay in contact with both parents. Children often have

to see for themselves that these promises are kept before they can believe them. And they have to see for themselves that they will not lose the parent with whom they do not live. Children often require repeated assurances that it is not their fault that their parents no longer live together.

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## **MEDIATION**

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Mediators at family counselling offices and external mediators are responsible for helping the parents to reach an agreement on parental responsibility, on where the child is to reside permanently and on access. During the mediation, priority is to be given to the arrangement that is in the best interests of the child or children. Married and cohabiting parents with children under 16 years of age who move apart and parents who are considering instituting legal proceedings can be provided with up to seven hours of free mediation. They are obliged to attend one hour of mediation. All mediators are trained in mediation and have a sound knowledge of adult's and children's reactions during and following the breakdown of a relationship. It is generally in the best interests of the child that parents reach sound and durable agreements concerning the children at an early stage. This will more rapidly provide the child with peace and predictability in their daily lives, while preventing and easing conflicts between the parents. In order to obtain more comprehensive assistance, the parents can also make use of the other low-threshold services of the family counselling offices, which include help in improving parental cooperation, therapy and various types of discussion group.

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## **RELATIONSHIP WITH GRANDPARENTS**

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When parents split up, some children lose touch with one set of grandparents. If the children were close to their grandparents before the family broke up, this will be a painful loss. Children often regard their grandparents as adults who have plenty of time and who pass on traditions.

Regardless of how old children are when their parents break up, it helps the children if their parents manage to cooperate. It is important to remember that, even if a marriage is dissolved, the couple remain parents. Parents will always have their children in common.

Below you will find some comments regarding the way children may react to the break-down of their parents' relationship. All

children are different. Parents may of course agree on arrangements different from those suggested in this brochure, as long as they agree that their solution is the one that is most suitable for them and their children. If you are in doubt as to whether the access agreement which you have chosen is the right one for all concerned, it may be useful to have a family counselling office, for instance to take a look at it.

## CHILDREN OF DIFFERENT AGES

### 0 – 1 YEAR OLD

Very young children, infants less than one year old, primarily need a close, secure relationship with a small number of familiar persons. Young children do not have a good memory. Many parents have no doubt experienced, especially when their child is around six months old, that their ordinarily secure, happy offspring turns away in screaming protest from his grandmother or grandfather, even if the grandparent recently visited the family. In terms of parental contact, this means that access one afternoon a week and every other weekend is not always the best arrangement, since the child forgets the parent from one visit to the next.

Children of that age occasionally also react to unfamiliar surroundings, particularly when it comes to sleeping in a strange bed. Spending time in another apartment during the day is usually less problematic, especially if the visits do not last so long that the child begins to fear that he or she will not be going home again. Building up a child's sense of security in a new place, particularly as far as overnight stays and longer visits are concerned, can therefore take some time. This is especially important in cases where the child has had little or no contact with the parent who has right of access. It helps considerably if the child can bring along a few familiar, much-loved objects, such as his teddy bear or favourite blanket.

For very young children, short but frequent visits, ideally perhaps several times a week, are often better than "ordinary right of access". And if the child does not know the person with whom he is to spend time, it might be best of all if the visits took place in the child's home to begin with. As the child gradually feels more secure, the visits can be longer, and possibly less frequent.

## **1 – 2 YEARS OLD**

Security is also extremely important for slightly older children, one-year-olds and two-year-olds. By then, moreover, they have reached the age when limits need to be set for them in earnest. They would like to make their own decisions, but of course there is a great deal they neither can nor should be allowed to decide. Parents might do well to remember that the act of deciding is often more important to children than what they are allowed to decide. Letting children decide whether they want to have blue or red mittens is quite all right, but not whether they should go outdoors or stay inside. Children may also be allowed to decide whether Daddy should read or sing to them at bedtime, but not whether it is time to go to bed.

Some limits are prohibitions that are necessary to protect the child's life or health. Others are less vital, yet nonetheless reasonable. For small children, it is easier if adults agree on what is allowed and what is not. It is often confusing if Mummy allows them to do something, while Daddy does not. It is also an advantage if mealtimes and bedtimes are relatively similar, regardless of which parent the child is staying with. Keeping to more or less the same routines and making visits as ordinary an occurrence as possible help make the child feel secure.

## **3 – 5 YEARS OLD**

Children who are a little older can more easily adjust to longer visits. Their memory is better and they may also find new places exciting if they know the person they are staying with. Children between the age of three and five are intrigued by the difference not only between girls and boys, but also between adult women and men. They begin to orient themselves towards their own adult role and need to know men and women well, in order to experience both the role they themselves are to play and the one they are not to play. Both girls and boys need to see and experience how men and women behave on a daily basis. Since this is also an age when children test their limits, it is easier if both parents set more or less the same limits.

Children between the age of three and five are often tormented by "fears". For instance, some are afraid of the dark or of kidnapppers or thieves, while others are terrified by water. At this age many children begin to watch TV, and some of them are frightened by what they see, sometimes even by children's pro-

grammes. Children are often afraid of things that adults would not dream of them fearing.

Having the same rules for what a child is allowed to watch is not always enough. It helps if both parents can discuss what frightens their child and how each of them tackles the problem. If one parent says “Don’t worry...” and the other says, “Watch out...” in the same situation, it’s not easy for a child to know what to believe.

It is also an advantage for children if their mother and father are in relative agreement as to what they can and should expect the children to manage to do. It is not easy if one parent virtually demands the impossible, while the other asks for nothing at all.

## **6 – 12 YEARS OLD**

Children over 7 years of age are entitled to give their opinion in personal matters, e.g. to state a preference as to which parent they wish to live with.

When children start school, school requirements and friends begin to play a greater role. Especially when a child reaches the age of 10–12, the time spent with the parent who has right of access can easily conflict with recreational interests, activities with friends or other important projects. While children are of school age and even more importantly, when they reach puberty, it is increasingly necessary, on the one hand, for parents to take account of the child’s wishes and other commitments he may have. On the other hand, it is important that children learn to keep an agreement. Children are aware of the importance of rules, in games and in their dealings with their peers and adults. An agreement regarding access, drawn up in cooperation with the child himself, must be kept by everyone concerned, including the child. The adult, for his part, must be aware of how very disappointed a child may be if the adult does not keep the agreement. If, for some reason or another, it is impossible to keep the agreement, the adult has a responsibility to inform the child in good time, so that other arrangements can be made.

School-age children adjust easily to new places. For instance, many children enjoy living alternately with their mother and their father, as long as they can continue to attend the same school and stay in contact with their friends.

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## 13 – 18 YEARS OLD

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Many parents find that the really difficult problems related to access arise when their child is no longer a “child”, but a teenager. The opinions of their peers are also important. Many a parent has had to bow to the fact that their access agreement is not functioning as intended, and is constantly being changed. At this stage, parents can do little else but let the teenagers themselves define the agreement. However, it is important to emphasise to children that agreements are meant to be kept, including those with their mother or father.

## PARENTAL RESPONSIBILITY

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### VIOLENCE AGAINST CHILDREN

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Parental responsibility involves an obligation to care for the child. Parents must give their children love, safety and attention, and ensure that they receive necessary supervision and care. Child care also involves the important task of stimulating the child in its development, among other ways, through play and social contact. Parents are prohibited by law from using any form of violence (including light smacks and slaps) in connection with upbringing. Nor shall children be subjected to frightening or annoying behaviour or other inconsiderate conduct.

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### WHAT IS PARENTAL RESPONSIBILITY?

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The term “parental responsibility” (*foreldreansvar*) as used in the Children’s Act is different from the sense of responsibility parents have and feel for their children. The parental responsibility referred to in the Act is the right and obligation of parents to make decisions for their child in personal matters. Parents must exercise their parental responsibility on the basis of the child’s needs and interests.

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### PERSONAL MATTERS

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What the Act means by personal matters are issues such as the child’s upbringing, where the child is to live, which kind of school he should attend, and the like. If parents have joint parental responsibility (*felles foreldreansvar*), both of them must give their consent in order for the child to be able to join or resign from associations or religious communities, change name, be given up for adoption or marry before the age of 18. Parents with joint parental responsibility must also give their consent in order for children under 15 to be allowed to work.

## ***MOVING ABROAD***

If parents have joint parental responsibility, they must both agree to the child moving abroad. If one parent has sole parental responsibility, the other cannot object to the child moving out of the country. If there is a dispute between the parents concerning parental responsibility or where the child is to live permanently, the child may not move out of the country until the dispute has been decided.

## ***HOLIDAY ABROAD***

A parent who has joint or sole parental responsibility may take his child abroad on short trips without the consent of the other parent. If it is uncertain that the child will return, a court of law may prohibit the child from leaving the country.

A parent without parental responsibility must have the consent of the parent who has parental responsibility in order to be able to take their child to another country. However, a court may grant permission for the trip abroad if it is obvious that the child will return.

## ***THE CHILD'S PASSPORT***

If parents have joint parental responsibility, both of them must sign the application for a passport if the child is under 18 years of age. However, the police may issue a passport to the child with the consent of only one of the parents in cases when the parent has the right to take the child abroad under the provisions of the Children Act, even if the other parent does not consent to this.

## ***RELATIONSHIP WITH SCHOOLS***

Parents with joint parental responsibility are entitled to receive the same information from their child's day care institution, school, etc. Both parents may attend interviews with teachers, parents' meetings and the like. If one of the parents has sole parental responsibility, the other parent may not demand to be summoned to, or take part in, ordinary interviews with teachers. You can read more about the right to information on page 24.

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## **HOW LONG DOES PARENTAL RESPONSIBILITY LAST?**

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As the child grows older, he has the right to make more decisions for himself. The parents' right to decide on behalf of the child is reduced correspondingly. A child is of full age and legal capacity when he reaches the age of 18, and can then make all his own decisions. From the age of 15, the child is entitled to choose his own education. At that age, the child can also join or resign from associations and religious communities as he chooses.

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## **THE CHILD'S RIGHT TO EXPRESS HIS OPINION**

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As their child grows older and more mature, parents must listen to what the child has to say before making any decision concerning the child's personal matters. Parents and other persons with whom the child has contact must attach importance to the child's opinion. Children who have reached the age of 7 are allowed to state their opinion as regards which parent they wish to live with after their parents split up. There is nothing to prevent younger children, too, from stating their opinions. When the child is over 12 years of age, considerable importance shall be attached to the child's opinions. This does not mean that the child can decide. It is the parents who decide where the child is to live.

Just as important as the child's right to state where he wants to live is the right to not have to choose between his parents. If the child does not wish to state which parent he wants to live with, no pressure must be placed on the child to do so.

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## **PARENTAL RESPONSIBILITY AND THE CHILD'S FINANCIAL SITUATION**

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The child's guardian (*verge*) makes decisions regarding any money or other assets the child may have. As a rule, the persons who have parental responsibility are the child's guardian. The guardian may not make decisions regarding money the child has personally earned after reaching the age of 15.

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## **WHO HAS PARENTAL RESPONSIBILITY?**

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Parents who are married have joint parental responsibility for the children that they have together. If the parents marry after the child is born, they also have joint parental responsibility.

## ***COHABITING PARENTS***

There are new rules for this that apply to children born after 1 January 2006. Parents who live together when paternity is established shall have joint parental responsibility for common children. Parents who live together may not make an agreement that one of them shall have sole parental responsibility. Parents who are registered at the same address or who have submitted a declaration of cohabitation to the National Population Register shall be regarded as cohabitants. If the parents are registered at the same address, they shall automatically have joint parental responsibility. If they are not registered at the same address, but nevertheless live together, they may submit a declaration of cohabitation to the National Population Register. They may also submit such a declaration at a later date. Parents may also submit a declaration of cohabitation to the National Population Register and be given joint parental responsibility for children born before 1 January 2006.

Prior to 1 January 2006, unmarried parents were required to notify the National Population Register if they wished to have joint parental responsibility. If no such notification was made, the mother has sole parental responsibility.

## ***PARENTS WHO DO NOT LIVE TOGETHER***

In the case of parents who are not living together when paternity is established, the mother has sole parental responsibility. The parents may agree that they shall have joint parental responsibility. Such an agreement can be made on the form for acknowledgment of paternity (both the mother and the father must sign the agreement) or a separate agreement concerning this may be submitted to the National Population Register. The child's mother may have good reasons for wishing to have sole parental responsibility. However, it is not sufficient that the mother wishes to have sole parental responsibility. Court judgments show that weighty grounds are required to prevent the father from sharing parental responsibility if he takes the case to court. Parents who have children without living together, but who later move together, do not automatically acquire parental responsibility by notifying change of address. They must either submit a separate agreement concerning joint parental responsibility or a declaration of cohabitation to the National Population Register.

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## **NOTIFYING THE NATIONAL POPULATION REGISTER**

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When parents who have joint parental responsibility split up, they will continue to have joint parental responsibility unless they establish an agreement stating that the father or the mother is to have sole parental responsibility. The agreement must be reported to the National Population Register in order to be valid. If they do not agree on the question of parental responsibility, they may ask the court to decide the issue.

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## **PARENTAL RESPONSIBILITY AFTER THE DEATH OF A PARENT**

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If the parents have joint parental responsibility and one of them dies, the surviving parent has sole parental responsibility. If the child lives with both parents, but only the mother has parental responsibility and she dies, parental responsibility will be transferred to the father.

If another person wishes to take over parental responsibility for the child after one of the parents dies, he may bring an action before a court of law within six months of the parent's death. While the court must attach importance to biological ties, what is best for the child must be the decisive factor.

If the parents have stated in writing whom they wish to have parental responsibility in the event of their death, the court should also attach importance to this. More information is provided in the brochure "*Hvem får ansvaret for barnet mitt hvis jeg dør?*" [Who will be responsible for my child if I die], issued by the Ministry of Children, Equality and Social Inclusion. This brochure can be obtained from [www.regjeringen.no/bld](http://www.regjeringen.no/bld), and is only available in Norwegian.

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## **WHERE THE CHILD IS TO LIVE PERMANENTLY**

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The parent with whom the child lives permanently has somewhat greater authority to decide on matters concerning the overall well-being of the child. The other parent may not, for example, object to the parent with whom the child lives deciding whether the child is to attend a day care institution or be cared for by a professional child-minder. The parent with whom the child lives permanently may move to another part of the country with the child. The other parent is entitled to state his or her opinion before they move, but cannot prevent them from moving.

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## **DIVIDED RESIDENCE**

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Parents may choose that their child is to reside permanently with both of them (*delt bosted*). Whether or not this is a good

arrangement for the child will depend on the child's age, whether the parents live near each other and whether the parents are able to cooperate. If the parents agree that the child is to reside permanently with both of them, they must nevertheless agree that the child is to be registered in the National Population Register as residing permanently with one of the parents. This kind of arrangement will have an effect on the way the child maintenance contribution (*barnebidrag*) is determined, and on the right to a benefit for single-parent families (*stønad til enslig forsørger*) and on child benefit (*barnetrygd*). Further information can be obtained from local offices of the Norwegian Labour and Welfare Service (NAV).

The parent with whom the child lives permanently must also have parental responsibility. Therefore, if parents agree that their child is to live with each of them for half the time, they must also agree to have joint parental responsibility.

## CHILD MAINTENANCE

Both parents have a duty to provide for their child's support according to their ability. If the parents do not live together, the parent with whom the child does not live must pay child maintenance. The Children Act provides that the parents are obliged to bear the costs of maintaining and educating their children. The parent who does not live with the child shall pay a fixed monthly amount (child maintenance). The parents may agree on the maintenance amount. If they fail to agree, they may request the Norwegian Labour and Welfare Service (NAV) to fix the maintenance amount. The Labour and Welfare Service may also order coverage of specific non-recurring expenses. You can obtain more information on calculation of child maintenance at [www.nav.no](http://www.nav.no)

## ADVANCE PAYMENT OF CHILD MAINTENANCE

The person entitled to maintenance may apply for advance payment of the contribution (*forskuttering av barnebidrag*) by the public authorities. The advance on child maintenance is means tested on the basis of the recipient's income. According to this, the advance may be provided at 0, 50, 75 or 100% of the full rate. Information concerning the income limits that apply can be obtained from local offices of the Norwegian Labour and Welfare Service (NAV).

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**INDEX REGULATION**

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The child maintenance contribution is indexed on 1 July each year, unless otherwise agreed or determined.

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**DECISION BY A COURT**

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If parents do not agree on parental responsibility, where their child is to live permanently or right of access, they may let these issues be decided by a court of law. Before the matter can be brought before the court, the parents must attend mediation. Court procedure has the best interests of the child as the overriding consideration, and provides for helping the parents to reach agreed solutions. In mediating between the parents, the judge may be assisted by an expert, and arrangements may be decided for the parents to try out for a given period. When a case is not appropriate for mediation or the parents do not wish this, it shall be dealt with in the traditional manner with a court hearing and judgment.

If judgment is passed in a case, the court must as a general rule decide that the child is to live permanently with one of the parents.

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**THE POWER OF THE COURT TO RULE THAT RESIDENCE SHOULD BE DIVIDED BETWEEN THE PARENTS**

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From 1 July 2010, the courts have the power, when there are special reasons for so doing, to rule that residence should be divided between the parents against the will of one or both of the parents. This is an exception with narrow limitations. In order that the judge shall be able to impose divided residence, the parents must live close to each other, the child must be able to maintain contact with friends and recreational activities from both homes, the parents must succeed in cooperating well on care of the child and the child itself must be satisfied with such an arrangement. It does not constitute sufficient grounds that the parents are deemed to be equally good carers for the child or that the child is equally attached to both parents. The judge is to make a decision on the basis of what is best for the child, and not opt for a less satisfactory solution out of regard for a balance of fairness between the parents. The requirement that the court must have special reasons for imposing divided residence, implies that the judge must be convinced that divided residence will be in the best interests of the child. If there is doubt that divided residence will be in the best interests of the child, the judge must impose permanent residence with the one

parent and access to the other. For children under 7 years of age, it will not in principle be appropriate to impose divided residence since children in this age group are assumed to be more vulnerable and to have a greater need for stability. The court may also fix an access arrangement for up to half the time if it finds that this would be in the best interests of the child.

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## **THE CHILD'S BEST INTEREST**

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The Children Act states that a decision regarding parental responsibility, where a child is to live permanently and right of access must always be governed by what would be best for the child. It is prescribed by law that weight shall be given to the child's opinion when considering such matters. The law also specifically states that regard shall be paid to ensuring that the child is not subjected to violence or in any other way treated so as to harm or endanger his or her mental or physical health.

When considering what is best for the child in decisions concerning permanent residence, legal practice ascribes particular importance to certain factors. These have traditionally been factors such as the child's emotional attachment and the parents' personal qualities, the regard for stability, the risk associated with a change of environment, the regard for the best possible total parental contact and the regard for avoiding separation of siblings.

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## **MEDIATION**

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Before a case concerning parental responsibility, where a child is to live permanently or right of access may be brought before the County Governor or a court of law, the parents must attend a process of mediation (*mekling*). The purpose of mediation is to help the parents reach an agreement regarding their children as an alternative to court proceedings. The mediator's role is to help the parents to reach agreement in cases where this is deemed possible. The advantage of the parents reaching agreement without a court hearing is that the family can more rapidly resolve the residence and access arrangements, and avoid a more lengthy legal process. The parents also avoid having to pay lawyers' fees. The Bufetat can also provide information about approved mediators. You can read more about mediation in the brochure "Mediation for parents".

Parents may, if they so agree, submit their agreement to the County Governor and request that it be made enforceable. The County Governor may approve the parents' agreement so that it can be enforced should one of them later so wish. Just as when a legally enforceable judgment or court settlement has been made, this entails that a parent may request the court to implement enforcement if the enforceable agreement is not fulfilled. Coercive measures may include fetching the child or imposing a coercive fine. In the case of failure to observe access rights, a coercive fine may be imposed. For further information on enforcement of access, see page 23.

Even if an administrative decision has been made or judgment pronounced concerning parental responsibility, where a child is to live permanently or right of access, the parents may agree on a different solution. Both parents must be in agreement about this, and the agreement should be in writing.

## **RIGHT OF ACCESS**

The child has a right to access (*samværsrett*) to both parents, even if they live apart. Both parents are responsible for ensuring that this right is respected. The parents must reach an agreement as to how the right of access is to be carried out in practice.

The child has a right to the care and attention of the parent with whom he is spending time. The parent who is with the child may make decisions related to care of the child while they are together.

The law provides that a child has a right of access to both parents even when the parents have not lived together after the child was born. However, this right of access is not automatic. The parents must therefore enter into an agreement as to how access is to be carried out in practice.

The parents themselves agree on the extent of their access on the basis of what they believe to be best for their children. In

agreements or decisions concerning access, pursuant to the Children Act, importance shall be attached among other things to the child's opinion, regard for the best possible contact between the child and his or her parents, the age of the child, the extent of the child's attachment to the local community, the travelling distance between the parents and regard for the child in other respects.

Access shall not be ruled if it is not in the best interests of the child. Clarifications have been included in the Act in order to ensure that allegations of violence and abuse are taken seriously.

### «ORDINARY ACCESS»

Each agreement shall be based on an assessment of the needs of the specific child in question, and not on a standardised arrangement. Parents often agree on "ordinary access" (*vanlig samvær*) without really considering whether this is the best solution for the child or for themselves.

"Ordinary access" entitles a parent to spend one afternoon a week, every other weekend, a total of three weeks of the summer holiday and alternate autumn, Christmas, winter and Easter holidays with the child. Even if parents agree on "ordinary access", it is often necessary to make a more detailed agreement, specifying when the child is to be fetched and brought back, during which weeks of the summer holiday the access shall take place, how long the holiday access periods shall be, with which parent the child is to spend the various holidays with first, etc. For some parents, weekend access means that the child is fetched at the day care institution on Friday afternoon and brought to the day care institution on Monday morning. For other parents, weekend access means from Saturday to Sunday. The parents themselves must come to an agreement that suits their children and their family situation. It may be useful to make the agreement as detailed as possible. A written agreement is often more carefully thought out than an oral one, and it is easier to avoid arguments about what was actually agreed.

If parents cannot reach an agreement concerning access, a court of law can decide the question. Decisions regarding right of access must be governed by what is best for the child. If access is not in the best interests of the child, the court must decide that there shall be no access.

## **CONTENTS OF AN ACCESS AGREEMENT**

Below is a list of questions that you should think about carefully before drawing up an agreement on right of access (*samværsavtale*). It is important that you think about what would be best for your own child. An access agreement should cover:

- access on weekdays and at weekends
- school holidays
- other public holidays
- birthdays and other special occasions
- who is to fetch and bring the child?
- how right of access should be defined if one of the parents moves to another part of the country?
- who is to pay for travel expenses in connection with right of access?

## **WHO IS TO FETCH AND BRING THE CHILD?**

It is often practical to fetch your child at a place other than where he or she lives, such as at the day care institution, school or day-care centre for schoolchildren. If you decide on this arrangement, it is important that you tell the day care institution, school, etc. who is to fetch the child. If the child is to be fetched at places other than at home, this should be stated in the agreement.

## **HOLIDAY**

For many people, problems arise in connection with access during Christmas and Easter holidays. You should therefore agree on which days at Christmas and Easter the child is to spend with each parent. It may be wise to agree specially on arrangements for access during the first Christmas and Easter. You must also think about and decide how access is to be organised during other school and public holidays.

## **VERY YOUNG CHILDREN**

When very young children are involved, it is important to consider whether the parent with right of access should spend time with the child where the child lives or in another place. It may be agreed that the parent with whom the child lives must be present when the other parent is with the child.

## **WHEN THE CHILD IS SICK**

Parents should agree on what is to be done about access if their child is sick. For instance, they may decide that access is to be postponed until later, or that the parent who is entitled to have access is to come to the child's home.

## **ACCESS COSTS**

It is usual that the parent who is spending time with the child covers the cost during this period of food, drink and health and sanitary articles as well as costs associated with play and recreation.

In addition, costs may accrue in association with the child's travel to and from the parent it is to spend time with. The parents may themselves agree on the most appropriate way of sharing the travel expenses associated with access in their specific situation. If the parties fail to agree otherwise, the travel expenses shall be shared between the parents in proportion to the size of their incomes. The costs to be shared are those associated with the child's travel as well as the travel expenses of one adult if the child is not able to travel alone. The parents' travel alone in connection with fetching and bringing the child to and from access is also included. When the access is to take place where the child lives, costs associated with travel to and from the child's place of residence are also included. The County Governor or the court may fix a different distribution of travel expenses if special grounds so indicate. For more information, see the brochure "Reisekostnader ved samvær" [Travel costs in connection with access] (available in Norwegian only).

## **WHEN THE PARENTS LIVE FAR APART**

If one of the parents lives in another part of the country, the parents must take this into account when they enter into agreement on right of access. A practical solution in such cases is to have the child visit the parent a little less often, but for a longer period of time. In these cases, it is particularly important to agree who is to pay for travel expenses. The parents must also consider whether the child can travel alone, or whether he or she needs to be accompanied.

If the parents do not come to an agreement, it may be helpful to ask the help of a third party in solving the problems. A family counselling office can provide assistance in solving problems related to access and similar matters.

## **TIME LIMIT FOR NOTIFICATION**

It may be wise to agree on a time limit for notification on occasions when access must be cancelled or postponed. It is best for all concerned to agree well in advance when access is to take place during the summer holidays.

## ***OBLIGATION TO NOTIFY CHANGE OF RESIDENCE***

If one of the parents wishes to move, the other parent is to be notified six weeks in advance of the move. This is in order that the parents shall have the time and opportunity prior to the move to discuss and consider what would be the best future care solution for the child. The obligation to notify applies both to the residential parent and the access parent. It applies in all cases where there is an oral or written agreement or decision concerning access even if the other parent does not share parental responsibility. The obligation to notify applies regardless of the distance of the move and regardless of the effect of the move on access.

It is the parent who wishes to move who is responsible for showing compliance with the obligation to notify. This should be done in writing. If a parent fails to fulfil the obligation to notify change of residence, no sanctions apply. However, it is important to be aware that failure to notify may have significance in any legal action concerning residence and access.

## ***ACCESS TO PERSONS OTHER THAN PARENTS***

Grandparents or other relatives who have a close relationship with the child can request right of access to the child. However, right of access for persons other than parents can only be granted when one or both of the parents are dead or when one of the parents has been denied right of access, on condition that the parent who has been denied access is not allowed to see the child. Such right of access must be specially determined in each particular case by a court. The decision must be governed by what is best for the child.

As long as the parents are alive, they may of course agree that the child is to have access to persons such as his grandparents, even if this is not covered by what is normally called right of access.

## ***NEW ACCESS ARRANGEMENTS MAY BE AGREED ON***

If the parents agree, they may change the access arrangements at any time. This also applies in cases where the question of access has been decided by the county governor or a court. Such an agreement should be made in writing.



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***WHEN THE RIGHT OF ACCESS DOES NOT FUNCTION SATISFACTORILY***

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Some parents experience problems when access arrangements are put into practice. This may be because the parents have not come to any special agreement regarding access or because the agreement is not detailed enough. In some cases, the parents find it so difficult to cooperate with one another that the child does not have access to the parent with whom he or she does not live.



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***FAMILY COUNSELLING OFFICES CAN HELP PARENTS TO COOPERATE***

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The family counselling offices provide assistance in order to improve parental cooperation for ex-partners and for parents who have children in common but have never lived together. For example, the parents can obtain assistance in dealing with communication difficulties or in discussing how matters of practical importance can be regulated in the agreement concerning the children.



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***REQUEST FOR A NEW DECISION***

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If the parent with whom the child lives prevents the other parent from exercising his or her right of access, the parent who has right of access may request that a new decision be made regarding who is to have parental responsibility or with whom the child is to live. The case may then be brought before the County Governor or a court of law.



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***ENFORCEMENT OF RIGHT OF ACCESS***

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The enforcement measure applied in the event of failure to comply with a judgment, court settlement or enforceable agreement is a coercive fine. The access parent may request the district court to decide a fixed coercive fine (stående tvangsbøt) to apply each time the right of access is not respected. The person with whom the child resides permanently is required to loyally and actively help in ensuring that the access takes place. The enforcement officer is to demand payment of the coercive fine when the rightholder so demands.

## THE RIGHT TO INFORMATION AND THE RIGHT TO BE HEARD

If parents have joint parental responsibility, both of them have an equal right to information about their child. The parents are only entitled to information about the child, not about the other parent.

Even if one of the parents does not share parental responsibility, he or she nevertheless has a right to information about the child. The right to information applies even if the parents have not lived together after the child was born.

### **RIGHT TO INFORMATION ABOUT THE CHILD**

If one of the parents has sole parental responsibility, he or she must give the other parent information about their child when asked to do so. A parent who does not share parental responsibility is also entitled to receive information about the child from day care institutions, schools, the health and social welfare authorities and the police. Information must not be provided if this might be to the detriment of the child. If the child is entitled to confidentiality concerning certain matters, no information must be given to either of the parents concerning such matters.

If a day care institution, a school, the health and social welfare authorities or the police do not wish to provide information concerning the child, an appeal may be made to the county governor.

In very special cases, the county governor may decide that the parent who does not have parental responsibility is to lose the right to receive information about the child. This might happen if the right to information is abused or if the parents have very serious conflicts.

### **THE RIGHT TO EXPRESS AN OPINION, BUT NOT TO DECIDE**

The parent with whom the child does not live permanently and who does not share parental responsibility has a right to express his/her opinion before the other parent makes a decision that will make it difficult or impossible to exercise the right of access. This might apply if one parent moves to another part

of the country or abroad. A change of residence must be notified (see page 22). It also applies to questions concerning adoption of the child. The parent who does not share parental responsibility only has a right to state his or her opinion. The parent who has sole parental responsibility decides the question. It may be useful, however, if the parent who has sole parental responsibility consults the other parent.

When a child over 16 years of age goes to see a doctor, the doctor has a duty to keep this information confidential. When the child is between the ages of 12 and 16, the doctor has the right to keep the information confidential, i.e. the doctor himself may decide whether he should inform the parents about the visit. This applies, for instance, when children consult a doctor with regard to birth control, etc.

An English translation of the Children Act:

<http://www.regjeringen.no/en/doc/Laws/Acts/the-children-act.html?id=448389>

For the addresses of the family counselling offices, see [www.bufetat.no](http://www.bufetat.no)

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