

New rules for the custody of children

The provisions relating to custody and access in the Children and Parents Code were amended on 1 July 2006. The purpose of these changes is to further emphasise the importance of consideration being given to the best interests of the child and to improve the child's right to be heard. Another purpose is to increase opportunities for parents to reach amicable solutions and to reduce the risk of protracted legal proceedings, which are detrimental to the child.

The best interests of the child

Previously, it has been clear from the rules in the Children and Parents Code that the best interests of the child are to be the primary consideration. The importance of the best interests of the child is now further underlined in that the Code stipulates explicitly that the best interests of the child must be the determining factor in all decisions concerning custody, residence and access.

The risk of the child coming to harm is emphasised in the Code. When assessing the best interests of the child, the social services committee and the court must pay particular attention to the risk of the child or another member of the family being exposed to abuse or of the child being unlawfully abducted, retained or otherwise coming to harm.

It has thus become more important for courts and social services committees that are to decide on issues involving custody, residence and access to adopt a distinct child perspective. An assessment of what are the best interests of the child must be based on knowledge and proven experience combined with what the child him/herself says. Account must be taken of all matters related to the child's physical and mental well-being and development. As far as possible, consideration must be given to both the short- and long-term effects on the child. It is also important that courts and social services committees give a clear account of the way in which they have reasoned in individual cases.

Information in support of decisions

Before a court makes a decision on a case involving

custody, residence or access, the social services committee must be given an opportunity to provide information. When these rapid reports are submitted to the court before an interim (temporary) decision is made, they often only contain information from the social services committee register. The new regulations mean that, as a principal rule, the social services committee must talk to the child and his/her parents before it submits a rapid report to the court. The intention is to make the information used by the court in support of its decision as comprehensive as possible and to give the child, at an early stage, the opportunity to be heard.

According to the new provisions, those responsible for conducting an investigation on custody, residence or access are required to submit a recommendation for a decision, unless this is inappropriate. A secrecy-override rule has been introduced for obtaining information from a social services committee in connection with undertaking an investigation on custody, residence or access. The reason for this is that a social services committee in another municipality may sometimes have information that is important to an investigation, such as when the parents live in different municipalities or when the child has recently moved to a new municipality.

Court proceedings

An explicit provision has been included in the Code to the effect that when assessing whether there should be joint custody, the court must take particular account of the parents' ability to cooperate on issues involving the child. It has thus become more important that parents are able to agree on issues that have a major bearing on the child where there is joint custody.

As before, a court is entitled to refuse to dissolve joint custody or to decide on such custody against the will of one of the parents, provided that joint custody is in the best interests of the child. The option, when joint custody has been granted, to rule on alternating residence against the will of one of the parents is also retained. The provision that the court must take particular account of the child's need for close and good contact with both parents remains unchanged.

A new obligation is introduced for the court to encourage, when appropriate, amicable solutions in cases that are not amenable to out-of-court settlement. In cases concerning custody, residence and access this means that the court is required to encourage the parents to reach an amicable solution that is compatible with the best interests of the child. The court is also empowered to instruct a mediator to try to get the parents to reach an amicable solution in the best interests of the child.

Access

A child who lives with one of his/her parents has the right to contact with the other parent. This normally means that the child meets the other parent for longer or shorter periods, such as every other weekend. Under the new provisions the court is empowered, in exceptional cases, to decide that access is to take place in another way than by the child meeting the parent. The social services committee will also be able to approve an agreement on such access. The aim is to enable the court to decide on access when, for some reason, the child cannot meet the other parent, such as when the parents live a considerable distance from each other or when the freedom of movement of one parent is restricted as a result of a prolonged stay in hospital or similar circumstances.

The social services committee is given the possibility of bringing a court action concerning the child's contacts with a parent. The child's need for contacts with people other than the parents is also highlighted in the Code. When assessing whether the committee should bring a court action, the social services committee should pay particular attention to the child's need for contact with his/

her maternal/paternal grandparents and other people close to the child.

Enforcement

The processing of enforcement decisions concerning custody, residence, access and similar issues is transferred from the administrative courts (county administrative courts, administrative courts of appeal and the Supreme Administrative Court) to the general courts (district courts, courts of appeal and the Supreme Court).

For this reason, the same court that decides on the point at issue concerning custody, residence or access will also in many cases subsequently decide on enforcement. One purpose of this reform is to streamline enforcement procedures and to make it easier to coordinate the processing of contentious cases. Another purpose is to reduce the number of protracted proceedings.

As a rule a decision on custody, residence or access must be enforced like any other decision. Where circumstances manifestly change, however, it must still be possible for the court to refuse to enforce a judgment, decision or agreement. The court is required to refuse enforcement if conditions are such that it is obvious that enforcement is incompatible with the best interests of the child. When assessing this, the court is to take account of the risk of the child coming to harm. Enforcement against the child's will continues to be prohibited, except when the court deems it necessary out of consideration to the best interests of the child. The twelve-year age limit previously existing in the Code has been removed. The possibility of adjusting conditions for access has been retained but further clarified.



REGERINGSKANSLIET

Ministry of Justice

SE-103 33 Stockholm

Additional copies of the fact sheet can be ordered from the Swedish Ministry of Justice, tel +46 8 405 10 00. Fax +46 8 20 27 34.
The Government's web site: <http://www.regeringen.se/>
The Ministry of Justice's e-mail address: registrator@justice.ministry.se

Fact sheet produced by the Ministry of Justice. Printing and Graphic Reproduction Centre, Stockholm, Sweden, September 2006. Article no. Ju 06.16e.