

# Family Law in Denmark: Overview

by Maryla Rytter Wróblewski, Nyborg & Rørdam

Country Q&A | Law stated as at 01-Aug-2023 | Denmark

---

A Q&A guide to family law in Denmark.

The Q&A gives a high-level overview of key issues including jurisdiction and conflict of law; pre- and post-nuptial agreements and matrimonial property regimes; divorce, nullity, and judicial separation; children; surrogacy and adoption; cohabitation; family dispute resolution; civil partnership/same-sex marriage; and controversial areas and reform.

---

## 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:

- Act on the Formation and Dissolution of Marriage (Marriage Act) (*Lov om ægteskabs indgåelse og opløsning*).
- Act on the Financial Relationship between Spouses (*Lov om ægtefællers økonomiske forhold*).
- Act on Division of Matrimonial Property (*Ægtefælleskifteloven*).
- Act on Registered Partnership (*Lov om registrerede parforhold*). From 1 October 1989 to 15 June 2012, when it was repealed, this law allowed same-sex couples to form a registered civil partnership. The Act continues to apply to registered partnerships entered into before 15 June 2012.

Since 14 June 2012, same-sex couples have been able to marry and can no longer establish registered partnerships (section 1, Marriage Act).

EU Regulation (EC) 4/2009 (EU Maintenance Regulation) applies in Denmark. However, Denmark has not ratified the Hague Protocol on the Law Applicable to Maintenance Obligations 2007. No other EU regulations dealing with family law are applicable.

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

- HCCH Convention on the Recognition of Divorces and Legal Separations 1970 (Divorce Convention).
- HCCH Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children 1958 (1958 Convention).
- HCCH Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations 1973 (Hague Maintenance Convention).

The primary source of law in relation to the welfare of children is the Act on Parental Responsibility (*Forældreansvarsloven*).

Cases dealing with children and maintenance can be dealt with by the Family Court or the Denmark family administrative authority, the Agency of Family Law (*Familieretshuset*). Depending on the facts and circumstances, a particular case may be dealt with by the agency directly or initiated there and then referred to the courts (see below, [Court System](#)). To facilitate this, administrative guidelines are available.

Denmark has ratified the existing international instruments about child abduction, namely the:

- HCCH Convention on the Civil Aspects of International Child Abduction 1980 (Hague Child Abduction Convention).
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children 1980.

Denmark has also ratified the HCCH Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children 1996 (Child Protection Convention).

## Court System

Since 1 April 2019, the following judicial system has been in force for family disputes, consisting of:

- **The Agency of Family Law** (*Familieretshuset*). This is an administrative authority. All disputes regarding divorce, custody and contact arrangements, child support and spousal maintenance must commence with an application to the Agency of Family Law. In some

cases, the Agency of Family Law can make decisions in the first instance while in other cases they prepare the case which is then referred to the Family Court for decision making.

- **The Family Court** (*Familieretten*). Disputes decided by the Agency of Family Law can be appealed to the Family Court. The Agency of Family Law can also refer cases to the Family Court for a determination. In these cases, the Family Court makes a decision as the court of first instance. These decisions can be appealed to the High Court.

Referral directly to the Family Court may be necessary where the Agency of Family Law finds that a dispute regarding children is complex (for example, where there is a high level of conflict between the parties or where the decision to be made will have drastic consequences).

Disputes relating to asset division and compensation are dealt with by the Probate Court (*Skifteretten*).

## Jurisdiction

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

## Divorce

Issues of property division and issues of children are not dealt with in a divorce case, but in separate processes. Generally, the Danish authorities have jurisdiction in relation to divorce on the following grounds:

- Where the respondent has their domicile in Denmark.
- Where the petitioner has their domicile in Denmark and has had this Danish domicile for the past two years or for a longer period previously.
- Where the petitioner is a Danish subject and it is established that because of this citizenship they cannot file for divorce where they reside.
- Where the petitioner and the respondent spouse are both Danish subjects and the respondent does not oppose the divorce being handled in Denmark.
- Where the petitioner and respondent spouse have obtained a legal separation from the Danish authorities within the past five years.

(Section 448f, Danish Administration of Justice Act (*Retsplejeloven*)).

For Nordic subjects (nationals of other Scandinavian countries and Iceland), a Nordic convention (*Den Nordiske Ægteskabskonvention*) applies and sets up jurisdictional grounds identical to the grounds found in Regulation (EC) 2201/2003 (Brussels II Regulation).

## Same-Sex Spouses and Civil Partners

Same-sex couples can marry and divorce on the same terms as different-sex couples (section 1, Marriage Act).

## Property

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

- If the petitioner or the respondent has their residence in Denmark.
- If either the petitioner or the respondent has an affiliation with Denmark, the parties can agree on Danish jurisdiction when the dispute arises.

The court has 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 Child Protection Convention for signatory countries. Jurisdiction is based on grounds mostly relating to the habitual residence of the child (Articles 5 to 14, Child Protection Convention). Within the Convention, a court in one state can 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).

For other countries, section 448g of the Administration of Justice Act governs the jurisdiction for cases relating to children in similar way to the Child Protection Convention. The following jurisdictional grounds are accepted:

- Where the child has their 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 outside Denmark has not asked for the child's return within that one year, or unless that parent has asked for the child to be returned but the application has been rejected.
- Where the child is wrongfully removed or retained in another country and the child had their 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 the child's location; and

- that parent has not asked for the child's return within one year and the child has now adjusted to that new country.
- Where the child is exiled from their home country due to disturbances and the child is present in Denmark.
- Where the child is present in Denmark and the child's habitual residence is unknown. As 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.
- Where 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, Nationality and Habitual Residence

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

In Danish law texts, there is no distinction between simple residence, habitual residence or domicile. Regardless of which concept is used, the law only refers to "residence". For this reason, it is necessary to consult preparatory documents or case law to find out whether the specific use of the term "residence" in a particular act refers to the concept of simple residence, habitual residence or domicile.

However, case law so far 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 or children.

In Denmark, all people must register at a central register where they live. This applies regardless of the nationality of the person. When a person moves, they must change the registration to the new address within a certain time limit. If the registration is not made within the time limit, the person can be ordered to pay a fine. The obligation to register means that the registration is often taken as important evidence when proof is needed as to where a person has their 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, the conclusion often is that a person has their simple residence in Denmark if they are registered here, because the concept of 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 who keep their Danish residence). A person can have more than one residence in different countries at the same time.

Habitual residence is generally used in Danish family law in relation to children. In relation to applications for return under the Hague Child Abduction Convention, there are two leading relevant judgments:

- Supreme Court 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.
- Supreme Court 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 period of time. The mother disagreed. The Supreme Court ruled that the children were not to be returned as their habitual residences had changed, despite the fact that the parents did not have a common understanding of the purpose and the intended duration of the stay in Denmark. 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 affiliation to the present and previous place of residence.

To reach 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 had been 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 their domicile where they reside with the intention of staying there. If a person changes their residence, but only with the intention of staying there for a limited period, 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. Consequently, 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 stay abroad for more than two years might indicate 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 first commenced has priority to deal with the proceedings and any proceedings started afterwards are halted. This is applied as a general principle, but in some areas (such as cases about maintenance) the Maintenance Regulation forms the basis for dealing with jurisdiction. In cases of separation or divorce, a reference to Article 12 of the Divorce Convention about the application of the principle of *lis pendens* is often included.

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 taken into account when deciding whether to apply *lis pendens*, which are:

- Whether the judgment from the foreign jurisdiction can be recognised in Denmark.
- Whether there is identity between the case in Denmark and the foreign case.

## Anti-Suit Injunctions

It is not possible to apply for an anti-suit injunction in Denmark.

## Applicable Law

5. Are foreign nationals treated differently on divorce?

As a general rule, the Danish courts will apply Danish law when making decisions in relation to divorce and children. However, the property regime can be determined by foreign law and in that case foreign law will be applied by the Danish courts (sections 63 to 65, Act on Financial Relationship between Spouses).

Under Danish law, the spouses can 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 rules will apply. In that case, 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, the law of the state where they have their first communal residence as spouses will be applied. If no communal residence is established, the law of the state where they are both citizens will apply. If they are not citizens of the same state, the law of the state to which they have their closest affiliation will apply.

Regardless of what the default regime is, the law stipulates that after five years of communal residence in Denmark, the property regime shifts to Danish law. However, the law does not specify whether this means that all assets will be subject to Danish law regardless of when they were acquired or if this will only take effect from the moment the five years have passed.

## Service of Proceedings

6. What are the requirements for service of divorce, financial and children proceedings in your jurisdiction?

Denmark has ratified HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention). However, Regulation (EC) 1393/2007 (Service of Documents Regulation) is not applicable in Denmark.

In Denmark, the courts are responsible for administering and carrying out service. By law, almost all inhabitants in Denmark are required to have a digital mailbox (*e-Boks*). Therefore, the most common method is for digital service to be sent to a person's digital mailbox. If performed in this way, service is first performed when the recipient has opened, moved or deleted the digital document. If the recipient does not open the document within a certain period another method must be used. There are a range of other methods including:



- Service by letter or telephone.
- Personal service.
- Service carried out by the police.

If service is performed by letter, it is not enough for the document to be delivered to the recipient's letter box. The recipient is required to sign a certificate confirming that they have received the document.

Special requirements apply if service is carried out by telephone, by a person or by the police.

## **Pre- and Post-nuptial Agreements and Matrimonial Property Regimes**

### **Validity of Pre- and Post-Nuptial Agreements**

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

Pre-nuptial and post-nuptial agreements are legally binding in Denmark if they meet the requirements stipulated by law. To be valid, the agreement must be:

- In writing.
- Signed by both spouses.
- Submitted to the court for registration.

In Denmark, it is possible for the spouses to:

- Contract using a pre- or post-nuptial agreement for the purpose of establishing their property regime.
- Make agreements stipulating how their pension rights will be divided on divorce (which are not divided under the default regime as a general rule).
- Agree for their property regime to be governed by foreign law.

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 more vulnerable spouse than the law does.

There is case law challenging the validity of pre- and post-nuptial agreements based on the principles of contract law. So far, the courts have been reluctant to declare nuptial agreements not to be binding (for example, the courts have not made it a general requirement for the parties to have obtained independent legal advice or a requirement for full disclosure to have been made).

However, if the agreement is made as a post-nuptial agreement at a time when one or both spouses is/are aware that there is a real risk that the marriage is breaking down, the courts tend to demand more proof that the spouse giving up property rights under the agreement understands the consequences of the agreement.

8. Do matrimonial regimes exist in your jurisdiction and is there a default matrimonial property regime?

A matrimonial property regime exists in Denmark governed by the Act on Financial Relationship between Spouses.

### **Default Regime**

The default property regime is a deferred community property regime. This means that, during the marriage, each spouse has separate control and liability of their property. However, 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.

### **Procedure**

The starting point in Danish law is that all property is community property, regardless of whether the asset was acquired before or after the marriage. However, pension rights are handled 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 their assets, 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 will, where the testator has specified that the inheritance is the separate property of the beneficiary.

9. How are foreign separation of property agreements and pre-nuptial and post-nuptial agreements treated by the courts in your jurisdiction?

Agreements stipulating a property regime are generally upheld if they comply with the formal requirements of the state/jurisdiction in which they were entered into.

Agreements on spousal maintenance and compensation are not accepted.

## **Divorce, Nullity and Judicial Separation**

### **Recognition of Foreign Marriages/Divorces**

10. Are foreign marriages/divorces/civil partnerships recognised in your jurisdiction?

### **Marriages**

Danish law recognises a marriage entered into abroad if it complies with the formalities of the state/jurisdiction in which it was entered into. This includes marriages between partners of the opposite sex and same-sex partners.

Consequently, if a marriage complies with the essentials of a valid marriage in the country in question, it is usually recognised in Denmark. This also includes religious marriages, even if the equivalent Danish religious authority does not have the right to perform wedding ceremonies in Denmark. Such recognition also includes the recognition of same-sex marriages, provided same-sex marriages have the same legal effects in the jurisdiction where the marriage ceremony was performed as opposite-sex marriages.

However, Denmark will not recognise a foreign marriage if it was conducted under circumstances that are contrary to Danish public policy.

The following two conditions apply to foreign marriages as a minimum:

- The spouses must both be at least 18 years old when they marry. This condition does not apply for EU/EEA citizens and their spouses.
- The spouses must both be present when the marriage ceremony is performed.

When a person is residing in Denmark, that person can register their foreign marriage with Danish authorities. If there are doubts as to the validity of the foreign marriage, the Division of Family Affairs at the National Social Appeals Board can be asked for advice or 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 the Hague Divorce Convention and also recognises divorces granted abroad in many other circumstances.

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

## **Civil Partnerships**

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

## **Divorce**

11. What are the grounds for divorce?

## **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.
- Physical violence or psychological abuse against the spouse or their children, or sexual assault against the spouse or their children or other 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.

The rules apply equally to same-sex marriages and civil partnerships.

## **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 granted 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 begin to cohabit after a judicial separation (but before a divorce), the separation terminates and the parties continue their marriage.

12. What is the procedure and timeline for divorce?

## **Divorce**

All applications for divorce must be sent to the Agency of Family Law.

A divorce is normally granted quickly if the spouses agree to divorce and agree on the following two terms:

- Whether one spouse is entitled to spousal maintenance (and for how long).
- Which spouse has the right to continue to rent a jointly rented home (if applicable).

In the absence of an agreement regarding the terms, a decision must be made by the Family Court. Matters such as division of property, children and child support do not need to be clarified before a divorce can be granted.

If the spouses do not agree to the divorce, a spouse is still entitled to judicial separation (see below, *Judicial Separation*).

## Nullity

Given the range of possibilities for divorce (see above, *Divorce*), the rules on nullity are not used in practice.

## Judicial Separation

All applications for judicial separation must be sent to the Agency of Family Law.

To obtain a judicial separation, the parties must also agree on the two terms stipulated above (see above, *Divorce*).

## Religious Marriage and Divorce

13. Are customary and religious marriages and divorces recognised in your jurisdiction?

In Denmark, a civil marriage ceremony must be conducted by an authorised person (*section 18, Marriage Act*).

Consequently, a marriage can legally be entered into if the marriage ceremony is conducted by a recognised religious organisation. A marriage cannot be entered into based on custom.

If a religious marriage entered into abroad complies with the formalities of the jurisdiction in which it was entered into, Denmark will, as a rule, recognise the marriage. There are no reported examples of recognition of customary marriages. For the conditions for recognition, see *Question 10, Marriages*.

Religious organisations do not have the authority to perform divorces in Denmark. Applications for divorce must be sent to the Agency of Family Law. However, Denmark is a party to the HCCH Convention on the Recognition of Divorces and Legal Separations (Hague Divorce Convention) and also recognises divorces ordered abroad in many other circumstances. Therefore, if a religious divorce complies with the formalities of the country in which it carried out in, Denmark may recognise it.

There are no reported examples of recognition of customary divorces. However, depending on the circumstances, recognition of such a marriage cannot be ruled out.

## Finances/Division of Assets

14. 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 in relation to the period for which spousal maintenance must be paid, and only if such an order is applied for. Orders for the amount of the obligation are made by the Agency of Family Law, also on application.

The power to allocate property on the breakdown of marriage lies with the Probate Court. The Probate Court is competent to both:

- Divide marital property.
- Decide whether compensation (a lump sum payment) should be paid if the spouses have separate property.

Trusts are generally not recognised as a legal structure in Denmark, so in the view of the Danish authorities an asset held in trust either belongs to the person that set up the trust or to the beneficiary. When dividing marital property and ordering compensation, only assets belonging to the person in question are taken into account.

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

Two types of lump sum compensation are available on divorce, as follows:

- For the spouse who during a long marriage has contributed directly or indirectly to the other spouse building up their 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 governing law regarding this type of compensation is Danish law).

The relevant factors in the deciding on this type of compensation include the:

- duration of the marriage;
- the spouses' income and financial circumstances; and

- pensions.

16. 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. For a description of the default regime, see [Question 8](#).

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 was that an asset must be either community property or separate property and could not be partly one and partly the other. As a consequence, if the asset was deemed community property, the spouse who also invested separate property money into the same asset would have to raise a claim for "compensation".

However, this position was changed in 2018 by a new law (Act on the Financial Relationship between Spouses, see [Question 1](#)). From 1 January 2018, it has been possible for an asset to be held partly as separate property and partly as community property, if it is acquired using expenditure/assets from both property types.

If the "combination" is a result of a subsequent investment, however (for example, separate property money in a community property asset), the asset continues to be part of the community of property and the investment must be compensated through a lump sum claim.

## **Finances/Spousal Maintenance (Alimony)**

17. How does ongoing spousal maintenance operate following marital breakdown? Is maintenance awarded for a fixed term or on an open-ended basis? Is there a set formula or do judges have discretion over quantum and term?

## **Spousal Maintenance**



The right to spousal maintenance after the breakdown of a marriage and the duration of that obligation must be decided on and agreed. If the parties reach an agreement, as long as the agreement is in accordance with case law, no formal approval is necessary.

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 duration of a possible spousal maintenance right/obligation (see [Question 12](#)).

Orders for the amount of maintenance are made by the Agency of Family Law.

## **Basis for Award**

The court makes a decision on the duration of the right to spousal maintenance, where the length of the marriage is the main benchmark. There is no formula for this award which is based on various factors.

A fixed-term award can be made for a maximum duration of ten years. As regards to the duration of such obligations, case law generally applies the following:

- Short obligations of up to five years (in practice usually for one, two or three years).
- Longer-term obligations of eight or ten years.

The court can also order maintenance to be paid for the joint lives of the parties. However, such obligations are only ordered under special circumstances and where the marriage has lasted more than 20 years (although in current practice the requirement is closer to 25 years).

The court cannot award maintenance on an open-ended basis.

## **Fixed Formula or Court Discretion**

The Agency of Family Law has discretion over the amount of spousal maintenance, for the purposes of which various considerations must be taken into account.

There is a formula for calculating the amount of spousal maintenance. The standard method for calculating maintenance is based on one-fifth of the difference of the net income of the payer and the payee. However, this is subject to an income ceiling of the payee being set at between DKK320,000 and DKK360,000 per year (dependent on the income of the payer). If the income of the payee (including the maintenance calculated under the standard formula) 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 where the payer owns the shares is included.

Not all trusts are recognised under Danish law as legal entities. For this reason, 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](#).

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

Short maintenance obligations are fairly common but ordering long obligations is rare. This is because maintenance obligations are only set up if the weaker spouse has no ability to create an income of their own and cannot be expected to achieve an income in the period when the maintenance is to be paid.

19. What is the court's current position on maintenance on marital breakdown?

The criteria to be considered when deciding maintenance are:

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

In recent years, a further requirement has been developed in case law, 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 may be as a result of childcare commitments or because they have followed their spouse abroad for work.

If one party is working part-time and can provide for themselves, then it is unlikely that they will be able to successfully claim maintenance. The mere fact that the weaker party cannot support themselves at the same standard that the parties had enjoyed during the marriage does not give grounds for maintenance.

## Finances/Child Support

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

The rules regarding child maintenance apply equally to all children, irrespective of whether the child is born within a marriage or whether the child's parents have never married.

A parent can only raise a claim for ongoing child support. No capital claims are available to support children.

21. On what basis is child maintenance calculated?

The assessment of the child maintenance quantum depends on the amount of time that the child spends with the parents.

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 made by the Agency of Family Law, which calculates the support based on standard rates.

Danish authorities always apply Danish law regarding child support. The minimum child support is DKK1,500 per month or DKK18,000 per year in 2023. If there is only one child, the non-resident parent must pay:

- Twice the minimum amount (standard rate + 100 %) if they earn more than DKK560,000.
- Three times the minimum amount (standard rate + 200 %) if they earn more than DKK800,000.
- Four times the minimum amount (standard rate + 300 %) if they earn more than DKK1.4 million.

There are also examples in case law of orders for the standard rate + 400%. However, it is not possible to order more than this, regardless of the income of the non-resident parent.

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

Child maintenance lasts until the child reaches 18 years of age. After that, support for education can be established up to the age of 24 years. The amounts paid for education are usually set at the standard child support amount.

23. Can a child (whether of legal maturity or otherwise) make a claim directly against their parents?

A child cannot make an independent claim either for child support or for educational support.

### **Enforcement of Financial Orders**

24. What are the main methods of enforcement to ensure compliance with financial orders following divorce/dissolution in your jurisdiction?

The Enforcement Court (*fogedretten*) can enforce a financial order made by the Probate Court in relation to asset division or compensation. An agreement on the division of marital property can also be enforced if the agreement contains an agreed clause of enforceability.

Spousal maintenance after the breakdown of a marriage and child maintenance can only be enforced by the Danish Debt Collection Agency (*Gældsstyrelsen*) and cannot be enforced through the Enforcement Court.

If both the resident parent and the child live in Denmark, the Administrative Authority (*Udbetaling Danmark*) will pay the minimum child maintenance amount (see [Question 21](#)) in advance if the non-resident parent does not pay.

25. 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.

The Maintenance Regulation applies in Denmark. For this reason, all orders regarding maintenance (in the EU sense of the word) can be enforced under the Maintenance Regulation.

Denmark has also ratified both the 1958 Convention and the Hague Maintenance Convention) For this reason, maintenance orders from signatory states can also be enforced by Convention.

However, Denmark has no international system of enforcement of financial orders from states not signatory to the Hague Maintenance Convention. This also applies to orders on division of assets.

## **Financial Relief after Foreign Divorce Proceedings**

26. What powers are available to the court to make orders following a foreign divorce? If such a power exists, what is the legal basis for making such an application?

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 not a specific power to deal with overseas matters but a consequence of the fact that the processes are not interlinked in Denmark.

Under the Maintenance Regulation, is also possible to:

- Commence a standalone application in relation to spousal maintenance if the question has not been dealt with in the separation or divorce case.
- Commence a standalone application to vary spousal maintenance granted abroad if the maintenance could be varied under the law of the country where it 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 handled based on Danish law.

None of the orders above generally differ from domestic orders.

## **Children**

### **Custody/Parental Responsibility**

27. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage? Do local courts in your jurisdiction recognise parenthood that has been established in another jurisdiction for the purposes of custody/parental responsibility, maintenance and so on?

## **General Position for Custody/Parental Responsibility**

On divorce in Denmark, parents have joint legal custody of a child or children. Parents can also agree to continue to share the child's residence (physical custody). Decisions regarding legal custody or residence are handled in separate proceedings. No automatic orders are made about the children on divorce.

The Family Court can decide that the parents will continue to have joint legal custody and make a decision about the residence (physical custody) of the child. The Family Court cannot decide that the residence must continue to be joint if the parents do not agree.

Sole legal custody is only granted when it is considered in the best interest of the child and where the parents cannot co-operate on matters regarding the affairs 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 relating to custody and residence start as an application to the Agency of Family Law, but decisions are made by the Family Court.

The Agency of Family Law can make temporary orders for custody and residence if necessary, but not final orders. Final orders can only be made by the Family Court.

## **Parenthood Established in Another Jurisdiction**

Paternity established in another jurisdiction for a child born abroad is recognised in Denmark, if the foreign paternity has legal effects corresponding to the legal effects of paternity in Denmark.

However, fatherhood might not be recognised in Denmark if the child was born out of marriage and the father has not otherwise been involved in the paternity case.

If parenthood is established based on commercial surrogacy, only the parenthood of the biological father is currently recognised (see [Question 31](#)).

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

The jurisdiction to make contact orders lies with the Family Court and sometimes the Agency of Family Law. There is no standard regime for contact.

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, the order is usually in force until the child reaches 18 years with no modifications necessary.
- If the child is younger, the authorities can make orders under which the frequency of contact is changed over time. These changes will generally only be based on 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**

29. What is the legal position on international abduction?

Denmark has ratified both the 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 (*Børnebortførelsesloven*). The Ministry of Social Affairs and Housing 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.

On receiving an application from a foreign central authority, the Danish central authority sends the application to the local court. However, it is the parent in Denmark, not the central authority, who acts as the applicant at the return hearing in court. The parent in Denmark is entitled to legal aid without having to fulfil the normal financial criteria. If that parent has not chosen a lawyer, the court will appoint a lawyer. There is a list of fifteen lawyers practising in different areas of Denmark who have been appointed as experienced in abduction cases, created by the Ministry of Social Affairs and Housing.

The timeframe for an abduction case in the court of first instance is about two to six months, depending on the circumstances of the case. In the court of first instance, there is usually 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 on an 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 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.2007.1205H*).

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.2014.2463H*). See also [Question 3](#).

- 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 over, the "grave risk" together with claims that the child objects to being returned are sometimes combined to form grounds for denial and return. Where small children are 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. For this reason, the legal steps are first 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**



30. 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?

The courts can make decisions on leave to remove in cases where the parents share parental responsibility.

An order for leave to remove is only granted if it is considered to be in the child's best interest. In that assessment, 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 years, provided there is normal contact with the parent who intends to stay in Denmark. This applies even if the grounds for the move are acceptable (for example, a foreign parent wanting to move back home due to difficult integration or a lack of network in Denmark).

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

## **Surrogacy and Adoption**

### **Surrogacy Agreements**

31. What is the legal position on surrogacy agreements in your jurisdiction? Is surrogacy available to individuals and cohabiting couples (both heterosexual and same-sex)?

In Denmark, the woman giving birth to a child is always deemed to be the mother and, as such, a legal parent of the child. This also applies to situations where the intended mother donated an egg to the woman giving birth. Therefore, agreements about surrogacy are not valid and cannot be enforced under Danish law. However, if the surrogacy was for altruistic purposes, it is possible after the birth of a child for an intended mother or intended second father to adopt the child through a stepchild adoption.

If a commercial surrogacy takes place abroad and the intended parents are parents under foreign law, Denmark will not recognise the parentage because such an arrangement is considered against

Danish public order. Consequently, the only parent that exists under Danish law is the biological father.

In a recent case, the Chamber reversed a judgment issued by the Danish Supreme Court (*K.K. and Others v. Denmark* passed by the European Court of Human Rights (ECtHR) (Application No. 25212/21) on 6 December 2022 (*KK v Denmark*)). The Chamber found that the Danish authorities' rejection of the intended mother to adopt the surrogate children concerned, who were born through a commercial surrogacy arrangement, violated the children's right to respect for their private life (Article 8, European Convention on Human Rights).

Following this judgment, the Danish authorities are obliged, in a commercial surrogacy matter, to permit an intended mother or a co-father to adopt the child as a stepchild if the biological father gives his consent.

Additionally, it is a condition for the granting of the adoption that the intended parent lives together with the child and the biological father as a family for some years.

Danish authorities have so far accepted that in the period until the conditions for stepparent adoption are met, the biological father and the intended father or mother agree to share parental authority.

It is currently not clear what level of co-operation is needed from the surrogate mother in such arrangements.

## Adoption

32. 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 is available for married couples, cohabitants (whether heterosexual or same-sex couples) and individuals.

The adoptive parents must generally have reached the age of 25. However, adoption can be granted to someone who has reached the age of 18 years on exceptional grounds.

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 43 years.

- The adoptive parents should as a minimum have lived together for two and a half years.
- 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 the adoption of relatives (for example, adopting the child of a spouse).

## **Cohabitation**

33. What legislation (if any) governs division of property and financial claims 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. Court procedures are available that can result in compensation being granted, but it is difficult to obtain such compensation.

## **Family Dispute Resolution**

### **Mediation, Collaborative Law and Arbitration**

34. What non-court-based processes exist to resolve disputes? Is alternative dispute resolution mandatory? What is the current status of agreements reached through mediation, collaborative law and arbitration?

Few non-court-based processes are currently available. Those available are as follows:

- Optional offer of counselling and conciliation at the Agency of Family Law.

- In cases regarding children, the Family Court can offer to process the case in one of three ways based on the A, B or C models, with the purpose of achieving a settlement and thus avoiding a court judgment.

The three models consist respectively of one or two preliminary meetings assisted by a child expert, and if the parties still cannot reach a settlement or if model C is chosen, the case will be transferred to a final hearing.

If a settlement still cannot be achieved, the judge unilaterally makes a decision in the case.

- In relation to the division of property, the Probate Court in general summons the spouses to a guidance and conciliation meeting.
- In civil cases, the court generally offers court-based mediation, where the parties together with a professional mediator seek an agreement instead of continuing the legal proceedings in court.
- Private mediation.
- Arbitration.

Under Danish law, parties include a clause of enforceability can in any type of agreement, with reference to the Danish Administration of Justice 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. Any clause included in an agreement reached by mediation, collaborative law or arbitration is also enforceable.

35. 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 in the Agency of Family Law start with an information meeting. Depending on the parties and the caseworker at the meeting, the meeting can take the form of a mediation, but this is not always the case.

## Civil Partnership/Same-Sex Marriage

36. 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.

Since June 2012, same-sex couples have been able to enter a legal marriage, 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 choose not to convert their civil partnership into a marriage are still civil partners.

The Danish regulation on marriage applies equally to same-sex marriages.

## Media Access and Transparency

37. 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.

## Succession Rights on Divorce/Dissolution

38. How does divorce impact succession and estate planning in your jurisdiction?

On divorce or separation, the spouses' mutual legal rights of inheritance are terminated.

The termination of the right of inheritance also causes the termination of the other spousal benefits on death such as the ability to retain undivided possession of the estate.

Further, a will made by one spouse in favour of the other spouse is in general as a rule of presumption considered revoked on the spouses' divorce or separation.

This can also apply if the will in question has been made irrevocable.

## Controversial Areas and Reform

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

New laws were passed in 2018 on the financial relationship between spouses (see [Question 16](#)).

In April 2019, Denmark set up an entirely new system for handling divorce cases (see [Question 1, Court System](#)).

As a result of the recent ruling from the ECHR (*K.K. v Denmark*) regarding surrogacy, an expert group on recognition of parenthood in commercial surrogacy agreements has been established with the purpose of developing possible models on how and to what extent parenthood can be established for intended parents

This expert group will inform the Danish parliament on commercial surrogacy matter in due course.

The Danish Government announced in February 2023 that a Bill will be introduced regarding recognition of co-fatherhood in altruistic surrogacy arrangements. The Bill has not yet been formally introduced. If the Bill is passed, a co-father would be able to be recognised as a parent in an altruistic surrogacy arrangement from the date of birth of the child.

### Contributor Profile

**Maryla Rytter Wróblewski, Partner**

**Nyborg & Rørdam Law Firm**

**T** +4 533 124 540

**F** +4 533 934 540

**E** [mw@nrlaw.dk](mailto:mw@nrlaw.dk)

**W** [www.nrlaw.dk](http://www.nrlaw.dk)

**Professional qualifications.** Denmark, Attorney-at-law; Master of Laws, 1999; LLM, London, 2000; Admission to practise law, 2003; Right of audience before the Danish Supreme Court, 2013

**Areas of practice.** Family law; inheritance law.

**Languages.** Danish, English, Spanish

**Professional associations/memberships.** International Academy of Family Lawyers; Danish Family Lawyers; Danish Estate Lawyers.

---

**END OF  
DOCUMENT**