



# When parents separate

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For the sake of readability, the text in this brochure has been written in the masculine form. Where the text refers to 'he', this may also be taken to mean 'she'. Where the brochure refers to 'parents', this may also be taken to mean 'parent' (with or without partner), carer(s) or legal representative(s). 'Partner' has been used to denote husband, wife and for unmarried cohabitants or registered partners. The term 'child' refers to all children and youths under the age of 18. The term 'client' refers to 'parent(s)' or 'child(ren)'. 'Marriage' also refers to registered partnership or cohabitation of two parents. In this brochure, 'divorce' also means separation.

## When parents separate

**A separation or divorce is a dramatic life event for children. In a number of children, this may even have a negative impact on their development. Children are mainly affected when their parents have heated and long-drawn-out conflicts. By managing your conflicts and keep the channels of communication open about the care for and upbringing of your children, you can limit any negative consequences for them. It is important that both parents take responsibility and make good arrangements about their children. For instance, parents have to decide together how they want to divide the care and parenting responsibilities after your divorce. If parents fail to work this out between themselves or with the help of a mediator, the court eventually takes a decision, based on advice from the Child Care and Protection Board. This brochure contains information on how this works.**

## The Child Care and Protection Board

A child depends on his parents for his development. They are responsible for his care and upbringing so that he can develop into an independent adult. When parents cannot or do not take that responsibility, a child's right to a healthy and stable development may be jeopardised. In such cases, the Child Care and Protection Board, as a government organisation, is responsible for safeguarding this right of the child.

General information about the Board is available in the brochure *About the Child Care and Protection Board - Each child is entitled to protection*. You can see where to get the *About the Child Care and Protection Board - Each child is entitled to protection* brochure on page 4 of this brochure.

### > Children at the forefront

The Child Care and Protection Board is charged with safeguarding the rights of children whose development is or may become jeopardised. Therefore, a child's interest is at the forefront in everything the Board does. At the same time, Board employees realise that the intervention of the Board can be an emotional and drastic event for both parents and children.

## Parenthood remains

A divorce does not mean you are no longer a parent. Divorced parents in theory continue to hold joint parental authority. This means that after your divorce you have to make sound agreements about the division of care and parenting responsibilities, such as where your children will live, how access is arranged and how you keep each other informed.

### > Your children need you

During your marriage or relationship, you are responsible by law to take care of your children and you hold joint parental authority. Together you are responsible for taking care of food, clothing, accommodation and education, but also for giving love and attention. Your children depend on you both for their care. When you and your partner decide to separate, this does not alter your responsibility towards your children. You remain your children's father or mother.

### > Statutory starting points

Parents who separate in principle continue to hold joint parental authority, according to the law. Therefore, you both remain responsible for them after your divorce. However, the court may decide to deviate from this starting point. The law also stipulates that children have the right to access to the parent who does not hold parental authority.

This parent also has the right of information and consultation (see text box). But the court may also deviate from this starting point in the interest of the children. Page 3 of this brochure has more information about these statutory starting points.

### > Making agreements

The development of children is threatened when their parents who are separating have serious and long-drawn-out conflicts, for example about the children. Therefore, for the sake of your children, it is of the utmost importance that you try to limit the consequences of your separation as much as possible. For instance, you as parents need to make sound agreements on the division of care responsibilities. You have to decide where the children live, how you arrange contact and how you inform and consult your ex-partner about the children. These arrangements are laid down in a parenting plan. More information about the parenting plan is available on page 3 of this brochure. It is important for the children that you as parents keep to your agreements.

### > You fail to reach agreement

If you fail to reach good agreements or if you fail to keep previously arranged agreements, you can ask a family member, friend or a professional mediator to mediate. Should this also fail, the court has to decide and you will be summoned to appear in court. Please bear in mind that the court may refer you to a mediator or care organisation to mediate in your conflict. Another option is that during the proceedings the court requests the Child Care and Protection Board to conduct an investigation and give advice. This task of the Board is explained in more detail on page 2.

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#### Information and consultation

The parent with whom the children live is obliged to inform the other parent of important matters related to the children, such as school performance or your children's health. This is called the right to information. Moreover, the parent with whom the children live is obliged to ask the opinion of the other parent regarding important decisions about the children. This is called the right to consultation. If one parent holds sole parental authority, he has the right to take the final decision. At the request of one of the parents, the court may determine how the other parent must be informed or consulted.

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### The role of the Board

If you and your partner cannot reach agreement about the division of care and upbringing responsibilities, the court decides on an arrangement. The court may request the advice of the Child Care and Protection Board. In that case a Board employee assesses which division of care and upbringing responsibilities is in the best interest of your children. The working method of the Board has been officially laid down in a quality framework. Information about the framework is available in the brochure *About the Child Care and Protection Board - Each child is entitled to protection*.

### > The investigation

The Board investigates which division of care and upbringing responsibilities is in the best interest of your children, also in the long term. A Board employee, a child welfare investigator, wants to get a clear picture of your children. To this end, he speaks with you, the other parent and your children. He can also have your children observed if they are still too young to talk well. He can also talk to other people involved, such as teachers or care workers. In the course of his investigation, an investigator is supported by a behavioural specialist and, if necessary, a legal expert. They take all decisions in the investigation together. A behavioural specialist may also be brought in to observe how a parent and child interact. The child welfare investigator's supervisor is ultimately responsible for the investigation. The investigator keeps you informed about the course of the investigation.

### > Child protection order

The investigation may reveal that in addition to the issues surrounding the divorce there are severe parenting and family problems. In this case, after conducting an investigation into the upbringing situation, the Board may request the court to impose a child protection order. The least severe measure is the family supervision order, which may or may not limit parental authority. This means that a family supervisor is appointed who assists the child and the parents with solving their parenting problems. The Board only makes this request if the parents reject or not full comply with voluntary assistance and your child's development is severely hampered by the situation.

The brochures *When parenting is a problem* and *When your child has been placed under supervision* contain more information about the family supervision order and other measures. You can see where to get the brochures on page 4 of this brochure.

### > Report and advice

The child welfare investigator concludes his investigation with a report in which he has documented the course of the investigation and has described the development and situation of your children. Moreover, the child welfare investigator gives information from his interviews with you, the other parent, the children and any other parties involved. Finally, he gives the court a recommendation on where the children are better of living or how the division of care and upbringing responsibilities can best be arranged. The child welfare investigator discusses his preliminary report with you, the other parent and, depending on their ages, also with the children. Incorrectly stated facts can be altered or removed and other comments can be added to the report in an appendix, after which the report is finalised and sent to the court. Both parents and your child, if aged 16 or up, receive a copy of the final report.

## The court decides

In his decision, the court considers the recommendation of the Board. However, your opinion, the opinion of the other parent and those of the children are also relevant.

After receiving the report with the Board's recommendation, the court hears your case in the presence of you and the other parent, and possibly lawyers. The court asks you and the other parent for your opinions; the lawyers may also be heard. If the children are twelve years or older, the court is obliged to also ask them what they think of the situation, without their parents being present. The court may also ask the opinion of children younger than twelve, but this is not required. On the basis of the recommendation of the Board and the proceedings at the hearing, the court subsequently takes a decision on the division of care and upbringing responsibilities. The court makes an independent decision and is under no obligation to follow the Board's recommendation.

## Statutory starting points

Dutch law has several statutory starting points that apply in the case of a divorce involving children. Although both parents in theory continue to hold parental authority, children and parents have the right to be in contact with each other, and a parent without parental authority has the right to information.

### > Joint parental authority

Even after a divorce, both parents continue to hold joint parental authority. You and the other parent decide in consultation where the children will live. You also remain jointly responsible for their care and upbringing. Moreover, you take major decisions about the children together. Both parents have the right to information and consultation.

### Exception

You or the other parent may request the court to award sole parental authority to only one of you. The court usually accedes to this request in case of an unacceptable risk that the children will become stuck between a rock and a hard place and used as pawns by the parents, and there are no prospects of this situation improving. The parent who is awarded sole parental authority is entitled to decide where the children will live.

### Amending parental authority

If your children's circumstances change, you may believe that another authority arrangement is better for the children. In this case, you have to contact your lawyer to discuss whether an amendment is possible in your case.

### > Parenting plan

Parents who separate are obliged to draw up a parenting plan, which contains agreement between the parents about the division of care and upbringing responsibilities, maintenance and the exchange of information. Parents are required by law to also state how they have involved their children, regardless of their age, in making the agreements and how they have informed them.

### > Contact and access

Children and parents have the right to continue to see each other, also after a divorce. If both parents hold parental authority, we are dealing with a division of care and upbringing responsibilities and contact between parents and children. This contact may or may not be temporarily denied. If after the divorce only one parent has parental authority, we are dealing with the concept of access. This parent with sole parental authority may make agreements with the other parent about access arrangements which detail when and how often the children can see the other parent. These access arrangements may also be determined by the court.

### Exception

The court may deny the parent without parental authority access to the children, either at the request of the parent with parental authority or at its own initiative. The court only denies access if one or more of the following grounds for denying access apply:

- Access to the other parent has a severely negative impact on the mental or physical development of the children;
- The other parent is deemed unfit or incapable of normal access to the children;
- The children are twelve years or older and have serious objections to access to the other parent;
- They have informed the court about their objections;
- Access to the other parent is in conflict with the substantial interests of the children for other reasons.

The court may also use these grounds for denying access if the court considers temporarily denying contact to the parent with parental authority.

## More information

### > Questions?

Do you have other questions about the work of the Child Care and Protection Board? Please direct them to your Board contact person, or contact your local Board branch. The addresses and route descriptions of the various branches are available on [www.kinderbescherming.nl](http://www.kinderbescherming.nl). Here you can also find information about the organisations that cooperate with the Board.

### > Other brochures

About divorce

- *You are separating\**
- *Authority, access and information\**
- *Divorced... What about the children?\**
- *When your parents separate*
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About the work of the Board

- *About the Child Care and Protection Board - Each child is entitled to protection*

These brochures are available:

- *on [www.kinderbescherming.nl](http://www.kinderbescherming.nl)*
- *at all Board locations*

\* *These brochures are exclusively available through [Rijksoverheid.nl](http://Rijksoverheid.nl).*

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