



## FAMILY LAW

# UNMARRIED PARENTS AND UNMARRIED COUPLES

## ABILITY TO REGULATE PARENTAL RESPONSIBILITIES AT CIVIL REGISTRY OFFICES

*This possibility has now been extended to parents who are planning a de facto separation and to parents who live together as unmarried partners and wish to dissolve that partnership. The possibility is also open parents who are neither married nor in a non-marital partnership.*

Law no. 5/2017 was published in the Portuguese official gazette *Diário da República* on 2 March. This new law establishes the rules on regulation of parental responsibilities by mutual agreement at Civil Registry Offices in cases of de facto separation and dissolution of non-marital partnerships, and cases of parents who are neither married nor in a non-marital partnership.

This option was already available to married parents who were planning to get divorced and wanted to regulate the exercise of parental responsibilities over their minor children by mutual agreement. Since 2008, parents in this position have been able to file their agreement on regulation of parental responsibilities at the Civil Registry Office under the provisions of the Portuguese Civil Code.

This possibility has now been extended to parents who are planning a de facto separation and to parents who live together as unmarried partners and wish to dissolve that partnership. The possibility is also open parents who are neither married nor in a non-marital partnership. Parents in these positions may apply to the Civil Registry Office for the regulation of parental responsibilities, or for the alteration of an agreement that has already been approved. The only requirement is that the terms of the regulation or alteration are agreed by both parents.

The application to be filed at the Civil Registry Office - by the parents or by their representatives - must be accompanied by the agreement on the exercise of parental responsibilities and on maintenance. Among other issues crucial to the future of the minor child, the agreement must make provision for the exercise of parental responsibilities, the residence of the minor child, the access arrangements and the maintenance obligations and payments. In summary, the agreement must address all the relevant issues and conditions necessary for the healthy growth and personal development of the minor child.

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Once the application has been filed, the registrar will consider the agreement and, if necessary, invite the parents to alter it in the event it does not safeguard the interests of the minor child. After considering the agreement, and as already happened in the case of applications made by married parents, the file is sent to the Public Prosecution Service (PPS) for it to make a decision on the agreement. If the PPS does not object, the file is sent back to the registrar to approve the agreement and this decision by the registrar produces the same effects as a court order.

However, if the PPS considers that the agreement does not properly safeguard the overriding interest of the minor child, its approval must be refused by the registrar and the file sent to the competent court, which will then regulate the parental responsibilities.

It is also open to the parents to ask for the file to be sent to the court if they do not agree with the alterations indicated by the PPS.

Finally, no change has been made to the legal rule which provides that if the parentage of a minor child born outside marriage is only established in respect of one of the parents, this parent has the right to exercise parental responsibilities.

The changes described above come into force on 1 April 2017.

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