Amendment of the Rules related to Child-Rearing after Divorce

Explanation of the Act partially amending the Civil Code, including child custody, child support and parent-child visitation.

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Civil Affairs Bureau, Ministry of Justice

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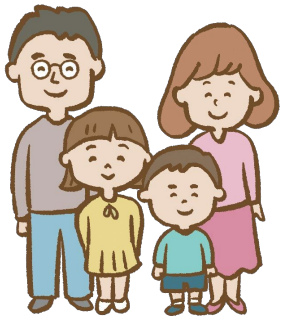
○ Summary of the Amendment

To ensure the best interests of children, it is important for their parents to be appropriately involved in raising them and to fulfill their responsibilities even after divorce. For the purpose of ensuring the interests of children after the divorce of the parents, the Act partially amending the Civil Code clarifies the responsibilities of parents in raising their children and revises the rules related to parental responsibility, child support, parent-child visitation, etc. This Act was enacted in May 2024 and will come into effect by May 2026.



1 Clarification of Rules Related to Responsibilities of Parents

Key Point

The amended Civil Code clarifies that parents have a responsibility to raise their children, regardless of whether they have parental responsibility or marital status.

This amendment clarifies the following responsibilities of parents.

Respect for the individuality of children

Parents have a responsibility to raise their children to ensure the children's healthy mental and physical development, regardless of whether they have parental responsibility or marital status. In doing so, the individuality of the child shall be respected, which includes listening to and respecting the opinions of the child in an appropriate manner.

Child support

Parents have a responsibility to support their children, regardless of whether they have parental responsibility or marital status. The extent of support must be such that allows the child to maintain a standard of living equivalent to that of the parents.

Obligation of mutual respect for individuality and cooperation between parents

Parents must respect one another's individuality and cooperate in the interests of their children, regardless of whether they have parental responsibility or marital status. The following acts may violate this obligation:

- Violence, intimidation, verbal abuse, and other verbal and physical actions that negatively impact the other parent mentally or physically, as well as slander, frivolous lawsuits, etc.
- Undue interference by the non-custodial parent with the day-to-day custody of the other parent with whom the child resides.
- One parent relocating a child without good reason and without prior notice to the other parent.
- Refusal to implement parent-child visitation arrangements agreed upon between the parents without good reason.

Exercising parental responsibility in the best interests of the child

Parental responsibility (child-rearing and management of the child's property) must be exercised in the best interests of the child.

2 Review of Rules Related to Parental Responsibility

(1) Who has parental responsibility after divorce?

Key Point

The options for determining who has parental responsibility after divorce will be expanded, allowing both parents to have parental responsibility after divorce.

While married, both parents have parental responsibility for their children, but under the previous Civil Code, only one parent could be designated as having parental responsibility after divorce.
With this latest amendment, it will be possible for parents to share joint parental responsibility after divorce.

Determination of parental responsibility

In the case of divorce by mutual consent

The parents determine by mutual consent whether to share parental responsibility or grant it to just one of them.

If the parents cannot agree or in the case of divorce by court order

The family court takes into account various circumstances from the perspective of the best interests of the child, such as the relationships between each parent and the child, and the relationship between the parents themselves, and decides whether only one parent or both should be granted parental responsibility. In such judicial proceedings, the family court must hear the opinions of both parents and try to understand the will of the child.

The family court must grant sole parental responsibility in the following situations:

- When there is a risk of child abuse
- When joint parental responsibility is impractical due to the risk of domestic violence, etc.

*Not limited to child abuse and domestic violence involving physical violence, such as hitting or kicking.

*In addition to the above cases, the court must also grant sole parental responsibility in circumstances in which joint parental responsibility would harm the interests of the child.

Changing parental responsibility

The family court may change the parent who has parental responsibility (from one parent to the other, from sole to joint parental responsibility, or from joint to sole parental responsibility) at the request of the child or his/her parent or relative, if it finds it necessary to do so in the interests of the child. This procedure can be used to correct a parental responsibility agreement that was not made on equal footing such as in cases where violence committed by one parent against the other existed prior to the divorce.

(2) Exercising parental responsibility (when both parents have parental responsibility)

Key Points

The amended Civil Code clarifies the rules for the exercise of parental responsibility when both parents have parental responsibility.

(1) Parental responsibility is exercised jointly by both parents. However, if one parent is unable to exercise it, the other parent does so.

(2) Parental responsibility can be exercised solely by a parent in the following circumstances:
- When performing day-to-day activities related to custody and education
- When there are urgent circumstances in the best interests of the child

(3) For specific matters, the family court may determine the parent that may exercise parental responsibility.

*Prior to the amendment, only (1) was stipulated, while (2) and (3) were not.

Day-to-day activities related to custody and education

"Day-to-day activities related to custody and education" means activities related to custody and education in day-to-day life, which do not have a significant impact on a child. The following are examples of what may and may not constitute day-to-day activities, depending on the individual circumstances.

Examples of day-to-day activities (can be exercised solely by one parent)	Examples of activities that do not constitute day-to-day activities (exercised jointly by both parents)
• Decisions about meals and clothing • Short-term travel for sightseeing • Decisions about medical procedures that do not significantly impact the child mentally or physically • Regular vaccinations • After school activities • Permitting high school students to have a part-time job after school	• Relocation of children • Educational decisions that affect a child's future career (including the decision to work rather than going to high school) • Decisions about medical procedures that significantly impact the child mentally or physically • Management of property (such as opening a savings account)

When there are urgent circumstances in the interests of the child

This refers to cases where joint parental responsibility cannot be exercised in time through the process of discussion between the parents or family court proceedings, and where there is a risk that the interests of the child would be harmed without an immediate decision. In urgent circumstance, one parent may exercise parental responsibility solely, even for matters that are not considered day-to-day activities.

Urgent circumstances may include the following situations, depending on the individual circumstances:
- When it is necessary to escape (including the relocation of children) from domestic violence or child abuse (not limited to the cases immediately after the incident)
- When a child requires emergency medical treatment
- When school entrance examination results have been announced and the deadline for admission procedures is approaching

Designation of the parent who may exercise parental responsibility over a specific matter

When parents have conflicting opinions on a specific matter for which joint parental responsibility is to be exercised (e.g. the relocation of a child or the management of property in a situation where there are no urgent circumstances for the child), the family court may, at the request of the father or mother, designate one of the parents to exercise sole parental responsibility over that matter. In that matter, the designated parent may then exercise parental responsibility solely.

*Parental consent is required to apply for a passport for a minor. For more details, please contact your prefectural passport center or Japanese diplomatic mission (embassy, etc.) overseas.

(3) Custody rules

Key Point

The amended Civil Code clarifies the rules on child custody after the parents' divorce.

Shared custody

When parents divorce, they can decide on how they will share custody of their children. The child's interests must be given the highest priority in the consideration when making this decision. The following are some examples of shared custody:

- One parent will have custody of children on weekdays, and the other on weekends and holidays.
- Decisions regarding the education of children are given to the parent living with them, but other important matters are to be determined by discussion between the parents.

Scope of authority of sole physical custody

Even if parental responsibility is granted to both parents after a divorce, one of them can be designated as the "custodial parent."

When such a determination is made, the custodial parent is able to independently make decisions on day-to-day matters, as well as on the child's education, residence, and work. The non-designated parent may not interfere with the custody exercised by the custodial parent, but the non-designated parent can exercise custody for the purposes of parent-child visitation, etc., to the extent that this does not interfere with the custodial rights of the custodial parent.

~ Q & A ~

Q1 We were divorced before the recent amendment, and had already decided on sole legal parental responsibility. Will this change to joint parental responsibility when the amended Civil Code comes into effect?

A1 If you are already divorced and have an agreement for sole parental responsibility in place, this will not automatically be changed to joint parental responsibility with the enforcement of the amended Civil Code. However, after the amended Civil Code comes into effect, the family court may change the person who has parental responsibility from one parent to both parents if the child or his/her parent or relative requests, considering the necessity to do so in the best interests of the child. The circumstances under which there will be a change to joint parental responsibility will vary depending on each case; for example, if a parent who live separately from a child has failed to pay child support without good reason for an extended period of time, it is unlikely that the parental responsibility will be changed to joint. In addition, changing to joint parental responsibility will not be permitted if there is a risk of child abuse or domestic violence, or if it would be difficult for the parents to exercise their parental responsibility jointly.

Q2 We have not married, but we have a child whose paternity has been acknowledged. Can both parents be granted parental responsibility?

A2 With this revision, it will also be possible for both parents to be granted parental responsibility through mutual agreement in cases where the father has acknowledged paternity. When the parents are unable to come to an agreement, the family court will determine, from the perspective of the best interests of the child, whether there shall be sole parental responsibility or joint parental responsibility, taking into account various factors such as the relationship between the parents and the child and the relationship between the parents themselves.

3 Reviews to Ensure Child Support Payments

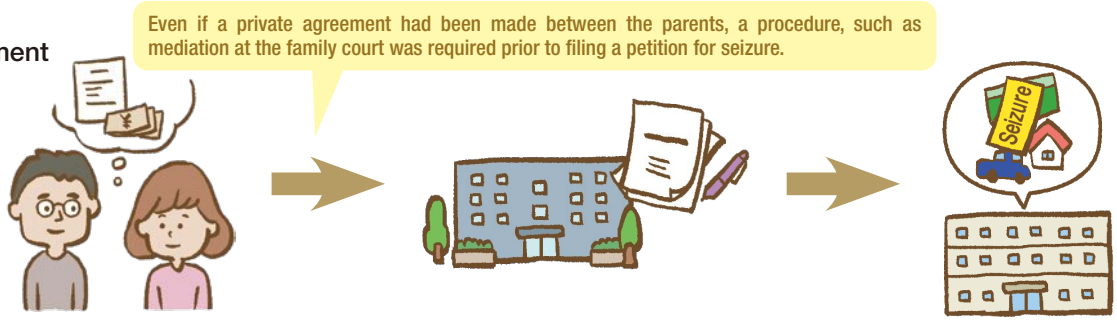
Key Points

- Enforceability of child support agreements has been improved through simplification of civil execution procedures for such agreements.
- A new right to claim statutory child support has been established.
- The convenience of court procedures related to child support has been improved.

Improved effectiveness of agreements

Before the amendment, under the Civil Code, even if there was an agreement on the payment of child support between the custodial and non-custodial parents, to seize the property of the debtor for failure to pay child support, it was first necessary to obtain a "title of obligation", such as a notarial instrument, record of judicial mediation or judicial decision document.

Prior to Amendment



With this amendment, a "Statutory Lien" will be established to prioritize child support claims, meaning that even in the absence of a title of obligation, it is possible to initiate seizure proceedings on the basis of the documentation prepared between the parents when they made the child support arrangement. The amount of child support that is subject to such Statutory Lien will be determined by Ministerial Order of the Ministry of Justice. However, if child support had already been determined prior to the enforcement of the amended Civil Code, it will only apply to child support that becomes due after the amended Civil Code comes into effect.

After Amendment

*In this case, there is a limit to the amount that can be seized.

Statutory child support

Before the amendment, under the Civil Code, it was not possible to claim child support without an agreed amount between the parents or a family court proceeding.

With this amendment, the parent who continues to have primary custody of the child from the time of divorce will be able to claim a fixed amount of "statutory child support" from the other parent, even if no child support agreement was made at the time of divorce. In addition, a petition for seizure proceedings can be filed if such statutory child support is not paid. The amount of statutory child support will be determined by Ministerial Order of the Ministry of Justice.

Prior to Amendment
Cannot be claimed

→

After Amendment
Statutory child support can be claimed

Statutory child support is intended to be a temporary/supplementary measure until child support is determined. In order to support a child's healthy development, it is important that the parents reach an agreement themselves or through family court proceeding to determine an appropriate amount of child support that takes into account the income of each parent, etc.

Improved convenience of court proceedings

- In court proceedings involving child support, the amount of child support is calculated based on the income of each party. Therefore, this amendment authorizes for the family court to order the parties to disclose income information to ensure smooth proceedings.
- The following series of procedures can be applied for in a single petition to the district court to claim child support.
  (1) Property disclosure procedure: The party that is required to pay child support must disclose the property that he/she holds.
  (2) Order to provide information: Municipalities may be ordered to provide income information of the party that is required to pay child support.
  (3) Order of seizure (Execution against a Claim): Identified income claims are seized.

~ Q & A ~

Q1 When does the obligation to pay statutory child support begin? Also, by when does it need to be paid?

A1 Statutory child support is paid from the date of divorce. The parent obligated to pay statutory child support must pay that amount at the end of each month.

Q2 How long will statutory child support payments continue to accrue?

A2 Statutory child support payments continue to accrue until the earlier of the following dates:
(1) When the amount of child support is determined by agreement of the parents
(2) When the judicial decision on child support becomes final and binding
(3) When the child reaches the age of 18

Q3 I am a divorced parent living separately from my children, but I do not have sufficient income. Do I still need to pay statutory child support?

A3 Any person that is requested to pay statutory child support can refuse to pay in full or in part if he/she is able to prove an inability to pay the statutory child support due to a lack of capacity to pay or if paying would result in extreme hardship (e.g. if he/she is receiving public assistance). If the parent who is living separated from a child has a low income, the parents can agree to a child support amount that is lower than the statutory child support.

Q4 What happens when parents are unable to come to an agreement on an amount of child support that differs from the statutory child support (higher or lower level of child support)?

A4 If the parents cannot agree on the amount of child support, they should file for conciliation or adjudication by the family court (see back cover for contact details).

Q5 I got divorced before the enforcement of the amended Civil Code. Will I still be required to pay statutory child support?

A5 The statutory child support provisions only apply to divorces that occur after the enforcement of the amended Civil Code. If you were divorced prior to the enforcement of the amended Civil Code, statutory child support will not be required, and to request the payment of child support, the amount must be determined by agreement between the parents or by family court proceedings.

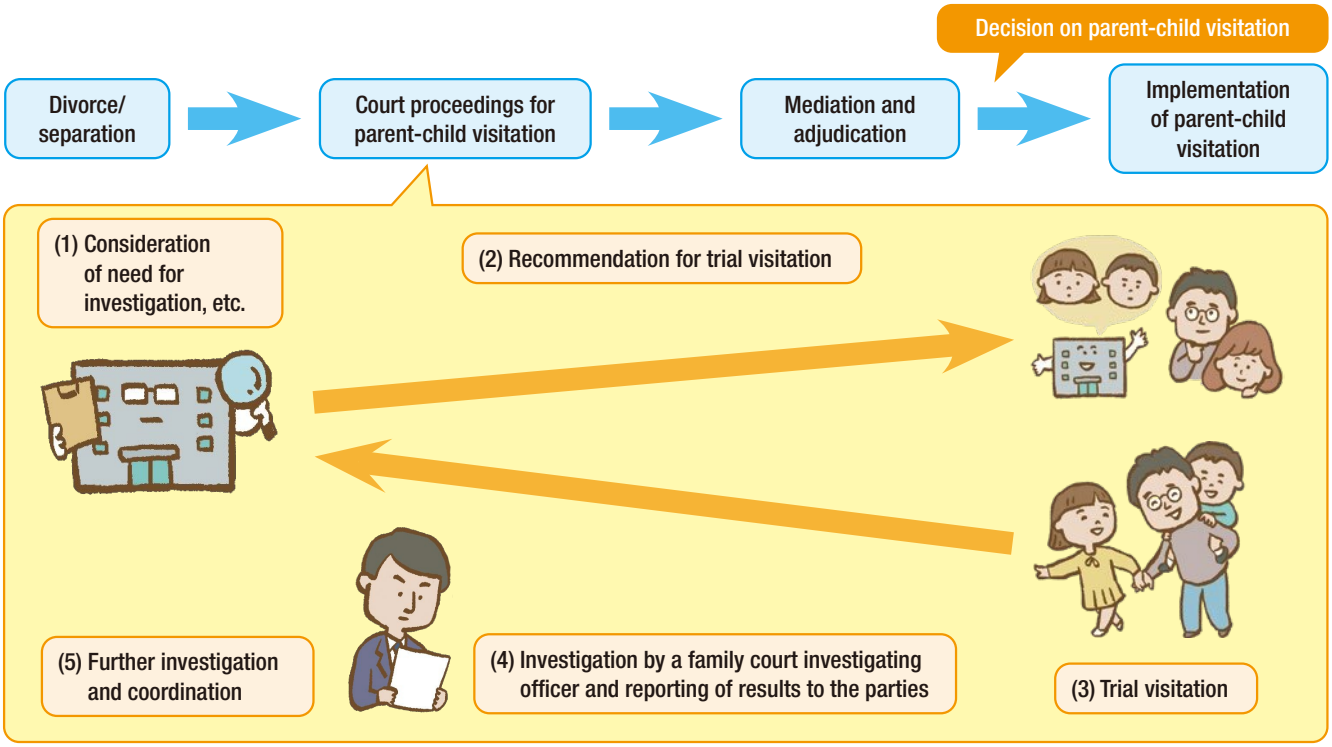
4 Reviews to Ensure Safe and Secure Parent-Child Visitation

Key Points

- A trial system of parent-child visitation has been established during the course of family court proceedings (trial implementation).
- Rules for parent-child visitation when married parents are living separately have been clarified.
- Rules have been established for visitation between children and non-parent relatives (grandparents, etc.).

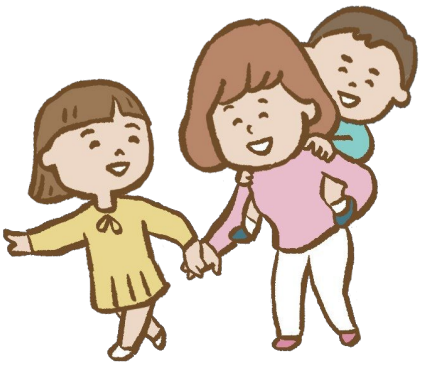
Trial implementation of parent-child visitation

Family courts determine parent-child visitation through mediation and adjudication, placing top priority on the interests of the children. In so doing, materials are collected and investigated, and the family court coordinates with the parents to ensure an appropriate parent-child visitation. During this investigation and coordination, it may be desirable to conduct trial parent-child visitation to better understand the situation and results. Thus, this revision establishes a system for the trial implementation of parent-child visitation. The specific procedures are shown below:



(1) A family court will determine whether it is appropriate to recommend trial parent-child visitation by taking into consideration the child's physical and mental condition and the need for investigation.
(2) Based on the considerations in (1), the family court recommends that the parties conduct trial parent-child visitation. In such cases, the family court may determine the conditions of visitation (days and times, place, method, etc.) and other obligations binding on the parents.
(3) The parties conduct trial parent-child visitation at the recommendation of the family court.
(4) The status and results of the trial visitation will be shared between the family court and the parents through investigations by family court investigating officers and reports from the parents themselves.
(5) The family court conducts further investigation and coordination as needed based on the results of (4), for the purposes of preparation for mediation or adjudication.

Parent-child visitation for married parents living separately



There are various reasons why parents may live separately from their children during their marriage, but there have not been any regulations governing parent-child visitation in such cases. In response to this, the amended Civil Code clarifies the following rules for parent-child visitation in situations in which married parents are living separately.

(1) Parent-child visitation in situations in which married parents are living separately are to be determined by agreement between the parents.

(2) If no agreement can be reached, a decision will be made by the family court.

(3) In the case of (1) and (2), the child's interests must be given the highest priority in the consideration.

Visitation between children and non-parent relatives

Before the amendment, the Civil Code had no provisions regarding visitation between children and non-parent relatives (such as grandparents). However, where there is an intimate relationship between a child and grandparents, etc., which is similar in nature to a parent-child relationship, it may be desirable to continue visitation even after the divorce of the parents. Therefore, the amended Civil Code provides for family courts to make a decision on visitation between a child and non-parent relatives, when deemed of particular necessity and in the best interests of the child.

In addition, while in principle it is the parents who decide the issue of visitation between the child and other relatives, if one of the parents has died or gone missing, or if there is otherwise no suitable method for making this decision, the following relatives, (1) through (3), may file a petition with the family court.

(1) Grandparents

(2) Siblings

(3) Relatives other than (1) and (2) who have actually been taking care of the child

~ Q & A ~

Q1 The family court recommended trial parent-child visitation, but due to certain circumstances, we were unable to do so. What happens in this case?

A1 If trial parent-child visitation cannot be conducted, the parties must explain the reasons at the request of the family court. The family court will then take these explanations into account and will conduct further investigations and coordination as needed to reach an agreement on mediation or adjudication for the parent-child visitation. In this case, the family court may again recommend trial parent-child visitation.

Q2 Is the opinion of the child taken into account in the decision to recommend trial parent-child visitation?

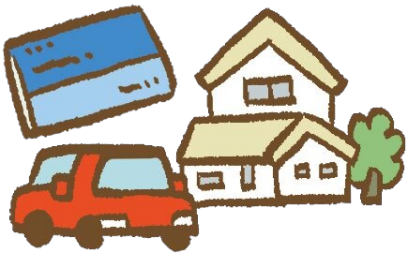
A2 The family court cannot recommend trial parent-child visitation if not appropriate given the physical or psychological condition of the child. The opinion of the child will be taken into account, according to the age and development of the child, when determining the "physical and psychological condition" of the child.

5 Review of Rules Regarding the Division of Property

Key Points

- The period for requesting a division of property has been extended from 2 years to 5years.
- The factors to be considered in the division of property have been clarified.
- The convenience of court proceeding for the division of property has been improved.

Period for requesting a division of property



The division of property is the process of dividing the property of a couple at the time of divorce that they have built up together during their marriage. First, a couple will attempt to come to an agreement on the division of property, but if this is not possible, they can request a family court to order the division of property.

Before the amendment, the period during which a request could be made for the division of property was limited to 2 years after divorce, but the amended Civil Code has extended the period up to 5 years after divorce.

Factors to be considered in the division of property

Before the amendment, factors to be considered in the division of property were not clearly specified in the Civil Code. Therefore, this amendment clarifies that the purpose of the division of property is to provide a fair distribution of property between the parties, and gives examples of the factors to be considered, as below.

With respect to the "degree of contribution of each individual to the acquisition or maintenance of property," in principle, this is equal for both spouses (half each) because it not only takes into account direct income from employment, but also considers various elements such as the sharing of housework and child care, etc.

Examples of factors to be considered

- Amount of property acquired or maintained during the marriage
- Degree of contribution of each party to the acquisition or maintenance of property ➡ In principle, half each
- Duration of the marriage
- Standard of living during the marriage
- Degree of cooperation and support during the marriage
- Age, physical and mental condition, occupation, and income of each party

Improved convenience of court proceedings

The type and amount of property to be divided needs to be clarified for court proceedings related to the division of property. Therefore, in the interest of making this process go more smoothly, this revision provides for the family court to order the parties to disclose information about their property.

6 Review of Rules Regarding Adoption

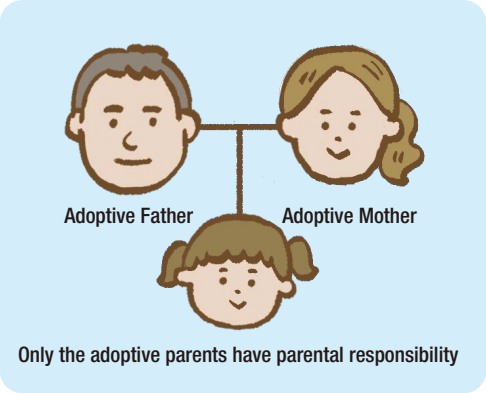
Key Points

- Clarification was made as to who has parental responsibility after an adoption.
- A new court proceedings was established to reconcile conflicts between parents in relation to adoption.

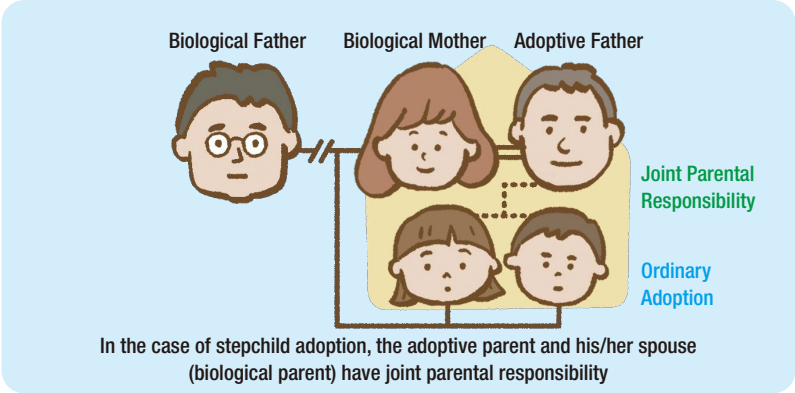
A person who has parental responsibility after adoption

When a minor child is adopted, the adoptive parents gain parental responsibility for the child, and the biological parents lose parental responsibility.

If a child has been adopted multiple times, only the last adoptive parents will have parental responsibility. If one of the divorced biological parents adopts the child with a new spouse (a so-called stepchild adoption), parental responsibility will rest with the adoptive parent (the remarried partner) and the biological parent who is his/her spouse. In this case, even if there is a joint parental responsibility agreement after the divorce of the biological parents, the other parent will lose parental responsibility.



Only the adoptive parents have parental responsibility



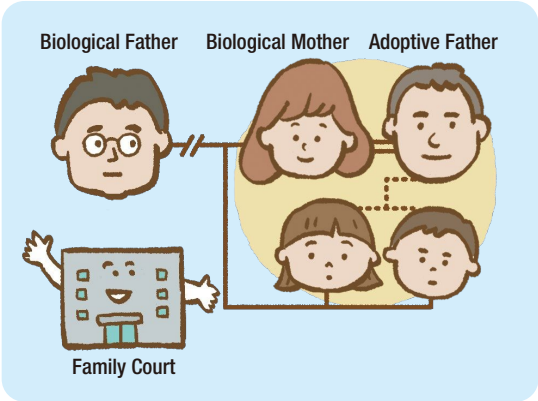
In the case of stepchild adoption, the adoptive parent and his/her spouse (biological parent) have joint parental responsibility

Procedure for reconciling the opinions of parents in relation to adoption

When a child under the age of 15 is adopted, the parent with parental responsibility may give consent to the child's adoption on behalf of the child. Before the amendment, there was no provision in the Civil Code to reconcile a difference of opinion when both parents had parental responsibility, and adoption was not possible unless the parents agreed.

This amendment establishes a new procedure for the family court to mediate disagreements between parents on adoption procedures.

The family court may designate one of the parents to exercise parental responsibility in adoption, when deemed particularly necessary in the best interests of the child. The designated parent can carry out adoption procedures on their own.



7 Other Revisions

(1) Before the amendment, agreements between a husband and wife could be unilaterally cancelled at any time, but this provision has been deleted with this amendment.

(2) Before the amendment, severe mental illness with no prospect of recovery was considered grounds for judicial divorce, but this provision has been deleted with this amendment.

Inquiries

○ Details of the revised law are also posted on the Ministry of Justice website

https://www.moj.go.jp/MINJI/minji07_00357.html

○ Procedures, necessary documents and costs, etc. related to mediation and adjudication

Nearest family court
(Please check the court website for the location and telephone number of the nearest family court)

https://www.courts.go.jp/index.html

○ To have a third party mediate discussions or if there is difficulty using the mediation procedures of the family court for work or other reasons

ADB (arbitration) by a private entity certified by the Minister of Justice

https://www.adr.go.jp

○ Consultation with legal professionals (attorneys)

Japan Federation of Bar Associations

https://www.nichibenren.or.jp/legal_advice.html (Legal Consultations)

○ Provision of information on the general legal system and consultation centers for the resolution of legal disputes

Japan Legal Support Center (Houterasu (Legal Terrace))

https://www.houterasu.or.jp

Houterasu (Legal Terrace) Support Hotline: 0570-078-374

(From IP Phones: 03-6745-5600)

Weekdays: 9 am to 9 pm; Saturdays: 9 am to 5 pm (closed on public holidays and New Year's holidays)

○ Regarding child support
Youikuhi Soudan Shien Center

Free Hotline: 0120-965-419

(From mobile phones: 03-3980-4108)

info@youikuhi.or.jp (E-mail)

https://www.youikuhi-soudan.jp/

Or contact your nearest Single-Parent family Employment and Self-reliance Support Center

https://www.cfa.go.jp/policies/hitori-oya/syuugyou-jiritsu-center

Counsellor's Office, Civil Affairs Bureau,
Ministry of Justice
Tel 03-3580-4111
https://www.moj.go.jp