

the child has not been adopted and the mother was not married 10 months before the birth of the child. There is therefore no need to apply to the court for joint guardianship rights nor is there any need to adopt the child.

If a mother marries a man who is not the father of her child, there is no legal relationship between her husband and her child. If the birth father is a joint guardian he remains a joint guardian of his child.

Should the mother and her husband wish to adopt the child and the father is a joint guardian, his consent to the adoption is required. If a father is not a joint guardian he has a right to be consulted about the adoption. If the child is adopted the father loses all legal rights in relation to his child.

See the leaflet on **Step-Parent Adoption**

**Notes:**

1. Where guardianship and access/custody are being applied for, then separate applications must be made to the court for each, though all applications will be heard at the same hearing.
2. Family law court hearings are not open to the general public - only those directly involved are allowed in.
3. Many parents represent themselves in the district court. Get a copy of *Taking the Stand* – a guide for unmarried parents resolving disputes regarding care of their children - from **Treoir: LoCall 1890 252 084, [www.treoir.ie](http://www.treoir.ie)**
4. Some parents may qualify for legal aid. Contact the **Legal Aid Board: LoCall 1890 615 200, [www.legalaid.ie](http://www.legalaid.ie)**.

## Guardianship of Children

whose parents are not married to each other





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## Guardianship

Guardianship is the collection of rights and duties which a parent has in respect of her/his child. A guardian has a duty to maintain and properly care for the child and has the right to make decisions in the major areas of the child's life e.g. choice of religion, of school, adoption, consenting to medical treatment and passports, decisions about leaving the country etc.

Guardianship should not be confused with custody, which is the day-to-day care of the child. See the leaflet on **Access and Custody**.

## Who can be a guardian?

Only parents can be guardians of their children if the parents are alive.

Where a child's parents have not married each other, only the mother is automatically a guardian of her child.

**If the father's name is on the birth cert this does not give him any guardianship rights in respect of his child.**

## An unmarried father can get guardianship rights by:

### 1. Agreement with the mother

- A father and mother can fill up and sign the statutory declaration for joint guardianship (S.I. No 5 of 1998) in the presence of a peace commissioner, commissioner for oaths or notary public. This form declares that:
  - the parents have not married each other
  - they are the parents of the child
  - they agree to the appointment of the father as a guardian and
  - they have entered into arrangements regarding the custody of (and access to) the child. These arrangements do not need to be specified or written down but it is advisable to do so.

A copy of S.I. No 5 of 1998 is available from Government Publications or from the National Information Service of **Treoir**. It can also be downloaded from the home page of the Treoir website, [www.treoir.ie](http://www.treoir.ie).

When this form is signed and witnessed it needs to be kept in a safe place as it is the only evidence that the father is a guardian. There is no central register for these Statutory Declaration Forms.

It is not necessary to go to court for guardianship rights if the S.I. No 5 of 1998 is correctly signed and witnessed. In the majority of cases fathers are granted guardianship.



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## 2. Going to court

The father can apply to the local district court to become a joint guardian of his child, **whether or not his name is on the birth certificate**.

While the mother's views are taken into account by the court in making a decision, the fact that she may not consent does not mean that the court will refuse the order for guardianship sought by the father. The decision of the court will be made with the interest of the child being the first and most important consideration.

## Appeals

An appeal to a guardianship order must be made within 14 days. The terms of the order will come into force while waiting for the appeal unless a court directs differently.

## Where joint guardians don't agree

Where joint guardians cannot reach an agreement on an issue concerning the child then either of the guardians can apply to the court for direction and the court will make a decision in the child's best interest.

## Removal of guardianship rights

A father who has been appointed a joint guardian by a court or by statutory declaration can have his joint guardianship rights removed by court order if the court is satisfied that this is in the best interest of the child. The only way a mother can give up her guardianship rights is by placing her child for adoption.

## Guardians and wills

All parents who are guardians but especially mothers who are sole guardians, should make a will appointing a guardian to act on their behalf in the event of their death before the child is 18. This is called testamentary guardianship. It is advisable to talk it over with someone who could and would like to act as guardian and get his/her consent to be named in the will as a testamentary guardian. The surviving guardian (if there is one) then acts jointly with the testamentary guardian.

If a parent dies without appointing a guardian in a will it is possible for someone with an interest in the child to apply to the court to be appointed a guardian of the child.

## Marriage following the birth

If the parents of a child marry each other following the birth of their child, then the father automatically becomes a joint guardian with the mother as long as

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