



The national federation of services for unmarried parents and their children

**LEGAL INFORMATION
FOR
UNMARRIED MIGRANT PARENTS**

August 2006

This booklet is for parents who are not married to each other.
In this booklet, the term marriage refers to civil marriages. Religious marriages are recognised by the State once they are also registered as civil marriages.

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INTRODUCTION

This publication has been developed in response to queries to the National Information Centre for Unmarried Parents from migrant parents on a variety of issues focusing on their children. Concepts such as guardianship, access and custody of children under the Irish legal system are often difficult to navigate. This can be even more difficult when cultural and language barriers are present. It is hoped that this information will begin to address the information needs of migrant parents in Ireland.

This booklet has involved significant collaboration with other organisations and individuals. It has been our pleasure to work with all of them and we thank them for their professionalism, dedication and expertise. This project has been funded by the Crisis Pregnancy Agency.

Comments on any aspect of this information are most welcome. Treoir operates the National Information Centre for Unmarried Parents and those involved with them, including professionals. This service is free, confidential and provided by trained information workers. Contact Treoir at 01 670 0120 or by email to info@treoir.ie

While every effort has been made to ensure that the information in this booklet is accurate, no responsibility can be accepted by Treoir for any error or omission.

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A NOTE ON THE IRISH LEGAL SYSTEM

Government in Ireland is centralised. This means that there is one central government and laws made by that government apply to everyone living in the state. Religious laws do not apply unless they are also state laws.

Under Irish law, the parents of a child who are married to each other are both guardians of their child. This means that they both have legal rights and responsibilities in relation to their child.

If the parents are not married to each other, the mother is automatically a guardian of her child. An unmarried father has no automatic rights in respect of his child. However, he can apply to the local District Court for joint guardianship, access and custody rights in respect of his child. Or, where the mother is in agreement, a father can acquire joint guardianship rights by both parents swearing an agreement. See page 7.

REGISTERING A BIRTH

How can I register a birth?

You must attend the Registrar of Births in person to register the birth of your baby within 3 months of the birth. Some hospitals have Registrars within the hospital. Otherwise you can attend any Registrar's Office.

You need to bring **photo identification** when you register the birth of your child. Photo identification is:

- a driver's licence, or
- a passport.

If you do not have photo identification, the registrar may accept other forms of identification. It is important that the birth certificate is a correct record of your child's birth and that you give the registrar correct information.

The 1989 UN Convention on the Rights of the Child affirms the rights of children in relation to identity and birth information. The Convention recognises that it is important:

- for children to have information on both of their birth parents,
- that children have contact with their birth parents if it is possible, and
- that the names of both parents are on a child's birth certificate.

A father does not get guardianship rights by putting his name on the birth certificate.

How do I put the name of the biological father on the birth certificate?

- Both parents can go to the office of the registrar together and register the birth.
or
- The mother **or** the father can bring an official form called a **Statutory Declaration**, signed by the other parent, to the registrar of births. On this form, he/she swears that the father is the biological father of the child. You can get this form from the registrar.
or
- If one parent does not want to put the name of the biological father on the birth certificate the other parent can bring a copy of any court order in respect of the child e.g. for access or maintenance, to the registrar. The registrar will then enter the name of the biological father on the birth certificate.

If you are married to a man who is not the biological father of your baby, the biological father's name can be entered on the birth certificate by using one of the methods described above. Before you can do this, you must have **one** of the four items that are listed below.

- A sworn statement from your husband that says he is not the biological father of the child
or
- A deed of separation and a sworn statement from you that says you were living apart from your husband for more than 10 months before the birth of your child
or
- An Irish divorce granted at least 10 months before your child was born. If you have a foreign divorce, contact the General Register Office
or
- Any court order which names the father as the biological father

You can add the name of the biological father of a child to a birth certificate at any time. To do this, you must re-register the birth. Apply to your local registrar.

How do I choose a surname (family name) for my child?

You must choose a surname (family name) for your child:

You can choose:

- The surname of the mother
- The surname of the father if his name is going on the birth certificate or
- The names of both parents. This is possible only if the father's name is going on the birth certificate. For example, if the surname of the mother is Garcia and the surname of the father is Ryan, the child can have the name Garcia-Ryan or Ryan-Garcia.

You can change the surname of your child if you add the name of the biological father to the birth certificate at a later stage, and no name was entered for the father in the first place.

You can also change your child's surname where you marry the child's other parent following the birth and the birth has already been registered in the names of both parents. Both parents must agree to the change.

You can change your child's surname by **Deed Poll** or by **common usage**.

A **Deed Poll** is a legal document that says that the name of a person has changed. If you change a name by Deed Poll, the name on the birth certificate stays the same and the birth certificate and the Deed Poll are presented together. For information on deed polls, contact the Deed Poll Section, Central Office, Four Courts, Dublin 7. Tel: 01 872 5555.

If you change a name by **common usage**, you begin to use a new name in everyday life. If you want to change the name on official Irish documents such as a passport, you must show that you have used the new name for at least two years. To give proof, you must present two of the following with the new name on them:

- a bank statement,
- a school report
- a Post Office account
- a Medical Card

If you change a name by common usage, the name on the birth certificate stays the same.

GENERAL REGISTER OFFICE

Government offices

Convent Road

Roscommon

LoCall 1890 252 076

Tel: 090 663 2900

Website: www.groireland.ie

The address and phone number of your local registrar is in the phone book in the Health Service Executive section.

PARENTING TOGETHER

When you have a child but are not living with the other parent, you will need to make decisions about guardianship (the right to make decisions about the child), access (contact with both parents) and custody (where the child lives). Agreement will also have to be made on sharing the financial cost of raising the child (maintenance). Where possible, it is a good idea for both parents to work out these arrangements together. It can be difficult for parents to agree on what is best for the child. If this is the case you could try mediation.

What is mediation?

This is where a trained professional would help you to reach an agreement together. The Family Mediation Service is a free service but you must both be willing to agree to mediation. There are a number of centres around the country. Contact the centre in Dublin to find the nearest one to you.

Family Mediation Service

1st Floor

St Stephen's Green House

Earlsfort Terrace

Dublin 2

Tel: 01 634 4320

www.welfare.ie/foi/fammedser.html

How do I get a court order?

If mediation is not possible, you can ask the court to make decisions about these issues. The court will make a court order which must be followed. To start proceedings for guardianship, access, custody or maintenance go to your local District Court office and tell the clerk that you wish to take a case. A list of District Courts is available at www.courts.ie or in the phone book.

To start the process, you will have to provide basic details such as the name and address of the other parent. He/she will get a summons to appear in court on a specified date. You can

- hire a solicitor to speak on your behalf
- represent yourself in the proceedings or
- apply for legal aid.

What is legal aid?

The Legal Aid Board provides legal advice and legal aid in civil cases to those who qualify for the service. There are legal aid centres around the country. The Legal Aid Board also provides a collaborative service whereby parents and legal aid solicitors can negotiate an agreement on parenting issues. Phone the Legal Aid Board for a list of local offices, or check their website. www.legalaidboard.ie

The Legal Aid Board

Caherciveen

Co. Kerry

Tel: 066 947 1000 www.legalaidboard.ie

How can I get legal aid?

You must apply for legal aid at a law centre. The Legal Aid Board can tell you which law centre you should go to. You must satisfy a means test. This means that your income will be taken into account in assessing you for eligibility for legal aid. There can be some delays in receiving legal aid.

GUARDIANSHIP

What is guardianship?

Being a guardian means that you have the right to make decisions about the major decisions in a child's life, such as:

- where the child lives
- where the child goes to school
- religion of the child
- passport applications
- consent to medical treatment
- consent to adoption
- consent to taking the child out of the country

Who is a guardian?

A mother is always a guardian.

A father and mother who are married to each other are the guardians of their children.

An unmarried father is not automatically a guardian of his child. There are two ways that a man who is not married to the mother of his child can become a guardian of the child.

- The father can swear an agreement with the mother. Both parents sign an official form called a Statutory Instrument. The form is called Statutory Instrument No. 5 of 1998. It is available from Treoir or from Government Publications and must be completed in the presence of a peace commissioner or commissioner for oaths.
- The father can go to court to ask to be appointed a guardian. A father only needs to do this if the mother will not sign the Statutory Instrument that appoints him a guardian.

If you are a guardian of a child, you should make a **will** that leaves your guardianship rights to someone who will act in the best interest of your child, if you die before your child is 18 years old.

A will is a legal document that you write which says what will happen to your property and who will care for your children if you die. A solicitor can write a will for you. Or you can write a will yourself, but you need to follow certain rules, for example, it must be witnessed by two people together. If you want to write a will without a solicitor, ask for help from your Citizens Information Centre. There is a list of Citizens Information Centres in the phone book (golden pages) or at www.citizensinformation.ie

CUSTODY

What is custody?

Custody is having the main day-to-day care of your child.

Who has custody?

- A mother automatically has custody of her child.
- A father who is not married to the mother of the child can informally agree with her to share custody of their child.
- A father can also go to court to request sole or joint custody.

ACCESS

What is access?

Access is having the right to see your child if he/she is not living with you.

How can a parent get access?

The parent not living with the child can get access in the following ways:

- Parents can agree between themselves when the other parent has access.
- The other parent can go to court to request access, if this is being denied.

Can anyone else get access to a child?

Any person related to a child or who has acted as a parent to the child can also apply to the court for permission to apply for access.

MAINTENANCE

What is maintenance?

Maintenance is a payment made by one parent to the parent who has custody of a child in order to contribute to the cost of raising the child. Parents are responsible for maintaining their child. But parents who are not married to each other are not responsible for maintaining each other.

How do we decide how much maintenance to pay?

It is best for you and the other parent of your child to talk about how much maintenance your child needs for example, how much it costs to provide food, clothes etc. You should also talk about how much each of you can contribute from your wages or social welfare payments. Then you may be able to agree how much each parent can contribute.

If you cannot agree, a mediator may help you come to an agreement. You can read about mediation in the section of this booklet that is called PARENTING TOGETHER.

If mediation does not help you to reach an agreement you may have to go to court. The court can give you a maintenance order, which orders the other parent to pay maintenance. It also tells him/her how much maintenance they must pay.

You can get a maintenance order from a District Court or a Circuit Court.

If you go to the District Court, the maximum amount of maintenance that the court can order is €150 a week for each child. If you go to the Circuit Court, the court can order any amount of maintenance as there is no maximum.

Sometimes the circumstances of parents change and their ability to pay maintenance is affected. In this case, either parent can go back to court to ask to have the amount of maintenance changed. The order that the court gives is called a Variation Order.

If the other parent doesn't pay the maintenance that the court ordered them to pay, you can ask the court to take the maintenance from their wages. This is called an Attachment of Earnings. The employer of the other parent sends the maintenance to the court office. Then the court pays you.

APPLYING FOR A PASSPORT

Is my child entitled to an Irish passport?

Since 1 October 2004 all children, regardless of age, must obtain an individual passport in their own name. People born in Ireland on or after 1 January 2005 do not have a Constitutional right to be Irish citizens, unless, at the time of their birth, one of their parents is an Irish citizen or is entitled to be an Irish citizen.

Non-Irish parents of children, born in Ireland on or after 1 January 2005, must prove that they have a genuine link to Ireland. This will be evidenced by being resident legally in Ireland for three out of the previous four years immediately before the birth of the child. On proof of a genuine link to Ireland their child will be entitled to Irish citizenship.

Time spent in Ireland as students or asylum-seekers will not be included in calculating non-Irish parents' period of residence in Ireland.

How do I apply for a passport for my child?

You can get a passport application from:

- all Garda stations
- all post offices
- the Passport Offices and
- by emailing the Passport Office in Dublin passportdublin@iveagh.irlgov.ie or Cork passportcork@iveagh.irlgov.ie

Passport applications must be witnessed by an Garda Síochána. In addition there are further and differing requirements for parents depending on the nationality and/or residence of the parents.

Who needs to sign a passport application for my child?

All guardians must sign the passport application of a child. If both parents of a child are guardians, both of their signatures are required on the passport application form. If you cannot get the consent of the other guardian, you can go to court. The court can make an order saying that you can get a passport without the consent of the other guardian.

If the mother of a child is a guardian but the father of the child is not a guardian, the mother must sign the passport application. She can also sign another form that says that she is the only guardian of her child. This form is called **'Affidavit to be sworn by father or a mother who claims to be the sole guardian of the infant'**. You can get this form from the Passport Office or downloadable from

<http://193.178.1.205/services/passports/AFFIDAVIT.htm>

It must be signed in the presence of a peace commissioner or commissioner for oaths.

Alternatively, both parents can sign the passport application even though the father is not a joint guardian of the child. However, the father's name must be entered in the Register of Births for this procedure.

The address and phone number of the passport offices are:

THE PASSPORT OFFICE DUBLIN

Setanta House

Molesworth Street

Dublin 2

LoCall 1890 426 888

THE PASSPORT OFFICE CORK

1a South Mall

Cork

LoCall 1890 426 900

After you fill in a passport application form, you can:

- take your application to the passport office in Dublin or Cork,
- post your application with the Passport Express service at the post office, or
- post your application by regular post.

FATHERS

What are my rights as an unmarried father in Ireland?

- A father who is not married to the mother of his child does not have any automatic legal rights to his child.
- If your name is on the birth certificate it does not give you any legal rights to your child.
- You can get legal rights by becoming a guardian of your child. You do this by signing a form called a Statutory Declaration (S.I.no 5 of 1998) but only if the mother agrees. If the mother does not agree, you can become a guardian through the courts.

How can I prove that I am the biological father of the child?

If your name is on the birth certificate you are presumed to be the father.

If you have a court order for maintenance, access, custody or guardianship naming you as the father then that is considered evidence of paternity.

How can I take a paternity test?

For a paternity test, you can contact one of the clinics listed in "Establishing Paternity" at www.treoir.ie/publications. They will probably ask you to go to your GP (doctor) who will carry out the tests and send the sample to the laboratory. Mother, father and child must be tested. Check prices as they can vary.

CHILD ABDUCTION

What is Child Abduction?

It is against the law for a parent, guardian or person with custody of a child to take a child out of the State without the consent of the other (married) parent, guardian, or the person with custody, or in defiance of a court order. If this happens, contact the Central Authority for Child Abduction.

Central Authority for Child Abduction

Department of Justice, Equality and Law Reform

Bishop's Square

Redmond's Hill

Dublin 2

Tel: 01 479 0290

LoCall: 1890 221 227

It is against the law for any person to detain, remove or keep a child under 16 years from the lawful control of any person who has lawful control of the child. A person guilty of these offences may be fined or imprisoned or both. If this happens within the State, contact your local garda station. There is a list of these in the phone book or at www.garda.ie

WHERE CAN I CONTACT ORGANISATIONS THAT CAN HELP ME?

IMMIGRATION/REFUGEE ORGANISATIONS

Access Ireland

Cultural Mediation Programme and Refugee Women's Programme
40/41 Dominick Street Lower
Dublin 1
Tel: 01 878 0589
Email: info@accessireland.ie
www.accessireland.ie

Afghan Community of Ireland Association

20 Ashington Gardens
Off Navan Road
Dublin 7
Tel: 01 868 3577
afgcommunity@hotmail.com
www.nasruddinsaljoqi.tripod.com

Centre for the Care of Survivors of Torture

213 North Circular Road
Phibsborough
Dublin 7
Tel: 01 838 9664
Email: info@ccst.ie mike@ccst.ie
www.ccst.ie

Department of Justice, Equality and Law Reform

72/76 St. Stephen's Green
Dublin 2
Tel: 01 602 8202
www.justice.ie

Department of Justice, Equality and Law Reform

Reception and Integration Agency
Block C, Ardilaun Centre
112/114 St. Stephen's Green West
Dublin 2
Tel: 01 418 3200
www.justice.ie

The RIA is responsible for co-ordinating services provided for asylum seekers in Ireland.

Emigrant Advice and Counselling Service

1a Cathedral Street
Dublin 1
Tel: 01 873 2844
Email: info@emigrantadvice.ie
www.emigrantadvice.ie

Immigrant Council of Ireland (status/welfare enquiries)

2 St. Andrew Street
Dublin 2
Tel: 01 674 0200
www.immigrantcouncil.ie

Irish Chinese Information Centre

57/58 Smithfield
Dublin 7
Tel: 01 878 8358
Email: wangzhe@news@press.net

Irish Immigrant Support Centre (NASC)

Enterprise House
35 Mary Street
Cork
Tel: 021 431 7411
Email: info@nascireland.org
www.nascireland.org

Irish Refugee Council (policy and legal issues)

88 Capel Street
Dublin 1
Tel: 01 873 0042

Irish Refugee Council

1 Bank Place
Ennis
Co Clare
Tel: 065 6822 026

Migrant Rights Centre Ireland

55 Parnell Square West
Dublin 1
Tel: 01 889 7570
Email: info@mrci.ie
www.mrci.ie

Muslim Association of Ireland

Unit 2 Greenhills Business Centre
Tallaght
Dublin 24
Tel: 01 452 3416
Email: mai.ireland@gmail.com

National Consultative Committee on Racism and Interculturalism (NCCRI)

Third Floor, Jervis House
Jervis Street
Dublin 1
Tel: 01 858 8000
Email: info@nccri.ie
www.nccri.ie

Polish Information and Culture Centre

56/57 Lower Gardiner Street
Dublin 1
Tel: 01 819 6535
Email: info@polishcentre.ie

Refugee Information Service (legal and welfare information)

27 Annamoe Terrace
Off North Circular Road
Dublin 7
Tel: 01 838 2740
Email: info@ris.ie
www.ris.ie

Refugee Information Service

Canavan House
Nun's Island
Galway
Tel: 091 532 850
Email: infogalway@ris.ie

Refugee Legal Service (asylum seekers)

48/49 North Brunswick Street
Georges Lane
Smithfield
Dublin 7
Tel: 01 646 9600
Freephone: 1800 238 343
Email: dublinris@legalaid.ie
www.legalaidboard.ie

Russian Information Centre

55 Lower O'Connell Street
Dublin 1
Tel: 01 874 0004
Email: sokolov@russianireland.com

SPIRASI

Health Information Project
Spiritan House
213 North Circular Road
Dublin 7
Tel: 01 838 9664
Email: info@spirasi.ie
www.spirasi.ie

Unaccompanied Minors

Social Work Service
Baggot Street Hospital
Dublin 2
Tel: 01 668 1577

Vincentian Refugee Project

St. Peter's Church
Phibsborough
Dublin 7
Tel: 01 810 2580
Email: refugeecentrephibsborough@eircom.net
www.vincentians.ie/VRC.htm

ONE PARENT FAMILY ORGANISATIONS**Treoir**

National Information Centre for Unmarried Parents
14 Gandon House
Custom House Square
Irish Financial Services Centre
Dublin 1
Tel: 01 670 0120
LoCall: 1890 252 084
www.treoir.ie

One Family

Cherish House
2 Lower Pembroke Street
Dublin 2
Tel: 01 662 9212
LoCall: 1890 662 212
www.onefamily.ie

Aim Family Services

Family Law Information, Mediation and Counselling
Floor 1
6 D'Olier Street
Dublin 2
Tel: 01 670 8363
www.aimfamilyservices.ie

OTHERS**Free Legal Advice Centre (FLAC)**

13 Lower Dorset Street
Dublin 2
Tel: 01 874 5690
www.flac.ie

The Equality Authority

2 Clonmel Street
Dublin 2
LoCall: 1890 245 545
www.equality.ie

National Women's Aid Helpline

Tel: 1800 341 900
www.womensaid.ie

Check the phone book for contact details for local District Courts and health centres. Your local Citizens Information Centre may also be of help. You will also find a list of these in the telephone directory or online at www.comhairle.ie

SUMMARY TABLE A

Legal Information for unmarried migrant parents

	WHAT IS IT?	HOW?
GUARDIANSHIP	<p>The right to make decisions on:</p> <ul style="list-style-type: none"> • where the child lives, goes to school • the religion of the child • passport applications • consent to medical treatment • consent to adoption • consent to taking the child out of the country 	<p>Mothers automatically have guardianship</p> <p>Unmarried fathers can get guardianship in two ways. You can:</p> <ol style="list-style-type: none"> 1. Sign a form called Statutory Instrument No 5 of 1998 2. Go to court to apply to become a guardian <p>Fathers do not get guardianship rights by having their name on the birth certificate</p>
ACCESS	<p>The right to see the child if you are not living with him/her</p>	<p>Make an arrangement with the other parent</p> <p>Go to mediation with the other parent to help you to reach an agreement</p> <p>Go to court to get an order for access/custody or maintenance</p>
CUSTODY	<p>Having the main day to day care of your child</p>	
MAINTENANCE	<p>A payment made by one parent to the other parent who has full custody to contribute to the cost of raising the child</p>	

SUMMARY TABLE B

Legal Information for unmarried migrant parents

When you are doing the following:	Remember that:
REGISTERING A BIRTH	<p>It should be an accurate record of your child's birth.</p> <p>To register the birth, register in the hospital, or go to any registrar's office. You will need to bring photo identification.</p> <p>You must choose a surname (family name) for your child. You can choose:</p> <ul style="list-style-type: none"> • Surname of the mother • Surname of the father (if his name is going on the birth certificate) • The surnames of both parents (if the name of the father is going on the birth certificate) <p>To put the name of the father on the birth certificate:</p> <ul style="list-style-type: none"> • Both parents can go to the registrar (or hospital) together • Either parent can bring a form called a Statutory Declaration to the registrar. On this form, he/she swears that the father is the biological father of the child • If one parent does not want to put the name of the father on the birth certificate, the other parent can bring a copy of any court order naming the father to the registrar <p>You can add the name of the biological father to the birth certificate at any time</p> <p>A father does not get guardianship by having his name on the birth certificate</p>
APPLYING FOR A PASSPORT	<p>All guardians must sign the passport application form.</p> <p>If you cannot get the consent of the other guardian, you can go to court.</p> <p>If a mother of a child is the only guardian, in addition to signing the passport application form</p> <p>(a) she must sign another form that says that she is the only guardian of the child</p> <p>or</p> <p>(b) both parents can sign the passport application form but the father's name must be entered on the birth certificate.</p>