



Children and Family Relationships Bill 2015

Submission to the Minister for Justice and Equality

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Treoir, 14 Gandon House, IFSC, Dublin 1
Ph: 01 – 6700 120 www.treoir.ie

Guardianship Rights for Unmarried Fathers

Approximately 25,000 births in Ireland are outside of marriage each year representing 35% of total births. About half of the births are to couples who are living together at the time of the birth. Many of these families will benefit from the provisions of the Children and Family Relationships Bill 2015. However, this groundbreaking legislation as currently drafted will not improve the situation for a significant number of children who will not have established a legal relationship with their committed and involved fathers.

Currently a father can acquire guardianship by signing a statutory declaration with the mother or by going to court. Under the Children Act 1997¹, unmarried fathers can, if the mother agrees, complete a statutory declaration for joint guardianship (S.I. No. 5 of 1998 – Statutory Declaration of Father and Mother in relation to Joint Guardianship of Child/Children). There is no Central Register for Guardianship Agreements. Where a declaration is signed and subsequently is lost or destroyed there is no evidence of the fact that the father has guardianship rights to his child/children. Also many parents are unaware that this option is available to them.

Where the mother refuses to sign the statutory declaration for guardianship form the father can apply to the local district court to become a joint guardian of his child. Some unmarried fathers decide not to resort to the courts to obtain guardianship rights because it would further antagonise the fragile relationship with the mother and it could ultimately compromise the contact and the relationship with his child.

¹ Section 2(4) of the Guardianship of Infants Act, as inserted by Section 4 of the Children Act 1997

Proposed Amendments

Treoir believes that in recognition of the importance of fathers in children's lives every effort should be made to establish and maintain links between children and their fathers, irrespective of the marital status or the living arrangements of the parents. Article 2 of the United Nations Convention on the Rights of the Child (1989) states that children have a right to be protected from discrimination irrespective of the marital status of the parents.

The Civil Registration (Amendment) Act 2014)² once commenced will make it compulsory for both parents names to be entered on a child's birth certificate so that every child will know the identity of both his or her parents. This means that unmarried fathers will be required to engage with the Registrar of Births to register the birth of their children. If a father does not attend jointly with the mother, he will be contacted, where possible, and asked to attend to confirm paternity and to have his name entered in the birth register. It will be possible for a mother to furnish the Registrar with a statutory declaration to avail of the exemptions allowing the exclusion of the father's details on the birth certificate.

Treoir's proposals to amend the Children and Family Relationships Bill are aligned with the Provisions of the Civil Registration (Amendment) Act 2014 regarding compulsory birth registration of a father's details.

Birth Registration and Acquisition of Guardianship Rights for Unmarried Fathers

Treoir envisages the following options surrounding the birth registration of a child of unmarried parents and how guardianship by fathers can be acquired following the enactment of both the Children and Family Relationships Bill 2015 and the Civil Registration (Amendment) Act 2014:

1. Joint Registration

The mother and father attend the Registrar together for the purpose of jointly registering the birth of the child. There will be no cohabitation requirement and the father will become a guardian by either:

² Civil Registration (Amendment) Act 2014, Section 6

- a. Signing the statutory declaration for joint guardianship which will be filed by the Registrar in the **Central Register for Joint Guardianship Agreements**, or
- b. Birth certificates will be amended to facilitate proof of joint registration on the same date and automatic guardianship rights for the father will flow from the joint registration. The birth certificate will be the official document proving the guardianship right of the unmarried father as is the practice in other jurisdictions such as Northern Ireland and Britain.

If for some reason the parents cannot attend the Registrar together to register the birth of their child (eg the father is working abroad), it will be possible for one parent to present the Registrar with a declaration completed and signed by the absent parent and witnessed by a relevant person.

2. Sole Registration by the mother

An unmarried mother attends to register the birth alone and provides information about the person she identifies as the father of the child. The purported father will have to attend before the Registrar within 28 days. At this point, if he agrees he is the father of the child, the Registrar will have a **statutory obligation to provide him with information** to the effect that he has no legal relationship with his child and on the options open to him to acquire legal guardianship rights of his child either by signing a Joint Guardianship Agreement with the mother or by application to the courts.

3. Mother does not provide information on the father

An unmarried mother attends the Registrar alone to register the birth of her child and does not provide information on the identity of the father of the child³ on the basis that:

- a) she does not know the identity of the father of the child;
- b) she does not know the whereabouts of the father of the child;
- c) she believes that providing the information is *not in the best interest of the safety of the child*.

³ Civil Registration (Amendment) Act 2014, Section 6 (1D)

She will be required to provide particulars and evidence in relation to her reasons for not providing the father's identity. If these reasons are accepted by the Registrar in relation to the registration of the birth no further action would be necessary.

Aligning the provisions of the Children and Family Relationships Bill 2015 with the filters outlined in the Civil Registration (Amendment) Act 2014 will protect unmarried mothers in circumstances of domestic violence or rape and will significantly reduce the numbers of fathers having to go to court to acquire guardianship rights. The relationship between the child and the unmarried father will no longer be defined by the relationship between the mother and father.

This will not pose constitutional difficulties as differences in the rights of married and unmarried families will remain. The court will continue to have the power to remove the guardianship rights of an unmarried father if it is in the best interest of his child.

Guardianship flowing from Cohabitation

Treoir welcomes the provision that many more unmarried fathers can acquire "automatic" guardianship rights by virtue of cohabiting with the child's mother for a minimum period of 12 months, three months of which must be post birth. However, it does not include any procedure to verify whether in fact a couple has been cohabiting.

If the relationship ends, the parents who are guardians may not be in agreement about how long they cohabited. This could result in an increase in court cases to determine whether the natural father is a guardian. This will not be in the best interest of the child because it will be unclear whether the father can take part in key decisions related to the child (such as medical consent or whether the child can leave the jurisdiction). Moreover, it will be unclear whether the father, as a guardian, enjoys automatic custodial rights.

Treoir believes that there should be a registration process for fathers who meet the cohabitation requirements so that they can demonstrate that they have acquired rights. These agreements could be registered in the Central Register for Guardianship Agreements.

Right of a parent who is not a guardian to be consulted (Section 45 6C)

Treoir welcomes section 45 (6C) of the Children and Family Relationships Bill which provides power to the Court to appoint a person other than a parent as guardian. Subsection (3) provides that a parent or guardian of the child concerned shall be put on notice of such application. However, Subsection (6) states that an order under this section shall not be made without the consent of each guardian of the child and the applicant concerned.

Treoir envisages a situation where a committed non-marital father who is not a guardian of the child could be excluded from this important process in the life of his child. Treoir would like an amendment of subsection (6) to provide the following:

(6) Subject to subsection (4), an order under subsection (1) shall not be made under this section without:

- (a) the consent of each guardian of the child,*
- (b) the consent of the applicant concerned and*
- (c) consultation with a parent who is not a guardian*

Summary of Proposed Amendments

- 1. A procedure should be put in place to facilitate the acquisition of guardianship rights for unmarried fathers at the point of birth registration.**
- 2. A Central Register for Guardianship Agreements should be established.**
- 3. Mandatory Information should be provided for unmarried parents at the point of birth registration.**
- 4. A registration process should be put in place for fathers who meet the cohabitation requirement so that they can demonstrate that they have acquired guardianship.**
- 5. Include a provision to make it compulsory to consult a parent who is not a guardian when the court deals with an application to appoint a person other than a parent as guardian.**

Appendix I

Northern Ireland Joint Birth Registration Form

REGISTRATION OF A BIRTH

4. Details of Informant (Name and Address of person registering the birth)

Forename(s)			
Surname			
Relationship to Child			
Address including Post Code			
Home Tel No.		Work Tel No.	
Mobile No.		Email	

4(b). Details of Second Informant (in the case of a joint registration of the birth)

Forename(s)			
Surname			
Relationship to Child			
Address including Post Code			
Home Tel No.		Work Tel No.	
Mobile No.		Email	

5. Declaration

* I/We confirm that the information given on this form is correct.

Informant Signature(s)

Please note: The Registrar will complete the registration with the details you have provided on this form. You will then be asked to check and sign the registration.

The registration is the legal record of the birth and you should only sign when you are satisfied that the details are correct.

THIS FORM ONCE COMPLETED SHOULD BE TAKEN TO ANY DISTRICT REGISTRAR'S OFFICE IN NORTHERN IRELAND.

For a list of offices and their opening times please see www.nidirect.gov.uk or Yellow Pages under Registration of Births, Deaths and Marriages.

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Appendix II

Northern Ireland Information for Unmarried Parents included in Birth Registration Form

JOINTLY REGISTERING YOUR BABY'S BIRTH IMPORTANT NOTES FOR UNMARRIED PARENTS

Who is responsible for children?

Married parents are both responsible in law for their children. They both have parental responsibility. Unmarried parents do not both have parental responsibility. Unmarried mothers have it automatically. Unmarried fathers can get parental responsibility, simply by jointly registering the birth of the child with the mother or by making a parental responsibility agreement with the child's mother and registering it with the Office of Care and Protection at the High Court in Belfast or by getting a Court Order.

How do we jointly register the birth?

The three most common ways are:

1. **The mother and father together** can ask the Registrar to record both their names on the birth certificate. Then the mother and father each sign the register, in the other's presence; or
2. **The mother** can ask the Registrar to put the father's name on the birth certificate. She has to fill in a Declaration form saying that this person is the baby's father. The Registrar will only put the father's name on if the father fills in and signs a Declaration form which must be witnessed by a relevant person. The Registrar can give you the forms and advice; or
3. **The father** can ask the Registrar to put his name on the birth certificate. He has to fill in a Declaration form saying that he is the baby's father. The Registrar will only put the father's name on if the mother also fills in and signs a Declaration form. The Registrar can give you the forms.

What is parental responsibility?

The law says that parental responsibility is "all the rights, duties, powers, responsibility and authority which, by law, a parent of a child has in relation to the child and his property". It enables you to look after your children and do everything they need for their well-being.

It gives you the right to make important decisions about your child's life - like who they should live with, or where they should go to school. It means you are the person who consents to medical treatment for your child. There is no complete list of decisions that someone with parental responsibility can take for a child, because so many different decisions can come up.

Even if you don't have parental responsibility for your child, the law says you have to help pay for their upbringing. (For more information visit the website www.nidirect.gov.uk).

What about my other children?

The law only applies to children born on or after 15 April 2002. If you are an unmarried father and want to get parental responsibility for your older children, you can:

- Make a parental responsibility agreement with the child's mother and register it with the Office of Care and Protection at the High Court in Belfast.
- Get a Court Order.

What if I'm not sure?

You don't have to jointly register your child's birth and both parents have to agree. Some people don't want to. An unmarried mother may register the birth on her own without providing details of the father.

If you aren't sure about joint registration after reading this leaflet, don't just go ahead. Tell the Registrar you need a few days to think about it. You could also talk to a Solicitor about anything that is worrying you, or contact other organisations offering support and advice to parents.

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