



Children and Family Relationships Bill 2015

Submission for discussion at the Seanad

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Introduction

Treoir welcomes the amendments to The Children and Family Relationships Bill 2015 introduced by the Minister at report stage to enable Registrars to inform unmarried parents at the point of birth registration that the father does not have automatic guardianship rights. Section 97 of the Bill empowers a Registrar to witness a statutory declaration for joint guardianship signed by the mother and father appointing the father as a guardian. This can be done at a time when the parents are registering or re-registering a child's birth or within a short period afterwards (14 days).

Treoir also welcomes the Minister's public commitment to implement a review in two years time to consider the impact of this legislation, once enacted, on improving the situation for non-marital fathers.

Central Register for Guardianship Agreements

Treoir firmly believes that the establishment of a Central Register for Guardianship Agreements should be embedded in this significant family legislation. We have a concern that a change of government or other political pressures may result in the Minister's commitment to undertake a pilot project/scoping exercise on a Central Register not being met.

Proposed Amendment

A Central Register for Guardianship Agreements should be established as follows:

New Section: National Register of Joint Guardianship Statutory Agreements

- (1) The Minister shall cause to establish and maintain a register to be known as the National Register of Joint Guardianship Statutory Agreements.
- (2) The Minister shall make an entry in the Register in respect of each joint guardianship agreement issued under the Guardianship of Children (Statutory Declaration) Regulations, 1998 (S.I. No. 5/1998).
- (3) The Minister may prescribe the manner in which the joint guardianship agreements referred to in subsection (2) are to be recorded

Additional Concerns

Treoir envisages that the following sections of the Bill are likely to prove problematic and believes that the Seanad should carefully consider them.

1. Right of a parent who is not a guardian to be consulted. Section 49 (6C) (3)

Treoir welcomes section 49 (6C) of the Children and Family Relationships Bill 2015 which grants 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. There is no requirement to consult a father who is not a guardian though he may be very committed to his child.

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.

2. Rights and Responsibilities flowing from a court order appointing a person other than a parent as a guardian. Section 49 (6C) (9) (11) (12)

The Children and Family Relationships Bill 2015 does not include definitions of guardianship, custody and access which would be essential in order to reduce the level of family conflict that may take place when relationships break down and to avoid existing confusion amongst the public, professionals and the Judiciary.

Although the Bill fails to define what being a guardian actually means to a child's parents, Section 49 (6C) (9) (11) and (12) spells out the rights and obligations of third parties who are granted guardianship by the courts. These rights and responsibilities are only enjoyed when expressly ordered by the court.

Subsection (11) deals with areas commonly related to guardianship such as making decisions regarding the child's place of residence or medical consent. Subsection (12) deals

with very specific areas relating to guardianship and consent - such as consent of a guardian when applying for a child's passport (section 14 of the Passports Act 2008); consent of a guardian when the child is applying for employment (section 5 of the Protection of Young Persons Employment Act 1996); or when taking DNA samples in the context of criminal investigations (sections 50 and 50A of the International Criminal Court Act 2006).

However, these sections fail to address the rights and responsibilities of persons other than parents who have been appointed guardians by the court in the context of education such as consent regarding the choice of school or other guardian responsibilities in this area (e.g. Education (Welfare) Act 2000 or the Data Protection Acts 1998 and 2003).

Treoir envisages that the lack of general definitions of guardianship, custody and access and the inclusion of section 49 (6C) (9) (11) and (12) outlining the rights and responsibilities of third party court appointed guardians will result in further confusion. Due to the lack of clarity it is likely that the interaction between parents who are guardians and persons other than parents who have been appointed guardians could become very challenging. This could be to the detriment of the child.

3. Guardianship flowing from Cohabitation Section 49 (6B) (3)
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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).

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.

Summary of Areas of Concern:

- 1. Lack of consultation with a parent who is not a guardian when the court deals with an application to appoint a person other than a parent as guardian.**
- 2. Confusion regarding the rights and responsibilities flowing from a court order appointing a person other than a parent as a guardian.**
- 3. 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.**

Questions for consideration:

- **The rights and responsibilities of a person other than a parent who has been appointed a guardian by the court are outlined in section 49 (9) (11) and (12). There is no mention of the right to make decisions on education. Does the fact that education is omitted from the above sections mean that a person other than a parent who has been appointed by the court as a guardian cannot make decisions in the context of education?**
If a third party was granted guardianship by the court and none of the rights under no 49 (11) a – e were “expressly so ordered” what rights exactly would the person get? Where does the right to make decisions about education fit?
- **Are parents who are guardians and third party guardians expected to consult and/or obtain consent regarding major decisions to be made in respect of the child?**
- **Why a parent who is not a guardian is not consulted regarding the appointment of a third party as a guardian of the child?**
- **How can a father prove that the cohabitation (1 year including 3 mths post the birth) requirement has been met and that he has acquired automatic guardianship? It will be particularly difficult to prove if the couple separates at an early stage.**