

## **RADICAL CHANGES ON THE WAY FOR (SOME) UNMARRIED FATHERS**

Alan Shatter has introduced the General Scheme of a Children and Family Relationships Bill 2014, a groundbreaking Bill which if implemented, would modernise family and child law to cater for the growing number of families whose needs are not adequately addressed in current law.

Most children live in marital families with their biological parents. However, a significant number of children live in other family types and these families do not have any “legal architecture” underpinning their parenting. This Bill seeks to provide legal clarity for all families in terms of their parental rights and responsibilities with the welfare and best interests of the child being at the heart of the legislation. A key message is that family types other than the married family can provide the necessary stability in which to raise a child.

This Bill is very complex and contains a significant number of provisions for families. If enacted, it will allow civil partners, step-parents, cohabitants and those who are providing day-to-day care for children (such as grandparents) to apply for guardianship or custody of a child. It provides for the assignment of parentage in Artificial Human Reproduction (AHR) and surrogacy. It also contains provisions relating to guardians ad litem, substitute guardians, interim custody and access orders amongst other provisions.

Currently where a child is born to unmarried parents only the mother acquires automatic guardianship rights in respect of their child. The father does not have any automatic guardianship rights whether or not he is cohabiting with the mother of his child. Where parents are in agreement, the mother and father can sign a Guardianship of Children (Statutory Declaration) S.I. No 5 of 1998 giving the father joint guardianship rights to his child. Where the parents do not agree the father has no option but to apply to the local district court for joint guardianship rights.

Very many unmarried parents are misinformed about their guardianship rights and assume that where a father's name is on a child's birth certificate this, in itself, gives a father joint guardianship rights. It does not!

There is a provision in the Bill whereby an unmarried father who is cohabiting for a year or more with the mother before the birth of the baby will acquire guardianship rights to his child automatically, and this provision is very welcome. However, there is no mention in the Bill as to how these guardians will be registered. Currently married parents can produce their marriage certificates and unmarried mothers can produce the child's birth certificate as evidence of guardianship. Without some form of evidence that the father has cohabited with the mother for the required amount of time it is difficult to see how this provision will work in practice.

We know from calls to our national specialist information service that there are many unmarried fathers who are not in cohabiting relationships with the mothers of their children, who are very committed fathers and who wish to be actively involved in the lives of their children. There is no provision in the Bill for acquiring joint guardianship rights more easily for these fathers.

We in Treoir recognise the difficulty of granting automatic guardianship rights to all unmarried fathers (for example in the case of a child conceived as a consequence of violence) but suggest that parents could be informed at the point of registration that putting the father's name on the birth certificate does not give the father guardianship rights. They should also be provided with a statutory declaration for joint guardianship for signing at a later date if both parents agree.

Whether or not this Bill is enacted a Central Register for all guardianship declaration *must* be established. Treoir has been campaigning for many years to have a central register for statutory declarations of joint guardianship. Since the Child Care Act 1997 introduced this facility there have been thousands of declarations signed by unmarried fathers which have not been registered in any

central location. Should a father lose that declaration he has no proof of his guardianship. This is most unsatisfactory – it is akin to losing a marriage certificate and having no facility to acquire a copy.

If this Bill is enacted, it seems likely that there will be an increased demand on court services. It is essential therefore that a family court structure be established to cater for the outcome of the Bill and to ensure appropriate training for the judiciary who will be dealing with much more complex family and child law cases.

**Margot Doherty**

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*Unmarried parents and their extended families can contact Treoir for specialist information on the legal rights and responsibilities of unmarried parents, living together or not. To speak in confidence to an information officer call **1890 252 084** or you can email **info@treoir.ie**. This is a free service.*

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