

PROPOSALS

ON

**THE INITIATION OF A REGISTER FOR JOINT
GUARDIANSHIP AGREEMENTS**



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Introduction

Over one third of children are born outside of marriage and 44% of first births in 2004 were to parents who were not married to each other.

Up until the passing of the Status of Children Act in 1987 there was no legal recognition of unmarried fathers. They could not acquire guardianship of their children unless they married the mother. Section 12 of the Status of Children Act gave the courts power to appoint the father as a guardian. A further improvement was made in the Children Act 1997. Section 2 provided that an unmarried father could be appointed a guardian of his child with the mother's agreement if both signed a statutory declaration (SI 5 of 1998) to that effect in the presence of a peace commissioner or commissioner for oaths.

Guardianship is the most significant right a parent can have in respect of a child. However, There is no obligation on or facility for the Peace Commissioner or Commissioner for Oaths to record such agreements. There is no Central Register for such agreements. Where a dispute arises between the parents the father may need to have proof that he is a guardian or indeed in the event of the death of the mother a copy of the agreement would be essential for the father. It is essential that a Central Register of Joint Guardianship Agreements be initiated so that in the event of loss of an agreement a copy can be acquired.

It is totally unacceptable that if a Joint Guardianship Agreement is mislaid there is no record that a father is a guardian of his child. It is impossible to envisage a situation where a marriage certificate is mislaid and the ensuing difficulty of establishing the marriage in the absence of a central register!

History of Treoir lobbying

Since 1998 Treoir has been lobbying for the initiation of a Central Register for Joint Guardianship Agreements

- When the Civil Registration Bill in 2003 was going through the house Treoir lobbied all parties in an effort to have the Central Register included in the Civil Registration Act but unfortunately the then Minister for Social and Family Affairs, Ms. Mary Coughlin, T.D. did not support the view that it was a significant life event and it did not happen.
- Treoir then met with officials of the Department of Justice, Equality and Law Reform and proposed that the Register be considered in the context of forthcoming family legislation.
- In January of 2006, in response to correspondence to the Minister for Justice Equality and Law Reform, Mr. Michael McDowell, T.D. his office stated “The Minister has no proposals to provide for the establishment of a central Register for joint guardianship agreements in legislation sponsored by his Department. While he is not convinced of the need for the establishment of such a register, he is of the view that any such register would more appropriately be dealt with in the context of the Civil Registration legislation which is primarily a matter for the Department of Health and Children”.
- At a meeting in 2005 with Minister Brian Lenihan, T.D., Minister with responsibility for children, the issue was briefly discussed in the context of the forthcoming guardianship legislation.

It is unacceptable that responsibility for a Central Register is being passed from one government department to another and no one is taking responsibility for the setting up of a Register.

Proposal

Children deserve to have their guardianship taken seriously and the initiation of a Guardianship Register is a way of affirming the seriousness of guardianship.

Treoir is appealing to the government to initiate a Central Register for Joint Guardianship Agreements as soon as possible.

Options

The options open to the government are to have the register placed in the Civil Registration Office or in the Courts.

- a) The Civil Registration System houses all records of births, marriages etc., As married parents get their guardianship rights through their marriage, there is a certain logic to housing the Central Register of Joint Guardianship Rights within that system.

- b) Where there is no agreement between unmarried parents on joint guardianship then guardianship may be sought by fathers through local District Courts so having the Central Register of Joint Guardianship Rights within the Court system also contains a logic.

Treoir believes that ideally the Central Register for Joint Guardianship Agreements should be part of the Civil Registration System. An amendment to the Civil Registration Act should be introduced to allow for the Register .

Treoir further believes that acquiring joint guardianship is such an important event that the Statutory Instrument should be witnessed by a Commissioner for Oaths and the facility whereby Peace Commissioners can witness them should be withdrawn.

**Treoir
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