

TREOIR BULLETIN 2010

One-Parent Family Payment - The Social Welfare (Miscellaneous Provisions) Act 2010

The government plans to phase out the One-Parent Family Payment for children over the age of 14 in a major overhaul of the system over a six-year period. Changes to the One-Parent-Family Payment are outlined in The Social Welfare (Miscellaneous Provision) Act 2010 that was enacted in July 2010. From April 2011 new recipients of the one parent family payment will receive payment only until their children reach the age of 14. The payment will be phased out over six years for existing recipients “ to enable them to access education and training, to prepare them for their return to the labour market”, the department has said.

For existing claimants, there will be a six-year phasing-in period:

For 2011 and 2012, the age limit will remain 18

For 2013, the limit will be age 17

For 2014, age 16

For 2015, age 15

For 2016, age 14

The Bill also provides for:

- The appointment, by the Minister, of persons other than serving staff to be Appeals Officers. This is to clear the backlog in the Social Welfare Appeals Office.
- The publication of the names, addresses, fines and other penalties of persons who have been convicted of offences under Social Welfare legislation.

View the Bill and explanatory information on www.oireachtas.ie.

CSO Statistics Yearly Summary 2009

There were 74,278 births registered in 2009. Of these, 24,532 births were registered as outside of marriage representing 33% of all births registered. Of all births registered as outside of marriage, 55% were registered by cohabiting parents. The highest percentage of births outside marriage occurred in Limerick City at 49%, while the lowest percentage was in both Galway County and Leitrim at 23%.

A total of 2,223 teenagers had babies last year, 176 of whom were married. 8% of all births registered as outside of marriage were registered by unmarried teenage parents of which 26% were registered as cohabiting.

Child Maintenance Enforcement Order

A High Court ruling in June 2009 (McCann vs Judge of Monaghan District Court & Others) changed the legal onus from a debtor having to prove they can't pay, to a creditor needing to provide evidence they can afford to pay. Following this case, the Enforcement of Court Orders (Amendment) Act was passed in 2009, which took account of the ruling in this case but did not amend the issue in family law. As a result of this many District Courts refused to issue child maintenance enforcement orders and parents who had been ordered to pay maintenance could not be forced to do so. The Act has now been amended by Rule SI 325 of 2010 with effect from October 11th, 2010. This means that a Judge can now issue a summons advising the debtor that where there is non payment of debt (maintenance) a warrant can be issued for arrest and/or imprisonment.

Growing Up in Ireland

Research from the first comprehensive report from Growing Up in Ireland, the Government funded national longitudinal study of children in the State, was published in December 2009. A total of 8,500 nine year olds were interviewed for the research together with their families, teachers and other significant carers. The report shows that 82 per cent of the nine year olds live in two parent households, with almost one in five living in lone-parent families. Nearly one-fifth of children living with their mothers only never had contact with non-resident fathers. And 51 per cent of these mothers reported non-resident fathers did not make any financial contribution to the upbringing of their child, while 55 per cent of non-resident fathers had no custody arrangements in relation to their child. Some 20 per cent of children who didn't have any contact with non-resident fathers lived within 30 minutes of their father.

See www.growingup.ie

Family Figures: Family Dynamics and Family Types in Ireland, 1986 – 2006

This study provides details of trends in the structure of Irish Families using Census data from the Central Statistics Office. The study was produced by researchers from the ESRI and UCD and funded by the Family Support Agency. The report deals with four aspects of family trends: (1) Singlehood and couple formation (2) Marital breakdown (3) Fertility (4) Lone parenthood.

Among the findings are the following:

On lone parenthood:

- In 2006, 57% of lone parents had never married. The proportion of lone parents who experienced a marital breakdown was 35% and is increasing.
- There is an extremely strong relationship between low educational attainment and the likelihood of becoming a never-married lone mother.
- There are over 10,000 lone fathers, almost all from broken marriages. It estimates the chances that the children of a broken marriage live with the father at one in eight.

On singlehood and couple formation:

- Across all social classes, marriage rates have fallen among those aged in their 20s and risen among those aged over 30. This delay in entering marriage is partly due to people delaying forming any kind of partnership and partly due to the rapid increase in cohabitation among younger adults.
- By 2006, twice as many 25 year-olds were cohabiting as were married. Cohabitation is mostly a prelude to marriage, but an increasing number of cohabiting couples have children, suggesting cohabitation may be a preferred option among a minority.
- Nationality, ethnicity and religion are stronger influences on whether people cohabit or marry than socio-economic position, though people in the middle of the range for educational attainment are most likely to form partnerships.

The study also shows what the implications are of its findings in relation to family policies, including the appropriate public supports available to different family structures, the rights and duties of unmarried partners.

See www.esri.ie/publications

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FAMILY LAW CASES

Custody rights of unmarried father

In July 2010 the Supreme Court referred a case to the European Court of Justice to decide on issues concerning the custody rights of an unmarried father in a child abduction case. This case involved an unmarried Irish father who was in a 10-year relationship with the mother of their three children. The mother was English and weeks after their relationship ended the mother returned to England with the children. The father took steps to bring proceedings before an Irish court, in order to obtain rights of custody (guardianship) in respect of his three children. However, since his application had not been served on the mother before her departure, the action had not been validly brought in accordance with Irish procedural law. The High Court had rejected the father's challenge and held that the removal was not unlawful because the man had not applied for custody

rights. The Supreme Court while agreeing with the High Court referred the case to the European Court of Justice to determine the issue. The issue to be determined, under a Brussels regulation, was in relation to the exact interpretation of the notion of “rights of custody”. Under the Hague Convention on Child Abduction, the Irish courts have declined to recognise as amounting to rights of custody the “inchoate” rights of those carrying out parental duties and enjoying parental privileges where those rights are not formally recognised by the law. However, the definition of custody rights for the purpose of applications for the return of children under the Hague Convention are now contained in a Brussels regulation which provides that the term “rights of custody” shall include rights “and duties” relating to the care of a child, particularly the right to determine the child’s place of residence. However, the Brussels regulation also envisaged a right of custody shall have been “acquired by judgment ... under the law of the member state”.

The European Court of Justice upheld the ruling of the Supreme Court. They said that the removal of the child by the mother, who had legitimate custody of the child, was a legitimate exercise and of her own right of freedom of movement and of her right to determine the place of residence of the child and did not deprive the father of exercising his rights in the future. For the regulation to recognise that the father had rights when these rights were not accorded to the father under national law would be incompatible with the requirements of legal certainty and with the need to protect the rights and freedoms of the mother. The court concluded that the regulation does not preclude a Member State from providing by its law that the acquisition of rights of custody by a child’s father, where he is not married to the child’s mother, is dependent on the father’s obtaining a judgment from a national court.

Family Rights of unmarried father violated in German Courts – 3/12/2009

The European Court of Human Rights found that an unmarried father was discriminated against when he was denied the right to a judicial review of a court decision that he could not obtain a joint custody order without the consent of the mother. The European Court of Human Rights held that ‘family life’ existed between the applicant and his partner for the purposes of the Convention on Human Rights. It reiterated the notion of family under the Convention makes no distinction between the family-life of a marital and non-marital family.

Irish Times 7/12/2009

Following this case the family courts in Germany have been asked to award joint custody automatically to unmarried fathers until new legislation is passed ending discrimination against them.

The looming legislation is likely to cause friction in Chancellor Merkel’s coalition government. The justice minister is anxious to give both parents automatic custody rights from birth regardless of marriage status. Under this proposal, a

mother who wants custody withdrawn from the father would then have to present her case in court.

Irish Times 4/8/2010

Child not heard in case under the Hague Convention on Child Abduction

Ms Justice Susan Denham of the Supreme Court, on May 20th 2010, upheld a High Court decision that a child be returned to her state of habitual residence, which is Latvia. The child was born in Latvia in 2004 to unmarried parents. In March 2009 the mother, for the second time, took the child to Ireland without the consent of the father. The father then brought proceedings for the return of the child under the Hague Convention. Ms Justice Denham ruled that the child's place of habitual residence was Latvia, that the parents exercised joint custody and that the child was wrongfully removed.

The Supreme Court also upheld the High Court ruling in this case that it would be inappropriate to hear the views of the child, who is five. Council regulation (EC) No 2201.2003 provided that in proceedings under the Hague Convention, the child should be given the opportunity to be heard during the proceedings, unless this appeared to be inappropriate having regard to his or her age or degree of maturity.

(Irish Times 14/6/2010)

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Under-age Sex

In January of this year a teenage boy was given an 11-month suspended prison sentence for having consensual sex with a 16-year old girl. The teenager had pleaded guilty to the offence under the Criminal Law (Sexual Offences) Act in October 2009. The teenager had been 19-years old when he and the girl, who was three months short of her seventeenth birthday, had sex. The young man's solicitor said that his client had been "genuinely shocked" to discover that the age of consent was 17, not 16, and he referred to comments made by a consultant psychiatrist who reported on the teenager that many of his colleagues would also not be aware of the age limit. Judge John Neilan praised the girl's family for their generosity in requesting that the young man not go to jail and put in place an order that he have no contact with the girl at any time, for any reason. He said he would not direct that the young man be placed on the sex offenders' register.

(Irish Times 22/1/2010)

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Mediation / Alternative Dispute Resolution

The Legal Aid Board has introduced best practice guidelines for its solicitors to promote the dispute resolution options available, including marriage guidance counselling, mediation, negotiated separation, the collaborative process and other non-court based ways of resolving matters. Clients are advised of the element of control over the outcome they will retain, and the potential avoidance of damage to ongoing relationships that can follow a court-based/ court-imposed resolution of family disputes, especially where children are involved. In her recent Irish Times Article, Anne Colley who is the Chairwoman of the Legal Aid Board goes on to say that the Board is considering ways to actively promote the use of mediation and has organised training for some solicitors on a pilot basis. The Legal Aid Board is exploring a joint approach to the integration of services, perhaps with the Courts Service.

Ms Colley goes on to say that the Family Mediation Service (FMS) which operates on a widespread basis throughout the country, offers separating couples the possibility of resolving their disputes relatively amicably. However, studies of the work of the family law courts have found that only 3 to 4 per cent of all those seeking resolution of their family disputes in the courts use the FMS. It is clear that there is enormous scope for development of this service on a more targeted basis, which might be either within the Service's present context or in one that could be more integrated into the legal system. (*Irish Times 14/6/2010*)

According to a recent article in the Irish Times "lawyers are being urged to buy into non-adversarial mediation. One Resolve is a network of mediators many from non-legal backgrounds who provide lawyer-assisted mediation. The aim of this type of mediation is to assist parties where (a) the parties are not on an equal footing and where there is serious power imbalance, and (b) where the financial issues are not straightforward and (c) where parties may reach agreement with little or no legal advice. However, this type of mediation will only work if the lawyers on both sides are willing to engage in the mediation process. See www.oneresolve.ie.

Irish Times 5/7/2010

Report on Alternative Dispute Resolution: Mediation and Conciliation

This publication by the Law Reform Commission was launched by the Chief Justice Mr. Justice John Murray on the 16th November 2010. The Report forms part of the Commission's Third Programme of Law Reform 2008-2014 and it makes over 100 reform recommendations including a draft Mediation and Conciliation Bill. The Report notes that mediation and conciliation are increasingly being used in an attempt to reach mutually acceptable settlements of civil and commercial cases.

The Report may be downloaded at www.lawreform.ie/news

Canadian family law judges offer fresh view

A Canadian-Irish Judicial Conference was held in October and organised by award-winning family law graduate Roisin O'Shea who was granted special permission by the Minister for Justice to attend in-camera cases to carry out research for her PhD. During the course of her research Ms. O'Shea travelled to Ontario where she saw first-hand how the courts there operate. "The Canadian family law courts operate to a settlement-focused mode. The antithesis of our system" Ms. O'Shea said. In Ontario 90% of family law cases are settled through state-provided mediators. There is no blanket in-camera rule, but cases are still anonymous and in-camera can be used in sensitive cases. Ms. O'Shea said the reforms which had taken place in Canada were judge-led.

Mr. Justice McKechnie speaking at the conference said "Judges can play an important role. If they keep this question of mediation to the fore there will eventually be progress". Mandatory mediation for family law cases exists in many jurisdictions in the US and Canada, the conference was told. According to Judge Thomas Trent Lewis of the Los Angeles Superior Court, 75% of these cases were resolved through mediation. Parental education was also mandatory and the courts could order parents to undertake a year's counselling. Justice R James Williams of the Supreme Court of Nova Scotia said Ireland was in a unique position to be a leader in addressing concerns about the need for change in family law at an international level.

It is worth noting here that the latest Rule of the Superior Courts (Mediation and Conciliation) 2010 provides that the court may order that proceedings be adjourned so that the parties can use an alternative dispute resolution process. Where a party refuses to participate the court may take this refusal into account in making its deliberations. These rules came into operation, in Ireland, on November 16th, 2010.

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District Court Statistics for 2009

Guardianship

	2009	2008
Granted	1861	1802
Refused	81	283
Withdrawn/Struck out	521	363
TOTAL:	2463	2448

For the year 2009, 96% of all applications for guardianship that were heard by the court were granted. 4% of these applications were refused.

Custody & Access

	2009	2008
Granted	687	857
Refused	46	209
Withdrawn/Struck out	243	175
TOTAL:	976	1241

Custody only

	2009	2008
Granted	566	468
Refused	36	68
Withdrawn/Struck out	355	215
TOTAL:	957	751

Access only

	2009	2008
Granted	3330	2723
Refused	157	175
Withdrawn/Struck out	861	593
TOTAL	4348	3491

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Civil Partnership Bill

Treoir reported on this Bill in its Bulletin dated June 2009. In July 2010 the Bill was passed by Dail Eireann under its new name 'Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2009' and will be enacted in 2011. In brief, this bill will when passed into law allow a financially dependant qualified cohabitant to seek redress through the courts where they are not adequately provided for at the end of their relationship, either through breakdown or on death. The types of court orders they can apply for include a transfer of property, a lump sum, periodic payments and a share in other person's pension. If the relationship ends through death, the surviving cohabitant can make a claim on the estate. The Bill will also allow for cohabitant partners to draw up legally recognisable contracts that would deal with their finances at the end of their relationship if they wish to opt out of the redress scheme. A qualified cohabitant is one where two adults have been living together in a relationship for at least two years if they have a dependent child or five years where there are no dependent children.

The Bill can be viewed on www.oireachtas.ie.

The Adoption Act 2010

The Adoption Act 2010 came into operation on November 1st, 2010. The aim of this legislation is to consolidate all previous adoption legislation in Ireland and to ratify the Hague Convention on the Protection of Children and Co-operation in respect of inter-country adoption. Under the new Hague regime the children adopted are likely to be slightly older to ensure that the option of a domestic adoption has been exhausted.

The Act also provides for the replacement of An Bord Uchtala (the Adoption Board) with a new Adoption Authority. The Authority will exercise a quasi-judicial function and regulate mediation agencies and other bodies involved in the process.

The Act will also firm up on the process of consulting unmarried fathers in the adoption process. The current situation is that where an unmarried father is also a guardian of the child his actual consent is required before a placement can be made. Where an unmarried father is not a guardian he has the right to be consulted before the child is placed for adoption. The new Act will make it necessary for the Authority to seek the approval of the High Court where they are unable to make contact with a father before placing a child for adoption.

HOUSING

New leasing initiative for the delivery of social housing

The Department of Environment, Heritage and Local Government has established a new leasing initiative for the delivery of social housing.

This new initiative represents an expansion of the options available to local authorities for the delivery of social housing. Properties will be leased from the private sector and used to accommodate households from local authority waiting lists. Leased properties will be allocated to tenants, in accordance with the local authorities allocations schemes.

Local authorities will enter into lease arrangements with property owners for periods of between 10 – 20 years. Properties will be tenanted, managed and maintained by the local authority.

In a move away from building new accommodation, the Government has said it will rely more on long-term leasing and the Rental Accommodation Scheme (Ras).

(See environ.ie)

Social Housing – The Incremental Purchase Scheme

This housing initiative was launched in June 2010. This scheme will allow social housing applicants and tenants to buy new houses at discounts of up to 60%.

Social housing tenants and persons who have been assessed as having a housing need will be able to avail of discounts ranging from 40% to 60% of the total cost of a new home depending on income. Households must have a minimum gross annual income of €15,000 in order to be eligible for consideration for the new scheme.

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Grandparents' Role in Divorced and Separated Families

This study, launched in December 2009, is the first study conducted in Ireland on the role of Grandparents in divorced and separated families. The report was written by Virpi Timonen, Martha Doyle and Ciara O'Dwyer of the Social Policy and Aging Research Centre at Trinity College and was funded by the Family Support Agency. The main aim of the report is to gain a deeper understanding of how intergenerational relationships are affected by divorce or separation by the 'middle' generation. The research also explores the various roles played by grandparents in their children's and their grandchildren's lives after divorce or separation.

The findings of this study give grounds for arguing that supporting grandparents is a highly effective means of supporting entire families undergoing divorce or separation. The report recommends that grandparents would use and benefit from formal support services were they more widely available and responsive to the needs of grandparents. Information and counselling, the latter possibly in the form of peer-support groups, appear to be particularly urgently needed. Transfer payments are also highly important, especially to custodial grandparents and grandparents who have made considerable financial sacrifices (including, in some cases, giving up employment) in order to support their children and grandchildren. Benefits available to these groups should be protected and enhanced for low-income groups. Further research is warranted to explore the different supports that are most accessible and acceptable to grandparents. The report concludes that supporting grandparents is important because it translates into supporting all generations implicated in divorce and separation, and that the current paucity of formal supports for grandparent in Ireland must now be addressed.

Download report at www.fsa.ie.

Teen Parents Support Programme: 10th Anniversary National Conference

This conference is to be held in the National University of Ireland (NUI), Galway on Friday, December 10th. Since it was established in 2000, the TPSP has supported over 3,000 young parents with all aspects of their lives such as health, relationships, accommodation, social welfare entitlements, legal issues, education, training, child development, parenting and childcare. The conference,

aims to celebrate the success of the TPSP and of the young parents it has supported and to share the accumulated expertise of TPSP staff with others who have contact with young parents. There will be a panel of expert speakers to include a Keynote Address by Prof. Pat Dolan joint founder and Director of the Child are Family Research Centre at NUI Galway and Chairholder of the Republic of Ireland's first UNESCO Chair on Children, Youth and Civic Engagement.

For more information or to book a place contact: Margaret Morris, National Co-ordinator TPSP at Treoir on 01-6700120 or 087-2518428.

CURA – Post Natal Support Service

As part of its core service provision CURA is now providing a Post Natal Support Service as part of their core service provision. This service is provided in three local CURA centres; Cork, Kerry and Galway. The service offers support and help to mothers of new babies who may be feeling overwhelmed or isolated in their new role. The overall aim of this service is to support mothers in their own right, in their new role as parents and in making informed decisions about their future through provision of support, information and linking them with relevant services locally.

CURA Cork 021 42775444

CURA Galway 091 562558

CURA Kerry 066 7127355

Crisis Pregnancy Agency - Annual Report 2009

Crisis pregnancy counselling services have reported a significant increase in the number of older women attending the services in recent years. Figures show that the birth rate for women over the age of 35 increased for 12,725 in 2001 to 20,449 in 2009. The Report shows that the number of women giving Irish addresses at British abortion clinics had declined from 6,673 in 2001 to 4,422 in 2009. Health Minister Mary Harney in launching the report said that that the newly named Crisis Pregnancy Programme should continue to issue its own annual report independently following its transferral to the HSE.

The Irish Family Planning Association

The latest Annual Report from the Irish Family Planning Association shows that 18 women attended Association clinics for counselling after negative experiences at the hands of rogue agencies claiming to provide crisis pregnancy counselling. The report said the Association was certain that this figure represented only “the tip of the iceberg” and is urging that statutory regulation prescribing codes of practice and standards be put in place for all pregnancy advice services.

Parent's Guide to Government Funded Childcare 2010

Produced by the South Dublin County Childcare Committee, this guide is a short introduction to the childcare available, and eligibility of children and families for Government Funded Childcare Schemes. *The publication can be downloaded at www.childcareonline.ie/publications*

Database of Irish Family Research Launched

The Family Support Agency has compiled a database in conjunction with Frontier Economics and the Centre for Social and Educational Research. This database forms part of an ongoing project to develop a family research strategy that will identify the gaps in existing Irish family research. The database contains details of over 340 Irish research papers from academic, voluntary and governmental organisations. See www.fsa.ie

www.oireachtasbrief.ie, this website provides regular updates on discussions and debates on issues relating to community and voluntary activity in the house of the Oireachtas. This website is edited by Brian Harvey, social researcher and was launched by The Wheel and the European Anti Poverty Network (EAPN) Ireland, supported by the Atlantic Philanthropies.

www.livinginireland.ie, provided by Crosscare Migrant Project this website is described as an easy-to-use multi-purpose resource. It provides general information on rights in five languages and has sections on issues like taxes, pensions, social welfare, healthcare and family.