
Submission

to the

Department of Justice and Equality

on the

General Scheme of the Children and Family Relationships Bill 2014



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Introduction

Treoir, the National Specialist Information Service for Unmarried Parents has a long established history of working with unmarried parents and their children and its main objective is to improve the position of unmarried families in Ireland.

Treoir very much welcomes the Children and Family Relationships Heads of Bill 2014. The Bill, when enacted, will replace the Guardianship of Infants Act 1964 and is therefore a hugely significant and dramatic piece of legislation. The opportunity of introducing family legislation rarely arises and therefore it is imperative that the new Bill adequately addresses the needs of diverse families in the coming years.

Since the enactment of the Guardianship of Infants Act 1964 two other pieces of legislation were enacted which significantly improved the position of unmarried parents in relation to their children:

- a) The Status of Children Act 1987 gave unmarried fathers the right to apply for guardianship of their children and removed the concept of 'illegitimate child'.
- b) The Children Act 1997 enabled unmarried parents to become joint guardians by agreement by completing a sworn Statutory Declaration S.I. No. 5 of 1998.

Treoir, through its National Specialist Information Service for Unmarried Parents, is very aware of the limitations of the current legislation in dealing with families other than married families. Now, 17 years after the enactment of the Children Act 1997, the Children and Family Relationships Bill 2014 represents a unique opportunity to align family legislation to the actual reality of the lives of diverse families.

The Heads of the Bill are very comprehensive and if implemented will significantly improve the legal position of many families. However, there are a number of areas where the legislation could be strengthened and a number of major omissions. Treoir believes it would be a disservice to this groundbreaking piece of legislation if these omissions were not addressed. The case studies described below to support our proposals are based on real every day experiences of parents who contact Treoir's National Specialist Information Centre.

SPECIFIC CONCERNS

1. The Bill discriminates against unmarried fathers who have not cohabited

Treoir's National Specialist Information Centre receives calls regularly from parents who are astonished to learn that an unmarried father does not have any automatic guardianship rights in respect of his child even if his name is on his child's birth certificate.

Case Study 1: a father contacted Treoir regarding his 6 year old child. He was no longer in a relationship with the mother when he discovered she was pregnant. Nevertheless, he took his parenting role very seriously and the child became the centre of his life. At the beginning the mother supported him to be involved in the life of their child. They jointly registered the birth and the child was given the father's surname.

The mother subsequently married another man. Now she wishes to adopt her child with her new husband and already is informally using her husband's surname for the child. The father was completely unaware that he had no automatic legal rights. He could not understand why such vital information was not readily available to him at the time of birth registration, including information that guardianship could be acquired by agreement with the mother. If he had been aware that action was required he could have taken action when the relationship with the mother was more harmonious. Court proceedings could have been avoided in this situation in the best interest of the child.

Case Study 2: A young mother was in contact with Treoir to ask about the legal rights of the father of her child. She is in a committed relationship with the father but they are not living together as they cannot afford to rent. They are living with their respective parents. The proposed legislation will do nothing to improve this father's legal situation in relation to his child.

1.1 Recommendations: *Treoir recommends that:*

- 1.1.1** At the very minimum, it should be mandatory to provide unmarried parents at the time of birth registration with information on the lack of automatic legal rights for unmarried fathers who are not cohabiting, to outline the options available and from where further information can be accessed.
- 1.1.2** It should be possible for the parents to sign the Statutory Declaration for Joint Guardianship when registering the birth. This would allow the parents to register the birth of the child and confirm the legal rights and responsibilities of the father at the same time if they so wished.
- 1.1.3** Eventually unmarried fathers should have automatic guardianship rights when jointly registering the birth of the child with the mother. Guardianship rights could be subsequently removed if it is deemed necessary.

SPECIFIC CONCERNS

2. Lack of provision for the establishment of a Central Register for Guardianship Agreements

Under the Children Act 1997 unmarried parents can, if both are in agreement, 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). Significant numbers of statutory declarations are requested from Treoir and downloaded from the Treoir website. Where a declaration is signed and subsequently becomes lost or destroyed there is no evidence of the fact that the father has guardianship rights to his child/children.

The Family Relationships Bill provides for the establishment of a National Donor Register with the purpose of safeguarding the child's right to identity (Part 4, Head 13). This is a very welcome initiative. However, the Bill does not provide for the establishment of a Central Register to keep a record of statutory declarations agreeing guardianship rights. This omission may have a significant impact on the right of the child to have a meaningful relationship with both parents.

Case Study 1: A father contacted Treoir stating that the mother of his child, who is a US citizen, had taken his 3 year old daughter on a vacation - with his consent. Unknown to him, she took the copy of the S.I. for guardianship with her. He had just found out that the mother had no intention of returning to Ireland. Without the guardianship agreement, this unmarried father was unable to seek custody rights under the Hague Convention. The process to establish his custody rights could be long and expensive impacting on the child's relationship with the father and minimising the chance of enforcing the return of the child to Ireland due to a change in the child's habitual residence.

This very committed father was devastated. Had the agreement been registered in a Central Register it would have been possible to issue a copy of the signed Statutory Agreement allowing for the father to request the return of the child to Ireland and for the Irish Courts to have jurisdiction to make a decision safeguarding the best interest of the child.

Case Study 2: A father contacted Treoir stating that he had signed the declaration for joint guardianship with the mother when their daughter who is now five years old was a baby. The mother was terminally ill and the father could not locate the Declaration. The mother was not in a position to sign another statutory declaration. The father was shocked to learn that he would have to go to court in order to acquire guardianship of his child. In addition to being a considerable waste of court time and resources, it was a major trauma for the father and certainly not in the best interest of the child who, arguably, has no legal guardian in the interim who can make decisions around his/her medical treatment etc.

Case Study 3: In this case the father is in a relationship and has a child with his Russian partner. Their relationship is currently difficult and the mother refuses to give him the Statutory Declaration which they had both signed. He is concerned that the mother is planning to go back to Russia. The father is in serious risk of losing all contact with his child of 2 years as he has no contact details for the mother in Russia. If the mother wishes to change country of residence for her and her child she must have the consent of the father if he is a legal guardian. In this case, although he is a guardian of his child he cannot prove it. He will have to go to court to establish that he is a guardian. If his

Guardianship Agreement had been registered in a Central Register he would not have to waste court resources nor have the expense and trauma of going to court. In addition, in order to obtain assistance from the Central Authority for Child Abduction he would need proof of his guardianship rights should the mother leave the country taking his child with her.

Case Study 4: A father had the care of his child while the mother was away on holidays. The child fell and damaged her teeth. He told us that the Dental Hospital would not treat the child as he had no proof of his guardianship. He had changed his address a number of times and in the course of this had mislaid his Statutory Declaration.

It is imperative that this official document is recorded in a Central Register. This is particularly significant in light of the new Bill expanding the categories of persons who can apply and become guardians of the same child. It is also important where consent issues in relation to the child arise that public bodies have access to this Central Register.

2.1 Recommendations: Treoir recommends that:

2.1.1 A Central Register for Statutory Declarations for Joint Guardianship should be initiated and hosted either by the Department of Justice and Equality or the Department of Social Protection.

2.1.2 If the State does not legislate for a Central Register there is a possibility that a non-governmental organisation might initiate one. There is a precedent for this in the adoption area. A non-governmental agency initiated a Voluntary Contact Register for adoptees and birth parents as none previously existed. The Adoption Board eventually took responsibility for hosting the National Adoption Contact Register. Although it is not ideal to have a non-governmental agency host a Central Register it would go some way towards ensuring the right of the child to have an ongoing meaningful relationship with both parents.

SPECIFIC CONCERNS

3. The Introduction of an additional form of Guardianship

Head 42 (8) of the Bill introduces a new form of guardianship in addition to guardianship as we know it. This is hugely worrying and will add to the misinformation which already exists. We understand that this is being addressed but we would like to make the following suggestions:

- There is significant confusion among parents and professionals about custody, guardianship and how they might be acquired. The heads of Bill as proposed will add to this confusion rather than improve the position. We fear that as a result there will be an increase in court cases seeking official clarification.
- It will be impossible for professionals to ascertain who has legal guardianship for consent purposes. This will have a particular impact on schoolteachers, social workers, public servants (e.g. passport office) etc. as well as on parents and children.
- Confusion between full and lesser guardians could result in additional litigation following decisions made by a “lesser guardian” being legally challenged by a “full guardian”. This is not in the best interest of the child or indeed the parents/carers.
- The lesser type of guardianship should have a self-defining and distinctive name to avoid confusion, in line with other types of guardianship introduced by the Bill (i.e. substitute guardianship, emergency guardianship, etc). The following terminology is suggested:
 - Complementary guardianship
 - Supportive guardianship
 - Supplementary guardianship
 - Subordinate guardianship

3.1 Recommendations: *Treoir recommends that:*

3.1.1.

- Instead of an inferior type of guardianship, give discretion to the court to make orders in favour of those acting in loco parentis (i.e. step-parents, civil partners, grandparents or others provided that the child lives with him/her) to have full guardianship while that order is in force (similar to the child arrangements order introduced in UK by the Children and Families Act 2014 April 2014).
- If for constitutional reasons persons other than parents cannot be given the full set of rights, then the set of rights granted could have a different name, such as complementary guardianship, supportive guardianship, etc. (see above).

SPECIFIC CONCERNS

4. Automatic guardianship for parents cohabiting for 12 months

Treoir welcomes the fact that guardianship rights will flow to unmarried dads who are cohabiting for a year or longer but questions the requirement that three months must be post birth. It should be possible to satisfy the cohabitation requirement by cohabiting for twelve months, irrespective of whether before or after the birth.

Case study 1: Recently a very tragic case occurred in a Dublin maternity hospital where a very ill baby was born to a mother who died shortly after giving birth. As the parents were not married to each other only the mother was the automatic guardian of the baby. The father therefore had no right to make any major decisions regarding his baby and had to go to the High Court for a decision to be handed down in relation to his child. Our concern is that even if the proposed legislation had been in place it would have done nothing to assist this father as he would not have fulfilled the 3 months post birth criterion.

As a result of this case Treoir received a number of calls from worried unmarried pregnant women who wanted the father of their child to be able to make decisions in these circumstances. Many of these mothers were not cohabiting with the father at all or, if cohabiting, not for the requisite period of time.

In addition, if a relationship breaks down approximately one year following cohabitation, it will be difficult to establish with certainty if a couple was living together for exactly a year. There should be a means of establishing the fact that the couple has cohabited for the year and from that point on joint guardianship applies. Otherwise again parents will be driven to the courts when a dispute arises.

4.1 Recommendations: *Treoir recommends that:*

- 4.1.1 If a couple has cohabited for a year at the time of birth registration it should be possible to at that point, perhaps through a Statutory Declaration, that the couple has been living together for a year and therefore both parents are automatically joint guardians. The Statutory Declaration could then be used as official proof of joint guardianship whenever consent issues regarding their child arise.
- 4.1.2 If a couple has not fulfilled the requisite time at the point of birth registration they should be informed that the onus is on them to complete a Statutory Declaration – if and when the time requisite is fulfilled – to prove that they are automatically joint guardians.