

What are the rights of my spouse in respect of my child if she is not the mother of my child?

None. However, your spouse under certain circumstances may apply to the court for (limited) guardianship rights. See 'guardianship' at www.treoir.ie.

What are my rights in respect of my child if the mother of my child marries another man?

The rights you already have in respect of your child do not change on the marriage of the mother:

- If you are already a joint guardian you remain so
- If you do not have any guardianship or access rights in respect of your child you can still apply for them, unless the child has been adopted by the mother and her husband (see below)
- You still have a duty to maintain your child unless your child is adopted.

Note: A step-parent may under certain circumstances apply to the court for guardianship rights. See 'guardianship' at www.treoir.ie.

What if my child is being considered for adoption?

- If the mother and her husband (or anyone else) apply to adopt your child the law requires that, if possible, you are consulted before any adoption order is made in respect of your child. If a father is concerned that he may not be consulted by the Adoption Authority, he can make a request in writing to the Authority that he be consulted, before or after the birth of his child.
- If you have joint guardianship rights in respect of your child then your consent is required before an adoption order can be made.
- If your child is adopted s/he becomes a child of the adoptive family as if s/he had been born into that family. This legally excludes you permanently from your child's life. You no longer have any possibility of applying for any rights in respect of your child and you no longer have a responsibility to financially maintain your child. It is possible to agree informal access arrangements between parents but these are not legally enforceable.

See 'step-parent adoption' section at www.treoir.ie.

Cohabiting Parents

See 'cohabiting parents' at www.treoir.ie.

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While every effort has been made to ensure that the information in this leaflet is accurate, no responsibility can be accepted by Treoir for any error or omission.

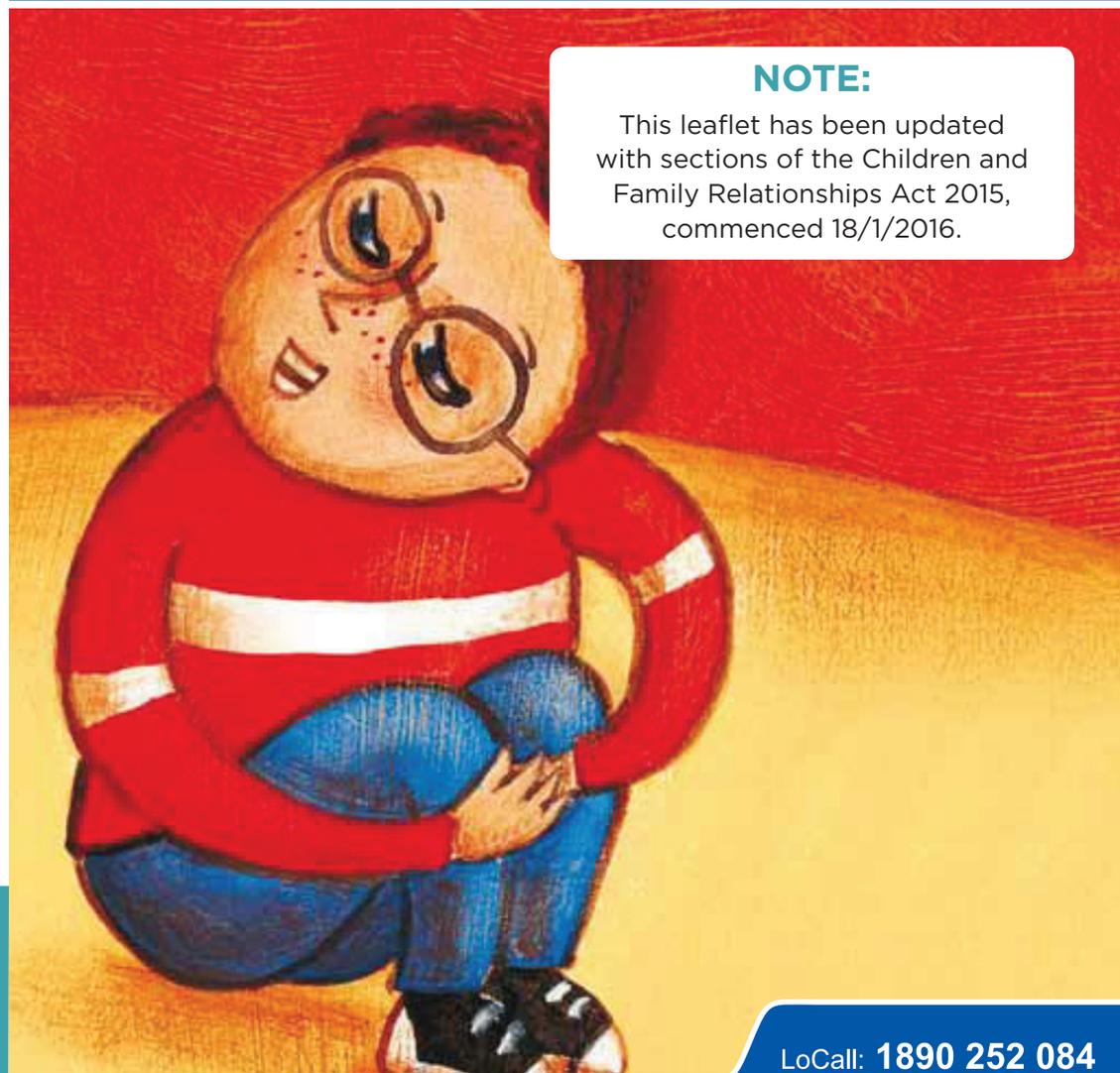
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Unmarried Fathers

rights and responsibilities in
respect of their children

NOTE:

This leaflet has been updated with sections of the Children and Family Relationships Act 2015, commenced 18/1/2016.



What are my legal responsibilities in respect of my child?

All fathers have a legal responsibility to financially maintain their child. This applies whether or not the father is a legal guardian or whether or not his name is on his child's birth certificate. See 'maintenance' below.

What are my legal rights in respect of my child?

None, unmarried fathers do not have any automatic legal rights in respect of their children. In Ireland, having your name on your child's birth certificate does not give you any legal rights in respect of your child. In certain circumstances, a father who is cohabiting with the mother of his child may acquire automatic guardianship rights (see below).

What legal rights can I apply for in respect of my child?

A father can apply to court for guardianship, access, custody or joint custody in respect of his child. Separate applications must be made for each right though all applications can be heard at the same hearing.

Guardianship

Guardianship is a collection of rights and duties that a parent (or non-parent) may have in respect of a child. A guardian has a duty to maintain and properly care for his child and has the right to make decisions in the major areas of the child's life e.g. religion, school, adoption, consent to medical treatment, passports, decisions about taking the child out of the country and where the child lives and other matters affecting the welfare of the child.

A father can get **guardianship rights** in any of the following ways:

By -

- **Agreement with the mother.** If the mother consents, a father and mother can complete and sign the statutory declaration for joint guardianship (**S.I. No 5 of 1998**) in the presence of a Peace Commissioner or a Commissioner for Oaths. When this form is signed and witnessed it needs to be kept in a safe place as it is the only evidence that the father is a guardian. There is no central register for these Statutory Declarations. To download a declaration form see 'guardianship' section at www.treoir.ie.
- **Satisfying the cohabitation period.** A father who cohabits for 12 months with the child's mother, including 3 months following a child's birth, will automatically become the child's guardian. This provision is not retrospective, so guardianship will only be acquired automatically where the parents live together for a least 12 months after 18th January 2016, the commencement date of the relevant legislation.

- **Going to Court.** A father can apply to court to become a joint guardian of his child, whether or not his name is on his child's birth certificate. For more information see 'guardianship' section at www.treoir.ie.

Access and Custody/Joint Custody

Access is the right of a child and a parent/guardian who do not live together to spend time together. This right can also be granted to relatives and others. **Custody/Joint Custody** is having the responsibility for the day-to-day care of a child.

Parents can make informal arrangements regarding access and custody but if these arrangements break down they cannot be legally enforced. However, any written agreement between parents can be made a **Rule of Court** (see below).

A father can apply to court for access, joint/full custody. For more information see section on 'Access & Custody' at www.treoir.ie.

Maintenance

If a father is not paying maintenance, the court can order that maintenance be paid in respect of his child. An unmarried father does not automatically have a legal responsibility to financially maintain the mother of his child. However, where the parents have cohabited and the mother is a **qualified cohabitant** the father may have a liability to pay maintenance to the mother. See section on 'Cohabiting Parents' at www.treoir.ie. For more information see section on 'Maintenance' at www.treoir.ie.

What is a Rule of Court?

Where an agreement for access, custody and/or maintenance is entered into and made in writing (including written agreements made during mediation), an application can then be made to court for an order to make that agreement a Rule of Court. The court may make an order if it is satisfied that the agreement is fair and reasonable and adequately protects the interests of the child. The agreement then has the same standing as a court order. A written agreement that is not made a Rule of Court is NOT legally binding.

What are my legal rights in respect of my child if I marry the mother of my child?

Provided that the mother was not legally married to someone else 10 months before the birth of the child, you automatically become a joint guardian of your child with the mother.