

CHANGE

IS IN THE AIR



Two important pieces of legislation will have a huge impact on modern families. BEATRICE CRONIN from Treoir looks at what this legislation means for unmarried parents and their children.

Families now come in all shapes and sizes, but it's taken some time for the law to catch up. But now, two key pieces of legislation, once in force, will have a big impact on unmarried pregnant women, unmarried parents and their families. The Children and Family Relationships Act 2015 (the 2015 Act) will give legal recognition to all types of modern families,

creating new rights for parents, both biological and non-biological, and for children. In addition, certain provisions of the Civil Registration (Amendment) Act 2014 (the 2014 Act) will make compulsory the registration of the father's details on a child's birth certificate protecting the child's right to identity. Here are six key points in the new legislation.

Registering the birth

At present, when registering a birth, it is not compulsory to register the name of the father if the parents are not married to each other. However, once the 2014 Act is commenced, an unmarried mother who attends on her own to register her child's birth will be required to identify and provide particulars of the father of the child to the Registrar of Births. The Reg-

Registrar will then make all reasonable efforts to notify the father in writing requiring him to attend the Registrar's Office within 28 days to verify the information and complete the registration. If no contact with the father can be made or, in exceptional cases, compelling reasons are provided, the father's name will be omitted. These exceptions are:

- * the mother does not know who the father is;
- * she does not know the whereabouts of the father and/or
- * she believes that providing the information is not in the best interests of the safety of the child. The mother will have to provide evidence to that effect.

It is important to note that having the father's name on the birth certificate does not give the father any legal rights in respect of his child.

Legal guardians

Guardianship means having a say in the major decisions of a child's life, such as consent to medical treatment, choice of school and religion and whether the child can be taken out of the country. Many unmarried parents, including those living together, mistakenly believe that if the father's name is on the child's birth certificate, this gives him guardianship rights to his child. However, where a child's parents have not married each other, the mother is automatically the sole guardian of her child. A father can obtain guardianship of his child by signing a statutory form (S.I. No 5 of 1998) with the mother in the presence of a Peace Commissioner or Commissioner for Oaths. If the mother does not consent to allowing the father to become a legal guardian then the father can apply to the local District Court to be appointed a guardian of his child.

Once the 2015 Act is in force, a non-marital father will automatically be a guardian of his child if he has been living in a family unit with the child's mother continuously for a year, including not less than three months after the child's birth. The cohabitation requirement is not retrospective, but following commencement of the 2015 Act it can be fulfilled any time before the child turns 18. In addition, it will be possible for Registrars of Births to witness the signing of statutory declarations by unmarried parents appointing the child's

father as a guardian. Non-marital parents will be informed of this possibility when registering the birth of the child. They will have the option of making the declaration, witnessed by a registrar, within two weeks of registering the child's birth.

Can someone other than a parent be a legal guardian?

An increasing number of children are growing up in blended families, living with step parents, with a parent's cohabiting partner, or with a grandparent or other family member. Currently, in these cases, the legal standing of the child's carers can be uncertain.

Once commenced, the 2015 Act will allow a step-parent, a civil partner or a person who has cohabited with the child's parent for at least three years to apply to the court to become a legal guardian where he or she has co-parented the child for at least two years.

In addition, a person who has provided for the child's day-to-day care for more than 12 months, such as a grandparent, may apply to the court to become a legal guardian where there is no parent or guardian willing to exercise the rights and responsibilities of guardianship in respect of the child. In this case, the Child and Family Agency will be put on notice of the application and will have the possibility of giving views.

Non-parental guardians will generally have restricted powers limited to decisions on day-to-day matters unless the court decides that it is in the child's best interests for a non-parental guardian to have full guardianship powers. The 2015 Act, once in force, will also allow the same category of persons, as well as relatives, to apply through the courts for custody or the day to day care and control of that child. The Court will be empowered to appoint such persons jointly with a child's parent and make orders with the specific residential arrangements.

Who else can have access to a child?

The 2015 Act will make it easier for grandparents and other relatives, as well as any person with whom the child resides or has formerly resided, to apply through the courts for access or contact to the child. It will simplify the current two-tier court procedure, as it will no longer be necessary to apply for leave or "permission" to apply for access. In addition, the

views of the child will have to be considered in this type of application.

Overall, the 2015 Act will set out the specific factors that the court will have to consider when determining a child's best interests in decisions on guardianship, custody and access. These factors include the benefit to the child of having a meaningful relationship with each parent and with other relatives or other persons involved in the child's upbringing, the child's physical, psychological and emotional needs, the views of the child concerned that are ascertainable and any history of household violence.

What if a legal guardian is temporarily unable to care for the child?

Once in effect, the 2015 Act will enable a qualifying guardian nominate a person to act as a guardian in the event of the qualifying guardian becoming incapable of exercising the rights and responsibilities of guardianship through illness or injury.

A qualifying guardian means a person who is a guardian of that child and who:

- * is a parent of the child and has custody of him or her or
- * not being the parent of the child has custody of him or her to the exclusion of any living parent of the child.

The nominated person can apply to the court to act as a guardian if the qualifying guardian is subsequently incapacitated. The appointment will be subject to the court's approval.

Other issues to consider

The 2015 Act, once in force, will introduce significant changes including:

- * new enforcement procedures in relation to custody and access to ensure that both parents can have a meaningful relationship with their child even if the relationship breaks down. These measures include allowing a court to require a parent who is persistently not complying with a court order for access or custody to attend a parenting programme or to give the other parent extra time with the child to compensate.
- * allowing the Court in certain circumstances to order payment of maintenance by the cohabitant of a child's parent for the support of the child. This potential liability can arise only when the cohabiting partner is a guardian of the child.
- * enabling civil partners and cohabiting partners (three years) to be eligible to apply adopt children jointly.

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How to reach us:

Treoir operates the National Specialist Information Service for Unmarried Parents and those working with them. Treoir's confidential phone service provides a unique opportunity for parents to talk through their individual situation on a one-to-one basis with highly experienced and empathetic information officers. For further information call 1890 252 084 or 01 6700 120.