

Being there for them

AMENDMENT SHEET - January 2016

Following the commencement of new legislation contained in the Children and Family Relationships Act 2015 there have been many changes to family law, particularly in relation to issues such as **guardianship, access & custody** and **maintenance**. For comprehensive information on these issues visit the information section of Treoir's website, www.treoir.ie.

The following sections of this publication, '*Being there for them*', are no longer up-to-date:

- **Legal rights of unmarried parents – page 3.**
- **Grandparents providing full-time care for grandchildren – page 11 (1st paragraph).**
- **Legal Rights for grandparents rearing their grandchildren – page 15.**

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NOTE: Grandparents do not have any automatic legal rights in respect of their grandchildren

What legal rights can a grandparent apply for in respect of a grandchild?

Access to a child

A grandparent may apply to the local District Court for access to her/his grandchild. Access can also be applied for if a child is in the care of the HSE. Any decision made by the court will be made in the best interests of the child and the court will consider:

- the applicant's connection with the child
- the risk, if any, of the application disrupting the child's life to the extent that the child would be harmed by the access
- the wishes of the child's guardians
- the views of the child
- whether or not an access order is necessary.

Custody of a child

A grandparent can apply for **custody** whether or not the child lives with him/her. The court can also make an order for **joint custody** and specify where the child is to live.

Guardianship of a child

A grandparent can apply for guardianship if he/she has provided the day-to-day care of the child for a continuous period of 12 months or more and where there is no parent or guardian willing or able to exercise guardianship rights and responsibilities in respect of the child. The court will decide what guardianship rights a non-parent will get. These rights could include any of the guardianship

rights granted to a parent. Parents/Guardians and The Child and Family Agency (TUSLA) will be notified of such an application.

Temporary Guardianship

A qualifying guardian* may nominate a person (including a grandparent) to act as a guardian if the qualifying guardian is unable, through serious illness or injury, to exercise his/her guardianship rights. The nomination must be made in writing and can specify the rights and responsibilities that the nominated person can exercise. The nominated person must then apply to the court for guardianship rights when and if necessary. Each guardian, parent and TUSLA will be informed of such an application.

**A qualifying guardian, in relation to a child, means a person who is a guardian of that child and who:*

- *is the parent of the child and has custody of him/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.*

Guardians and Wills - Testamentary Guardianship

All parents who are guardians and other guardians who have the custody (day-to-day care) of a child should make a will appointing a guardian to act on their behalf in the event of their death before the child is 18. This is called testamentary guardianship. It is especially important where a parent/guardian is a sole guardian. It is possible for a grandparent to be appointed a testamentary guardian. The testamentary guardian will then act together with the surviving guardian/s (if any). If a parent dies without appointing a guardian in a will it is possible for someone with an interest in the child to apply to the court to be appointed a guardian of the child.

***NOTE:** The appointment of additional guardians does not affect the guardianship rights of existing guardians. Guardianship rights for non-parents may be limited to making day-to-day decisions for the child. The court will make its decision in the best interests of the child and may have regard to the views of the child, where possible, given the child's age and understanding. A court appointed guardian continues to be a guardian of a child up until the child reaches 18 years of age.*

Definitions

What are the legal rights in respect of children?

Access is contact between a child and his/her parent, relative or other person. This can mean having the right to spend time with a child or to communicate by letter, telephone etc.

Custody is having the responsibility for the day-to-day care of a child.

Guardianship is the collection of rights and duties that a parent (or non-parent) may have in respect of a child. For example, a guardian has a duty to maintain and properly care for the child and has the right to make decisions in the major areas of the child's life e.g. religion, school, adoption, consenting to medical treatment, passports and decisions about leaving the country etc.

If you would like to talk to an Information Officer, don't hesitate to call us on 01-6700120 or LoCall - 1890 252 084