



Treoir is the national federation of services for parents who are not married to each other, and we work in partnership with our members to promote their rights and best interests.

Treoir provides a National Specialist Information Service to parents, their extended families and those working with them via the telephone, our information website, through publications, and outreach workshops. We co-ordinate the National Teen Parents Support Programme and advocate for constitutional / legal equality and improved services for parents and their children. We host Kinship Care Ireland and promote and support shared parenting. We conduct research to better understand the needs of unmarried parents, children, and kinship carers and collaborate with other agencies to promote equality for them.

Treoir recognises the diversity of family life in Ireland and believes all families, irrespective of status should have a right to be respected, cared for, and supported by the state. We support and promote the rights of all children as per the Constitution and the UN Convention on the Rights of the Child..

Submission to Dr Brian Tobin, NUIG

on the

Department of Justice

Review of the operation of the provisions of the Guardianship of Infants Act 1964 as they relate to guardianship of children whose parents are neither married or in a civil partnership.

January 2022

Introduction

Treoir welcomes the opportunity to contribute to the review of the Guardianship of Infants Act, 1964 and subsequent legislation on guardianship. We also welcome the opportunity to raise issues that arise for unmarried fathers under current procedures.

Legal and social context of this submission and its limitations

While making this submission, we are firstly aware of the following.

- (1) The ongoing discussions on broader reforms to the family law system. These reforms may well bring about changes in legal terminology which might replace the concepts of guardianship, custody, and access. For instance, guardianship and custody might be combined in a new term such as 'parental responsibility' which puts children's rights in the foreground.
- (2) Secondly, we wish to note that there is a lack of any official data on the pattern of birth registration at present, since the introduction of legislation that requires that the natural father's name must be on the birth certificate.
- (3) Thirdly, we wish to note that while there is extensive official data on unmarried mothers, there is none on unmarried (or married) fathers.

The lack of such relevant data are external constraints on our ability to locate paternal guardianship in a broader social context so our submission is best appraised within the current application and implementation of guardianship available to unmarried fathers who are natural /biological fathers.

Birth registration and fathers' rights

All births must be officially registered by the parents within three months. The Civil Registration (Amendment) Act 2014, places a duty on unmarried parents to register the father's name on the birth certificate, irrespective of their marital status. This joint registration was introduced to uphold the child's right to know their natural parents under UN and EU Conventions. This legal requirement has led to an increase in the numbers of unmarried parents who are now jointly registering the birth of their child.

The acquisition of legal guardianship for unmarried fathers

Our response to guardianship focuses on the father who is not married to the mother of their child but who wants to actively engage as a father. Many of these fathers would ideally like to be treated in a similar legal way to married fathers. Accordingly, they argue that if their names are registered on the birth certificate then that should be sufficient. But under current legislation, registration on the birth certificate is a necessary but not a sufficient pre-condition of his guardianship. They can attain or apply for guardianship in one of the following ways.

Unmarried fathers can acquire ‘legal guardianship’ in 1 of 4 ways.

- (1) **Marriage** to the mother after birth provided his name is on the birth cert.
- (2) **Guardianship by cohabitation** if he has lived with the child’s mother for 12 consecutive months, including 3 months with the mother and child following the child’s birth.
- (3) **Guardianship by agreement** between parents who are jointly registered on the birth certificate. The couple need to complete a statutory declaration (SI 210 of 2020) of joint guardianship which must be witnessed by a Commissioner of Oaths or legal notary or the registrar of births¹.
- (4) **Guardianship through the courts** , if the mother does not agree to sign the statutory declaration of guardianship. In these cases the father may apply directly to the District Court and contact the clerk of the court to institute proceedings. It is important to note this is possible to do even in cases where the father’s name is **not** on the birth certificate.

The Guardianship of Children (Statutory Declaration) Regulations (2020)^[1]

The official application/record of guardianship if awarded is processed using a statutory Instrument entitled The Guardianship of Children (Statutory Declaration) Regulations (2020)². In many everyday references it is simply referred to as ‘the statutory instrument’,

The parents complete this declaration form which includes personal details of both parents and child, and the mother signs her agreement to their joint guardianship of the child.

Over the years, TREOIR in its work with unmarried fathers has encouraged the use of this statutory declaration to signify their guardianship rights in relation to their children. This facilitates the exercise of their parental responsibilities and promotes a caring environment for the child. However, while the declaration is an official record it is **not registered** . Photocopies of the document are not acceptable, as it is an ‘official’ document . This important ‘unique document’ can easily be lost or mislaid. If this happens, the father has to get a new declaration signed to replace it.

Further, a father’s claim to guardianship is not at present accessible to professional people who might at times (especially in a crisis) have to verify his guardianship in order to make decisions on his child best interests.

Recommendations

TREOIR is making the following recommendations which will make it easier for parents to live as joint guardians

¹ This new provision has yet to become an established practice owing to the closure of civil registration offices following the outbreak of the COVID-19 pandemic in March 2020

² <https://www.irishstatutebook.ie/eli/2020/si/210/made/en/pdf>

Registry of Guardians

TREOIR recommends the establishment of a registry of guardians . The registry will be compiled from statutory declarations/ official records completed by the couple.

The certification of guardianship

The registration of guardianship should also be certified , providing guardians with a card which shows their guardianship status. This would facilitate their everyday lives in which their guardianship identity might need to be demonstrated.

Compilation of statistics on guardianship

The formal registration as proposed would also enable official statistics to be compiled on guardianship, as is currently compiled on marriage rates.

Location of Civil Registry on guardianship

TREOIR recommends that the declaration/registration and its certification should take place in a Civil Registry Office, for instance adjacent to the Registration of Births office rather than in a court building. These offices are open for specified hours , staff regularly deal with queries, as for instance in when updating birth registrations etc. Such an arrangement would make it much easier for couples who seek joint guardianship by agreement (see 3).

Where parents don't feel able or ready to make a decision about guardianship at the time of registration of birth , the presence of a registry would facilitate their return to the registrar at a later stage .

Legal assistance for couples who do not agree

TREOIR recognises that some couples may need legal assistance or mediation in order to resolve guardianship issues. Mediation should be offered to them as required . Some may have to make court applications to resolve their difference before reaching an agreement.

Information campaign on guardianship

If these proposals are implemented, TREOIR recommends that prior to birth, parents should be informed about their future joint guardianship rights, and the rights of children through a national information campaign.

Conclusion

TREOIR is of the opinion that these legal changes: civil registration and certification of guardianship would if implemented advance the rights of children and unmarried fathers. This formal recognition and certification of guardianship should be introduced for the many reasons already specified. A Civil Registry system would recognise and support unmarried fathers relationships and responsibilities towards their children

Treoir is committed to addressing the current unequal position of unmarried fathers under Irish Law and will continue to work and advocate for reform of family law in emerging agendas for change.