



# Unmarried Fathers

Rights and responsibilities in respect of their children



## **What are my legal responsibilities in respect of my child?**

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

## **What are my legal rights in respect of my child?**

When the child is born an unmarried father does not have any automatic legal rights in respect of his child. In the Republic of 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 in 'Satisfying the cohabitation period').

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

A father can apply to the 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 court hearing.

## Guardianship

Guardianship is a collection of rights and responsibilities a parent (or non-parent) may have in respect of a child. 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, consent to medical treatment, passports, decisions about taking the child out of the country, where the child lives and other matters affecting the welfare of the child. A father can get guardianship in any of the following ways:

- **Agreement with the mother.** If the mother consents, the father and mother can complete and sign the **Statutory Declaration** for joint guardianship (**S.I. No 210 of 2020**) in the presence of a solicitor, peace commissioner, commissioner of oaths or Registrar of Births. 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 our section 'guardianship' on [www.treoir.ie](http://www.treoir.ie)
- **Satisfying the cohabitation period.** A father who cohabits for twelve consecutive months with the child's mother, including not less than three months after the child's birth, will automatically become the guardian of the child. The three months period does not have to take place directly after the birth of the child. It can be fulfilled any time before the child turns eighteen provided that it is part of the twelve consecutive months during which parents have lived together. This provision is not retrospective, so guardianship will only be acquired automatically where the parents live together for a least twelve months after the 18th January 2016, the commencement date of the relevant legislation. **While not mandatory, fathers in this situation can and should seek a formal declaration from the court that the 'living together' test has been satisfied and that the father is a guardian of the child**

- **Going to Court.** A father can apply to the 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](http://www.treoir.ie)

## What if my child was born through Donor-Assisted Human Reproduction?

If an opposite-sex couple who are married, cohabiting, or in a civil partnership conceived a child through a recognised donor-assisted human reproduction facility with a donor sperm or egg, both people can be registered on the birth certificate. The birth mother will be named as the 'parent' or the 'mother' on the birth certificate, even if she is not the biological parent of the child. If it is the father's sperm or a donor's sperm, he will have the choice to be registered as the 'father' or 'parent' on the birth certificate. These cases can be very specific to a family's circumstances so if you would like to find out more about your family's situation about birth registration or guardianship, please call Treoir on 01 6700120 and we would be happy to explain your rights and responsibilities.

## 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 be granted to certain 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 arrangement between parents can be made a '**Rule of Court**' (see below).

A father can apply to the court for access, joint/full custody. For more information see section on '**Access and Custody**' at [www.treoir.ie](http://www.treoir.ie)

## Maintenance

All fathers have a legal responsibility to financially maintain their children. 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 have a legal responsibility to financially maintain the mother of his child, however, where parents have cohabited, and the mother is a qualified cohabitant the father may have a legal liability to pay maintenance to the mother. For more information see '**Cohabiting Parents**' and '**Maintenance**' sections at [www.treoir.ie](http://www.treoir.ie)

## What is a Rule of Court?

Where an arrangement for access, custody/joint custody and/or maintenance is entered into and made in writing (including written agreements made during mediation), an application can then be made to the court for an order to make the agreement made 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 legal standing as a court order. A written agreement which 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 ten months before the birth of the child, you automatically become a joint guardian of your child with the mother.

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

**None.** However, under certain circumstances your partner may apply to the court for (limited) guardianship rights, see ‘**guardianship**’ section at [www.treoir.ie](http://www.treoir.ie)

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

The rights you 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’s husband
- You still have a duty to maintain your child unless your child is adopted.

**Note:** A step-parent under certain circumstances may apply to the court for (limited) guardianship rights. See ‘**guardianship**’ at [www.treoir.ie](http://www.treoir.ie).

## What if my child is being considered for adoption?

- If an application to adopt your child has been made, 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 a father objects to the proposed placement of his child for adoption, the placement will be deferred for not less than 21 days for the purpose of affording him an opportunity to make an application to the Court for guardianship.
- 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.

For further information see '**step-parent adoption**' and '**cohabiting parents**' at [www.treoir.ie](http://www.treoir.ie)

If you would like to talk through your individual situation, call Treoir on our confidential helpline at: 01 670 0120



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28 North Great Georges St  
Dublin 1,  
D01 HY46

CHY: 8877  
RCN: 20022211

[info@treoir.ie](mailto:info@treoir.ie)  
[www.treoir.ie](http://www.treoir.ie)

