



The National Federation of Services for
Unmarried Parents and their Children

**Submission to the
Commission on the
Future of Policing in Ireland**

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14 Gandon House, IFSC, Dublin 1
01 – 6700 120 www.treoir.ie



Founded in 1976, Treoir is the national federation of services for unmarried parents and their children. Treoir, in partnership with its member agencies, has promoted the rights and best interests of unmarried parents and their children through its National Specialist Information Service and by advocating for their rights.

Treoir works to achieve this aim by:

- providing a National Information Service to unmarried parents, their extended families and those working with them through answering queries, information website, publications and outreach workshops
- Co-ordinating the Teen Parents Support Programme
- promoting change at every level to achieve constitutional and legal equality for unmarried parents, and to improve services and attitudes to unmarried parents
- promoting/undertaking research to better understand the situation of unmarried parents and their children in Ireland
- Collaborating with other agencies to promote our aim through the federation of Treoir and agencies outside Treoir

Treoir recognises the diversity of family life in Ireland and that all families, including unmarried families, have the same rights to respect, care, support and protection. In addition, Treoir supports and promotes the rights of all children as outlined in the United Nations Convention on the Rights of the Child.

In 2016 Treoir's National Information Service responded to approximately 7,250 queries, a significant number of which were from lone parents, unmarried fathers, extended family and professionals. The recommendations in this Submission are based on the experience of those contacting Treoir's Specialist Information Service.



Garda Síochána and Consent to Passport Application for Children

- Every child under the age of 18 must have the consent of their guardians to get a passport and this consent must be witnessed.
- The concept of guardianship is distinct from the concept of custody, which is the day-to-day care and control of the child. A guardian is entitled to be consulted and to have input into the important decisions of a child's life even though the guardian may not have the day-to-day custody of the child.
- Often the witness is a Member of the Garda Síochána.
- The Member of the Garda Síochána who acts as a witness must:
 - Sign Section 9 of the application and be satisfied as to the child's identity.
 - Complete, sign and stamp Section 7 of the application. Each column must be signed separately if the member of the Garda Síochána witnesses both parents/guardians' signatures.
- It appears that there is significant confusion amongst members of Garda Síochána regarding who is required to sign the parental consent section of the passport application form. As a result, families have experienced considerable inconvenience and at times stressful situations.
- **This confusion has intensified** since the commencement of certain provisions of the Children and Family Relationships Act 2015, which have substantially reformed private family law to provide legal recognition to different types of modern families and to create new rights for parents, both biological and non-biological, and for children.



Passport Application for Children Whose Parents are Married to each other

- Where the parents of the child are or were married, and the other parent is still alive, both parents are automatically legal guardians and therefore must sign the parental consent section of the passport application form.

Passport Application for Children Whose Parents are not Married to each other

- When a child is born to parents who have not married each other only the mother is automatically the (sole) guardian of her child. Often it is mistakenly believe **that if the father's name is on the child's birth certificate**, this gives him guardianship rights to his child but **it does not**.
- Where the parents are not married, the father's consent is **only required if he is a joint guardian of the child**.
- A father and mother can complete and sign the statutory declaration for joint guardianship - ([S.I. No 5 of 1998](#)) – Appendix I - in the presence of a Peace Commissioner or a Commissioner for Oaths. This form declares that: the parents have not married each other; they are the parents of the child and they agree to the appointment of the father as a joint legal guardian.
- The non-marital father becomes **automatically** a joint legal guardian of his child by virtue of cohabiting with the child's mother for 12 consecutive months, including not less than three months after the child's birth, after the 18th of January 2016. This is the date the non-retrospective provision of the Children and Relationships Act 2015 came into operation. The non-marital father may be in the position to present a court declaration of guardianship to demonstrate he has acquired joint guardianship rights.



- In addition, the non-marital father may be a joint legal guardian if he has been appointed by a Court order or if the non-marital father had acquired guardianship in another jurisdiction.
- Where the parents are not married, and the non-marital father is not a joint legal guardian by virtue of statutory declaration, cohabitation, court order or guardianship acquired in another jurisdiction, **only the mother is required to sign the Passport Application Form as she is the sole legal guardian of the child. This applies even if the father's name is on the child's birth certificate.**
- The mother will have to sign the [Sole Guardian Affidavit Form](#) (AFF1) - Appendix II. The Passport Service has updated this document to reflect changes brought by the Children and Family Relationships Act 2015.
- Alternatively, instead of the mother having to swear the above affidavit, if the father's name is on the child's birth certificate, both parents may sign the passport application **even though the father is not a joint guardian** of the child. In this case, the member of the Garda Síochána witnessing the consent must be aware that it can only take place if both parents agree. As the relationship between parents may be strained, it is important that the parents are allowed to provide and witness consent at different times.
- If the whereabouts of the other guardian is unknown or if the other guardian refuses to give consent, it is possible to apply to the District Court for a court order allowing the Passport Office to issue the passport without that consent.



Passport Application for Children and Non-Parental and Temporary Guardianship

- Members of Garda Síochána witnessing the consent of legal guardians to apply for a child's passport must be aware that the Children and Family Relationships Act 2015 enables the court to appoint certain persons, other than a parent, as a guardian where the person:
 - is married to, is in a civil partnership with or has cohabited with the child's parent for over 3 years and in each case has shared responsibility for the child's day-to-day care for more than 2 years
 - has provided for the child's day-to-day care for more than 12 months and where there is no parent or guardian willing or able to exercise the rights and responsibilities of guardianship in respect of the child.
- In addition, the Children and Family Relationship Act 2015 enables a qualifying guardian to nominate a person to act as a temporary guardian in the event of the qualifying guardian becoming incapable of exercising the rights and responsibilities of guardianship through illness or injury.
- Hence, there could be an unlimited number of joint legal guardians if it is deemed to be in the best interest of the child concerned. The court will decide what guardianship rights it will grant to a non-parent or temporary legal guardian. These rights could include all or some of the guardianship rights such as a **specific right to provide consent to a child passport application.**



- Furthermore, the Children and Family Relationships Act 2015 has amended the Passport Act 2008 to provide that before issuing a passport to a child, the Minister for Foreign Affairs and Trade must be satisfied on reasonable grounds that where the child has two guardians, each guardian of the child should consent to the issuing of a passport. Where the child has more than two guardians, **not fewer than two of those guardians should consent to the issuing of a passport to the child.**
- This provision could lead to challenging situations where several guardians with conflicting ideas or principles must act jointly. It could potentially be a source of conflict as, for instance, it could undermine the rights of an unmarried father or extended family member who is a guardian and available to give consent. Members of Garda Síochána need to be prepared to best handle this type of situation and minimise stress and inconvenience, particularly for children.
- It is important to note that the court may, on application by a guardian or a proposed guardian, remove from office a guardian if the court is satisfied that this is in the best interest of the child. A mother's guardianship rights can only be removed if her child is adopted.
- For further information contact:

Beatrice Cronin BL

Information and Policy Officer

TREOIR

14 Gandon House, Lower Mayor Street, IFSC, Dublin 1

beatrice@treoir.ie

Phone: 00353 1 6700 120

Mobile: 0876728932

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Summary of Recommendations

- Members of Garda Síochána should have access to specialist training on recent family law developments related to parentage and guardianship of children in order to best manage challenging situations involving families. Treoir has a long history of providing workshops on key issues affecting unmarried parents. Treoir would be happy to host a **free workshop** to staff in your organisation on significant new legislation that has radically changed family law - Appendix III.
- Members of Garda Síochána should be fully informed regarding consent requirements to the issuing of a passport to a child.
- Members of Garda Síochána should have effective and family friendly protocols and systems in place to ascertain who is entitled to provide consent to the issuing of a passport to a child:
 - Whether the mother is the sole guardian of a child pursuant to the Guardianship of Infants Act 1964 as amended by the Children and Family Relationships Act 2015
 - Whether the non-marital father is a joint legal guardian by:
 - statutory declaration
 - court order
 - guardianship rights acquired in another jurisdiction,
 - Whether there is any court order giving any other person temporary or non-parental guardianship over the said child, or rights and responsibilities equivalent to guardianship over the said child, or parental responsibility in relation to the said child;
 - Whether no other circumstances exist whereby there is a guardian, or whereby another person has rights and responsibilities equivalent to guardianship over the said child, or has parental responsibility in relation to the said child.



Appendix II

S.I. No. 5 of 1998.

GUARDIANSHIP OF CHILDREN (STATUTORY DECLARATION) REGULATIONS, 1998.

I, JOHN O'DONOGHUE, Minister for Justice, Equality and Law Reform in exercise of the powers conferred on me by paragraph (e) of section 2(4) (inserted by the Children Act, 1997 (No. 40 of 1997)) of the Guardianship of Infants Act, 1964 (No. 7 of 1964) hereby make the following regulations:

1. These regulations may be cited as the Guardianship of Children (Statutory Declaration) Regulations, 1998.
2. These Regulations shall come into operation on 1st day of February, 1998.
3. A statutory declaration referred to in paragraph (e) of section 2(4) (inserted by the Children Act, 1997 (No. 40 of 1997)) of the Guardianship of Infants Act, 1964 (No. 7 of 1964) shall be in the form set out in the Schedule to these Regulations.

SCHEDULE

Statutory Declaration of Father and Mother in relation to Joint Guardianship of Child

THE MAKING OF THIS DECLARATION WILL SERIOUSLY AFFECT THE LEGAL POSITION OF BOTH PARENTS. IT IS ADVISABLE TO OBTAIN LEGAL ADVICE BEFORE MAKING THIS DECLARATION.

THIS DECLARATION IS AN IMPORTANT DOCUMENT AND ON COMPLETION SHOULD BE KEPT IN A SAFE PLACE.

In the matter of a declaration under paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964 —

We—

_____ of

(father's name)

 (father's address)

and



(mother's name)

of

(mother's address)

do solemnly and sincerely declare and say as follows:

- 1. We have not married each other.
- 2. We are the father and mother of _____ who was born on day of , 199 .

(child's name)

- 3. We agree to the appointment of _____ as a guardian of

(father's name)

_____.

(child's name)

- 4. We have entered into arrangements regarding the custody of [and access to]* _____

(child's name)

*Strike out as necessary.

We make this solemn declaration conscientiously believing the same to be true by virtue of the Statutory Declarations Act, 1938 , and pursuant to paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964 .

Signed _____ (Father)

Signed _____ (Mother)

DECLARED BEFORE ME BY

_____ who are personally known to me or (who are identified to me by
_____ who is personally known to me at



this day of , 19 .

(Peace Commissioner/Commissioner for Oaths/Notary Public)

GIVEN under my Official Seal, this 14th day of January, 1998.

JOHN O'DONOGHUE,

Minister for Justice, Equality and Law Reform.

EXPLANATORY NOTE.

1. These regulations prescribe the form of the joint statutory declaration to be made by the mother and father of a non-marital child who wish the father to become a guardian of the child jointly with the mother in accordance with section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964 .

2. If there is more than one child a separate statutory declaration should be made in respect of each child.

3. In the absence of agreement between the parents of the child concerned in respect of the appointment of the father as joint guardian of the child, the father has a right to apply to the Court under section 6A of the Guardianship of Infants Act, 1964 to be made a joint guardian.

4. A father who is appointed guardian by virtue of a joint statutory declaration made under section 2 (4) of the Guardianship of Infants Act, 1964 can only be removed as guardian by a court order.

5. A child ceases to be subject to guardianship when he or she reaches the age of 18 years or upon the date of his or her marriage.

6. Guardianship is the collection of rights and duties which a parent has in respect of his or her child. It encompasses the duty to maintain and properly care for the child and the right to make decisions about a child's religious and secular education, health requirements and other matters affecting the welfare of the child. The exercise of guardianship rights may be agreed between parents. In the event of a dispute arising concerning the exercise of guardianship rights the court may determine the matter on the application of either parental guardian. The right to custody is one of the rights that arises under the guardianship relationship. Custody is the physical day to day care and control of a child. Even where one parental guardian has custody of a child the other parental guardian is generally entitled to be consulted in relation to matters affecting the welfare of the child.

Note: A father's duty to maintain his child and his right to apply to the court for custody of or access to his child is not contingent on his being made a guardian.

7. The appointment of a natural father as guardian will affect the adoption process.



Appendix II

FORM AFF1

AFFIDAVIT TO BE SWORN BY THE SOLE GUARDIAN OF THE CHILD

(Please complete this affidavit using black ink)

I (full name)

_____ of (full
address) _____

_____ aged
_____ years and upwards, make oath and say as follows:-

1) I am the sole guardian of (full names of child) _____

born the ____ day of _____ in the year of _____. I beg to refer to the birth certificate of the said child upon which, marked with the letter "X", I have signed my name prior to the swearing hereof.

2) I say that I am the sole guardian of the said child and that:

1. a) there is no other guardian of the said child pursuant to the Guardianship of Infants Act 1964;
2. b) there is no court order giving any other person guardianship over the said child, or rights and

responsibilities equivalent to guardianship over the said child, or parental responsibility in relation to the said child;

c) I have not entered into any arrangement or agreement which has the effect of making, or purports to make any other person a guardian of the said child jointly with me, or otherwise relating to any other person having rights and responsibilities equivalent to guardianship over the said child, or having parental responsibility in relation to the said child;

d) no other person is a guardian, or has rights and responsibilities equivalent to guardianship over the said child, or has parental responsibility in relation to the said child by operation of law;

e) no other circumstances exist whereby there is a guardian, or whereby another person has rights and responsibilities equivalent to guardianship over the said child, or has parental responsibility in relation to the said child.



Appendix III

TREOIR WORKSHOPS

Treoir (The National Federation of Services for Unmarried Parents and their Children) promotes the rights and best interests of unmarried parents and their children through providing specialist information and advocating for their rights.

Treoir operates a free, confidential, national, specialist information service for unmarried parents, their extended families and those working with them.

Our service is for unmarried parents, living together or apart, both opposite and same-sex.

Information on Treoir and its services is available on www.treoir.ie.

Treoir has a long history of providing workshops on key issues affecting unmarried parents. Treoir would be happy to host a **free workshop** to staff in your organisation on significant new legislation, which has radically changed family law.

The workshop will brief participants on the provisions of the ***Children and Family Relationships Act 2015*** which were commenced on the 18th January 2016. The provisions relate primarily to guardianship, custody, access and maintenance. They include the following:

- A non-marital father will automatically become the guardian of his child if he lives with the child's mother for at least 12 consecutive months including not less than 3 months after the child's birth. 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 18 provided that it is part of the 12 consecutive months during which the parents have lived together. Until now non-marital fathers have never been automatic guardians of their child. The cohabitation requirement is not retrospective: only cohabitation after the commencement date is taken into account. ***The Act was commenced on the 18th January 2016.***



- A person other than a parent may become a child’s guardian. It will be possible for step-parents, grandparents and others who act in loco parentis to apply for guardianship.
- The Act allows relatives and certain persons to apply for custody of a child.
- Where there is a court order in place for either access or custody and the access or custody is either unreasonably denied or not taken up, a parent/guardian of the child may apply to the court for an Enforcement Order. The enforcement order may provide for one or more of the following:
 - that a parent and/or guardian be granted additional access to the child,
 - that a parent and /or guardian be reimbursed for any expenses they may have had as a result of the unreasonable refusal to either take up or allow the access,
 - that either or both parties do one or more of the following: receive information about the availability of mediation, attend a parenting programme and/or attend family counselling
- It will be possible for a parent who is a guardian and has custody of a child to nominate a person to act as a temporary guardian in the event of the parent becoming incapable of exercising the rights and responsibilities of guardianship through illness or injury.

For further information contact:

Veronica Black

Information and Training officer

veronica@treoir.ie