

- 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 and her husband
- You still have a duty to maintain your child unless your child is adopted

There is no legal relationship established between your child and her/his step-father due to the marriage.

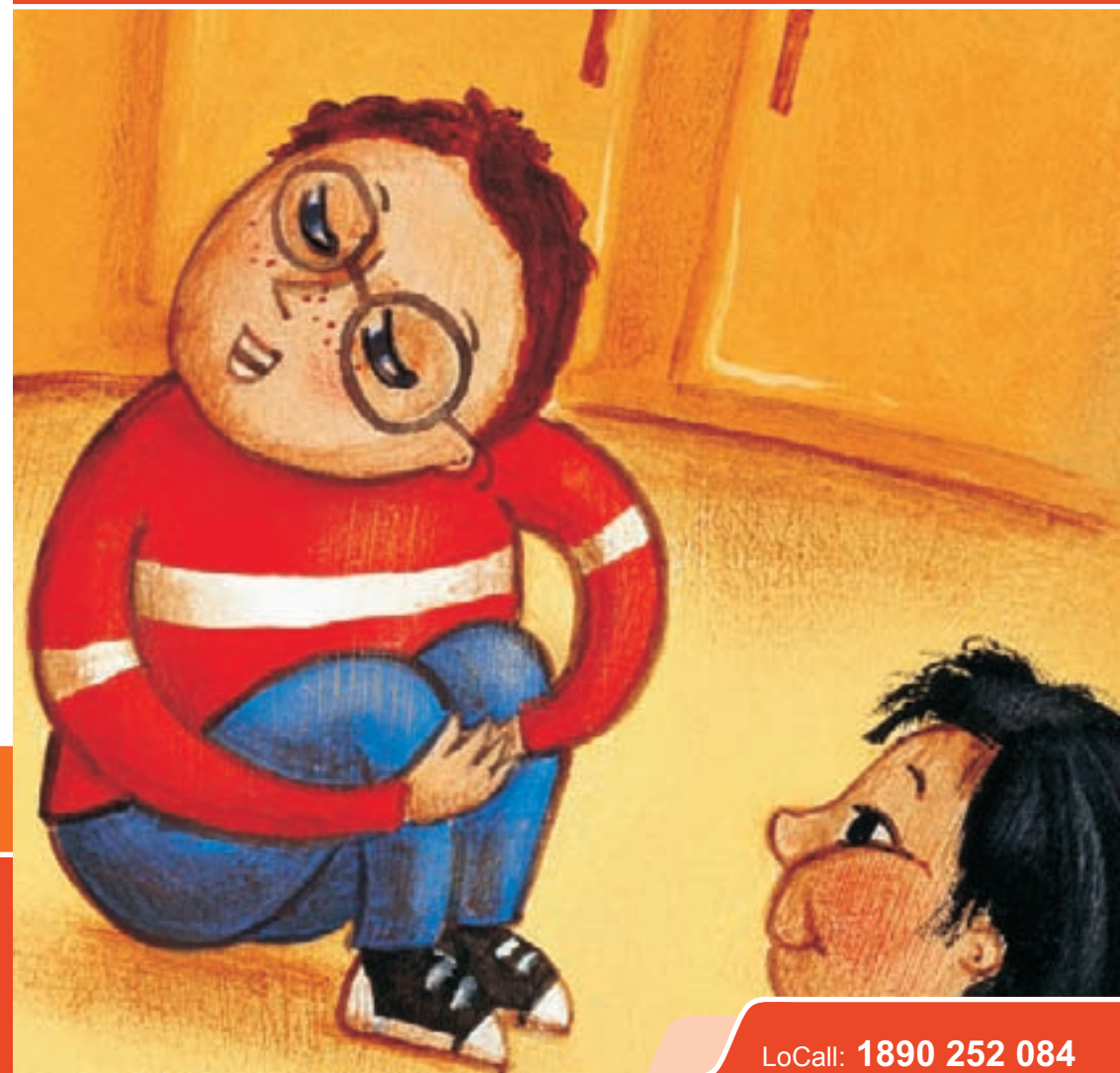
#### What if my child is adopted?

- If the mother and her husband (or anyone else) apply to adopt your child the law requires that, if possible, you are **consulted** before any adoption order is made in respect of your child, even if you are not a joint guardian of your child
- 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 your child 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. It is possible to agree informal access arrangements between parents but these are not legally enforceable.

See the leaflet on **Step-Parent Adoption**.

## Unmarried Fathers

rights and responsibilities in respect of their children





# Unmarried Fathers

rights and responsibilities in respect of their children

## What are legal rights in respect of children?

**Guardianship** is the collection of rights and duties which a parent has in respect of her/his child. The guardian has a duty to maintain and properly care for the child and has the right to make decisions in the major areas of a child's life e.g. choice of religion, of school, adoption, consenting to medical treatment and passports etc.

**Access** is the right of a child and a parent who do not live together to spend time together.

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

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

**None.** Unmarried fathers do not have any **automatic** legal rights in respect of their children.

## What are my legal rights in respect of my child if my name is on the birth cert?

**None.** In Ireland having your name on the birth certificate does not in itself give you any legal rights in respect of your child. You are however, presumed to be the child's father when your name is on the birth cert.

## How can I get legal rights in respect of my child?

**1.** If the mother of your child agrees, you can get guardianship rights of your child by both parents signing a statutory declaration for joint guardianship (S.I. No 5 of 1998) in the presence of a peace commissioner, commissioner for oaths or notary public.

This Form contains declarations that

- the parents have not married each other
- the parents are the parents of the child
- they agree to the appointment of the father as a guardian **and**
- they have entered into arrangements regarding the custody of (and access to) the child. These arrangements do not need to be specified or written down. However, it is advisable to do so.

A blank copy of S.I. No 5 of 1998 is available from Government Publications or from the National Information Service of **Treoir** (address overleaf). It can also be downloaded from the home page of Treoir's website, [www.treoir.ie](http://www.treoir.ie).



When this form is signed and witnessed you need to keep it in a safe place as it is the only evidence that the father is a guardian. There is no central register for Statutory Declaration Forms.

These joint guardianship rights can only be removed by the court.

Parents can make informal arrangements regarding access, custody and maintenance but if these arrangements break down they cannot be legally enforced. However, any written agreement between parents can be made a rule of court.

## What is a Rule of Court?

Where parents enter into an agreement in writing for custody and/or access (including written agreements made during mediation), either parent may make an application to court for an order to make the agreement 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 standing as a court order. If a rule of court is broken it has the same penalties as if it was a court order.

**2.** If your child's mother does not agree to you getting rights you can apply for them through the courts:

You can apply to the court for joint guardianship, as well as access, joint/full custody and/or a declaration of parentage. The court can also order you to pay maintenance in respect of your child. Court orders for access, custody, maintenance and/or guardianship can only be changed through the court.

See the leaflets on **Access and Custody of Children**, **Guardianship** and **Maintenance**.

## 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 10 months before the birth of the child, you automatically become a joint guardian of your child with the mother. You do not need to adopt your own child as it is from the marriage that your joint guardianship rights flow.

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

The rights you already have in respect of your child do not change on the marriage of the mother:

continued overleaf