

the child has not been adopted and the mother was not married 10 months before the birth of the child.

If a mother marries a man who is NOT the father of her child, there is no legal relationship between her husband and her child. If the birth father is a joint guardian he remains a joint guardian of his child.

Should the mother and her husband, who is not the father, wish to adopt the child and the father is a joint guardian, his consent to the adoption is required. Where a father is not a joint guardian he has a right to be consulted about the adoption. If it is not possible or it is inappropriate to consult the father the Adoption Authority, after first obtaining the approval of the High Court, may make an adoption order without consulting the father. If the child is adopted the biological father loses all legal rights in relation to his child.

See **Step-Parent Adoption** at www.treoir.ie

Notes:

1. Where guardianship and access/custody are being applied for, then separate applications must be made to the court for each, though all applications can be heard at the same hearing.
2. Family law court hearings are not open to the general public - only those directly involved are allowed in court.
3. Many parents represent themselves in the district court. Download a copy of *Taking the Stand* - a guide for unmarried parents resolving disputes regarding care of their children at www.treoir.ie.
4. You may qualify for legal aid. Contact the **Legal Aid Board: LoCall 1890 615 200, www.legalaid.ie**.



The National Federation of Services for
Unmarried Parents and their Children

If you would like to talk to an Information Officer
LoCall: 1890 252 084

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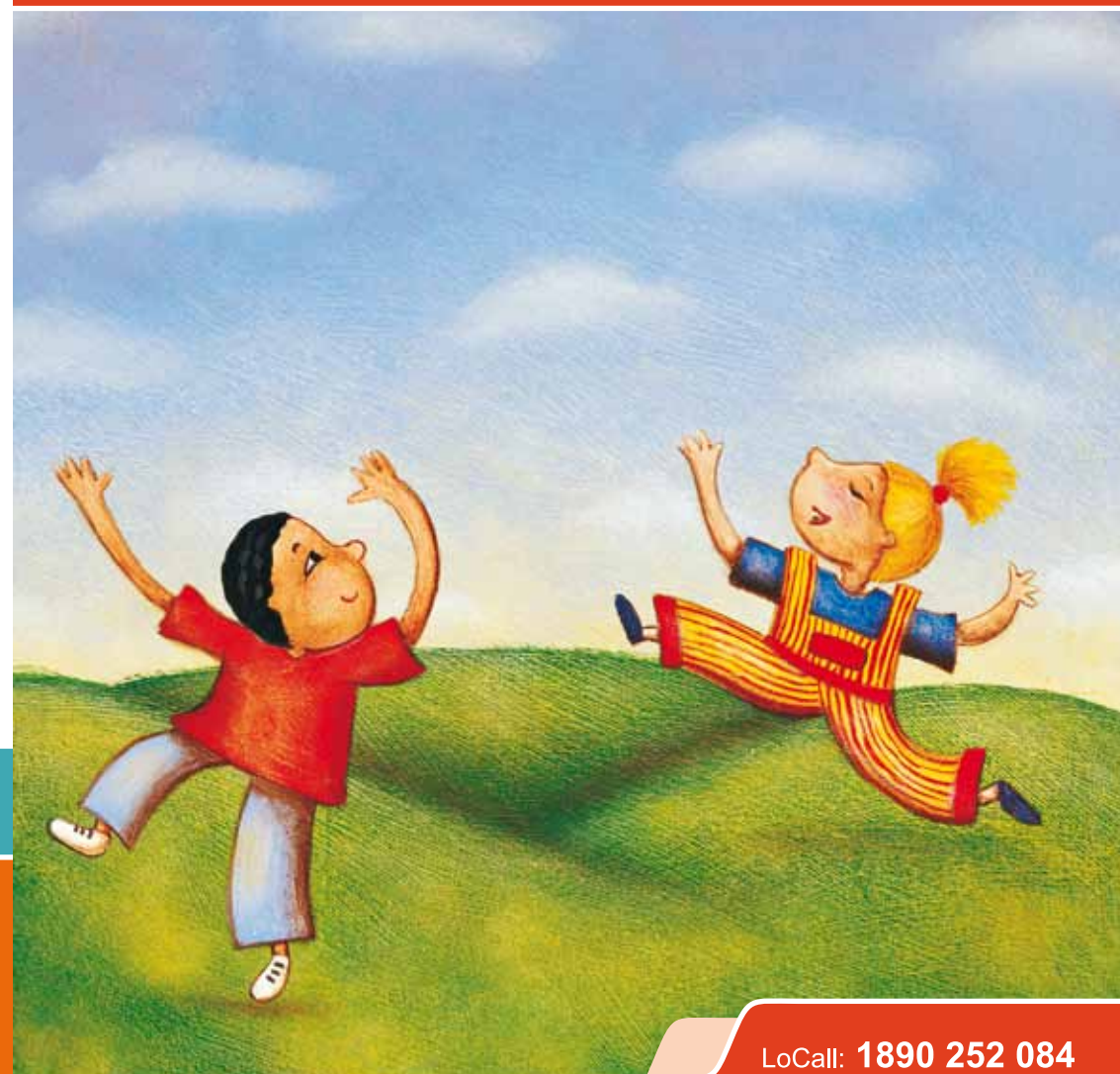
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treoir
informing unmarried parents

Guardianship of Children

whose parents are not married to each other



LoCall: **1890 252 084**



Guardianship of Children

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Guardianship

Guardianship is the collection of rights and duties which a parent has in respect of his/her 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. choice of religion, of school, adoption, consenting to medical treatment, passports and decisions about leaving the country.

Guardianship should not be confused with custody, which is the day-to-day care of the child. See Treoir leaflet on **Access and Custody** at www.treoir.ie or order from LoCall 1890 252 084.

Who can be a guardian?

Where a child's parents have not married each other

- the mother is automatically the sole guardian of her child
- the father does not have any automatic guardianship rights in respect of his child even if his name is on his child's birth cert.

An unmarried father can get guardianship rights either by agreement with the mother or by court order:

1. Agreement with the mother

A father and mother can complete and sign the 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 declares that:

- the parents have not married each other
- they 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 but it may be advisable to do so.

A copy of S.I. No 5 of 1998 can be downloaded from Treoir's website, www.treoir.ie or order from Treoir **LoCall 1890 252 084**.

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 Declaration Forms.

Where the mother refuses to sign the Statutory Declaration Form it is worth considering mediation. Mediation is where a third party helps parents reach an agreement. It encourages parents to co-operate with each other in working out arrangements concerning their children.

The Family Mediation Service: 01-634 4320, www.legalaid.ie
Mediation Institute of Ireland: 01-609 9190, www.themii.ie



2. Going to court

If all else fails, the father can apply to the local district court to become a joint guardian of his child, **whether or not his name is on the birth certificate**.

While the mother's views are taken into account by the court in making a decision, the fact that she may not consent does not mean that the court will refuse the order for guardianship sought by the father. The decision of the court will be made with the interest of the child being the first and most important consideration. In the vast majority of cases a father will be granted guardianship.

Appeals

If you are not happy with the decision made by the court you have 14 days in which to appeal. The terms of the order will come into force while waiting for the appeal unless a court directs otherwise.

If joint guardians don't agree

Where joint guardians cannot reach an agreement on an important issue concerning the child then either of the guardians can apply to the court for direction and the court will make a decision in the child's best interest.

Removal of guardianship rights

A father who has been appointed a joint guardian by a court or by statutory declaration can have his joint guardianship rights removed by court order 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 by someone else.

Guardians and wills

All parents who are guardians but especially mothers who are sole guardians, 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 advisable to talk it over with someone who could and would like to act as guardian and get his/her consent to be named in the will as a testamentary guardian. The surviving guardian (if there is one) then acts jointly with the testamentary guardian.

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.

Marriage following the birth

If the parents of a child marry each other following the birth of their child, then the father automatically becomes a joint guardian with the mother as long as