
GUARDIANSHIP OF CHILDREN BILL 2010

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Amendment of section 2 of Act of 1964.
3. Amendment of section 6 of Act of 1964.
4. Amendment of section 11A of Act of 1964.
5. Amendment of section 11B of Act of 1964.
6. Further amendment of Act of 1964.
7. Amendment of Act of 2004.
8. Repeal.
9. Short title, collective citation and commencement.

ACTS REFERRED TO

Children Act 1997	1997, No. 40
Civil Registration Act 2004	2004, No. 3
Guardianship of Children Acts 1964 to 1997	
Guardianship of Infants Act 1964	1964, No. 7

GUARDIANSHIP OF CHILDREN BILL 2010

BILL

entitled

AN ACT TO VINDICATE THE RIGHTS OF THE CHILD PURSUANT TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON 20 NOVEMBER 1989, TO GIVE FURTHER EFFECT TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS DONE AT ROME ON 4 NOVEMBER 1950, TO EXTEND GUARDIANSHIP RESPONSIBILITIES FOR THE PURPOSES OF ENHANCING AND BETTER PROTECTING THE WELFARE OF CHILDREN IRRESPECTIVE OF THE MARITAL STATUS OF THEIR PARENTS, TO VINDICATE THE RIGHT OF THE CHILD TO THE SOCIETY OF BOTH OF THE CHILD'S PARENTS, ABSENT COMPELLING CIRCUMSTANCES, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1. – In this Act –

“Act of 1964” means the Guardianship of Infants Act 1964;

“Act of 1997” means the Children Act 1997;

“Act of 2004” means the Civil Registration Act 2004.

Amendment of section 2 of Act of 1964.

2. – Section 2 of the Act of 1964 (as inserted by section 4 of the Act of 1997) is amended –

(a) in subsection (1) –

(i) by the substitution of the following for the definition of “father”:

““father” includes a male adopter under an adoption order;”,

(ii) by the insertion of the following definition:

““guardianship responsibilities” includes all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his or her property and further includes the right to determine the child’s place of residence;”

and

(b) by the deletion of subsections (3) and (4).

Amendment of section 6 of Act of 1964.

3. – The Act of 1964 is amended by the substitution of the following for section 6:

“6. – (1)(a) Subject to the subsequent provisions of this section, the father and mother of a child shall be guardians of the child jointly irrespective of their marital status.

(b) On the death of the father of a child the mother, if surviving, shall be guardian of the child, either alone or jointly with any guardian appointed by the father or by the court.

(c) On the death of the mother of a child the father, if surviving, shall be guardian of the child, either alone or jointly with any guardian appointed by the mother or by the court.

(2) *Subsection (1)* shall not confer any entitlement on a man who has become the father of the child in consequence of –

(a) sexual intercourse with the mother of the child without the consent of the mother unless the mother has freely agreed to the father exercising parental responsibilities in respect of the child for a period of at least one year;

(b) incest; or

(c) sexual intercourse which constitutes an offence by reason of the age of the mother unless the parties subsequently marry or the court orders that the father shall become and be a guardian or unless the mother having come of full age has freely agreed to the father exercising parental responsibilities in respect of the child.

(3)(a) *Subsection (1)* shall not apply to a parent, not being a parent who is or has been married to the other parent, where that

parent agrees with the other parent by deed that the first mentioned parent shall not be a guardian of the child.

- (b) A deed under *paragraph (a)* may be revoked by either party and, upon such revocation, *subsection (1)* shall apply to both parties.
 - (c) The Minister for Justice, Equality and Law Reform may make regulations in respect of –
 - (i) the form and content of a deed under *paragraph (a)* and registration of notice of its making,
 - (ii) the revocation of a deed under *paragraph (b)* and registration of notice of such revocation.
- (4)(a) On the application of a parent of a child (“the applicant”) who is not or has not been married to the other parent (“the respondent”), on notice to that respondent, or where the respondent or his or her whereabouts are unknown, the court having given such directions as to service of the application as the court considers appropriate, the court may declare that the respondent should cease to be a guardian of the child, or shall cease to exercise such particular guardianship responsibilities as are specified by order of the court, if –
- (i) the respondent does not wish to assume any guardianship responsibilities, or particular guardianship responsibilities, in respect of the child, or
 - (ii) the respondent is unknown and cannot be traced despite reasonable enquiry, or
 - (iii) the whereabouts of the respondent are unknown and cannot be traced despite reasonable enquiry, or
 - (iv) the conduct of the respondent as a guardian of the child is so inimical to the fundamental rights of the child that he or she should cease to be a guardian of the child or should cease to exercise particular guardianship responsibilities.
- (b) An application under this subsection shall be verified by affidavit sworn by the applicant personally.
 - (c) An applicant who makes a statement in an affidavit under this subsection –

- (i) that is false or misleading in any material respect, and
- (ii) that he or she knows to be false or misleading,

is guilty of an offence and is liable –

- (I) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a period not exceeding 12 months or both,
 - (II) on conviction on indictment to a fine not exceeding €30,000 or to imprisonment for a period not exceeding 5 years or both.
- (d) An affidavit sworn under this subsection shall include a statement by the deponent that he or she is aware that the making of a statement by him or her in the affidavit that is false or misleading in any material respect and that he or she knows to be false or misleading is an offence.
 - (e) The court may, on the application of a respondent who has been the subject of an order under paragraph (a), restore a respondent as guardian of a child if the court is satisfied that the person intends to exercise guardianship responsibilities in relation to a child and, if the order was made under paragraph (a)(iv), that the circumstances referred to in that paragraph no longer obtain.

(5) Where, on the passing of the *Guardianship of Children Act 2010*, a father of a child (other than a man referred to in *subsection (2)*) is not the guardian of that child he may, on or after such passing, subject to *subsections (3) and (4)*, apply to the court under this section to become and be the guardian of that child, unless an adoption order has been made in respect of the child prior to such passing, and the court shall grant such application if the father would have been a guardian had the child been born on or after the passing of that Act and the court would not have removed the father as a guardian pursuant to *subsection (2)(a)(iv)*.”

”

Amendment of section 11A of Act of 1964

4. – The Act of 1964 is amended by the substitution for section 11A (inserted by section 9 of the Act of 1997) of the following section:

“11A (1) In any proceedings relating to the guardianship or custody of, or access to, a child and without prejudice to the requirement that the welfare of a child shall be the first and paramount consideration, it shall be presumed, until the Court is satisfied to the contrary, that –

- (a) a child's welfare is best served by vindicating the child's right to maintain personal relations, direct contact and society with and protection of both of his or her parents on a regular basis,
- (b) a child's welfare is best served by vindicating the child's right to maintain personal relations, direct contact and society with and protection of all of his or her grandparents on a regular basis,
- (c) it is in the best interests of a child –
 - (i) that both parents should have joint custody of the child, save in circumstances where the welfare of the child so requires, and
 - (ii) that both parents who are guardians of a child should –
 - (I) take all reasonable steps to consult and co-operate with each other in relation to all decisions, events and other matters of importance directly concerning the child, and
 - (II) continue to have contact and be involved in a constructive relationship with the child and contribute to the child's upbringing, development and education, and
- (d) where the circumstances of the case are such that the giving of the custody of the child to one parent would give rise to a significant risk that the relationship between the child and the other parent will be irretrievably damaged, it is in the best interests of the child to be placed in the custody of that other parent.

(2) Where after the passing of the *Guardianship of Children Act 2010* a court considers an application for the variation of an order made before such passing relating to guardianship or custody of, or access to, a child, the court may make such variation to the prior order as it thinks appropriate having regard to the principles set forth in subsection (1).

(3) Where application is made under this Act, the court may, unless the circumstances are such that it would be inappropriate to do so, require the parents of a child to undergo mediation or counselling, take steps towards entering into a parenting agreement, or undergo parenting classes or courses.”.

Amendment of section 11B of Act of 1964.

5. – Section 11B(1) of the Act of 1964 (inserted by section 9 of the Act of 1997) is amended –

- (a) by the substitution for paragraph (b) of the following –

“(b) has acted in *loco parentis* to a child, for example in consequence of being married to, or being the partner of, a parent of the child, or

(c) otherwise has a legitimate interest in the child.”,

- (b) by the insertion after “access” of “, guardianship or custody”,

- (c) by the insertion of the following after subsection (4) –

“(5) An order giving a person guardianship or custody of a child under *subsection (1)* shall not be made to the exclusion of a right of a guardian of the child who is a parent to exercise such custody of the child jointly with that person as is appropriate.

(6) It shall be presumed unless the contrary is proved that it is a child’s best interests to have reasonable access to each of the child’s relatives and to each person who has acted *in loco parentis* to the child, or otherwise in relation to whom the child has a legitimate interest.”.

Further amendment of Act of 1964.

6. – The Act of 1964 is amended by the insertion after section 18 of the following section –

“Power of court.

19. – Where a party to proceedings under this Act makes unreasonable applications under this Act which by reason of their number, frequency and nature are such as to amount to an abuse of the process of the court by reason of oppression of another party to those proceedings, the court may, without prejudice to any other power in that behalf to prevent such an abuse of process, direct that the first-mentioned party may not bring further applications under this Act, or applications of a particular class, without having first obtained leave of the Court, and subject to such conditions or exceptions as the Court may direct.”

Amendment of Act of 2004.

7. – The Act of 2004 is amended –

- (a) in section 2 by the insertion of the following definition –

“father”, “mother” and “parent” have the same meaning as in the Guardianship of Infants Act 1964 as amended by the *Guardianship of Children Act 2007*.”,

- (b) in section 19, by the deletion of subsection (6)(g),
- (c) by the deletion of section 22 and the substitution therefor of the following section:

“Registration of birth where parents are unmarried.

22. - (1) This section applies without prejudice to the general duty on both parents to register a birth under section 19, whether those parents are married or not.

(2) It shall be the duty of a parent whether married to the other parent or not, to furnish to the registrar particulars of the other parent.

(3) Where a mother who is the informant for the purposes of section 19, gives particulars to the registrar of the father, those particulars shall be registered following the giving of notice to the person so named, unless he makes a claim, within such period as may be prescribed, that he is not father; and on the making of such claim the matter shall be referred by the registrar to the District Court for directions prior to the registration of the birth.

(4) Where a mother who is the informant for the purposes of section 19 fails or refuses to furnish particulars of the father, or provides particulars that are false, misleading or incomplete, any person claiming to be the father of the child may at any time thereafter supply to the registrar or to any other qualified informant particulars regarding the father of the child, and the registrar shall register such particulars if the mother does not object to them within such time as may be prescribed; and in case of such objection the registrar shall refer the matter to the District Court for directions.

(5) Where the father of a child has not been registered in respect of any child born before the commencement of section 7 of the *Guardianship of Children Act 2010*, or where, in respect of such a child, a mother who is the informant for the purposes of the Act of 2004 has provided particulars of the father that are false, misleading or incomplete, the father of the child may at any time after such commencement supply to the registrar particulars regarding the father of the child, and the registrar shall re-register the birth containing such particulars if the mother does not object to them or in case of objection shall refer the matter to the District Court for directions.

Repeal.

8. – The following sections of the Act of 1964 are repealed, without prejudice to the position of any father as a guardian immediately prior to the passing of this Act:

- (a) section 6A (inserted by section 12 of the Status of Children Act 1987 and amended by section 6 of the Act of 1997);
- (b) section 11D (inserted by section 9 of the Act of 1997).

Short title, collective citation and commencement.

9. – (1) This Act may be cited as the Guardianship of Children Act 2010.

(2) This Act and the Guardianship of Children Acts 1964 to 1997 may be cited together as the Guardianship of Children Acts 1964 to 2010 and shall be construed together as one Act.

(3) Section 7 shall commence on the day that is 2 months from the passing of this Act and the remaining provisions of this Act shall commence on the passing of this Act.

GUARDIANSHIP OF CHILDREN BILL 2010

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to vindicate the right of the child to the society of each of the child's parents, absent compelling circumstances.

This right is underpinned by international law which is binding on the State, in particular Article 7.1 of the UN Convention on the Rights of the Child which provides that "The child shall ... have ... as far as possible, the right to know and be cared for by his or her parents".

At present the child's right to know and be cared for by both of his or her parents is not fully respected in Irish law insofar as (a) there is no automatic registration of an unmarried father on the child's birth certificate (b) an unmarried father has no automatic guardianship role.

The Bill is also designed to give effect to the rights of non-marital families under Article 8 of the European Convention on Human Rights.

In order to ensure that the child's rights are vindicated, the Bill will confer an automatic guardianship role on natural fathers in respect of children born after the passing of the Act (with specified exceptions) and will give the parties or the court a power to terminate that role in specified circumstances. Such a guardianship role will not depend on whether the father is registered on the birth certificate, as to do so would create a disincentive to registering the father, contrary to the right of the child. Instead, the role conferred by the Bill will be automatic, but will be complemented by an automatic registration of fathers on the birth certificate.

Where a dispute arises as to whether a man is the father of a child or not for the purposes of registration, this will be resolved by referral of the matter to the court.

Article 41 of the Constitution deals with the Family and provides that married parents – and only married parents – have inalienable and imprescriptible rights in relation to their children. Unmarried parents do not have any rights in relation to their children under Article 41. The courts have found that an unmarried mother has a natural right to the custody of her child but that this right is derived from Article 40.3 of the constitution and not Article 41. Unmarried fathers have no rights in relation to their children under the Constitution.

The law regarding guardianship rights is governed by the Guardianship of Infants Act 1964, as amended. When the mother and father are married, the guardianship rights that each enjoy are equal. Even if this couple subsequently separate or divorce, their individual status as guardian is not affected and they are each entitled to have an input into the development and welfare of the child.

However if the parents of a child are not married, then the law confers different rights on each according to their status as ‘father’ or ‘mother’. A child’s mother is automatically a guardian of the child, whatever her marital status. However the father of a non-marital child does not enjoy this automatic right of guardianship and, therefore, is not entitled to make decisions about the child’s upbringing. In fact the unmarried father is “excluded from all key decisions involving the child”.

The non-marital father can acquire guardianship status in three ways.

- the father and mother, by agreement, can make a statutory declaration conferring upon the father the status of guardian.
- the father can become guardian of the child upon marriage to the mother
- the father can secure guardian status by applying to the court to be appointed guardian of the child under section 6A of the 1964 Act.

A guardian is entitled, as against all other non-guardians, to custody of a child. Custody comprises the right and duty of a parent to exercise on a daily basis the physical care and control over a child.

The effects of a custody order necessarily involve residential care. However, this does not negate the rights of the non-custodial parent. If he or she is a guardian, the non-custodial parent will still retain the right to input into decisions on the overall welfare of the child.

A non-custodial parent is also entitled to apply for “access”, meaning a right (and duty) of visitation, allowing the person with access to visit and communicate with the child on a temporary basis. The parent who has access rights is neither entitled nor expected to take on a primary care-giving role.

Irish law on guardianship, custody and access must now be assessed in the light of the European Convention on Human Rights and Fundamental Freedoms. In *Keegan v Ireland* the European Court of Human Rights restated its view that the definition of family in Article 8 of the Convention is not confined to family relationships that are based on marriage. The court rejected a narrow definition of family life based on legal relationships alone, in favour of a more flexible definition based on the reality of modern relationships. The Bill seeks to make further provision to protect family relationships including those protected by Article 8 of the Convention.

Provisions of Bill

Section 1 provides for the definition of certain terms used in the Bill. In particular, the “Act of 1964” means the Guardianship of Infants Act 1964; the “Act of 1997” means the Children Act 1997; and the “Act of 2004” means the Civil Registration Act 2004.

Section 2 makes amendments to section 2 of the 1964 Act (as amended in 1997). That is the definition section of the 1964 Act and it provides that, generally speaking, the term “father” does not include the father of a child who is not married to the child’s

mother. The change made by this Bill is to remove that disqualification and to provide simply that “father” includes a male adopter under an adoption order.

The section also includes a definition of a term inserted by this Bill into a later section of the 1964 Act: “guardianship responsibilities” is re-defined and updated particularly so as to provide protection to parents in respect of the child abduction legislation.

Finally, because the definition of “father” is being widened so as to include non-marital fathers, special provisions made in subsections (3) and (4) of that section, dealing with void or voidable marriages and with guardianship by consent are unnecessary and are repealed.

Section 3 substitutes a new section for section 6 of the 1964 Act, dealing with the rights of parents to guardianship. As in the original section 6, it provides that

- the father and mother of a child shall be guardians of the child jointly,
- on the death of either parent, the surviving parent shall be guardian of the child, either alone or jointly with any guardian appointed by the deceased parent or by the court.

Unlike the original section, this new provision applies to both married and unmarried parents. It is also made subject to certain exemptions and provisos spelled out in the section.

First, the rule does not confer any entitlement on a man who has become the father of the child in consequence of sexual intercourse with the mother of the child without the consent of the mother (whether the man is married to the mother or not) unless the mother has freely agreed to the father exercising parental responsibilities for a period of at least a year.

It will also exclude any rights for a father who commits incest, or where the mother is under age (unless the parties subsequently marry or a court declares that the father should be a guardian, or unless the mother agrees after having attained full age).

Second, the rule does not apply to a parent where that parent agrees with the other parent by deed that the first mentioned parent shall not be a guardian of the child. Such a deed may be revoked. Provision is made for rules relating to the form and content and registration of the making or revocation of such deeds.

Third, one parent may apply to court for a declaration that

- the other parent does not wish to assume guardianship responsibilities in respect of the child, or
- the respondent is unknown and cannot be traced despite reasonable enquiry, or
- the whereabouts of the respondent are unknown and cannot be traced despite reasonable enquiry,

- the conduct of the respondent is inimical to the fundamental rights of the child.

The court may on such an application declare that the respondent should cease to be a guardian of the child or cease to exercise particular parental responsibilities.

An application to court must be verified by an affidavit sworn by the applicant personally. Provision is made for an offence in relation to swearing false affidavits under this section.

The provisions on termination of guardianship by deed or court order do not apply to married parents, in order to ensure compliance with the constitutional principle that family rights under Article 41 are inalienable and imprescriptible.

The section also provides that, on the passing of this Act and provided all other conditions are satisfied, and except where an adoption order made, a father of a child who is not the guardian of that child may apply to become the guardian of that child and the court shall grant the application if the father would have been entitled to guardianship had the child been born on or after the passing of the Act.

Section 4 substitutes into the 1964 Act a new section 11A (which was inserted by section 9 of the Act of 1997). The original section 11A simply provided that, “for the avoidance of doubt”, it was open to a court to award custody jointly to a father and mother. The substitute section will create a presumption in favour of joint custody.

The substitute section 11A provides that, in any proceedings relating to the guardianship or custody of, or access to, a child or for the delivery or return of a child, and without prejudice to the requirement that the best interests of a child shall be the first and paramount consideration, it shall be presumed, until the contrary is proven, that the child’s best interests would be served by vindicating the child’s right to personal relations and direct contact with both his or her parents on a regular basis.

The section will also reflect the child’s right to relationships with his or her grandparents.

It shall also be presumed that it is in the best interests of a child –

- that both parents should have joint custody of the child, save in circumstances where the welfare of the child requires it. Note however that joint custody is a legal concept and does not imply an equal sharing of time with the child.
- that both parents who are guardians of a child should take all reasonable steps to consult and co-operate with each other in relation to all decisions, events and other matters of importance directly concerning the child and should continue to have contact and be involved in a constructive relationship with the child and contribute to the child’s upbringing, development and education.
- That where the circumstances of the case are such that the giving of the custody of the child to one parent would give rise to a significant risk that the relationship between the child and the other parent will be irretrievably damaged, it is in the best interests of the child to be placed in the custody of

that other parent. Such a situation could arise as a consequence of a refusal by one parent to countenance access by the other parent, even where ordered by the court.

It is important to note that the above provisions do not affect the requirement that the best interests of a child shall be the first and paramount consideration. Thus the fact that a parent of a child is a guardian of that child does not of itself entitle the parent to any particular form of access to the child if the court is satisfied that such access would threaten the physical or mental health of the child.

Consideration has been given to the question of a rebuttable presumption that a parent who threatens the welfare of another parent would in turn be likely to threaten the welfare of a child. However it is considered that this provision could not be included for a range of reasons. The primary reason is that such a presumption would not be factually sustainable in a very large number of cases, where a parent engages in conduct adverse to the other parent but has no intention of threatening the child. Furthermore in jurisdictions where such schemes have been introduced, the results have caused severe interruption to the relationships between parents and children.

For example the effect of the New Zealand statute which involves such a rebuttable presumption is that the non-custodial parent is barred from contact until the investigation of an allegation is incomplete. Such investigations (under section 16B of the NZ Care of Children Act 2004) are necessitated when allegations of abuse by one of the parents is made. An empirical study of the operation of that statute (P. Tapp and N. Taylor, “*Protecting the Family*” in M. Henaghan and B. Atkin (eds), *Family Law Policy in New Zealand* (Butterworths, 2nd edn, 2002) cited in Perry “*Safety first? Contact and family violence in New Zealand: an evaluation of the presumption against unsupervised contact*”, 2006 CFam 18 1 (1)) found that in half of cases the section 16B investigation resulted in a complete cessation of contact between the non-custodial parent, normally the father, and the child. Where contact resumed after the conclusion of the investigation there was a contact hiatus for 15 weeks. The authors opined that for very young children in particular this would represent a significant amount of time without contact with the non-custodial parent. Indeed New Zealand caselaw makes clear that fathers are denied access under the rebuttable presumption even where there is expert evidence that they do not pose a threat to their children.

This contrasts strongly with the welfare of the child approach which is prevalent in other jurisdictions and underpinned by international law on the rights of the child. The New Zealand legislation assumes that risks posed by a parent who is guilty of, or accused of, violence to the other parent outweigh the benefit to the child of continued contact, at least in the short term, whereas in a number of other jurisdictions, in particular Australia, there is a strong presumption that continued contact with both parents will generally be in the child’s best interests, even in the presence of allegations of a past history of conduct adverse to the custodial parent. In summary it is considered that a rebuttable presumption statute which is based on the conduct of a parent towards the other parent, is not sustainable and would be likely to be contrary to the constitutional rights of the child and of the non-custodial parent, and indeed to international law.

However it is recognised that there are risks of using the access/custody process as a means of visiting abuse upon the other parent. To minimise such risks, the Bill proposes to introduce a new provision to enable the court to deal with abusive applications (section 7).

In subsection (2), provision is made for the application of this section to existing cases where a variation is sought, if a court so orders.

Provision is also made for the court to order the parents of a child to undergo mediation or counselling, take steps towards entering into a parenting agreement, or undergo parenting classes or courses, unless it would be inappropriate to do so.

Section 5 amends section 11B of the 1964 Act (which was also inserted by section 9 of the Act of 1997), which deals with the entitlement of relatives such as grandparents to apply for access to a child. The amendments broaden the section in two ways. First, an applicant under the section is enabled to apply for guardianship or custody, where appropriate, rather than simply access.

Second, the categories of persons entitled to apply under the section is extended to include relatives, those who have acted *in loco parentis* and any other person who “otherwise has a legitimate interest in the child”. This will confer an entitlement to apply for guardianship upon, for example, a man who is not the father but who the unmarried mother subsequently marries, without eliminating the guardianship position of the natural father. It would also protect the partner, including a same-sex partner, of one of the natural parents, who acts *in loco parentis* to the child. Such a partner will be entitled to apply to become a guardian.

The section provides that a guardianship or custody order shall not be made to the exclusion of a right of a guardian of the child who is a parent to exercise such custody of the child jointly with that person as is appropriate.

The section also provides that a court shall presume unless the contrary is proved that it is in a child’s best interests to have reasonable access to each of the child’s relatives and to each person who has acted *in loco parentis* to the child, or otherwise in relation to whom the child has a legitimate interest.

Section 6 introduces a new power which will apply to applications under the Act of 1964 and is designed to prevent abusive applications. It provides that where a party to proceedings makes unreasonable applications under the Act which by reason of their number, frequency and nature are such as to amount to an abuse of the process of the court by reason of oppression of another party to those proceedings, the court may, without prejudice to any other power in that behalf to prevent such an abuse of process, direct that the first party may not bring further applications under the Act, or applications of a particular class, without having first obtained leave of the Court, and subject to such conditions or exceptions as the Court may direct.

Section 7 amends the Civil Registration Act 2004 in a number of ways. First, paragraph (a) imports the same definitions of “father”, “mother” and “parent” as are used in this Bill.

Under section 7(b), a consequential amendment arising from the replacement of section 22 of the Act of 2004 is made by way of the deletion of section 19 (6) (g).

Section 7(c) replaces section 22 of that Act, which makes special, optional provision for the registration of the name of a father of a child on the child's birth certificate, where the parents are unmarried. The effect of this amendment is that the registration of the father's name on the birth certificate will be compulsory in all cases as and from the commencement of the legislation.

The new section 22(1) provides that the section applies without prejudice to the general duty of parental registration under section 19 of the Act of 2004.

Subsection 22(2) reiterates the general parental duty.

Subsection 22(3) provides that where a mother is the informant, she shall provide particulars of the father. The father so named shall be notified and may object, otherwise the particulars are registered. If he objects, the subsection provides for directions to be sought from the District Court where the parents disagree over the registration of the father on the birth certificate.

Subsection 22(4) provides that where the mother is the informant and fails to register the father, he may subsequently apply to be registered. The mother is notified and the details of the father are registered unless she objects. If she objects, the matter is again referred to the District Court.

Subsection 22(5) allows for re-registration of children born before the commencement of the section to include the father's name, and allows for disputes to be referred to the District Court.

Section 8 repeals two sections of the 1964 Act which are made redundant by the provisions of this Bill., These are section 6A (inserted by section 12 of the Status of Children Act 1987 and amended by section 6 of the Act of 1997) and section 11D (inserted by section 9 of the Act of 1997).

Section 9 provides in standard form for the short title and collective citation of the Bill. It provides for commencement on the passing of the Act with a delay of 2 months for the new provisions on registration of births.

Deputy Kathleen Lynch
March 2010