

Guardianship law must be updated to enhance the rights of children

The Bill we are publishing here today is essentially about enhancing the rights of children.

It particularly seeks to vindicate the right of a child to know and have the company of each of its parents, unless there are compelling circumstances why this would not be in the interests of the child.

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.

There have been huge changes in Irish society and in social attitudes since the principal piece of legislation governing guardianship was passed in 1964. There has been a huge increase, in particular, in the number of children born outside of marriage since then. In 1964 the number of births outside of marriage was less than 5%. The most recent statistics suggest that this has now grown to almost 32%. The quarterly figures published since then show no decline in this pattern and in some urban areas the numbers of births outside of marriage is close to two thirds.

Clearly our legislation needs to be updated to take account of the changes that have occurred since 1964.

Contrary to the popular myth, this is not a phenomenon of teenage pregnancy, as the vast majority of single births are to mothers in their twenties and thirties.

In many cases, the couple may be cohabiting as a couple. 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".

This is not in the interests of the child or the father. Particularly if a relationship breaks up, the child can be deprived of any contact with its father. Young men who are deprived of contact with their child can feel excluded and alienated from society.

The Bill we are publishing will make very major changes to the law on guardianship. We acknowledge that this is a difficult and sensitive area involving the rights of the mother, the father and the child. All these rights must be respected, but the right of the child should take precedence over all others.

I hope that we will be able to bring the Bill before the Dail shortly and we will of course be open to any amendments or suggestions as to how the Bill might be improved, either from the government, other political parties or from other groups.