

CHILDREN & FAMILY LAW

Leaflet No. 8



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RPC002014_EN_PR_L_2

Updated April 2012

This leaflet is not an interpretation of the law.

Going to court is not pleasant and should always be regarded as a last resort particularly in relation to issues involving children. It may make your relationship with your child's other parent more difficult and this may have a negative effect on your child. It is generally better, in the first instance, to attend relationship counselling or family mediation, to help work out a solution mutually acceptable to both parties. Details of the State funded Family Mediation Service are available at www.legalaidboard.ie

Some legal issues involving children are discussed below:

Guardianship

Guardianship is the legal relationship between parents and their child.

Guardianship involves:

- the duty to maintain and properly care for a child and
- the right to make decisions about a child's education, religious upbringing, health and general welfare.

How long does a child need a guardian for? - A child needs a guardian until the age of eighteen years. A person who has reached the age of 18 years and has a mental or physical disability to such an extent that it is not reasonably possible for the person to maintain himself/herself may need a guardian indefinitely.

Who is the guardian of a child? - Married people are automatically joint guardians of their child.

Who is the guardian, if the mother of the child is not married? - A mother, who is not married to the father of her child, is automatically the child's guardian.

Is the father a guardian of the child, if he is not married to the mother of the child? - A father, who is not married to the mother of his child, is not automatically the child's guardian.

How may an unmarried father become a guardian? - The mother may consent to the father being appointed a guardian and both parties may swear a declaration to this effect or the unmarried father may apply to court, either with or without the consent of the mother, to be appointed a joint guardian with the mother.

Can other people become a guardian? - Yes, other guardians may be appointed under a parent's will or by court order but only in certain limited circumstances.

Custody - Custody is the term that is generally used to describe the physical day-to-day care and control of a child.

Who is responsible for the custody of a child? - Married people living together are automatically joint custodians of their child. Where married couples separate or divorce, decisions need to be made in relation to the living arrangements of the child.

If the parents of the child are not married, who has custody? - A mother, who is not married to the father of her child, automatically has sole custody. A father, who is not married to the mother of his child, may apply to court to be appointed a guardian of the child and he may also apply for custody (day to day care of the child).

Can a child be in the custody of other people? - A child may be in the custody of neither parent, for example, where the child is being reared by grandparents, a relative of the child or is in the care of the Health Service Executive.

Access - Access is the term that is generally used to describe the contact between a child and the parent with whom the child does not normally live. A parent who does not have custody of a child can apply to the court for access if it is not possible to agree arrangements. Grandparents, or other relatives may also apply to court for access though they need the prior approval of the court to make an application. Access can be physical, which means that a child sees the other parent in person: or it can be by means of a letter, telephone call or other form of electronic communication. Where a child is in the care of the Health Service Executive, parents and certain other persons can apply for access if it is not possible to agree suitable arrangements with the HSE.

Proceedings concerning children - In family law proceedings concerning a child, the child's welfare is the main consideration.

Maintenance of children - Maintenance is financial support paid by a person for the benefit of a child.

Who is responsible for the maintenance of children? - Both parents, whether married or not, have a duty to maintain their dependent children. A dependent child is a child:

- under eighteen years
- under twenty three years who is in full time education; or
- dependent on his/her parents due to a disability.

Who can apply for the maintenance of a child other than parents? - In certain circumstances, a person other than the parent may seek maintenance for a child from the child's parents, for example, a social worker or a relative taking care of the child.

Inheritance and children

Have children any rights to a share in their deceased parents estate? - Where a parent dies having made a valid Will, a child does not have an automatic right to a share in his/her parent's estate. However, a court can award a child a share of his/her parent's estate where it finds that the parent "*failed in his moral duty to make proper provision for the child in accordance with his means*". Such an application to court must be made to Court within six months of the date of the Grant of Probate. A Grant of Probate is where a Will has been made and the Executor (the person responsible for carrying out the terms of the Will) or the Solicitor working on behalf of the Executor applies to the Probate Office for a grant of probate. This will allow the deceased's estate (assets) to be distributed according to his/her Will.

A child bringing such an application need not be under eighteen years of age, nor must he or she have been financially dependent on the parent.

Have children of unmarried parents any inheritance rights? - Children of unmarried parents have the same inheritance rights as children of married parents.

Do adopted children have any inheritance rights? - Adopted children have the same right of inheritance from their adoptive parents as other children do.

Children in care

What does a Care Order do? - A Care Order places a child in the care of the HSE.

If a Care order is in place, what decisions can the HSE make? - The HSE may make decisions as to how the child's interests are best served, for example, it may decide to place the child with foster parents or in residential care.

How long can a Care Order last? - A Care Order may be made for as long as the child remains a child, i.e. up to the eve of the child's eighteenth birthday or for a shorter period as might be agreed or as a court sees fit. Applications can be made to renew orders.

How can a Care Order be made? - Parents may voluntarily place their child in the care of HSE. The HSE is obliged to apply to the District Court for a care order where it is of the opinion that a child needs care which will not otherwise be provided.

When might the District Court make a Care Order? - The District Court may make a care order where it is satisfied that a child has been or is being:

- assaulted,
- ill-treated,
- neglected,
- sexually abused or,
- the child's health, development or welfare has been or is being avoidably impaired or neglected, or the child requires care or protection which he or she is unlikely to receive if an order is not made.

What is a Supervision Order? - If the HSE has concerns about a child, but does not consider that it would be appropriate to seek a Care Order, it may apply for a supervision order. This allows HSE officials to visit the child and give advice to the child's parent(s) about caring for the child.

Wardship - Wardship proceedings may be taken where, for example, a person who is not a parent of a child, seeks custody of the child.

What happens if a child is made a Ward of Court? - If a child is made a Ward of court, all matters concerning the child's upbringing and welfare become the responsibility of the court.

What decisions can the court make regarding the child? - The court will decide matters such as, responsibility for care and custody of the child, management of any property owned by the child, and sometimes the degree of contact the child's parents should have with the child.

Adoption

Adoption is the process whereby the legal relationship between a child and his/her natural parents is ended and is replaced with a parent/child relationship between the child and the adoptive parents.

An adoption order can be made by the Adoption Authority of Ireland in respect of:

- a child who is an orphan;
- a child whose parents are not married to each other; or
- a child of a marriage, who has been abandoned.

Who needs to give consent to an adoption order? - The consent of every person being a parent or guardian of the child, or a person having charge of or control over the child, is normally required for:

- the placing of a child for adoption, and
- the making of an adoption order for the child.

The Father - If the natural father is a **guardian** of the child, or has care or control of the child, his consent is required. Where the natural father is not a guardian the Adoption Authority is required to make efforts to **consult** him.

The Mother - A mother who wishes to have her child adopted must first consent to the child being *placed* for adoption. At a later date, consent to the making of the adoption order is required.

What happens if the mother gives the first consent to the child being placed for adoption and then changes her mind? - Where a mother gives the first consent and then wants to get her child back, the court may dispense with the need for her second consent if it considers that it is in the child's best interest to do so.

Is a foreign adoption valid in this country? - For a foreign adoption to be valid in this country, all of the requirements of an Irish adoption must be complied with as well as the laws of the foreign country.

Fostering

Fostering is the placing of a child in the care of a person other than the mother or father of the child by the HSE in accordance with legislation.

Can parents have access to a fostered child? - The Health Service Executive makes arrangements, where appropriate, for access to the child by the natural parent(s). As mentioned above, if parents are not satisfied with the access being provided they may apply to the court for an order for access.

Child Abduction

This is the removal of a child by a parent from one country to another without the consent of the other parent or in breach of a court order. Ireland is a party to International Conventions which provide for co-operation between countries in relation to child abduction. Generally, this means that, where a child is abducted to a Convention country, the child will be returned to the country where it normally lives and the courts in that country will deal with any disputes about custody or access.

In certain circumstances, the Court will not make the order for return. This may happen if:

- the court finds that the child was taken abroad with the agreement of the other parent.
- in exceptional cases if the court is satisfied that there is a grave risk to the child's physical or psychological wellbeing
- also, in exceptional cases the Court may take into account the wishes of children who state that they do not wish to be returned.

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