

# Family Law Act (Northern Ireland) 2001

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Family Law Act (Northern Ireland) 2001. They have been prepared by the Department of Finance and Personnel in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. Under the Children (Northern Ireland) Order 1995 unmarried fathers may acquire parental responsibility for their children in a number of ways. Parental responsibility is defined in that Order as “all the rights, duties, powers and responsibility and authority which by law a parent of a child has in relation to the child and his property”. This definition does not list or enumerate all the decisions that may lawfully be taken by a person with parental responsibility for a child. Such decisions would include, for example, the right to determine a child’s education or make other decisions about a child’s welfare. The principal mechanisms by which an unmarried father may acquire parental responsibility are (1) by written agreement with the child’s mother who has been registered in the High Court, and (2) by Order of the Court. These mechanisms are rarely used.
4. The low take-up of the existing mechanisms whereby an unmarried father may acquire parental responsibility for his children must be set against recent demographic trends in Northern Ireland. According to the most recent report of the Registrar-General for Northern Ireland, in 1999 there were 6,957 live births outside of marriage which represents 30.3% of all live births. The proportion of live births outside marriage has been increasing steadily since the early sixties when the proportion of children born outside marriage was only about 3 per cent.
5. It is clear then that given the large number of live births outside marriage each year in Northern Ireland and the low take up of the existing legislative

mechanisms there is a significant number of unmarried fathers who do not have parental responsibility for their children. Or to put the issue from a child-centred perspective there are many children in Northern Ireland who have no legal relationship with their fathers.

6. Supporting family relationships is an important social policy aim in all societies. Of all live births outside marriage in 1999 some 4487 were jointly registered by the mother and unmarried father (approx 64.5%). Recent research has indicated that many unmarried parents believe that by jointly registering the child's birth (a public acknowledgement that the unmarried man is the father of the child) a legal relationship between father and child is established. This is not at present the legal position.
7. The primary purpose of this Act is to facilitate the acquisition of parental responsibility by unmarried fathers. The Act also updates the law on scientific tests to determine parentage and thirdly, introduces a statutory presumption of paternity in certain cases.

## **CONSULTATION**

8. A Consultation Paper entitled "Parental Responsibility for Unmarried Fathers and Court Procedures for Determining Paternity" was published by the Office of Law Reform in July 1999. The consultation period ran from 30 July 1999 to 29 October 1999. Copies of the Consultation Paper were sent out to 185 individuals and organisations throughout Northern Ireland representing local community and voluntary groups, the health boards and trusts, other government departments, mens' groups, the main churches, the legal profession, academics, the judiciary and the political parties. By the end of the consultation period a total of 34 substantive replies were received. The quality of response was generally very high. Following the close of the consultation period the responses to the issues raised were analysed and that analysis has informed the development of policy which this Act implements.

## **OPTIONS CONSIDERED**

9. The Consultation Paper put forward three options for reform in relation to the acquisition of parental responsibility by unmarried fathers, and views were invited on each, along with a number of subsidiary questions.
  - (1) The first option put forward for consideration was that all unmarried fathers should automatically have parental responsibility for their children. This would put unmarried fathers in exactly the same position as all mothers of their children and all married fathers.
  - (2) The second option discussed was that those unmarried fathers who jointly register with the mother the birth of the child should automatically acquire parental responsibility for those children. Given the figures quoted above this would establish a legal relationship between an unmarried father and his child in almost two-thirds of live

births outside marriage each year in Northern Ireland. The reasons for adopting this approach are detailed below.

- (3) The third option considered was that there should be no change to the law. It was considered whether perhaps the existing mechanisms had not yet had sufficient time to bed in, and that greater publicity about existing mechanisms through which an unmarried father could acquire parental responsibility would suffice at present.
10. The Consultation Paper also suggested that the law on the use of scientific tests to determine parentage should be updated to reflect advances in technology and that a statutory presumption of paternity should be introduced. Both of these suggestions are now incorporated in the Family Law Act (Northern Ireland) 2001. Other measures suggested in the Consultation Paper are now contained in the Child Support, Pensions and Social Security Act (Northern Ireland) 2001.

## **OPTION SELECTED**

11. Having considered the response to the consultation paper it has been decided that the best way forward is to confer parental responsibility on unmarried fathers who jointly register the birth of the child with the mother. This was the option put forward which commanded the greatest degree of support from those who commented on the consultation paper. This recognises in law that joint registration demonstrates a public statement by the man that he is the father of the child and that he accepts the responsibility of parenthood. The Act will also deal with the ancillary question of the acquisition of parental responsibility by step-parents.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Acquisition of parental responsibility by father or step-parent***

This section amends the Children (Northern Ireland) Order 1995 and provides that an unmarried father who jointly registers the birth of his child with the child's mother shall have parental responsibility for that child. It also provides that a step-parent may apply to a court for an order conferring parental responsibility on the step-parent in relation to a child of his or her spouse. In both cases that parental responsibility may be terminated only by court order.

*Subsection (2)* amends the Children (Northern Ireland) Order 1995 to provide a positive statement that the unmarried father of a child acquires parental responsibility if he meets any of the three requirements listed and has not ceased to have it.

*Subsection (3)* makes provision for a step-parent acquiring parental responsibility. It also states that a step-parent who acquires parental responsibility as a result of a court order does not give that person the right to give consent (or agree) or refuse consent (or refuse to agree) to the making of an application or the making of certain orders under the Adoption (Northern Ireland) Order 1987; or to appoint a guardian for the child.

*Subsection (4)* lists the various statutory provisions under which registration of a child's birth in the United Kingdom will be recognized as conferring parental responsibility on an unmarried father.

*Subsection (6)* provides that a court considering an application for a parental responsibility order by either an unmarried father or a step-parent must have regard to the matters (welfare checklist) listed in Article 3(3) of the Children (Northern Ireland) Order 1995

### ***Section 2: Presumption of parentage***

This section provides that a man shall be presumed to be the father of a child in certain circumstances: namely if (a) he is married to the child's mother; or (b) he has been registered as the child's father in the Register of Births in any place in the United Kingdom. In other circumstances a court may have made an order on the basis that a man is the father of a child. In those circumstances the existence of a court order would constitute evidence of paternity. The presumption that a man is the father of his wife's children already exists at common law and (a) above simply puts this in statutory form.

### ***Section 3: Tests for determining parentage***

This section amends the Family Law Reform (NI) Order 1977 and will enable courts to direct the taking and testing of bodily samples for use in scientific tests for the purpose of resolving questions of parentage, that is whether a named individual is or is not the father or mother of a child. At present courts are confined to directing the taking and testing of blood samples only. The new scientific tests can be carried out on other types of tissue such as skin, saliva, or hair. Other amendments to the Family Law Reform (Northern Ireland) Order 1977 are contained in section 65 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2001. The implementation of the amendments contained in section 3 of this Act is dependent on section 65 of the new child support legislation being brought into force.

### ***Sections 4 and 5: Commencement and Short Title***

These sections provide that the Department of Finance and Personnel may bring into operation the provisions of the Act on such day or days as it may by order appoint, and provide for the short title to the Act.