

Legal Aspects of Family Relationships

In 2010, the Commission published a Report on [Legal Aspects of Family Relationships](#) (LRC 101-2010) (3rd Programme of Law Reform, Project 23), which followed its Consultation Paper on [Legal Aspects of Family Relationships](#) (LRC CP 55-2009). The Report continues the Commission's long-standing work on reform of family law. In its 1982 Report on [Illegitimacy](#) (LRC 4-1982), the Commission recommended the abolition of the status of illegitimacy, so that all children would be treated equally in the law. This was implemented in the *Status of Children Act 1987*. The Commission had also recommended in 1982 that automatic guardianship rights and responsibilities should apply to all fathers, regardless of marital status. This has not been implemented in Ireland, although the 1987 Act (and other changes made since then) recognises the importance of the relationship between fathers and their children. The 2010 Report on Legal Aspects of Family Relationships reiterates the view taken in the 1982 Report, and the Commission emphasises that this reflects an appropriate recognition of the rights of children to know their parents and the corresponding rights and responsibilities of fathers. The Report also makes additional wide-ranging recommendations for reform that reflect the changing patterns of family relationships that have emerged in Ireland in recent years. This includes reform concerning the rights and responsibilities of civil partners, step-parents, grandparents, co-habitants and other members of the extended family in contemporary Ireland, taking into account the best interests and welfare of children. The Report also includes a draft *Children and Parental Responsibility Bill*, which would replace the *Guardianship of Infants Act 1964*.

Among the specific recommendations made in the Report are:

- new terms “parental responsibility”, “day-to-day care” and “contact” should replace the terms guardianship, custody and access currently used in the *Guardianship of Infants Act 1964*. The new terms would give a clearer indication of what is actually involved in this part of family law; and remove any misunderstanding that parental rights involving children exist without corresponding responsibilities. It would also ensure that the terms used in Ireland would be in line with those used in many other States and in international instruments to which Ireland is a party.
- parental responsibility (guardianship) should be defined in legislation as including the duty to maintain and properly care for a child, the right to apply for a passport for the child and the right to make decisions about where a child will live, a child's religious and secular education, health requirements and general welfare.
- day-to-day care (custody) should be defined in legislation as including the ability of the parent, or person in loco parentis, to exercise care and control over a child on a day-to-day basis, to protect and to supervise the child.
- contact (access) should be defined in legislation as including the right of the child to maintain personal relations and contact with the parent or other qualifying person on a regular basis, subject to the proviso that contact must be in the best interests of the child.
- mothers and fathers (including non-marital fathers) should have automatic joint parental responsibility (guardianship) for their children.
- there should be automatic joint registration of both parents on a birth certificate (intended to reinforce the right of a child to know their parents).
- legislation should facilitate the extension of parental responsibility to civil partners and step-parents. The Commission recommends that civil partners and step-parents could

obtain parental responsibility by way of an agreement with the other parties who have parental responsibility for the child or by application to court.

- where parental responsibility is extended by court order the court shall have regard to, among other factors, the wishes and best interests of the child and the views of other parties with parental responsibility.
- the ability to apply for day-to-day care (custody) should be extended to relatives of a child, persons in loco parentis and persons with a bona fide interest in the child in circumstances where the parents are unable or unwilling to exercise parental responsibility.
- the draft *Children and Parental Responsibility Bill* in the Report uses the proposed new terms and, as well as replacing the Guardianship of Infants Act 1964, incorporates the reforms made in the Report.