

## **Submission on The Consultation Paper on the Legal Aspects of Family Relationships submitted on the 23<sup>rd</sup> of December 2009**

In response to the recent invitation from the Law reform, Amen is making the following submission on Family relationships.

**5.01 – The Commission provisionally recommends that, to ensure greater accuracy, clarity and consistency, the term “parental responsibility,” “day-to-day care” and “contact” should be used in relevant Irish family law legislation in place of “guardianship,” “custody” and “access”.**

– Amen agree that instead of the current legal terms of guardianship, custody and access, the law should use the terms, *parental responsibility*, *day-to-day care* and *contact*. Amen agree that this would give a clearer indication of what is actually involved and remove any misunderstanding that parents might have rights involving their children without corresponding responsibilities. This would be consistent with EU legislation. The term “*parental responsibility*” is growing in acceptance world wide. In 2002 the Council of Europe adopted a Convention on Contact Concerning Children. The use of the word *contact* highlights the move away from the terminology still in place in Ireland.

**5.02 – The Commission provisionally recommends that a broad statutory definition of parental responsibility should be adopted in Ireland. The Commission invites submissions on whether this should include a requirement to consult with other parties who have parental responsibility for the child where it is practical to do so. The Commission also invites submissions on whether there should be a single parenting order to determine who should have day-to-day care of the child and who should have contact with the child.**

– Amen agree that a statutory definition of *parental responsibility* should be adopted in Ireland. This would give a clear understanding of the term and what it entails. In Amen’s opinion this definition could include references to the fact that *parental responsibility* includes “the position of being accountable to somebody or for somebody”. Amen agree that this should include a consultation with others who have *parental responsibility* for the child unless to do so would contrary to the best interest of the child.

**5.03 – The Commission provisionally recommends that a statutory definition of day-to-day care should be adopted in Ireland. The Commission invites submissions on the precise wording of the definition.**

– Amen believe that the statutory definition of day to day care could include terms such as care, protection and supervision. Amen’s definition of day to day care involves the legal right to look after the child and to be responsible for the protection and safe keeping of that child.

**5.04 – The Commission provisionally recommends that a statutory definition of contact should be adopted in Ireland. The Commission invites submissions on the precise wording of the definition.**

- Amen are of the opinion that a statutory definition of the term contact could include that there is an emotional connection between the child and the non custodial parent.

**5.05 – The Commission provisionally recommends that the changes recommend in this Consultation Paper to incorporate into a consolidated Children Act, which would replace the Guardianship of Infants Act 1964, as amended.**

- Amen agree that the changes recommended in this Consultation Paper be incorporated into a consolidated Children's Act.

**5.06 – The Commission provisionally recommends that the distinction between birth registration and the allocation of guardianship/parental responsibility should remain**

- Amen agree that the distinction between birth registration and the allocation of guardianship/parental responsibility should remain, on the basis that a child born outside marriage can be fathered in circumstances of rape or incest and there is a belief that in these circumstances it is reasonable not to automatically accord the father significant rights in relation to the child. However Amen believes that the joint registration of the birth should be encouraged.

**5.07 – The Commission invites submissions on the development of a statutory clarification that a joint registration of a birth does not give rise to automatic guardianship/parental responsibility rights in relation to the child.**

- Amen believe that joint registration of the birth should give the father automatic guardianship rights in relation to the child. Amen believes that if a father is present at the registration of the birth this would indicate that he is willing to take parental responsibility for the child and that the mother is agreeable.

**5.08 – The Commission invites submissions on whether it would be appropriate to impose a statutory duty on a Registrar to make enquiries of a mother who comes in alone to register the birth of a child if she wishes to include the father's details on the birth certificate. The Commission also invites submissions on whether there should be a statutory duty on a Registrar to inform the mother of the option of re-registering the birth at a later stage to include the father's details.**

- Amen agree that it would be appropriate to impose a statutory duty on the Registrar to make enquiries of a mother who comes in alone to register the birth of a child if she wishes to include the fathers name on the birth certificate.

Amen agree that the Registrar should be duty bound to inform the mother of the option of re-registering the birth at a later date to include the father's details.

**5.09 – The Commission invites submissions on whether it would be appropriate to introduce compulsory joint guardianship registration of the birth of a child in Ireland. The commission also invite submissions on whether a non-marital father should be able to provide his details independently to the Registrar, to be registered once it is confirmed that he is the father.**

– Amen is of the opinion that joint registration of a birth should not be compulsory but should be encouraged.

Amen agree that a non-marital father should be able to provide his details independently to the Registrar, to be registered **once** it is confirmed that he is the father.

**5.10 – The Commission provisionally recommends that the presumption of paternity in the context of marries couples should be retained, but that the existing statutory exceptions should be extended, and invite submissions on the detailed nature of the extensions**

– Amen agree that the presumption of statutory paternity in the context of married couples should be retained.

**5.11 - Amen agree that there should be a statutory presumption that a non-marital father be granted an order of guardianship(parental responsibility) unless to do so would be contrary to the best interest of the child or would jeopardise the welfare of the child.**

**5.12 – The Commission provisionally recommends that a central register should be established in Ireland to keep account of existence of statutory declarations agreeing parental responsibility/guardianship of children. The Commission invites submissions on whether the proposed register should be managed by the General Registrar Office and also whether it should be publicly available to search.**

– Amen agree that a central register should be established in Ireland to keep account of the existence of statutory declarations agreeing parental responsibility/guardianship of children. Amen also agree that the proposed register should be managed by the General Register Office. Amen believe that this could be made publicly available to search.

**5.13 – The Commission invites submissions on whether it would be appropriate to introduce automatic guardianship/parental responsibility for all fathers in Ireland**

- Amen agree that automatic guardianship (parental responsibility) for all fathers should be introduced, *unless to do so would be contrary to the best interest of the child or would jeopardise the welfare of the child.*

**5.14 – The Commission provisionally recommends that there should be no link between joint registration of the birth of a child and guardianship/parental responsibilities. However, the Commission invites submissions on this issue.**

- Amen believes that if a father is present at the registration of the birth this would indicate that he is willing to take parental responsibility for the child and that the mother is agreeable.

**5.15 – The Commission invites submissions on whether it would be appropriate to include a statutory definition of the term *in loco parentis* in the legislation governing family relationships.**

- Amen agree that it would be appropriate to include a statutory definition of the term *in loco parentis* in the legislation governing family relationships. This would help clarify the situation regarding grandparents who have access/contact or in some cases are the main care givers to the child.

**5.16 – The Commission provisionally recommends the removal of the leave stage provided for by section 11B(2) of the Guardianship of Infants Act 1964, as inserted by section 9 of the Children Act 1997. The Commission invites submissions as to whether the categories of persons who can apply for access/contact should be expanded to include persons with a bona fide interest as is currently provided for by section 37 of the Child Care Act 1991**

- Amen agree with the removal of the current two stage procedure for applying for access/contact by members of the extended family. Amen believes that the extended family should be able to apply for access/contact regardless if parental access/contact is in place. Each should be judged on their own merit.

**5.17 – The Commission invites submissions on the possibility of extending the right to apply for (or to apply for leave to apply for) access/contact to include the child. The Commission also invites submissions on whether it would be necessary to include a leave stage to determine the capacity of the child; and to include a specific requirement in Irish law that the wishes of the child be considered in making a decision on an application for contact by a member of the child’s extended family.**

- Amen agree that the wishes of the child be considered in making a decision on an application for access/contact by a member of the child’s extended family with a specification that the child should be aged twelve or over.

**5.18 – The Commission provisionally recommends extending the right to apply for custody/day-to-day care to persons other than parents or grandparents or guardians of the child where the parents are unwilling or unable to exercise their responsibilities. The Commission provisionally recommends that such rights would be extended to the same category of persons who can currently apply for leave to apply for access/contact.**

- Amen agree that persons other than the parents should be able to apply for custody/day-to-day care of the child where the parents are unwilling or unable to exercise their responsibilities.

**5.19 – The Commission invites submissions on whether the category of persons who can apply for custody, day-to-day care should be widened to include bona fide persons with an interest as currently provided for in section 37 of the Child Care Act 1991 in the context of applications for access/contact.**

– Amen agree in principle *unless to do so would be contrary to the best interest of the child or would jeopardise the welfare of the child.*

**5.20 – The Commission invites submissions on whether it would be appropriate to develop a procedure to extend guardianship/parental responsibility to a step-parent. The Commission also invites submissions on whether there should be a minimum time period and whether the appointment would only be by agreement or if it should be possible for a step-parent to make an independent application to court for guardianship/parental responsibility.**

– Amen believe that in some circumstances the appointment of a step parent as a guardian could be beneficial to the child. However this should only be done with agreement of both biological parents. If both parents are active in the child's life the step parent should not be able to over rule any decisions made by either biological parent and that at all time the best interest of the child is of paramount importance.