

***Birth registration
and Parental
Responsibility:
proposals for
changing the law***



Fathers Direct, June 2007

THE ISSUE

The Government has proposed a change in legislation so that more fathers sign the birth certificate.

18% of unmarried fathers do not sign the birth certificate in the UK (which is 7% of all fathers). This means just under 45,000 children each year in the UK having no registered father at birth.

In Australia the rate of mother only registrations is half of that in the UK.

The status quo

Birth registration, as currently constituted in this country, is complicated because it does two different things with one signature:

It records the parentage of the child. The UN Convention on the Rights of the Child states that each child has the right, as far as possible, to know his or her parents (Article 7).

It confers “Parental Responsibility” on the parent, giving the parent the legal authority to make important decisions in relation to caring for the child. (The final section of this pamphlet outlines what PR means.)

It is not always the case that a registered parent is able to look after a child, and so sometimes Parental Responsibility is taken away, or its exercise limited. For example, adoption involves Parental Responsibility being taken away from a biological mother and/or father and given to another person or people. Courts can also issue Section 8 orders to stop parents from doing specified things – these can act to restrict the exercise of Parental Responsibility without actually removing it.

Some children’s rights experts advocate that registering parents on a birth certificate should be separated from obtaining Parental Responsibility, even if it just involved signing two separate documents at the same time – one registering the child’s parents and one signing up to look after the baby. We think this should be considered carefully. In this paper we are assuming the continued practice of combining two functions when signing the birth certificate, but the principles we propose would be easily adapted to changing the signature process.



The problem with the status quo

Mothers and fathers are completely different in how they are treated around birth registration. The father's status – but not the mother's – is altered fundamentally by marriage. It is difficult to justify these differences either in relation to the child's right to know his or her parents or the apportioning of responsibilities for caring for the child. The UN Convention on the Rights of the Child itself makes no reference to marital status nor any inherent difference between mothers and fathers.

	Mother	Father
WHO IS REGISTERED?	All mothers are automatically registered irrespective of marital status and with no reference to the child's best interests.	Father is registered under two conditions: <ul style="list-style-type: none">• If the mother consents, either through marriage to the father (married fathers are automatically registered) or, for unmarried fathers, through specific consent by the mother.• If it is judged to be in the child's best interests: if the father wants to be registered and the mother does not consent, he can seek a Parental Responsibility Order, arguing the case in court and must satisfy the court that his registration would benefit the child.
IF THE PARENT REFUSES TO SIGN?	Mothers must register the birth of a baby and their names must be declared. Fines apply for infringement.	Married fathers have the same obligation as mothers. Unmarried fathers do not have to sign the birth certificate and there is no sanction if they withhold signature even if the mother wants it.
WHO GETS PARENTAL RESPONSIBILITY? (see Annex for definition of PR)	All mothers get PR automatically, irrespective of marital status. If the child is at risk from the mother, a court can: <ul style="list-style-type: none">• (in the case of adoption) remove PR completely and pass it to someone else – there are no other circumstances in which a mother's PR can be removed• limit the mother's exercise of PR (through Section 8 orders)	Fathers get PR automatically if they are married. Unmarried fathers do not get PR automatically. They get it if they sign the birth certificate, which is subject to the conditions above. Married fathers are in the same situation as mothers if they are considered a risk, but unmarried fathers can have their PR taken away in court by another parent with PR (or by the child him/herself). This will be decided by the court in the best interests of the child. This hardly ever happens in reality, but the legality of this difference has been questioned by an advisory group to the Department of Constitutional Affairs in 2002.

Our proposals

We have three key proposals:

- See things from the child's point of view – children want to know both their parents and to be loved and cared for by them, as is their right. So treat mothers and fathers the same. That removes marital status as a factor affecting how fathers are registered.
- Elevate the status of birth registration – make it an important event, and with it give information about the rights of children and about Parental Responsibility, and provide easy access to support services for families having difficulties.
- Make birth registration part of a wider process in the first year of a child's life that communicates that the responsibility of parenthood is as great and as inescapable for fathers as it is for mothers. We are very far indeed from this at present.

1.

If the mother wants an unmarried father to register, and the father refuses, we believe he should be required to do so, just as unmarried mothers are. Unlike now, his consent would not be required. The mother would sign a Declaration of Paternity that would lead to his registration even against his will. The father could rebut this, but only by proving that he is not the father by means of a paternity test.

2.

If the mother does not want the father to register, but the father does want to be registered, we propose a change to the law enabling him to be registered if he can satisfy the authorities that he is the biological father, normally through a DNA test. He would not have to prove that his registration would be in the best interests of the child, just as is the case now with mothers and married fathers – the safety of the child or either parent would be achieved by other means, as currently exist for mothers and married fathers who are a risk to their children or each other.



3.

If the mother does not want the father to register, and the father does not want to register, or his identity is not known, we reject the idea of any form of compulsion on the mother to identify or register the father, on the grounds that this would be fundamentally unfair and unworkable, even if exceptions were clearly specified. Instead we propose the Australian model, where there is a procedure when the mother does not identify a father or does not want him to register – correspondence, meetings and access to support, where appropriate involving discussions with both mother and father. This provides an ideal early opportunity to make support accessible to vulnerable families.

4.

If the father is known to the authorities and neither the mother nor he wants him to register, he should be in the same situation as a mother, except if the mother states that he is a risk to her. He should be required to register.



5.

The methods to protect children from dangerous unmarried fathers, more of whom would have PR under the above proposals, would be the same as those that currently apply to mothers or married fathers – intensive support to see if the situation can be improved, the child protection system, limits to the exercise of PR (Section 8 orders), or the removal of PR through adoption. The current possibility of denying registration of an unmarried father on child welfare grounds, or removing his PR by means other than adoption, both of which apply only to unmarried fathers, should be withdrawn.

6.

The status of registration should be enhanced through public information campaigns, and specific information and support services to parents around the registration. This would maximize the opportunity for strengthening mother-baby, father-baby and mother-father relationships where these are vulnerable.

7.

Any change should take place as part of a wider change in how the role of fathers is supported in family services, leave entitlements, the benefits system etc. Collusion with fathers drifting away from their responsibilities, particularly prevalent where the fathers are very young, needs to be challenged through all these systems, not just through changes in birth registration.

Implications of changes

WHAT IS THE IMPACT ON THE INVOLVEMENT OF FATHERS IN CHILDREN'S AND MOTHERS' LIVES?

Current System

Impacts of unmarried fathers not having PR often make little difference – caring responsibility can be delegated to anyone irrespective of PR status; a father without PR can consent to emergency medical treatment for a child; often agencies do not know about PR status anyway.

Possible disadvantages:

- Non-registration may be happening not just because the mother correctly considers the father to be a risk – he may want to avoid paying child support, she may fear losing benefits, she may wish to exclude the father in cases where his involvement would be better for the child or where other family members are against his involvement.
- The family's sense of an unmarried father's responsibilities may be lessened. This could reduce his efficacy as a father. It could make him less involved and make the mother less secure and more exclusively responsible.
- The unmarried father has no legal right to contribute to major decisions about child's life.
- Lack of PR can undermine the father's involvement at times of parental disagreement, even when father's involvement in care of child has been positive and/or could be.
- A father without PR may feel less responsible or empowered where child safety is an issue, and may be less engaged with by child protection agencies.

New System

Possible disadvantages:

- By establishing fatherhood to be as unconditional as motherhood, the new system would contribute to a wider social change, already signaled by Government in other areas (e.g. family services): this would almost certainly lead to fewer fathers drifting out of the lives of their children to the children's detriment.
- The new system would lead to changes in how services engage with fathers in general, but especially fathers with PR. For example, there would be likely to be greater challenge to and support for fathers who struggle to parent well.

Possible disadvantages:

- There would be greater opportunities for fathers to be disruptive and harmful – around registration and later. Social services only get involved at a high threshold, and family services tend to ignore negative involvement by fathers.
- There would be greater complication where two parents are in conflict, even if both have capacity to be adequate parents individually.

DWP has commissioned research into the 7 per cent of sole registrations. This will have implications for the detail of these proposals, but not the core ideas.

Implications of changes (continued)

WHAT IS THE IMPACT ON WIDER ATTITUDES ABOUT THE ROLES AND RESPONSIBILITIES OF FATHERS?

WHAT ARE THE IMPLICATIONS FOR THE HUMAN RIGHTS OF WOMEN AND MEN?

Current System

The *automatic* registration of mothers and the *conditional* registration of fathers communicate the low expectations by society of fathers' involvement with their children compared with society's expectations of mothers. This affects how all fathers are viewed – but expectations of fathers without PR can be particularly low. This increases the likelihood of fathers' not taking their responsibilities seriously. These low expectations continue into family services, workplaces and benefits / tax credits.

The legal difference in the status of mothers and fathers could potentially be challengeable on human rights grounds. An advisory group to the DCA in 2002 considered whether the possibility of revoking PR from an unmarried father but not from an unmarried mother or married parents is a breach of human rights.

The legal difference in the status of mothers and fathers could potentially be challengeable on human rights grounds. An advisory group to the DCA in 2002 considered whether the possibility of revoking PR from an unmarried father but not from an unmarried mother or married parents is a breach of human rights.

The denial of registration to unmarried fathers considered a risk to the child, but not to mothers or married fathers who are considered a risk to the child, is difficult to justify on child welfare grounds. Either denial of registration is effective, so not using it on mothers and married fathers is against the interests of the child; or it is not effective, so applying it to unmarried fathers adds nothing to the safety of the child. It could be argued that the current differential treatment of unmarried fathers is justifiable - because those unmarried fathers who (as a result) currently do not have PR are viewed as more likely to be dangerous than other parents. However, even if this were true, it is not evident that the current position contributes to child welfare or safety.

New System

The new system is an opportunity to make a clear new cultural statement about fatherhood, but only if it is part of a wider commitment to this idea. Other steps are needed to curtail the collusion of family services and policies with fathers' not taking their responsibilities.



Implications of changes (continued)

WHAT ARE THE IMPLICATIONS FOR THE RIGHT OF THE CHILD TO KNOW BOTH PARENTS? (ARTICLE 7, UN DECLARATION ON THE RIGHTS OF THE CHILD)

IS THE NEW SYSTEM PRACTICABLE AND EASY TO UNDERSTAND?

Current System

Other than when donor insemination is involved, the record of parentage is the birth certificate. If the father is not on the certificate, the UN Convention's right of the child to "know" both parents may be undermined.

The current legal framework for PR – how PR is acquired by fathers, how PR affects their legal status, how agencies should engage with those fathers who have PR and those who don't - is poorly understood, by both parents and services. This impacts negatively on how service providers engage with fathers whom they know (or think) do not have PR.

New System

More children would know the identity of their biological father, which has an impact on their own wellbeing and sense of identity.

Any system of birth registration that pays greater attention to encouraging both parents to register will require an increased engagement between the registry, services and families where parents are at loggerheads.

It is not clear whether the courts would see increased demand, or just a change of legal basis for their judgments.

The problems of lack of understanding of PR by parents and professionals would not automatically be resolved in the new system, without investment in communication.



Annex: what is PR?

In practical terms, PR means the legal authority to make important decisions in relation to a child – all those with PR need to agree. PR therefore confers the following legal rights:¹

- Choice of child's name
- Choice of child's school
- Choice of child's religious upbringing
- Consent to the child's medical treatment
- Decision where child will live
- Consent to child's marriage if the child is under 18
- Consent to the child's adoption
- Application for a passport
- Looking after property to be inherited by the child

Where those with PR disagree about such decisions, they may have recourse to mediation or the family courts to decide the issues for them.² This circumstance usually arises after parents separate. Where the courts are involved, they will decide the issue in the best interests of the child. Otherwise, in practice, it is generally – although not always - the resident parent's wishes that prevail.

The exercise of PR can, if necessary for reasons of child welfare or safety, be controlled by the courts through the use of section 8 orders (orders requiring someone to do or not do something in relation to a child), or through the child protection system.

It should be noted that a natural father without PR still has certain legal rights in relation to his child, e.g. an automatic right to apply to the court for certain court orders in respect to his child

in an emergency, the right to consent to medical treatment for the child

if the child is being looked after by the local authority, the right to have reasonable contact with his child and the right for the local authority to give due consideration to his wishes and feelings in relation to important decisions they make about the child, including decisions about adoption and contact arrangements after adoption.

¹ List from DCA funded advice provided by Advice Services Alliance and One Plus One.

² Fathers without PR can also do this.





Fathers Direct

Fathers Direct is the national information centre on fatherhood. We help Government, employers, services for families and children, and families themselves to adapt to the changing social roles of men and women.

We help institutions to base their work on the evidence from research on the impact of fathers on child welfare.

Our vision is of a society that:

- Gives all children a strong and positive relationship with their fathers¹
- Provides greater support for both mothers and fathers as carers and earners
- Prepares boys and girls for a future shared role in caring for children

**You can contact Fathers Direct on
0845 634 1328 or via our
website: www.fathersdirect.com**