

CHILDREN AND THE PROPOSED CIVIL PARTNERSHIP LEGISLATION.

Maintenance:

All parents have a legal obligation to maintain their dependent children (that is a child under 18 years or having reached 18 years is in full time education and under age 23 or where a child is suffering from a disability such that the child is not capable of maintaining them self). Under the Family Law (Maintenance of Spouses and Children) Act, 1976 (as amended)

Spouses have a legal obligation to maintain dependent children of the family which includes children who are not their biological children, but with who they were *in loco parentis*.

This obligation does not apply to civil partners in the proposed legislation. Therefore children whose parents have a registered civil partnership but are not married have less rights.

Inheritance:

In respect of the children of a relationship only the biological or adopted children have rights on intestacy under the Succession Act, 1965. e.g. the entitlement to a share in of the deceased's estate, the entitlement to take out the grant of probate or administration to the estate of the deceased parent.

Where a parent has made a will and a child whose relationship with his/her parent is legally recognised, is not content with the provisions in that will, the child can bring an application under section 117 of the Act to challenge the will of the parent and seek that proper provision be made for that child from the estate of the deceased parent.

These rights will not apply where a non biological child's relationship with his/her parent is not legally recognised.

Guardianship:

A non biological parent cannot be appointed guardian by the court or even by agreement of the natural parents as per the Guardianship of Infants Act, 1964 (as amended). It will remain imperative for the natural parent to appoint her/his civil partner, the other parent as a testamentary guardian in her/his will.

Custody

Non biological parents cannot be granted custody of their children (unless they have been adopted). Having a registered civil partnership will not change this.

Access

Non biological parents may apply for access in the family law courts in relation to their children where they were in *in loco parentis*. However, this is a two tiered process, (like a grandparent's application), which makes it more difficult and takes longer. They first must apply for leave to apply and then make the application.

Children's Act 1997

There is no "Safeguarding the Interests of the Children" in relation to solicitors' certificates advising counselling and mediation before the dissolution of the civil partnership as there is with separation or divorce for married couples. [i.e. Sections 6 and 7 of the Family Law (Divorce) Act 1996 Act dealing with the parties awareness of alternatives and assist reconciliation attempts do not appear to be mirrored in the heads of Bill.]

Child Abduction and Enforcement of Custody Orders Act, 1991

This Act gives no protection in relation to the child being abducted from the family by the biological parent away from the non-biological parent. This stems from the fact that a non biological parent has no legal relationship with a child acting in loco parentis, thus guardianship and custody rights can not be conferred on a non biological parent. Therefore the Law currently does not deem it abduction as the child is not considered to be wrongfully removed.

Taxation:

To date we have not seen the details of the tax and social welfare provisions proposed for commencement alongside the civil partnership legislation. However we have set out below how children of civil partners will fare unless their relationships with their non-biological parents can be legally recognised and the simplest way to do this, where possible, would be to allow their non biological parent to adopt them. Less favourable taxation schemes may lead to social exclusion and poverty for some children.

Income Tax:

Widowed parent tax credit – not available to civil partner who is left widowed with children
One parent tax credit – not available on death of partner
Home Carer's tax credit – not available if one parent stays at home

Capital Gains Tax (C.G.T.):

Parents of children (biological & adopted) enjoy special exemptions on disposals to their children. This will not apply to disposals to children whose relationship with the non biological parent is not currently recognised at law. e.g. transfer of a site to a child (exempt from CGT), disposal of a business or farm to a child (exempt from CGT & no threshold for minimum or maximum value)

Capital Acquisitions Tax (C.A.T.):

This relates to all gifts or inheritances from one person to another. There are certain gifts tax advantages in relation to a parent and a child (biological & adopted). In 2008 the threshold for a gift/inheritance from a parent to a child is €521,208, after this tax is chargeable at 20% of the market value of the gift/inheritance. The threshold for children whose relationships with the non biological parent is unrecognised in law (strangers in blood) is €26,060.

Stamp Duty:

Transfers of property between parents and children (as well as any other immediate family member e.g. sisters & brothers) enjoy consanguinity relief (family relief). This reduces the stamp duty payable by 50%. This is not available to parents and children who are not recognised as having any legal relationship.

Social Welfare:

Adoptive benefit – will not be available to parents who wish to adopt the biological children of their civil partner

Widowed parent grant – will not be available to parents who have been unable to adopt the biological children of their civil partner.

Adoption Act, 1991

Same sex couples cannot adopt as a couple, but may be considered as a single applicant. Only married couples may be considered to adopt jointly. Same sex couples can foster as a couple and therefore the professionals involved in child care and child protection who place these children believe that they are looking after the best interests of these children when placing them with same sex families.

Immigration:

Children born in Ireland before 1st January 2005 are entitled to Irish citizenship.

Children born here after that date – it depends on the citizenship of their parents at the date of birth.

A child of same sex parents may be treated differently to a child of opposite sex parents, where her/his biological parent is not Irish but his other parent (who is not legally recognised as his parent) is Irish. (see Irish Nationality & Citizenship Act, 2004 for more details.)

Health:

A child's non biological parent may not be treated as next of kin in a hospital or school situation which may lead to delay in treatment, distress and hardship for a child.

Family Home Protection Act, 1976:

The Bill is silent on the accommodation needs of children in relation to the 'shared' home (compare with the Family Home Protection Act 1976, which requires the court to have regard to the accommodation needs of children).

International legal Protection:

Protection of Children (Hague Convention) Act, 2000 gives force of law to the convention on jurisdiction, applicable law, recognition, enforcement and co-operation in relation to parental responsibilities and measure for the protection of children.

This in fact means that in countries where same sex partners can adopt their children and have joint custody, for example in Belgium, if one parent unlawfully removes the child to Ireland, for example the biological parent, the Irish courts on the application of the other parent, with the assistance of the Irish legal aid board, (in this example the non biological parent) would grant an order compelling the return of that child to Belgium even though our domestic legislation would not recognise that parent as a legal parent. However if the opposite happened, from Ireland to Belgium, under this Convention, the child taken from Ireland would not have the same protection as her/his relationship with the non biological parent is not recognised in Irish law.