

My rights in the family



Chapter 5

5.1 General

Do I have a right to live with my family?

Yes, you have a right to live with your family if this is the best thing for you.

What is guardianship?

Guardianship is the word given to the rights and duties of parents in relation to the upbringing of their children. Your guardians have a right to make all major decisions about your life. This includes decisions like:

- what school you go to
- any medical treatment you receive
- where you live
- applying for passports
- choice of religion (if any)
- decisions about leaving the country.

Your guardian is the person who has 'guardianship rights' – legal responsibility – for you. This is usually your mother and father but can also be another relative or person.

Who is my guardian?

If your parents were married to each other when you were born, they are automatically your guardians.

If your mother was not married when you were born, she is automatically your guardian, but your unmarried father is not automatically considered your guardian even if his name is on your birth certificate. He can become your guardian in a number of ways:

- by marrying your mother
- by making a joint agreement with your mother
- if your parents have lived together for 12 consecutive months after 18 January 2016 including at least three months with you and your mother following your birth
- by applying to a court.

If your parents are a female same-sex couple, your biological mother will be your automatic guardian. If your parents are a male same-sex couple, your biological

father can seek guardianship. In both cases, your non-biological parent can apply to the court to be made a guardian if:

- they have been married to or living with your biological parent for over three years
- have looked after you for more than two years.

If you have a step-parent they can apply to the court to be made a guardian if:

- they have been married to or living with your biological parent for over three years
- have looked after you for more than two years.

If you have no parent or guardian or your parent or guardian cannot carry out their role, another adult in your life who has looked after your day-to-day care for a continuous period of more than 12 months can also apply to become a guardian.

If one of my parents enters a relationship, is their new partner automatically my guardian?

No. If your mother or father's partner is not your biological parent then they do not automatically become your guardian. However, they can become your guardian by applying to the court if:

- they have married your parent
- have been living with your parent for over three years, and
- have looked after your day-to-day care for more than two years.

If one of your parents marries their new partner, the new partner can formally adopt you with the consent of your other biological parent (the parent who is not part of the marriage).

Do my relatives have the right to make decisions about me?

Not usually. However, if your parents were unable to look after you because of an illness or if, for example, they died, a relative could apply to the court to become your guardian. They would then have the right to take legal decisions about you and to exercise your rights on your behalf. This often happens when your parents cannot look after you and you are in the care of your relatives or grandparents. Your parents could also nominate someone to take on this role in their will in case they died.

What supports are available for families?

Family support services are available for families and individuals who need help. Life events like birth, death, depression, separation, illness, abuse or financial problems can put stress and strain on family life and relationships. There are family resource centres across the country and other family support services available through Tusla. You can find more information on the [Tusla website](#).

Can I see both of my parents if they do not live together?

If your parents do not live together (this could be if they split up or if they have never lived together) they will decide between them how often you can see each parent and for how long. This is called 'access'.

If they cannot decide, they can get help from a judge in the court.

Your grandparents, aunts, uncles, and your sisters and brothers (if they are over 18) can also apply to the court for access, which is the right to spend time with you.

How will a judge make a decision in court?

In making a decision about access, the most important thing the judge must consider is what is the best thing for you.

In deciding what is best for you, there is a number of things they consider including:

- the history of your care
- the benefit to you of having a relationship with both of your parents
- any harm you may have suffered
- your opinions.

A judge may also order reports to be completed to help them make a decision. Sometimes a judge may appoint a *Guardian ad Litem* who can report to the court what would be best for you and what your views are.

Do I have a right to have my views heard?

Yes. You have a right to have your opinion heard when a judge is making a decision about:

- guardianship
- who you live with
- access.

Sometimes a judge might decide to talk to you directly. Otherwise the judge

might decide to have an expert talk to you who will then write up a report to the court that will include your opinion on what should happen. Your parents will have to pay for the expert to do this work.

It is important to note that while a judge or expert will listen to your views, they may ultimately make a decision that is not in line with your views. This is because your views are only one part of what the judge has to look at when deciding what would be best for you overall.

If the judge does not hear your opinion you can get legal advice. You can get free legal advice from the [Children's Rights Alliance](#) or the [Free Legal Advice Centre](#).

Can I be in the court when the judge makes the decision about my care?

If you want to be in the court for your case, you can ask the judge if you can be there for all or part of the case. The judge should allow you to be in the court unless they think it would not be suitable or useful for you. In deciding if it is in your best interests to be there, judges will often look at your age, maturity and understanding of what is happening.

What happens to me if one or both of my parents die?

Having one or both of your parents die is a hard time in your life. If you need to talk or get support, there are many places that can help you. You can talk to Childline, a confidential and free service for children. You can contact Childline by phone on 1800 66 66 66. You can also text 'Talk' to 50101 or you can chat with someone online on the [Childline website](#).

Barnardos operates a children's bereavement helpline service for people looking for information and support on dealing with a child's bereavement. You can contact them on 01-473 2110 from 10am to 12pm Monday to Thursday.

If one of your parents died and the other parent was your guardian, they would be able to make decisions about your life, for example where you lived and where you went to school.

Your parents can appoint another adult or family member in your life to look after you through their will in the unlikely event that they died. If you have any questions about this, you can get more information from the Children's Rights Alliance Information Line on 01-902 0494.

At what age can I move out of home?

You can leave home at 16 if your parent or guardian agrees. You can leave without consent when you reach 18 years of age.

5.2 Changes in my family situation

What happens to me if my parents split up?

Your parents will decide:

- how they will share the day-to-day responsibilities of taking care of you
- where you will live
- if you will live with one of them or share your time with both
- how often you will see each parent and for how long
- how much each of them will pay towards running the home.

If your parents cannot agree on these issues, someone else will have to get involved to help your parents to decide. This could be a mediator, lawyer or a judge.

What happens if my parents do not agree?

If your parents cannot agree on what happens to you if they split up, they might go to court to have a judge decide.

If a judge is deciding what happens to you if your parents split up, the most important thing they must consider is what your best interests are.

In deciding what is best for you overall there are a number of things a judge must consider, including:

- the history of your care
- the benefit to you of having a relationship with both of your parents
- any harm you may have suffered
- your opinions.

Can I have a say in decisions about my care?

You do not have a right to have a say in decisions your parents are making about your care, however, they may ask you for your opinion if they wish.

If your parents are getting help from the Family Mediation Service, you may be invited to attend a session with your parents to discuss the arrangements they have made.

If a judge is making a decision about guardianship, who you live with and access, you have a right to have your opinion heard. There are many ways a judge can hear your opinion. Sometimes a judge might decide to talk to you directly. Otherwise the judge might decide to have an expert talk to you who will then write a report to the court that will include your opinion on what should happen. Your parents will have to pay for this report to be carried out unless they qualify for Legal Aid.

It is important to note that while a judge or expert will listen to your views, they may not ultimately make a decision in line with your views. This is because your views are only one part of what the judge has to look at when deciding what is best for you overall.

Do I have a right to see my relatives if my parents split up?

Yes, in most situations. Arrangements will usually be made for you but step-parents, grandparents, aunts, uncles, sisters and brothers may also apply to the court for the right to see you. The court will allow this if it is best for you overall.

Is there anything I can do if I am unhappy about the time I get to spend with my parents?

If you are unhappy with the amount of time you spend with either parent, try to explain your point of view to them. You might want to get help from organisations that work with children and young people like Teen Between. See chapter 10 'where can I go for help' for details.

Do I have a right to financial support from my parent?

Your parent has a duty to support you financially until you are 18. If your parents separate or divorce, they must both provide for you. If they cannot agree, the court will decide, based on your parents' income and other family responsibilities. A step-parent who is not your legal guardian does not have to financially support you.

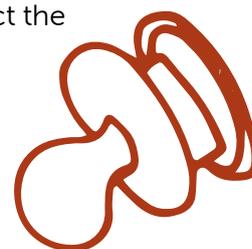


5.3 Young parents (under 18)

Where can I access information and support?

There are many organisations that can provide you with information and support. If you are under 18 and having a baby, you can contact the organisations below.

- [The Teen Parent Support Programme](#)
- [Treoir](#)
- [One Family](#)



Can I go to school after my child is born?

Yes, by law, you must be in school until you are 16 years of age. You may miss some time at school during your pregnancy or after your baby is born so it is a good idea to talk to a teacher or the school principal about making up for lost time. Otherwise you can join the Home Tuition Scheme which lets you learn from home.

If you are due to have your baby around the time of your Junior Certificate or Leaving Certificate exams, you should ask your school to make arrangements for you to do your exams separately and in more comfort.

How will I pay for all the things my baby needs?

There are a range of supports available to you from the Department of Employment Affairs and Social Protection including Child Benefit payments to help you pay for the baby's needs. Your parent or guardian may be able to help you apply for these payments. You could also contact the Department or your local Citizens Information Centre yourself.

There are special guides like the Young Parents Survival Guide from the [Teen Parents Support Programme](#). See also the [Treoir website](#), or [Department of Employment Affairs and Social Protection website](#), see chapter 10 'where can I go for help' for details.

Do I have guardianship rights as an unmarried mother?

Yes. You are automatically the child's legal guardian from birth and have full custody of your child.

Do I have to register the name of my child's father at birth?

You must register the birth of your child within three months of the birth. You do not currently have to record the details of the child's father if you are single. A new law will change this rule soon, but at the time of going to print the procedures for this have not been finalised.

Many people assume that having the father's name on the child's birth certificate gives the father legal guardianship rights – but this is not correct. If there is no father's name on the birth certificate it does not affect a single mother's entitlement to One-Parent Family Payment.

You can find out more about registering the baby's birth from the General Registrar's Office on 1890 25 20 76. There is more information on the [Citizens Information website](#), see chapter 10 'where can I go for help' for details.

Do I have rights as a single father?

You have no automatic rights if you are an unmarried father. However, if you have been living with the mother of your child for 12 months after the 18 January 2016 including at least three months after your child's birth, you are entitled to automatic guardianship.

If you do not qualify for automatic guardianship, you can apply for guardianship if the mother agrees. You do this by signing a guardianship form in front of a peace commissioner or commissioner for oaths. If the mother does not agree, you can apply for guardianship through the local district courts. The court may refuse to appoint a father as a guardian if it believed this would not be best for the child. If the biological father and mother marry, the father will automatically become the child's guardian.

You can get information on how to apply for guardianship, seek custody of your child or get access rights from [Treoir](#). You may also need to get legal advice. You can find out how to get civil legal aid by visiting the [Legal Aid Board's website](#), see chapter 10 'where can I go for help' for details.

If you are a young father or a young father-to-be, you can also contact the Teen Parents Support Programme. See the [Teen Parents Support Programme website](#) to find out what parenting supports are available to you, see chapter 10 'where can I go for help' for details.

5.4 Assisted human reproduction

Have I a right to know who my biological parents are if I was born using assisted human reproduction?

Sometimes the people who are your parents and looking after you day-to-day are not the same people as your biological parents. This can be for a number of reasons including if you were born using sperm or egg from a donor.

Currently you have no right to know who your biological parents are in this situation. However, there are laws that are due to come into force that will allow you to know who your biological parents are after you turn 18 from a donor conceived register..

5.5 Adopted children

What is adoption?

Adoption is a legal process where a child becomes a member of a new family. It creates a permanent legal relationship between the adoptive parents and the child.

In an adoption, the legal relationship between the child and the birth parents no longer exists and the adoptive parents have the same rights and duties as if the child was born into their family.

For parents and guardians

How can I place my child for adoption?

All children can be placed for adoption in Ireland, including children who have been previously adopted.

For more information, contact:

- the social work team at your maternity hospital
- your local Child and Family Agency adoption team
- an adoption agency
- the Adoption Authority
- a pregnancy counselling service like [My Options](#).

You can contact these agencies at any stage of a pregnancy or after the birth of your child. You can change your mind about the adoption at any time up to the point that an Adoption Order is made.

Treoir along with the Crisis Pregnancy Programme has produced an information booklet on the adoption process for parents thinking of placing their child for adoption. See the [Treoir website](#) for information or contact details to speak to someone about your situation.

What are the different types of adoption?

Step-parent adoption

This is when your step-parent applies to adopt you. They will then legally become your parent alongside your other parent. You must have lived with your parent and step-parent together for a minimum of two years for this to happen.

Extended family adoption

This is when a member of your family or a relative adopts you after you have been placed with them by Tusla or by your mother.

Domestic infant adoption

Domestic infant adoption is where a child is placed with a new set of parents. The child may only be placed with the couple by the Tusla adoption service or an accredited adoption agency. The Adoption Authority of Ireland must approve the placement before it takes place.

Inter-country adoption

Inter-country adoption is where people who live in Ireland decide to adopt a child who is resident in a country other than Ireland.

Long-term foster care adoption

Foster care adoption occurs when you are adopted by your foster carers.

For parents and guardians

As a child's father do I have a right to be consulted before my child is placed for adoption?

Yes. As the child's father, you have the right to be consulted before your child can be placed for adoption by the mother, even if you do not have joint guardianship. If you have joint guardianship of the child, your consent is required before the adoption can go ahead. If you cannot be contacted, an order from the High Court is needed before the adoption can go ahead.

When can a child be adopted?

You can be adopted once you are under the age of 18, but the adoption process can take a long time so the application should be made before you turn 17 at the very latest. When making a decision on adoption, the Adoption Authority's main consideration is what is in your best interests. The Adoption Authority must hear your views on being adopted before they make the Adoption Order.

If I am adopted, do I get a new birth certificate?

If you have been adopted, you do not get a new birth certificate. An adoption certificate will be issued for you by the General Register Office in the name of your adoptive parents and your name will be entered into the Adopted Children Register. This happens after what is known as an adoption hearing with the Adoption Authority of Ireland.

For more information on what happens at the hearing, see the [Adoption Authority guides](#) for young people.

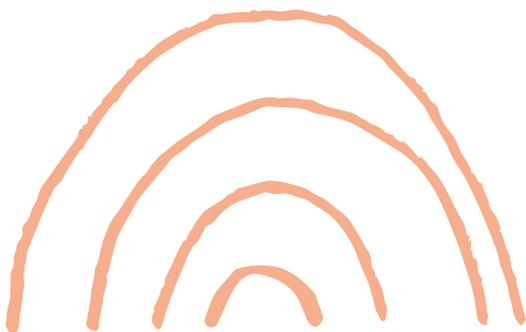
Do I have a right to see my original birth certificate?

No. There is no automatic right to see or get a copy of your original birth certificate, but you can apply to the Adoption Authority asking them if you can see it. Details on how to apply can be found on the [Adoption Authority website](#).

If you already know your full birth name and date of birth you can apply directly to the General Registrar's Office for it.

Do I have a right to see my adoption records?

No, you do not have a right to your adoption records in Ireland. You can apply to the Adoption Authority of Ireland for details of your birth parents. However, the Adoption Authority has a duty to protect your birth mother's privacy unless she decides to give her consent to the release of records. If your birth mother does not give her consent, the Adoption Authority undertakes a balancing exercise when arriving at its decision. If the Adoption Authority refuses your request, you can ask the High Court to review the decision.



Do I have a right to have contact with my birth parents?

No. However, the Adoption Authority operates a National Adoption Contact Preference Register to make it easier for adopted people and their birth families to contact each other if they both wish to do so. It is up to you to decide if you want to put your name on the Register, but you must be over 18 to do so. You and your birth family will only be put in contact with each other if you have both registered.

The Register lets you choose what level of contact you wish to have. This can range from meeting your birth family to phone calls, emails, letters or no contact at all.

If you are under 18 and would like to see if you can contact your birth parents, siblings or grandparents you should contact Tusla as they are often able to help people contact their relations.

For more information see the [Adoption Authority of Ireland website](#).

Who can I talk to about being adopted?

If you want to talk to someone about your adoption, Barnardos runs a confidential phone helpline on 01- 454 6388. You can also contact the [Adoption Authority of Ireland](#), [Tusla](#) or [Childline](#) if you have concerns – see chapter 10 'where can I go for help' for details.



