

STEP-PARENT ADOPTION

Adoption Board Information Leaflet on Step-Parent Adoption

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1. Purpose of Information Booklet

- 1.1 This information booklet has been prepared by the Adoption Board to help people understand step-parent adoptions. It provides general information on step-parent adoption and explains how step-parent adoptions are processed by the Adoption Board.
- 1.2 The information contained in this booklet is not intended to be a definitive explanation of the legislative provisions of Irish Adoption law in respect of step-parent adoption but rather a general guide to step-parent adoption.

2. What is Step-Parent Adoption?

- 2.1 Step-parent adoption occurs when a birth mother marries a person other than the birth father of her child and they both adopt the child. In the case of step-parent adoption the birth mother has to give up her sole legal rights to the child and both she and her husband have to take on joint legal rights and responsibilities for the child on the making of the adoption order. Step-parent adoption allows the birth mother's husband to attain legal rights and responsibilities in respect of the child.

3. What are the Advantages of Step-Parent Adoption?

- 3.1 Upon the making of an adoption order in the case of a step-parent adoption, the child becomes a legal member of the new family unit and the child has the same legal rights in law as any child born within the marriage, including inheritance rights.
- 3.2 Adoption confers full parental rights and obligations on the adoptive father and this is especially important in the event of the death of the mother. Adoption ensures that the child becomes a permanent member of the new family unit and it indicates a desire on the part of both adoptive parents to incorporate the child fully into their marriage.

- 3.3** For children, the fact that an adoption order has been made indicates to them the commitment of the adoptive father to them and his willingness to take on legal responsibility for them. It is the experience of the Adoption Board that some children feel the need to be adopted to become a full member of the new family unit.

4. What are Disadvantages of Step-Parent Adoption?

- 4.1** One of the consequences of step-parent adoption is that it has the effect of completely severing all legal ties between the child and his/her birth father and his extended family. On the making of a step-parent adoption order, the birth father loses all legal rights to the child, including the legal right to have ongoing contact with the child. It is up to the birth mother and her husband on the making of a step-parent adoption order to decide if they wish to allow the father to have ongoing access to the child. The birth father also loses his right in law to apply to the Courts for access to the child.
- 4.2** Adoption changes the identity of the child and the birth mother's legal relationship to her child and it also obscures his/her birth origins. The child loses one identity and takes on another. Children need to know the truth about themselves. They need to know who they are, where they come from and where they fit in.
- 4.3** Where a child is being parented by an adult who is not his/her birth father it is important this fact is acknowledged, and that opportunities are found to discuss these issues with the child in an open and honest manner. Even if a child has had no contact with the birth father, this does not mean the child does not need to know about him. It is important for a child's identity to have knowledge of both birth parents and, if possible, to have a relationship with both of them.

5. Can a Child be Adopted without the consent of his/her Birth Father?

- 5.1** If a birth father has joint guardianship rights in respect of his child then his consent is required before an adoption order can be made. The Adoption Board is obliged to make every effort to seek a birth father's views on the adoption application even if he is not a joint guardian of the child to make an adoption order. The Adoption Board may decide in exceptional circumstances that there are compelling reasons why a birth father should not be notified of an adoption application in respect of his child. In such circumstances the Adoption Board will arrange for the birth mother to swear an affidavit outlining her relationship with the birth father and the reasons for not informing him of the adoption application.
- 5.2** If a child is adopted by his/her birth mother and her husband then all legal rights and responsibilities in respect of the child are vested in them. The birth father no longer has any possibility of acquiring rights in respect of his child. The child's birth mother becomes the adoptive mother and her husband becomes the adoptive father and this legally excludes the birth father permanently from the child's life. It is open to the adoptive parents to agree informal access arrangements with the birth father but such arrangements are not legally enforceable.

6. What rights has an Unmarried Birth Father to his Child?

- 6.1 Unmarried birth fathers do not have any automatic legal rights in respect of their children.
- 6.2 Having the birth father's name entered in the Register of Births does not in itself give him any rights in respect of his child.
- 6.3 It is possible for a birth father to apply to Court for joint guardianship, access, joint/full custody or a declaration of parentage.
- 6.4 Joint parentage can also be acquired with the consent of the birth mother (Statutory Instrument 5 of 1998). The Court can also order a father to pay maintenance in respect of his child.
- 6.5 Guardianship can be described as a collection of rights and duties which a parent has in respect of his/her child. It encompasses the duty to maintain and properly care for the child and the right to make decisions about a child's religious and secular education, health requirements and other matters affecting the welfare of the child.

7. What Rights has an Unmarried Birth Father to his child if the Birth Mother marries another man?

- 7.1 Any legal rights which a birth father may have acquired through the Courts do not change on the marriage of the child's birth mother. A step-parent does not acquire a legal relationship to a child when he marries the child's birth mother.
- 7.2 If a birth father is already a guardian of a child then his legal position in respect of the child is not changed on the marriage of the child's mother to another man. If a birth father does not have any legal rights to his child then he can still apply for them, unless the child has been adopted. A Court can make an order for the birth father to pay maintenance in respect of the child, unless the child is adopted.

8. What is an Adoption Order?

- 8.1 Adoption is a process by which a child becomes a member of a new legal family. It creates a permanent legal relationship between the adoptive parents and the child. The child is regarded in law as the child of the adoptive parents as if he/she were born to them in marriage.
- 8.2 There is no provision under Irish Adoption law for the Adoption Board to attach conditions to the making of an adoption order. On the making of an adoption order the birth parents lose all legal rights and responsibilities in respect of the child and these rights and responsibilities are transferred to the adoptive parents.

9. Who makes Adoption Orders?

- 9.1** All adoption applications are made to the Adoption Board, an independent statutory body. The Adoption Board consists of a Chairman, Deputy Chairman and eight ordinary members who are all appointed by Government. The primary function of the Adoption Board is to grant or refuse to grant applications for adoption orders in relation to Irish adoptions; to register and supervise the Registered Adoption Societies; to grant or refuse declarations of eligibility and suitability in relation to intercountry adoption; and to keep the Register of Foreign Adoptions.

10. Welfare of the Child

- 10.1** Adoption is for the benefit of the children. The child is the most important person in the whole process. The principle is embodied in Irish Adoption law which requires the Adoption Board or a Court, when dealing with any matter relating to Adoption, to regard the welfare of the child as the first and paramount consideration.

11. The Child's Wishes

- 11.1** The Adoption Board is obliged by law to take into account the wishes of a child who is more than seven years of age at the date of an application for an adoptive order.
- 11.2** The Adoption Board's Social Worker will speak to the child concerning the adoption to establish his/her wishes in relation to the adoption application. The Adoption Board will also speak to the child in an age appropriate way at the hearing to establish his/her wishes in relation to the adoption application.

12. Suitability?

- 12.1** The Adoption Board cannot make an adoption order unless it is satisfied that each of the adoption parents is a suitable person to have parental rights and duties in respect of the child.
- 12.2** A Social Worker from the Adoption Board will visit the prospective adoptive parents in their home and prepare a short report for the Adoption Board with a recommendation concerning their suitability to adopt. The Social Worker will deal with issues such as the prospective adopter's background histories, their relationship and marriage, relationships within the family unit with particular reference to the child's integration into the family, the attitude of close relatives to the adoption and birth father's relationship with the child and the prospective adopters.

12.3 The Social Worker will also advise the prospective adopters on how to tell the child of his/her birth origins in an age appropriate way, if they have not already done so. The imparting of such information is vitally important to the child in coming to terms with their individual identity and their place within the new family unit.

13. The Procedure

13.1 An adoption application form (Form 1) is available from the Adoption Board on request or from the Adoption Department of your local Health Board. Form 1 must be signed by both applicants and returned to the Board.

13.2 Originals of the following documents must be submitted to the Adoption Board with Form 1:-

- (a) The child's Birth Certificate (long form)- a birth certificate issued solely for Social Welfare purposes is unacceptable;
- (b) The child's Baptismal Certificate, if any;
- (c) The applicants' Civil Marriage Certificate;
- (d) The Birth Certificate (short to long form) of either applicant;
- (e) A home/work telephone number where you can be contacted, and direction to your home.

13.3 As part of the adoption process one of the Board's Welfare Officers will visit the prospective adopters' home, by appointment, on a number of occasions to discuss the adoption application, interview the child where appropriate and make a recommendation to the Board.

13.4 The Adoption Board is obliged to make every effort to seek a birth father's views on the adoption application, even if he is not a joint guardian of the child, before it decides whether it is in the interests and welfare of the child to make an adoption order. The Adoption Board may decide in exceptional circumstances that there are compelling reasons why a birth father should not be notified of an adoption application in respect of his child. In such circumstances the Adoption Board will arrange for the birth mother to swear an affidavit outlining her relationship with the birth father and the reasons for not informing him of the adoption application.

13.5 The Adoption Board does not charge for processing an adoption application. Most family adoption applications are finalised within one year except where there are difficulties with an application. Prospective adopters are invited to attend before the Board with the child to make the adoption order when their application is finalised.