



Briefing for the Public Petitions Committee

Petition Number: [PE1513](#)

Main Petitioner: Ron Park

Subject: Equal Rights for Unmarried Fathers

Calls on the Parliament to urge the Scottish Government to review the laws that govern parental rights and child access, and their implementation, to ensure unmarried fathers have guaranteed rights to be a part of their children's lives if they are deemed fit parents.

Background

Fathers and the registration of a child's birth

When a child's birth is registered, there is no requirement for the father's name to be entered in the Register of Births (and therefore to appear on the birth certificate). Where the father's name does not appear, this is referred to as a "sole registration". The level of sole registrations has remained reasonably constant in the last forty years.¹

Parental rights and responsibilities

The Children (Scotland) Act 1995 ('the 1995 Act') (as amended) provides for a range of parental rights and responsibilities ('PRRs') in respect of children living in Scotland, where practicable and in the best interests of the child. PRRs include the right to have the child reside with the person having PRRs and, where the child does not live with that person, the right to have contact with that child.

A range of people automatically have PRRs in respect of a child, including: 1) the child's mother; 2) the child's father where he is married to the mother at the time of the child's conception or subsequently; and 3) the child's father where he is registered as the father of a child *on or after 4 May 2006*.²

¹ See further: <http://www.gro-scotland.gov.uk/files2/stats/ve-ref-tables-2012/ve-12-t3-2.xls>. The big change is in the number of 'joint registrations' (where the name of the father does appear) carried out by unmarried parents.

² 1995 Act, section 3, as amended by section 23 of the Family Law (Scotland) Act 2006; Registration of Births, Deaths and Marriages (Scotland) Act 1965, section 18.

Even where the unmarried father's name did not originally appear on the child's birth certificate, it can be subsequently entered and this confers PRRs.³ However, unless the father has a decree of paternity granted by a court in his favour (see below) this process requires the co-operation of the child's mother.

Other methods of acquiring PRRs include entering into an agreement with the child's mother and registering it in the Books of Council and Session.⁴ It is also possible for the unmarried father to apply to the court under section 11 of the 1995 Act for a court order granting him some or all of the PRRs.

In considering whether to grant a court order under section 11 of the 1995 Act, the court will have regard to three principles, namely: 1) the welfare of the child is the paramount consideration; 2) the child must be given an opportunity to express his or her views and account will be taken of those views in the light of the child's age and maturity;⁵ and 3) the court will not make any order unless it considers that to do so would be better than making no order at all (1995 Act, section 11(7) and (10)).

The Family Law (Scotland) Act 2006 (section 24) also amended section 11 to require the courts to "have regard in particular" to the need to protect the child from actual or possible abuse, the effects of such abuse on children, the ability of the abuser to care for the child, and the effects of abuse on a person's capacity to fulfil PRRs.

Declarators of parentage and DNA testing

A man seeking to establish that he is a child's father may raise an action for a 'declarator of parentage' in the local sheriff court or the Court of Session in Edinburgh.⁶ DNA evidence is the main source of evidence in such actions. Paternity testing requires a sample (typically either cheek cells or a blood sample) from the child's mother, the man in question and the child.⁷

A civil court in Scotland (unlike a criminal court) cannot compel a competent adult to submit to a blood test or, indeed, any other test involving bodily interference. However, a civil court may now request a party to proceedings to do so and draw any inference from the refusal as it considers appropriate.⁸

Where the child (i.e. someone under 16) is of sufficient age and understanding to appreciate what is involved in a paternity test and the likely

³ *Ibid.* Note however that where, before 4 May 2006, the unmarried father's name *did* appear on the birth certificate, no further action may be taken under section 23 of the 2006 Act (and section 18 of the 1965 Act) to confer PRRs. Instead, other methods of acquiring PRRs must be used.

⁴ 1995 Act, section 4.

⁵ A child of 12 years or over is presumed to have sufficient maturity to form a view.

⁶ The issue of parentage may also be determined incidentally to other proceedings.

⁷ Some companies offer paternity tests that only require samples from the child and the man (sometimes called motherless testing). Results from tests like this are less accurate.

⁸ Law Reform (Miscellaneous Provisions)(Scotland) Act 1990, section 70.

consequence of it, he or she can consent to the test.⁹ A medical practitioner assesses the child's competence for this purpose.

In many cases of disputed parentage, the child will be too young to be in a position to consent to the test and the necessary consent will have to come from elsewhere. Any person who has PRRs in respect of a child under 16, or care and control of him or her, may consent on a child's behalf.¹⁰ As mentioned above, all mothers have automatic PRRs and so they can consent. However, only married fathers and unmarried fathers who are registered as such on or after 4 May 2006, have PRRs automatically.

Developments in England and Wales

The equivalent legislation to the 1995 Act in England and Wales is the Children Act 1989 ('the 1989 Act'). With the policy objective of encouraging shared parenting, the Children and Families Act 2014 ('the 2014 Act') amends the 1989 Act to require the court, when considering whether or not to make a court order relating to the equivalent of PRRs, to "presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare". A definition of 'involvement' was added during the legislation's parliamentary passage, to clarify that it was involvement of some kind, either direct or indirect, but not any particular division of a child's time.¹¹ For some groups campaigning on this topic, this provision of the 2014 Act, whilst welcome, did not go far enough.¹²

Scottish Government Action

The last major review of this area of law in Scotland resulted in the Family Law (Scotland) Act 2006, with the main provisions relating to unmarried fathers being section 23 (effect of registration) and section 24 (domestic abuse and section 11 orders). The Scottish Government has no plans for a further review and, in particular, no plans to introduce a presumption of shared parenting in Scotland.

The Scottish Government is currently chairing a working group to examine the role of court reporters in cases involving contact and residence with children. More information on the work of this group can be found [here](#).

Scottish Parliament Action

The Equal Opportunities Committee is currently carrying out an inquiry into fathers and parenting, including consideration of issues around PRRs. However, it is focusing on the practical and social aspects of this topic, not issues falling on the remit of the Justice Committee. More information on this inquiry can be accessed [here](#).

⁹ Age of Legal Capacity (Scotland) Act 1991, section 2(4).

¹⁰ Law Reform (Miscellaneous Provisions)(Scotland) Act 1990, section 6(2).

¹¹ 2014 Act, section 11(2) inserting section 1(2A) and (2B) into the 1989 Act.

¹² See, for example, the news release (dated 19 March 2014) from Families Need Fathers Scotland: <http://www.fnfscotland.org.uk/>

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