

PE1513/F

Minister for Community Safety and Legal Affairs

Roseanna Cunningham MSP

T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk



David Stewart MSP
Convener
Public Petitions Committee
T3.40
Scottish Parliament
EDINBURGH
EH99 1SP

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Email to: petitions@scottish.parliament.uk

Your ref: PE1513
Our ref: A 8585550
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Dear David

PUBLIC PETITION PE1513: RON PARK: RIGHTS OF UNMARRIED FATHERS

Introduction

1. I am responding for the Government to the letter dated 9 May 2014 by Ned Sharratt.
2. First of all, I recognise how difficult family cases of this nature are for all concerned. There is a complex mixture of emotions in these cases and I know that they have major effects on those involved.
3. Secondly, the Government's over-riding policy objective in relation to these cases is the welfare of the child. Court cases relating to matters such as parental responsibilities and rights (PRRs) and contact and residence are governed by section 11 of the Children (Scotland) Act 1995.
4. Section 11(7)(a) provides that in considering whether or not to make an order and what order to make the court "shall regard the welfare of the child concerned as its paramount consideration". We believe that this provision puts the child at the heart of these cases. As indicated above, I appreciate that these cases are very difficult for all concerned. However, we would not intend to make any changes to the law which could adversely affect the principle that the welfare of the child is the paramount consideration.
5. Thirdly, the rest of this letter responds by following some of the key headings in the petition.

Petition summary: calling on the Scottish 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 part of their children's lives if they are deemed fit parents.

6. Ned Sharratt's letter also asks the Scottish Government to confirm whether it is reviewing legislation in this area.

7. The Government has no plans to review legislation in this area. The Family Law (Scotland) Act 2006 ("the 2006 Act") extended Parental Responsibilities and Rights (PRRs) to unmarried fathers who jointly registered the birth with the mother on or after 4 May 2006. This Act followed lengthy consultation¹.

Proposition 1: Both parents must be named on a birth certificate before a birth can be legally registered. Where the child's parentage is in doubt, all avenues must be explored in determining the child's father to the satisfaction of a court. If it is still not possible to name the child's father for whatever reason, a court may grant a registered birth with only one parent

8. The Government has carefully considered this suggestion but does not agree with it. The Government considers it important that births are registered quickly, and without delays². Not registering the birth until court proceedings on parentage are finished could lead to significant delays. In addition, there could be a number of reasons why the mother does not want the father to be included in the birth certificate, such as:

8.1 The mother may not know who the father of the child is (and there may be no court actions planned to determine parentage).

8.2 The father may have been violent or abusive.

9. We have considered our practice when the courts grant a decree of paternity or decree of declarator of parentage or non-parentage in relation to a child. When such a decree is granted and sent to the Registrar General, National Records of Scotland (NRS) staff follow sections 18(2) and 18A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965. These provide that if the provisions in the decree do not correspond with the relevant entry in the register of births, an entry has to be made in a Register of Corrections Etc. NRS deal with around 40 decrees of paternity and 45 decrees of declarator of parentage/non-parentage a year: Annex A to this letter gives more statistical details.

10. The original entry in the birth register is unchanged when a decree is issued. When an extract (a certificate) is sought from the birth register, the extract does reflect any decree of declarator of non-parentage that has been granted. At the moment, however, the extract does not reflect any decree of paternity or decree of declarator of parentage that has been granted.

11. There may be an argument that we should change our practice so that when a decree of paternity or decree of declarator of parentage is granted, any future extracts from the birth

¹ The Scottish Government's website outlines the consultation involved:

<http://www.scotland.gov.uk/Topics/Justice/law/17867/FLSA2006>

² Information on the procedure for registering a birth is at <http://www.gro-scotland.gov.uk/regscot/registering-a-birth.html>

register should reflect this decree. (At the moment, an extract from the Register of Corrections Etc. could be issued, if required, as proof of parentage). Any change would not affect parental responsibilities and rights as the original entry in the birth register would be unchanged. We intend to consult key bodies (eg Scottish Women's Aid; Families need Fathers; the Law Society of Scotland; the Family Law Association and the Scottish Court Service) to seek their views on any changes to how we deal with decrees of paternity and decrees of declarator of parentage.

Proposition 2: Afer parentage is determined, and should both parents be found to be fit and able to care for the child should an investigation be necessary, full rights and responsibilities will be awarded to BOTH parents. This will include the duty of care and living arrangements either agreed by mutual consent or, as a last resort, a court order.

12. The Government does not agree with this proposition.

13. The possibility of giving PRRs to all parents was considered in the consultations leading up to the 2006 Act. Governments at the time rejected the idea as:

13.1 There was concern that such a move would expose some mothers and children to abuse and violence at the hands of former partners.

13.2 It would not be fair if women who had been raped or who had become pregnant through a brief relationship had to go to court to have PRRs removed.

13.3 It was felt that some evidence of a commitment to joint parenting should be required.

14. As indicated above, the 2006 Act extended PRRs to unmarried fathers who jointly registered the birth with the mother on or after 4 May 2006. National Records for Scotland publish statistics on birth registration. These show that sole registrations (where the father's name does not appear) account in 2012 for just 5.2% of registrations³. This means that for 94.8% of children born in 2012, both their mother and father have PRRs.

Proposition 3: If the court orders a DNA test, or anything else for that matter, then failure to comply with this request should be considered contempt of court.

15. Section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 makes provision so that in civil cases the court may request a party to the proceedings to provide a sample of blood or other bodily fluid or body tissue. Provision is also made about a party consenting to the taking of such a sample from a child. If a party refuses or fails to provide a sample section 70 provides that "the court may draw from the refusal or failure such adverse inference, if any, in relation to the subject matter of the proceedings as seems to it to be appropriate." The Government considers that this existing provision is sufficient.

Roseanna Cunningham

³ See <http://www.gro-scotland.gov.uk/files2/stats/ve-ref-tables-2012/ve-12-t3-2.xls>

ANNEX A:

DECREES OF PATERNITY RECEIVED BY NATIONAL RECORDS OF SCOTLAND STAFF,
BY YEAR

2009 – 92
2010 – 45
2011 – 41
2012 – 30
2013 – 39

DECREES OF DECLARATOR OF PARENTAGE/NON-PARENTAGE RECEIVED BY
NATIONAL RECORDS OF SCOTLAND STAFF, BY YEAR

2009 – 28
2010 – 35
2011 – 48
2012 – 41
2013 – 46