

PE1513/I

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Public Petitions Committee
T3.40
Scottish Parliament
Edinburgh. EH99 1SP

26th June, 2014

**RE: PUBLIC PETITION – PE01513 (the “Petition”)
EQUAL RIGHTS FOR UNMARRIED FATHERS**

I write to express my opinion of the proposals made by the Petitioner, Mr Ron Park. I address each of the three changes he proposes.

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.”

It is important that there is not a delay in the registration of the birth of a child. Under Article 7 of the United Nations Convention on the Right of the Child, a child is to be registered immediately after birth and has the right to a name and nationality flowing from this. It is the case that children who have no official recognition of their names and nationality and no official registration of birth are more difficult to trace in disappearance cases”,¹ and are at increased risk of trafficking.

In Scotland, the numbers of babies who are solely registered in the name of the mother has fallen slightly since 2009. In 2012, 5.2% of babies were registered in the name of the mother only.² There are a number of lucid reasons that a woman may not wish the name of the father of her child to appear on the birth certificate. Among these are:

- The child is a product of rape.
- The child is a product of incest.
- The child was conceived by a mother before her 16th birthday and is therefore the result of unlawful sexual activity.
- The father of the child is a married man but the mother of the child is not his wife.
- The mother is a sex worker and does not know who the father of her child is.

¹ ECPAT International (2009) Stop Sex Trafficking of children and young people. Bangkok, The Body Shop / ECPAT International.

² *Scotland's Population 2012: The Registrar General's Annual Review of Demographic Trends* (Scottish Government, Edinburgh, 2013), p 23. Available at: <http://www.gro-scotland.gov.uk/files2/stats/annual-review-2012/rgar-2012.pdf>

- The mother was affected by substances – whether self-administered or administered by another person – and may not recall who the father of her child is.
- The father of the child did not wish the mother to proceed with the pregnancy and may have pressurised her to have an abortion. She may even have told him that she did have an abortion.
- The father of the child is or has been violent towards the mother (possibly during her pregnancy – when domestic abuse is known to increase) and the mother fears for the safety of herself and infant. She may also be fearful that the father will found on any known connection with the child as a means of continuing to exert dominance and control over the life of the mother.

There is a risk that increasing numbers of women may opt for abortion if they fear that to continue with the pregnancy will mean they (and the infant) will be unable to break free from an abusive relationship or the mother fears she will be forced into naming a person who has committed a criminal act (or acts) against her (and is unable to face the consequences of that naming – such as having to prove before a court that it was rape and not consensual sexual intercourse).

Women may also wish to protect their child from the knowledge of the identity of their father as the knowledge would be too distressing (eg: the step-brother or step-father of the mother).

2. “After 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.”

The wording of this point suggests the petitioner has confused the determination of parentage with recording of the name of a child’s father on a birth certificate. If the appropriate court action is raised, a court *may* issue a Declarator of Paternity and *may* also award some or all of the Parental Rights and Responsibilities (PRR) listed at Sections 1 and 2 of the Children (Scotland) Act 1995. This may include the right to regulate the child’s residence at s2(1)(a) of the 1995 Act.

Court orders for Declarator of Paternity or PRR however are separate from the issue of a father being named on a child’s birth certificate. If a father is named on a child’s birth certificate then, for any child born on or after the 4th May 2006, the father will *automatically* have full parental rights and responsibilities without any test that he is fit and able to care for the child.

3. “And perhaps my most important change in that 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. If we cannot rely on our legal system to fall back on, then we simply have a lawless and anarchic society.”

In civil actions to determine the parentage of a child, the law at present enables a person with PRR to consent to the taking of a sample from a child under the age of

16 years, as may a person who has ‘care and control’ of the child.³ Where such a person is “unwilling to accept the responsibility of giving or withholding consent” the court can consent to the taking of the sample.⁴ However, the court must not give consent unless it is “satisfied that the taking of the sample would not be detrimental to the person’s health.”⁵ Potentially, this could include the child’s future mental health and wellbeing and this is clearly a factor when a child is born of rape or incest.

The Scottish Law Commission (SLC) has previously considered whether a refusal to give a DNA sample should bear the consequences of a civil contempt of court.⁶ The SLC Discussion Paper considered the more usual circumstance that a man who has been named as a father is denying paternity. The SLC expressed the view at that time that it would be ‘draconian’ to impose a fine or imprisonment should a man refuse to consent to a DNA sample being taken to establish paternity.⁷ This is surely all the more so when the person to be fined or imprisoned (for a failure to name the father of a child) is a woman who has recently given birth and has a dependant infant. Additionally, as the SLC also pointed out, such a ‘remedy’ fails to provide the evidence sought and is for this reason a decidedly unsatisfactory solution.⁸

Some additional observations

In the petition it is stated that there are an estimated 160,080 ‘separated fathers’. We do not know however, what percentage of these fathers are *unmarried* fathers, let alone what percentage are also not named on the birth certificate of their children. It is important to re-state that, where unmarried, the majority of fathers *will* have PRR by virtue of being named on the birth certificate.

It is also worth observing that the term ‘separated fathers’ is misleading as it implies that men who father children have at some stage been a part of a ‘couple’ with the mother of the child. My recent research into child contact disputes that go through the private law courts of Scotland found that the parents of 36% of the children who were the subject of the court dispute over contact or residence had never lived together as a couple at any stage.⁹ The term ‘separated fathers’ also implies that the fathers are ‘separate’ from their children whereas a significant percentage of the 160,080 cited in the Petition are likely to be in regular contact with their children (including residential contact), whether informally arranged or court ordered.

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³ s6(2) Law Reform (Parent and Child) (Scotland) Act 1986

⁴ s6(3)(b) Law Reform (Parent and Child)(Scotland) Act 1986

⁵ s6(4) Law Reform (Parent and Child) (Scotland) Act 1986

⁶ Scottish Law Commission (1988) Discussion Paper No 80. Evidence: Blood Group Tests, DNA tests and Related Matters. Edinburgh.

⁷ Scottish Law Commission (1988) Discussion Paper No 80. Evidence: Blood Group Tests, DNA tests and Related Matters. Edinburgh. para 3.18

⁸ Scottish Law Commission (1988) Discussion Paper No 80. Evidence: Blood Group Tests, DNA tests and Related Matters. Edinburgh. para 3.20

⁹ Mackay, K., 2012. *The Child’s Voice in Contact Disputes: Genuine Participation in Private Law Court Actions*. Saarbrücken, Germany, Lambert Academic Press. pg 80.