

**NSPCC BRIEFING:
WELFARE REFORM BILL: HOUSE OF LORDS, REPORT STAGE
Amendment Number 87A
Joint Birth Registrations**

Amendment Number 87A: Tabled by Baroness Thomas of Winchester & Lord Kirkwood of Kirkhope

Schedule 6, page 95, line 23 at end insert -

(IA) The father of the child does not automatically acquire parental responsibility by virtue of his name being registered on the birth certificate under section (1)(a) if, following a declaration by him to the registrar under this section or section 10B, the mother makes a legal declaration in a prescribed form to the registrar explaining that she has reasons to fear for her safety, or that of her child if the father acquired parental responsibility.

(IB) Section (IA) applies only if the mother's declaration is supported by an approved professional, to be defined in regulation.

(IC) The Secretary of State must, by regulations made by statutory instrument, define an "approved professional" for the purposes of section (IB).

(ID) A statutory instrument containing regulations made under section (IC) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NSPCC Position

The NSPCC supports the Government's ambition to increase the number of births that are registered by both parents and measures that promote a child's right to know their origins, providing that this is safe and in the child's best interests; this position is consistent with the UN Convention on the Rights of the Child¹. The NSPCC supports the objectives that the provisions in schedule 6 of the Welfare Reform Bill seeks to achieve, however we consider that safeguards should be introduced to protect vulnerable children who could be put at risk as a result of these new measures.

Risks to Children

There is an anomaly in schedule 6 of the Welfare Reform Bill, as it provides an exemption to prevent registrars from contacting an unmarried father if the mother

¹ See articles 7 and 9 of the UN Convention on the Rights of the Child. Available online: [Convention on the Rights of the Child](#)

claims that she has reasons to fear for her safety or that of her child if the father is contacted in relation to the registration of the birth, but there is no exemption available if the same father contacts the registrar independently of the mother. In these circumstances, the father will be registered on the child's birth certificate and will automatically acquire parental responsibility for the child, even if the mother informs the registrar that the father is known to pose a risk to children – for example, if he has a previous history of child abuse or violence against children.²

The NSPCC considers that the state has a responsibility to respond appropriately when provided with information which suggests that a child would be put at risk as a result of a father acquiring parental responsibility. This principle, that agencies must respond appropriately to safeguard children, is central to the guidance *Working Together to Safeguard Children (2006)*³ and the cross-government programme to tackle violence that disproportionately affects women and girls. We believe that it is untenable for the state to take no action when informed that a mother is fearful that the father poses a risk to the child, and even more dangerous in circumstances where the unmarried father has previous convictions for sexual abuse or violence against the mother or other children.

How Birth Registration puts children at risk

In the Grand Committee debate the Government argued that parental responsibility does not put children at risk. It is correct that the rights conferred as a result of having parental responsibility do not by themselves harm children, however if these rights are manipulated, they do present a threat to children. Parents with parental responsibility have the right to a say in all important matters in relation to the child including the child's name, education, medical treatment and decisions about where the child lives. The NSPCC is concerned that violent fathers will use the exercise of parental responsibility to harm the mother or child. To illustrate this it is helpful to consider the types of circumstances which have led the court to refuse an unmarried father's applications for a Parental Responsibility Order on the grounds that granting such an order would be contrary to the child's best interests, for example:

*Re P (Parental Responsibility) [1998] 2 FLR 96*⁴: an unmarried father, aged 78, was found to be in possession of obscene photographs of children. He had met the mother when he was in his 60s and she was 15. He also made false allegations of sexual abuse and had videoed the child while he was encouraging her to talk about it. In this case the Court of Appeal held that parental responsibility was properly refused as the court was satisfied that the father was likely to make improper or inappropriate use of it⁵.

² Refers to Part 4, Schedule 6, Clause 2D of the Welfare Reform Bill

³ HM Government, (2006), *Working together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children* TSO: London

⁴ For full Judgement see: *RE P (A MINOR) (PARENTAL RESPONSIBILITY) (1998) CA (Hirst LJ, Wall J) 19/2/98*

⁵ For similar cases see: *Re H (Parental Responsibility) [1998] FLR 855* and *RE: F (Indirect Contact) 2007 IFLR 1015*

*Re M (Contact: Parental Responsibility) [2001] 2 FLR 34*⁶ the courts found that the father's exercise of parental responsibility would be too stressful for the mother and would undermine her ability to care for their child. The child was severely disabled, with cerebral palsy affecting all four limbs, virtually blind and suffered from seizures. The relationship between the parents was highly acrimonious. The risk was that he would misuse parental responsibility.

These case examples clearly show that there are circumstances where the courts consider that the potential to misuse parental responsibility is so great that it would not be in the child's best interest for it to be awarded. In general terms courts are minded to award parental responsibility to unmarried fathers as they can use other measures to address child protection, or other safety concerns, at the same time. For example the court may award an unmarried father with a Parental Responsibility Order, but refuse an application for contact and introduce a Prohibitive Steps Order to prevent him from taking certain actions, at the same time. The NSPCCC is concerned that under the new provisions in schedule 6 of the Welfare Reform Bill the unmarried fathers in the case examples above would automatically acquire parental responsibility, even where registrars are informed about the mother's child protection concerns, and without the opportunity for the rigorous scrutiny and introduction of other measures to protect the child, that courts can introduce.

Proposed amendment

The NSPCC considers that there needs to be some protection for the children of mothers who make a declaration to registrars that they or their child would be at risk of harm if the father were to acquire parental responsibility. However it is important to ensure that information about both the child's parents is recorded on the child's birth certificate, as this is important in order for the child to know their birth heritage.

We propose that in these circumstances the mother should be required to make a legal declaration to the registrar explaining her reason for fearing the father poses a risk to her or her child. The mother's declaration must be supported by an approved professional who should be included on a list of duty approved professionals on whom registrars can call to support such a statement. We envisage that approved professionals will include midwives, health visitors, social workers, GPs, and workers from domestic violence or family support agencies, such as Independent Domestic Violence Advocates; approved professionals should be defined precisely in regulations. Such approved professionals should have had recent training on child protection and domestic violence and abuse issues, and understand both the nature and effects of psychological and physical violence on children and their mothers.

⁶ For full judgement see: RE M (CONTACT: PARENTAL RESPONSIBILITY) (2001) Fam Div (Black J) 6/3/2001

In circumstances where domestic violence is given as the reason why the mother is concerned about her own or her child's safety, Independent Domestic Violence Advocates (IDVAs) have an important role to play. IDVAs support survivors of domestic violence and their children and work with other agencies to ensure their safety. They fulfil a crucial function in supporting and empowering victims of such violence. They can also provide support for obtaining civil injunctions to protect the individuals affected, improving home security for children or alerting schools and services to the risks that children face.

The proposed exemption will only affect a very small number of unmarried fathers, where they have contacted registrars independently of the mother and she has made a legal declaration which has been supported by an approved professional, that he poses a risk to her. In these circumstances unmarried fathers can still acquire parental responsibility by making an application to the court under Section 4(1)(a) of the Children Act 1989 as they are currently able to do. This is safer for children than automatically awarding parental responsibility when child protection concerns are raised. Registrars should inform fathers that the option to apply for parental responsibility is available to them. We would also encourage some flexibility so that if the courts consider that it is inappropriate to award parental responsibility, fathers are able to reapply for parental responsibility at a later stage.

Contact for more information

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