



# Joint Birth Registration: promoting parental responsibility

Reply to Department for Work and Pensions Consultation  
from *Families Need Fathers*

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## 1. Executive Summary

FNF strongly supports the principle that both parents should be registered at a child's birth except in very limited circumstances. We believe that legislation is needed to bring this about. So too is a well resourced plan to implement the legislation, including appropriate training for registrars. Any dangers of reducing the rate of registration currently should be dealt with by promoting the new approach in information provided to parents and by offering an optional ceremony to celebrate the registration of the baby's parents, as Jack Straw has suggested in the past.

## 2. Introduction

One imaginative way of testing whether there are possibly discriminatory expectations concerning people in a situation is to 'reverse' the assumed or 'normal' characteristics of the people and see what it seems like. Societies could have, and some indeed have or have had, attitudes to children and their parents that are, like this example, the opposite of our own. In such a society the children could be seen as belonging with, or to, the father. The biological need for there to have been a mother might be recognised at some level, but she would not be considered of much importance socially or legally. In such a society the duty or right to register the birth would probably lie with the father. There might be some provision to have the details of the mother there, but there could be a possibility of the father registering the baby's birth with himself as the only parent recorded.

*The objection to this situation by groups promoting equality and respect for both parents would be much the same as the arguments we use against the status quo in Britain now.*

**It follows that we are strongly in favour of the principles underlying the proposals in this paper, though we propose safeguards below to ensure that these principles are applied in practice.**

## 3. Three reasons for joint registration

There are three sorts of reasons for supporting the main thrust of these proposals. (There are secondary criticisms, outlined below).

i) **The first are questions of value.** The proposals put forward in this paper are very similar to those put forward by Families Need Fathers at the time of the debates about the Children Act 1989. Namely that all children should be given the right to have two parents who both had parental responsibility, but with some protection for the children from parents (of either sex) that were unfit to

exercise those responsibilities. 'Society' was then not yet ready for that assumption. Under that Act, mothers, irrespective of their conduct, character or parenting, were always and automatically given PR. It could only be removed by the adoption of the children. Social services could take over the practical powers of parenting if the children were neglected or abused, but the mother always retained PR.

The children had no presumption of a father having such a role or responsibility. He had to be married to (or marry) the mother, persuade the mother to allow him to have it, or persuade a court, often after substantial investigation and expense, that it was best for his children that he should have it.

*This was neither gender equality, nor recognition of the rights to children to have both parents.*

Values have changed since 1989.

A substantial change took place in 2003 when, as a result of an idea from this charity having caught on, unmarried fathers who signed the birth certificate were given parental responsibility (PR). This still left, as the DWP paper notes, a significant if much reduced minority of children with only one recognised parent. Joint registration of the birth brought in most unmarried fathers who recognised their children, but not all. The balance, as noted in this paper, included some who were positively involved in the lives of their children.

*'Society' now recognises that children deserve two involved and recognised parents, unless of course there are some grounds for thinking them unfit to exercise parental responsibility.*

These changes in values are reflected in policy change in other respects, for example the loss of anonymity of sperm donors, and the recommendation that the birth certificates should state if the pregnancy resulted from donated eggs or sperm. These facts are part of the child's identity.

In part these changes are the spontaneous evolution of values in a child centred and gender equality direction. In part they reflect change in parental behaviour. The Equal Opportunities Commission reported last month that fathers now provide 2 hours 16 minutes of child care per day and mothers 2 hours 40 minutes.<sup>1</sup> There is no longer a major difference.

There are two noteworthy elements.

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<sup>1</sup> Equal Opportunities Commission (2007) *Completing The Revolution: The Leading Indicators*, Gender Index as part of the Gender Agenda

First there is the speed of social change. Only a handful of years before fathers had provided a third of child care – half that of mothers. Further back still child care was an almost exclusively maternal preserve, with fathers providing only a few minutes on average. This change of behaviour has been without encouragement from public policy, and even despite ‘signals’ that it was not to be sought or even recognised. With encouragement from policy, in which this proposal is a small part, equality in parenting will surely be with us soon.

Mothers will benefit from equal or more equal parenting, being able to combine child care with other activities and commitments. A matter of high priority for public policy at the moment will be their increased ability to earn adequately and often equally with men. This will bring benefits to the economy - the full use of their skill and ability to pay taxes and social contributions. It will reduce poverty for themselves and their children. It will reduce their risk of poverty in old age for they will have better pension contributions.

Fathers will benefit from being involved in the emotionally richest part of life. The research by Hakim at the LSE<sup>2</sup> indicates that a majority of men seek a balance between economic participation and family life.

Society will benefit from the better educational, economic and social performance of children and especially in the decline in social problems associated with children not getting enough parenting.

Above all the children will benefit, from more and better parenting and all that that brings for themselves and for society. They are also more likely to be better parents in their turn. The current vicious cycle whereby negative parental and family practices are passed down the generations will be unwound.

ii) **A second element is the change in marriage patterns.** Gone are the days when parents who wanted to raise children jointly got married. An implication – or at least a label - of being unmarried parents was once that one or both were to be presumed ‘irresponsible’. This no longer applies. Most of the pregnancies outside marriage are wanted and planned and in even more cases both parents accept their responsibilities. There are of course differences between married and unmarried couples with children. There are also many overlaps. There is not the ‘clear water’ between the attitudes of the married and unmarried groups that would warrant treating their children differently. Whether the parents are married is not a *reliable* guide to attitudes or behaviour, especially when it comes to commitment to the children.

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<sup>2</sup> Hakim C (2003), *Models of the Family in Modern Societies; Ideas and Realities*, Ashgate Publishing Limited

iii) **A third change is in attitudes to, and behaviour after, parental separation.** It is still assumed in some quarters that on family division parental roles go into one extreme corner or the other. One parent takes on all – or virtually all – of the caring. The other merely has ‘contact’. The judiciary mostly – there are growing number of exceptions – impose this. Other public arrangements, for example the allocation of benefits or CSA/C-MEC responsibilities – assume it. *This assumption is now contested, principally of course by those people whom we represent.* Parental separation should not entail the children losing their bonds and their parenting time with their ‘other parent’. The children should not be prevented from having a full and free relationship with both their parents simply because the parents don’t live together. The proposals for joint registration of the birth of children, carrying with it joint Parental Responsibility which continues after separation, *contributes to the culture that actual (as opposed to just legal) responsibility continues too.*

**The key implication of these developments and arguments is that the discrimination against the children of unmarried fathers should end. Nor is there any justification for treating parents differently according to sex.**

#### **4) Social evidence**

Some of this is reviewed by the paper and the analysis and evidence has our support. There is a growing body of evidence that children benefit in all sorts of ways, including educational attainment, mental health, propensity to be law-abiding, career chances etc, from the involvement of both their parents. This benefit continues even if the parents do not live together. It may, actually, be more important to have the involvement of both parents after separation than before. If the parents still live together, the children may be less likely to question the role of a parent who is ‘present’ even if not much involved than if he or she is not there. Public policy, which ought to be based on what is best for children, should therefore promote involvement of both parents both in intact families and divided ones. To deny both parents PR would give the opposite signal.

The tone of the DWP paper gives the impression that father self-exclusion is the problem rather than enforced exclusion. We do not accept that view. The people we represent have had exclusion imposed on them – and even more importantly their children have had their fathers’ exclusion imposed on them. But the so called ‘voluntary’ non-involvement of fathers in the lives of their children is surely to be explained at least in part by their responding to what ‘society’ expects of them. *It will therefore fall if they are given different and more positive signals.*

#### **5) Practicalities**

Firstly, there is the need of the children and the authorities to know the identity of both parents. There are medical reasons (to know the genetic background); social reasons (for agencies concerned with children to know whom to contact for example) and financial reasons (the CSA/C-MEC, for example).

*There are more important reasons to do with the self-awareness and sense of identity of the children. They need to know 'who they are' and their 'story'. There are clauses in the United Nations Convention on the Rights of the Child (articles 7, 8 and 9) that require that children be allowed this information. There is much good work done on the identity and stories of the children in the case of 'looked after' children. Children whose lives are disrupted but who are not under 'public law' do not have such a provision. Information about their parentage is an essential component in their doing it themselves if they so wish and they are old and motivated enough.*

Secondly, the change is needed to enable both parents to make their status as parents effective. Unfortunately parents having parental responsibility is no guarantee that agencies, even public ones, will respond properly. Many of our members have a struggle to get information about their children from state schools and to be told about parents' evenings and so on. This is despite having a clear legal right to it. Private schools and nurseries are even worse. Primary Health Trusts seem to defy the law almost systematically and deny non-residential parents, even those with Parental Responsibility, information about the medical treatments and condition of their children. *There is an urgent need for official guidance to be issued that they must communicate with non-resident parents with PR.* But without PR the struggle for a non-residential parent to get information or to be allowed to be involved *cannot even begin.*

## 6. Answers to the consultation questions

**Question one: Do you agree with the underpinning principles that the Government has developed for birth registration? Are they sufficient for a system that proposes to require joint birth registration?**

*We agree. We do so as the principal agency representing fathers living apart from their children. The number of Non Residential Parents is not known precisely but a plausible estimate is 2.5m (with some 4 million children). We have the authority, based on our knowledge of this group, to say that this proposal has their support.*

**Question two: Is making parents jointly responsible for registration the right approach?**

Yes. Joint registration recognises both parents. It is imperative that the law is changed to that effect. It would send a powerful signal and give registrars the appropriate powers. If a totally voluntary approach were adopted, we believe that there is a serious risk that little would change. Hard-pressed registrars would afford it a low priority and parents would behave much as now.

Any penalty for non-registrations should of course be visited on the parent who failed to register the birth and not the other parent, unless the latter has actively obstructed the other parent's right to be registered by concealing the father's identity without good reason and/or failed to inform him of the birth. Fines would be justified in the latter circumstances.

**Question three: Do you agree that we have identified the appropriate exemptions? Are there any other circumstances in which parents should be exempt from joint responsibility to register a birth?**

We think it is important, as already said, for the birth certificate to contain the names of both parents. This would apply even if one of the parents were a rapist, or abusive. They are still part of the child's story, even if a distressing and sometimes horrific one. What would of course absolutely **not follow** is any right of an unfit parent to have further involvement or responsibilities. Such a father would be named on the certificate but not be permitted to register the birth nor have any of the consequences of that. He would however have the right to be informed that his name was being put on the certificate, lest false allegations were made.

We can see no possible rationale for not registering their identity if they were dead, as paragraph 57 suggests.

The grounds listed in No 58 seem broadly the correct exclusions. *However, we think they will be too readily and sometimes wrongly invoked.* That the matter be settled by a court in the event of dissent from allegations made is inevitable. *However the current proposals do not have the right balance between the parties.* Take the allegation that 'a father is or could become, violent or abusive'. It should not simply be for the mother to allege this, and the father to have to contest it in court. Often, as said in the paper, these cases may involve very young parents and those who are 'socially excluded'. A very young father without personal or educational or financial resources will be in no position to contest such an allegation legally. Research has shown that most such fathers want involvement but that this is commonly not recognised.<sup>3</sup> As the consultation paper itself notes, these early moments may be crucial. The line taken then that may be irreversible although the parents may be very different when they are a bit older.

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<sup>3</sup> Speak S, Cameron S, Gilroy R (1997) *Young single fathers: Participation in fatherhood - bridges and barriers*, Family Policy Studies Centre.

*Rather than a presumption requiring a challenge from the father, we favour the need for every case to be scrutinised by the courts. As, for example, in the divorce courts, there would be an 'applicant' for non-registration – in effect the mother – and a 'defendant', in effect the father. The allegations would have to be explicitly made and the papers formally served. If they are uncontested (as in the vast majority of divorces) the outcome would be a formality. The administrative costs would then be minimal. The need to protect the children from the wrongful exclusion of one of their parent would justify the occasional need to review and make a decision on the evidence and arguments.*

It needs to be said explicitly that the test for the courts would be the welfare of the children. This is to avoid the possible implication that 'a finding of fact' on whether one of the tests for exemption is met would of itself be sufficient. Of course it would be in the vast majority of cases, but the courts would need discretion. And the law should be so framed that the courts will have to be given evidence of past actions, not some vague potential for misbehaviour alleged by the mother. The words 'or could become' in 'a father is or could become, violent or abusive' should be struck out.

**Question four: Does the approach set out strike the right balance between the new right of both parents to register the birth of their child and the need to protect children and vulnerable women?**

*We have strong reservations about these proposals. Clearly it is unreasonable to expect the mother to do any 'follow up' enquiries herself. However, we think it is important for the identity of both parents to be established whenever that is possible. Not to do so risks removing much of the benefit conferred by the proposals, for many young fathers are likely to fall through the net if the mother is given no encouragement to identify him. It is important for the father to be required to register except in the cases discussed below. This would involve some tracing in some cases, possibly done by contractors or a specialist agency. But the starting point should be that in the small minority of cases – currently around 7 per cent – where the father is not registered, the registrar would encourage the mother to identify him. Training would have to be provided to ensure that these enquiries are made sensitively and appropriately.*

We recognise the dilemma. We have no wish to put pressure on mothers at this sensitive time. But there will also be a need to 'complete the record', and for the name to be on the Birth Certificate in order to protect the child's identity.

There is also a need to protect the child from the wrongful exclusion of a possibly loved and loving father. *We favour more concern and resource for this.*

There are cases where the mother simply does not want the father to know she had become pregnant or had a baby. *This will be too easily done under these provisions.* He may wish to be involved, the child would benefit from it. We had such a case come to one of our surgeries. The mother had told her story to a tabloid paper. The main point of the article was she had found a loophole in the law concerning sperm donation to get herself pregnant without an involved man for a fourth time. But she also reported that her first three pregnancies had been from 'natural' conceptions. She had deliberately broken off the relationship with the man involved as soon the role she had in mind for him was over. The man who came to us realised that he must have been the father of the first child, and wanted to be play a part in the upbringing of his child.

Several other members have found out that they were fathers in various ways – sometimes only via a CSA demand years after the birth. They felt this very wrong; they should have been told at the time; they feel strongly about it. Is it not part of Human Rights to 'family life' that one knows that one has a child? Those fathers that have come to us are those who wanted to be involved with a person they had fathered. Some feel passionately. They will be lobbying their MPs and taking other legitimate action to get attention to their complaints. ***There will be a struggle over the provision as currently drafted and amendments need to be made in advance.***

We think that the occasions where a mother genuinely does not know who the father is, or at least who it could be are, even today, very rare. There are more allegations of women deliberately 'seducing' a man in order to become lone parents. There may be no knowing how often this happens - but it surely does. We think this should be discouraged for all sorts of reasons but principally because the children deserve better. Some of these decisions will have resulted from deliberate planning. The decisions of the mother will be affected by any known consequences. Making it too easy to avoid identifying the father would be to forgo a way of discouraging this behaviour.

Nearly all 'fathers not known' will be the result of a wish to exclude one parent from the child's life. Simply not wanting the father to know is not good enough grounds for excluding him – unless one of the other exemptions are applicable.

It should not be an easy option.

The mother in such cases should have to convince the registration officer that she really did not know. To avoid the distress this might cause shortly after the birth, and to enable the mother to reflect, a possibly stressful interview could be delayed. An interim sole registration could be made, but a further fuller statement required later. She should be required to make and sign under oath

a statement of what in her view had happened and the names and details of those involved or how it was that she was unable to identify them. She would be warned that penalties would be attached if she 'changed her mind' (in an attempt to collect maintenance for example) or if other evidence came to light that she had misled the officer. That would be perjury.

Failure to co-operate fully with the investigations of the registration officer would be sanctioned. The purpose of the sanction would not of course be for it ever to be applied, but to ensure compliance. If it were known and unavoidable, there would be little or no failures to comply. The Children and Adoption Act 2006 has a 'ladder' of sanctions designed to ensure compliance with Court Orders by a resident parent without harming the child. At the lower end will be a requirement to attend parenting or counselling sessions, at the upper end community service. This would of course have to follow a legal hearing. Another suggestion would be to withhold child benefit. *Suggestions in this area need exploring.*

Who should conduct the enquiries? The first line should obviously be the registration officer. They would do the initial interviews with the requisite discretion and tact. If full and free cooperation was not forthcoming, it should be handed over to another agency. It could be Social Services, the CSA/C-MEC (which will often have an interest), or CAFCASS, or the task could be contracted to specialists.

The more authoritative the requirements, the less any sanctions will need to be used. The rules would need applying with discretion. We would not envisage the guidelines covering their application would require any officer to get 'heavy' with for someone who is 'genuine' but vulnerable. An 'understanding' stance would *not* be appropriate, however, over the stand of, for example, a celebrity who, allegedly, knows exactly who the father of her baby is but has changed her mind about his involvement and so reportedly said she 'did not know', or with others clearly acting similarly.

**Question five: Do you consider a fine to be an adequate penalty for a father who accepts paternity but refuses to be registered on his child's birth certificate?**

Yes. Such behaviour is shameful but there seem no grounds for treating a father who does not register a birth any differently from a mother. As noted above, fines therefore seem justified if a mother actively obstructs the father's opportunity to register, without good reason.

There also needs to be more attention given to the problem of supplying malicious information, for example wilful misleading of the registrar or the court in claiming exemptions.

**Question six: Do you agree with the registration service developing a proactive signposting role for potentially vulnerable mothers?**

Yes we agree, for vulnerable mothers **and fathers**, and we would go further. Jack Straw, when at the Home Office, suggested a debate about the possible further development of the Registration of Births as an educational and ceremonial tool. We would welcome that, and think there are many opportunities that could delight parents as well as meeting public needs. Parenting messages on which there is consent should be pushed as far as universally acceptable as part of the official registration process. They should include the need of children for both their parents. There are many other possibilities of formalities and ceremonies, perhaps on the model of marriages and registrations of civil partnerships. They could both celebrate social diversity while emphasising social cohesion on fundamental values. This could be a very rich area for experiment. The Baby Naming Society set up by the late Michael Young is a source of ideas. **Such services should be available to both mothers and fathers.**

There should also be a pro-active and continuing campaign by registrars to educate all new fathers and mothers of their rights and responsibilities under the new law. A variety of media should be deployed to ensure that the message gets through to those parents least likely to register.

**Question Seven: Do you think that the non-legislative initiatives identified above would promote joint birth registration? Do you think that there should be any further initiatives in this area?**

The culture of shared parenting, within and outside the parents having a shared home, will both promote and be promoted by joint registration. As noted above, the non-legislative initiatives must be founded on bedrock of clear and new legislation.

Part of FNF's current programme is to ask for an audit of the whole of government policy for its impact on the shared parenting of children. We could write a full statement but a minimum policy would include

- A formal, statutory right of children of separated parents to a relationship with both of them, unless this would be against their welfare. This would be in accordance with the UN Convention on the Rights of the Child. It would extend to the children of separated parents the rights to their parents that children who have been neglected and abused currently already have under the *Children Act 1989*.
- The sharing of state financial and other support to parents, such as child benefits and tax credits, between them pro rata the time and costs they incur.

- Making residence orders to both parents unless there are reasons against.
- The equal treatment of both parents by public agencies, such as health authorities and health visitors.
- Ensuring that 'family friendly' employment and other policies are available, both legally and in 'real' ability to access them, to both parents.
- Putting maternity and paternity leave and benefit on a basis that is not discriminatory by sex. This would involve the father having paternity rights when both mother and baby were frail and the mother having rights to enable her to recover her strength and to breast feed. However any rights for any longer period than for the mother to recover and to breast feed are to provide the baby with a carer. These should be equally available to both parents.

**Question Eight: Should we work to promote joint registration within the existing legislative framework, or should we use non-legislative measures to compliment the legislative approach set out in chapter 3?**

The need is to use both legislative and non-legislative means to promote a virtuous cycle. The move towards shared and co-operative parenting has so far been without the support of public policy. Some aspects of policy, for example the CSA, actually promote a vicious cycle of the exclusion of one parent. It is abundantly clear from the history of family policy in this country that passing laws alone is never sufficient to bring about positive change, though it is often a necessary condition. All the relevant public services and relevant parts of the voluntary sector should be mobilised in support of the new law, if it is passed, as we very much hope it will be.

### **Families Need Fathers**

21 September 2007

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