



An Roinn Dlí agus Cirt
Department of Justice

Request for Tender for Research Services

Review of the operation of the provisions of the Guardianship of Infants Act 1964 as they relate to guardianship of children whose parents are neither married or in a civil partnership



Request for Tender for Research Services

Applications for tenders must be returned to research@justice.ie by **17:00 10th June 2021**

Section 1. Background information and invitation to tender

1.1 The Department of Justice

The Department of Justice (“the Department”) is a department of the Government of Ireland. The Department's mission is to work to make Ireland a safe, fair and inclusive place to live and work. It has a wide range of responsibilities including, state security, the protection of life and property, the prevention and detection of crime, maintaining and promoting fairness, providing services for the buying and selling of property, managing inward migration to the State, providing a Courts Service, updating our criminal and civil laws and regulatory services.

Specifically, Goal 2 of the Department’s Strategy Statement 2021 – 2023 refers to the Department’s responsibility to widen access and to identify and remove barriers to the justice system so that it meets the needs of the public, society and business. Thus is the broad context for undertaking this particular piece of work.

1.2 Background to the tender

The Department invites tenders for research:

- (i) To review the operation of the provisions of the Guardianship of Infants Act, 1964 as they relate to guardianship in cases where parents are not married or in a civil partnership.
- (ii) To review the amendments made by the Children and Family Relationships Act 2015 to the relevant provisions of the 1964 Act concerning guardianship rights of parents who are not married or in a civil partnership.
- (iii) To research the practical experiences of parents in Ireland in relation to issues arising from the current legislative position of guardianship rights in Ireland.
- (iv) To explore the approach taken by other jurisdictions in extending ‘guardianship’ rights to parents who are not married or in a civil partnership.

Establishing a knowledge and evidence base in this area has become a research priority for the Department.

In Ireland, there has been extensive reform of family law in recent years to place a greater emphasis on recognising the rights of the child, of both his or her parents and to make better provision for guardianship of children.

The reforms provided for in the Children and Family Relationships Act 2015 recognised the crucial role of parents and the need for a child to maintain meaningful relationships with both parents. Under Irish law, married parents of a child are automatically joint guardians and have joint custody of their children. However, if the father is not married to the mother of the child, he will not automatically become a guardian of the child.

There are provisions in place to facilitate unmarried fathers to become guardians of their children.



Section 2(4A) of the Guardianship of Infants Act 1964 as inserted by the Children and Family Relationships Act 2015 provides for joint guardianship of a child for a father who is not married to the mother of the child and who has cohabited with the mother for a period of not less than 12 consecutive months. This 12 month period must include a period, occurring at any time after the birth of the child, of not less than 3 months during which both the mother and father have lived with the child.

Under section 2(4) of the Guardianship of Infants Act 1964, a father who is not married to the child's mother may become a guardian if the parents jointly make a statutory declaration appointing him as a guardian. A statutory declaration as to guardianship may be made before a registrar of the Civil Registration Service within 14 days of the registration of the birth of a child.

It is open to a father who is not married to the child's mother to make an application to court at any stage for guardianship of the child under section 6A of the Guardianship of Infants Act 1964.

Section 6B of the Guardianship of Infants Act 1964 contains similar provisions relating to guardianship for parents of children born as a result of donor-assisted human reproduction procedures.

The Justice Plan 2021, which was published by the Minister for Justice in February 2021, includes as an action the publication in 2021 of a review of the operation of the provisions of the Guardianship of Infants Act 1964 relating to guardianship of children whose parents are not married or in a civil partnership.

Carrying out independent research in this area, examining the approaches taken in other jurisdictions and getting the view of experts in the area, will provide the Department with a robust evidence base for any future policy and legislative changes around this issue. This work will inform the Department's thinking on whether any legislative and/or policy changes may be required.

1.3 Research aims

The aims of this research are to:

- Provide an analysis of the impact – intended and actual - of the provisions of the Guardianship of Infants Act 1964 as amended by the Children and Family Relationship Act 2015 as they relate to parents who are not married or in a civil partnership.
- To give a brief overview of the principle of guardianship in a legal and policy orientated context.
- Identify and outline the various approaches and responses being taken in other jurisdictions to deal with the issue of guardianship in the case of unmarried parents (legislative and otherwise).
- Describe, outline and evaluate any studies which have examined the effectiveness of these various international approaches.
- Assess the relevance of these studies to the Irish context.
- Investigate what is known about the prevalence of this issue (in Ireland or internationally) through examination of the literature.
- Identify any gaps on a policy and/or legislative level in Ireland that need to be addressed.

Key research questions

This research has three related key areas/questions.



1. Exploring the impact of the provisions of the Guardianship of Infants Act 1964 as amended by the Children and Family Relationship Act 2015 in Ireland including an exploration into parents' practical experience of guardianship issues arising from the current legislative situation.
 - As it currently stands, how does guardianship legislation operate in relation to unmarried parents?
 - Are there any negative impacts on this category of parents based on the current legislative framework?
 - What were the outcomes for parents and children, intended or otherwise, of the amendments made by the Children and Family Relationships Act 2015 to the Guardianship of Infants Act 1964 in relation to the law surrounding guardianship rights of unmarried parents?

2. Exploring the Irish literature, reporting and academic commentary in relation to the issues arising for unmarried parents based on the current legislative framework:
 - Are there any key themes which emerge from the Irish commentary on the issue of unmarried parents and guardianship under Irish law?
 - What are the proposed interventions, solutions or reforms posed by relevant stakeholders, authors and academics in relation to guardianship for unmarried parents?

3. Develop a comparative understanding:
 - What is understood by guardianship in law in Europe particularly within the EU/EEA and internationally, with particular emphasis on common law jurisdictions? Has this understanding changed over time?
 - What can be learned from an international context that can help us understand and deal with the issue of guardianship in Ireland?
 - What interventions have been undertaken internationally to tackle legal issues relating to guardianship for unmarried parents? What are the various approaches taken in other jurisdictions on this issue? This should include (but not be limited to) examination of the following: legislative interventions, specific statutory measures, laws policies, guidelines, specific interventions.
 - What has been the specific situational context in which these have been undertaken, i.e. what may have prompted these interventions?



- How successful have they been? What has been the impact of these various approaches? What evidence is there for their effectiveness (or lack there-of)? What contributes to effectiveness?
- To what extent are international interventions transferable to an Irish context?

Approach

A core part of the methodology should be a review of the relevant literature – international and domestic – in order to understand the national and international context. The review should cover evidence and literature published from 1998 to 2021. The articles reviewed should be in English, within peer reviewed journals and government/agency publications. If other research sources are to be included, it should be clearly stated in the proposed methodology and a rationale provided, along with a clearly stated approach as to how they will be dealt with.

A key component of the approach taken will be the undertaking of a series of interviews (n = 50+) with relevant parents on the impact of legislation on their experiences, outcomes in relation to the law surrounding guardianship and any impacts on the lives of their children. Where appropriate the Department may assist in the recruitment of respondents.

However, proposals within the methodology as to how other sources of data and information could be used to inform answering the above research question would also be welcomed. The methodology section should also include proposals that examine how on-line, off-line and any grey literature resources will be analysed.

The tenderer will be required to outline the approach that is proposed to be taken in undertaking this work in the attached submission form. In doing so, the following key questions must be addressed as part of the response to the review of literature:

- Full details of the methodology to be used, including the strengths and limitations of the proposed approach as well as any ethical concerns
- For the literature review, what the key search terms will be, and the rationale for their selection and use stated
- What academic databases or other sources will be used to sample from
- The process for deciding which articles to include for the review and which to exclude
- The data recording process (essentially, what are the key data points you will record for each study such as author, year of publication, what type of study, evaluation type and its strength)
- The process that will be used to assess the quality and methodological rigour of the articles
- How the findings within articles will be synthesised

Any additional methodological approaches, for example on-line analysis, should also be accompanied by an appropriately detailed description to allow for an assessment to be made of its strength.

Tenders should also include details of stakeholders to be considered for interview.

1.4 Research outputs



The target audience for this research include: Department of Justice Civil Justice Legislation and Policy Divisions, practitioners in the field, and the research community. The final report should provide evidence-based recommendations for actions and interventions most likely to be successful in dealing with the legal concept of guardianship. Importantly, these recommendations should be tailored to the specifics of guardianship in Ireland. Findings from this research will be used to inform any legislative changes, policy decisions/actions in this area.

As noted, a core element of the research will be to undertake a review of the research literature in this area.

The research outputs should include:

- An interim report highlighting key emerging findings and analysis. This can be presented as a slide pack.
- A final draft report, identifying findings, analysis and implications to be submitted to the Department of Justice by 30th November 2021
- A presentation on the final report to the Department of Justice

1.5 Timeframe

The Department is eager that the tenderer will be ready to start as soon as possible and asks that tenderers specify how soon they would be in a position to commence the work. Duration of the tender will be no more than five months after the awarding of the tender.

The estimated budget for this study is €25,000 (excluding VAT).

Section 2. Instructions to Tenderers

2.1 Format of tenders

Tenderers should complete and submit the application form. Tenders submitted in formats other than the application form will not be considered.

2.2 Compliant tenders

To better ensure compliance with the tendering process, tenderers should read this document in full including Section 5 'Terms and conditions'. If a tenderer fails to comply in any respect with the requirements of this paragraph, the Department reserves the right to reject the tender as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- Seeking written clarification from the tenderer;
- Seeking further information from the tenderer; or
- Waiving a requirement, which in the Department's view, is non-material or procedural.

Tenderers are required:

1. To submit all documentation which this Request for Tender (RFT) requires to be submitted with their tender;
2. To conform to and comply with all instructions and requirements set out in this RFT;
3. To submit the statement required under Appendix 1;
4. Not to alter or edit this RFT in any way.

2.3 Submission of tenders and closing date for application

Completed application forms must be sent by email to research@justice.ie with subject line



“Guardianship review”.

Completed application forms must be received no later than 17:00 on 10th June 2021 (the ‘tender deadline’). Application forms received after the tender deadline will NOT be considered.

Section 3. Queries and clarifications

All queries related to any aspect of this RFT must be directed to research@justice.ie. The Department reserves the right to issue or seek written clarifications. The Department reserves the right at any time before the tender deadline to update, cancel or amend the information contained in this document and/or to extend the tender deadline. Participating tenderers will be informed of any such clarification, amendment or extension by email.

Section 4. Evaluation of tenders and award of contract

4.1 Criteria for award of contract

The contract will be awarded out of a total of 100 marks on the basis of the most economically advantageous tender as identified in accordance with the following criteria:

- Proven and demonstrable track record, project description and demonstrated understanding of the work involved in conducting the research(35)
- Feasibility of the approach suggested to the research (20)
- Ability to deliver key outputs on time (10)
- Cost – broken down to show description of costs, justification for proposed costs and best use of resources (35).

Award of the contract to the highest ranked tenderer (as determined by the above paragraph) will be conditional upon the tenderer submitting the following evidence in respect of the tenderer (including any subcontractor as applicable) to the extent not already provided, within seven days of request by the Department (i) a Declaration in the form attached as Appendix 1 at “TENDERER’S STATEMENT” and (ii) all or any of the supporting documents specified in the section 2.1 on ‘Format of tender’.

The Department does not bind itself to accept the lowest priced of any tender. This RFT does not constitute an offer or commitment to enter into a contract. No contractual rights in relation to the Department will exist unless and until a formal written contract has been executed by or on behalf of the Department.

The tenderer will be required, if necessary, to outline and agree the approach which it proposes to take to the research with the members of the Department's Research Advisory Group/Research and Data Analytics Unit.

4.2 Payment conditions

- i. All prices quoted must be all-inclusive of all expenses anticipated inclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- ii. Tenderers must confirm that all prices quoted in the tender will remain valid for three months following the tender deadline.
- iii. Payment for the delivery and implementation work will be on foot of appropriate invoices. Invoicing arrangements will be agreed with the successful contractor, following the award of contract.
- iv. The provisions of the Prompt Payment of Accounts Act 1997, as amended or



revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

4.3 Taxation requirements

It will be a condition of any contract pursuant to this RFT that the successful tenderer shall, for the term of such contract, comply with all applicable EU and domestic tax laws. Tenders are referred to www.revenue.ie for further information. Prior to the award of any contract arising out of this RFT, the successful tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Department. By supplying these numbers, the successful tenderer acknowledges and agrees that the Department has the permission of the successful tenderer to verify its tax cleared position online.

4.4 Subcontractors

Tenderers should note that where a tenderer is relying on the capacity of other persons or entities (for example subcontractors) for the purposes of fulfilling any of the award criteria set out below, it must ensure that each such person or entity, when requested by the Department, will submit proof, to the satisfaction of the Department, that it will place the necessary expertise at the disposal of the tenderer.

If a tenderer does not, upon request by the Department, provide evidence which is considered by the Department as sufficient to demonstrate the fulfilment by any subcontractor on whose capacity the tenderer relies of the award criteria (or any one of them) in accordance with this RFT, it shall be excluded from further participation in this tender process unless it replaces the subcontractor with one which meets all relevant requirements of this RFT. Any such replacement cannot affect the price submitted.

Section 5. Terms and conditions

5.1 Liability and warranty for tender information

While every effort has been made to provide comprehensive and accurate information in this request for tender, the Department does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers as appropriate.

5.2 Data protection

With effect from 25 May 2018, a new Europe wide data protection regime has come into place under the General Data Protection Regulation (GDPR). The GDPR significantly increases the obligations and responsibilities for organisations and businesses on how they collect, use and protect personal data. All data will be processed in accordance with GDPR and relevant data protection law. Applicants are required to comply with the requirements of data protection legislation and the General Data Protection Regulation (GDPR).

5.3 Tendering costs

All costs and expenses incurred by tenderers relating to their participation in this RFT shall be borne by the tenderers exclusively.

5.4 Confidentiality

All documentation, data, statistics and information furnished by the Department to tenderers during the course of this RFT:

- i. are furnished for the sole purpose of replying to this RFT only;



- ii. may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Department;
- iii. shall be treated as confidential by the tenderer and by any third parties (including subcontractors) engaged or consulted by the tenderer; and
- iv. must be returned immediately to the Department upon cancellation or completion of this RFT if so requested by the Department.

5.5 Publicity

No publicity regarding this RFT or any contract pursuant to this RFT is permitted unless and until the Department has given its prior consent to the relevant communication.

5.6 Ownership

Ownership of any reports or material produced relating to any contract awarded as a result of this RFT rests with the Department.

5.7 Copyright and publication

Copyright of any reports or material produced shall rest with and be assigned to the Department. The Department shall have the right to publish, or not as the case may be, and to disseminate the report in both its original and in a modified form, without further reference to the tenderer. The tenderer will not be entitled to further payment if this occurs. The tenderer and the individual researchers will be entitled to be credited with the work that they have done on this project in any publication.

5.8 Registrable interest

Any registrable interest involving any tenderer or subcontractor and members the Department, members of the Government, members of the Oireachtas, or employees and officers of the Department and their relatives must be fully disclosed in the tender or, in the event of this information only coming to the notice of the tenderer or subcontractor after the submission of a tender, must be communicated to the Department immediately upon such information becoming known to the tenderer or subcontractor.

The terms 'registrable interest' and 'relative' shall be interpreted as per section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.ie. The Department will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a tenderer from this RFT or terminating any contract entered into by a tenderer.

5.9 Anti-competitive conduct

Tenderers' attention is drawn to the Competition Act 2002 (as amended, the '2002 Act'). The 2002 Act makes it a criminal offence for tenderers to collude on prices or terms in a public procurement competition.

5.10 Freedom of information

Tenderers should be aware that, under the Freedom of Information Act 2014, information provided by them during this RFT may be liable to be disclosed.

Tenderers are asked to consider if any of the information supplied by them in their tender should not be disclosed because of its confidentiality or commercial sensitivity. If tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, tenderers must, when providing such information, clearly identify the specific sections of their tender containing such information and specify the reasons for its confidentiality and commercial sensitivity.



5.11 Conflicts of interest

Any conflict of interest or potential conflict of interest on the part of a tenderer, subcontractor or individual employee or agent of a tenderer or subcontractor must be fully disclosed to the Department as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Department may invite tenderers to propose means by which the conflict of interest might be removed. The Department will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a tenderer from this tender process or terminating any contract entered into by a tenderer.

5.12 Withdrawal from the RFT process

Tenderers are required to notify the Department immediately by email to research@justice.ie if they decide to withdraw from the RFT process.

5.13 Insurance

The successful tenderer shall be required to hold for the term of the contract the appropriate level of insurance cover in order to carry out work associated with this project.



Appendix 1

Research Tender Submission

Lead Researcher:

Institution:

Project Title:

Researchers:
Please list the name and institution of all researchers involved in the project, their proposed role in the project and the proportion of their time that will be spent on the project.

Academic Background:
Please outline your experience and expertise relevant to the proposed project including demonstration of a proven ability to carry out the work in an impartial and objective manner.



Feasibility of proposed project:

Include a brief project summary. Please include aims and objectives, methodology, background and significance of the research question/problem.

Proposed Cost and Value for Money:

Demonstrate appropriate allocation of resources and demonstrated value for money (full description of costs, justification for these costs and a plan to ensure best use of resources).

Conflict of Interest Declaration:

Outline any conflicts of interest.



Timelines:

Outline the timeframes for commencement and completion of the project.

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Ethics Statement:

Applicants are required to submit a written statement that full consideration has been given to the ethical implications of the research proposal.

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By signing the tenderer’s statement, tenderers confirm that, if awarded a contractor under this RFT, (i) they will, from the effective date of the contract (as defined in the contract), obtain and hold the types and levels of insurance specified above (ii) the territorial limits and jurisdiction of tis insurance policies include the Republic of Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the tenderer’s insurance company or broker to this effect may be requested from the successful tenderer prior to the award of any contract.

TENDERER’S STATEMENT

Tenderers shall complete and return the following form of Tenderer’s Statement signed by the Tenderer.

Tenderer’s Statement

Having examined your Request for Tender (RFT) including the instructions to tenderers, the selection and award criteria, the requirements and specifications, I hereby agree and declare the following:



- i. I understand the nature and extent of the research required to be delivered as described in the RFT;
- ii. I accept all of the terms and conditions of the RFT;
- iii. I accept all the award criteria as set out in the RFT;
- iv. I agree to provide the Department of Justice with the research requested in the RFT;
- v. I agree that, if awarded a contract, I shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
- vi. I confirm that I have complied with all requirements as set out in the RFT.
- vii. I confirm that all prices quoted in my tender will remain valid for the period of time commencing from the tender deadline.
- viii. I shall, if awarded any contract under the RFT, have in place on the effective date of the contract all insurances (if any) as required by the RFT.
- ix. I confirm that all data subjects whose personal data is provided in my tender have consented to the processing of such personal data by me, and by the Department of Justice and by the evaluation team for this tender or that I otherwise have a legal basis for providing such personal data to the Department of Justice for the purposes of my participation in this tender and that I will provide evidence of such consent and / or legal basis to the Department of Justice upon request.

SIGNED

Print name

Address

Date

Signature of Lead Researcher: