



**LGBT
IRELAND**

For Inclusion
For Equality
For Everyone

A Guide to the Legal Recognition of Parenting Relationships for LGBTQ Families

The purpose of this guide is to explain the legal position, as it is currently understood, for many of the known pathways to parenthood involved in LGBTQ Families. Legislation in this area is changing and this document attempts to set out the position pre-commencement and post-commencement of the relevant sections of the Child and Family Relationships Act 2015 (CFRA 2015) while also addressing situations which are not covered by the CFRA 2015 or may be addressed in other legislation.

PLEASE NOTE: This document is provided for information purposes only and does not constitute legal advice. If you are unsure as to the legal status or benefit of any actions or have a complex situation that is not addressed here, please contact your legal representation if you have access or contact FLAC www.flac.ie who may be able to assist you.

Current Position (July 2018)

The Commencement of Parts 2 & 3 of the Child and Family Relationships Act 2015 will allow some LGBTQ Parents to be legally recognised as co-parents of their children otherwise than through adoption by one or both parents.

While some of the CFRA 2015 has been commenced since enactment in 2015, one of the primary reasons for the delay in commencement of parts 2&3 was errors in the drafting of certain sections. An amendment bill to correct those errors is currently being brought through the Oireachtas and it is possible that the sections can be commenced, along with Part 9 which establishes the Donor-Conceived Person Register, in or about October 2018.

What do Parts 2 & 3 CFRA 2015 cover?

The primary focus of Parts 2 & 3 are conceptions using donor sperm in a clinic in Ireland. In practical terms this is most likely to affect lesbian couples or same sex couples where both partners are legally recognised as female, where one partner carries the pregnancy.

What do Parts 2 & 3 CFRA not cover?

As the primary focus of Parts 2 & 3 is as set out above, they do not cover **Adoption, Surrogacy, Home Inseminations** or **Reciprocal IVF** using donor sperm. Further information is provided below in relation to each of these pathways to try to clarify the legal position for each and the relevant developments in these areas. An additional guide in relation to accessing **Guardianship** rights is provided for those parents who may not be able to avail of parentage rights but wish to access some legal protection for their family. Further information on Guardianship generally and the specific differences between Guardianship and Parentage rights is included below.

In relation to pathways to parenthood not currently included in legislation, the Assisted Human Reproduction Bill 2017 may afford a significant opportunity for inclusion. Where relevant details of

the progress of this Bill is included in individual sections below and an information chart is included at the end of this document.

Future Position (Possibly Late-2018 Provided Act is fully Commenced)

What happens post-commencement?

Commencement will allow for certain same-sex parents to register with the Registrar for Births, Deaths and Marriages, as parents, and obtain a birth certificate which reflects this, in the following circumstances:

1. **Retrospective recognition** of children conceived pre-commencement:
 - Using an **anonymous** sperm donor in clinic **in Ireland OR Abroad**
 - Using a **traceable** sperm donor in a clinic **in Ireland OR Abroad** (i.e. child has a right to trace the donor when they reach 18 years of age)

The date of conception is the relevant point in time, so a pregnancy ongoing at time of commencement will not be affected and any children born as a result of that pregnancy will be covered by the retrospective provisions.

It is also worth noting that Section 26(5) allows clinics to use donor sperm acquired before the date of commencement in a DAHR procedure for a period of three years from the date of commencement regardless of the anonymous status of the donor. This is only where the intending parent is already the parent of a child born as a result of a DAHR procedure using sperm from the same donor but clearly allows families that wish to have genetic siblings to achieve that objective. A similar position arises with respect to embryos created prior to commencement regardless of the anonymous status of the donor(s) however there is a significant argument that the 3 year time limit will not apply to embryos.

2. Future recognition for children conceived **post-commencement** date:
 - Using a traceable sperm donor in a clinic in Ireland ONLY.
 - Using a known donor in a clinic in Ireland ONLY (although it is not known how this process would work in practice, in theory the legislation does appear to allow for this scenario).

This means that children conceived post-commencement in a clinic abroad or in a clinic using an anonymous donor will not be covered by the legislation. It is not clear why the CFRA 2015 does not recognise clinics abroad particularly when many of them could be in a position to satisfy the document requirements of the CFRA 2015. Going forward this is something that should be addressed in all future legislative developments.

What will the process look like?

A **Practical Steps Guide** for information on how recognition will be provided under the CFRA 2015 is available.

ADOPTION

Adoption in Ireland is governed by the Adoption Act 2010 which was most recently amended in 2017. This legislation allows for adoption as a direct pathway to parenthood for LGBTQ people as individuals or couples but it also allows recognition of foreign adoptions in Ireland.

Further information on each of the processes through which people can become an adoptive parent is available - please see our **Guide to Adoption**.

At present, it is understood that some couples applying for second parent adoption (i.e. one parent is already recognised as a biological parent) have been requested to wait until commencement of Parts 2&3 (in the case of female same-sex couples) or have been informed that their foreign surrogacy cannot yet be recognised (in the case of male same-sex couples). It is hoped that commencement of Parts 2&3 CFRA 2015 will highlight those female same-sex couples covered by parts 2&3 and those not which will allow for greater clarity around who can avail of adoption rights. With respect to foreign surrogacies, it is understood that with legislation allowing for surrogacy in Ireland (through the Assisted Human Reproduction Bill), recognition of foreign surrogacies will also be permitted.

SURROGACY

Currently in Ireland there is no enacted legislation that addresses surrogacy as a pathway to parenthood. The General Scheme of the Assisted Human Reproduction Bill 2017 (AHR Bill) was published by the Department of Health in October 2017. While the intention of such a bill includes providing a legal framework for domestic surrogacy, it has not yet progressed through the many significant steps of the normal legislative process – it is currently undergoing pre-legislative scrutiny. One noticeable inclusion in the proposals is a complete ban on commercial surrogacy with emphasis instead on payment of ‘reasonable expenses’ to the surrogate only which is a common approach in many countries that already allow for surrogacy.

Without this legislation, parents (particularly gay couples or couples where both partners are legally recognised as male) cannot automatically be recognised as parents other than through adoption. Such parents may choose to consider **guardianship** as a means to protect the family relationship while waiting for enactment of legislation in this area.

HOME INSEMINATIONS

Home insemination using donor sperm has been and may continue to be a common pathway to parenthood for many same sex couples where one partner carries the child through pregnancy. Unfortunately, the Children and Family Relationships Act 2015 does not recognise this type of conception regardless of whether a known, traceable or anonymous donor was used.

There are a number of reasons for this, one of which is that the CFRA 2015 is focussed on the clinic setting which allows for certain documents to be generated which are required for the recognition of parentage under that Act e.g. records of consents, records of the procedure actually performed, etc.

The main reason for this however appears to be a Supreme Court judgment from 2009 which recognised a ‘known donor’ as having the same parental rights as any other natural father in circumstances where a child is conceived via ‘home-insemination’. This also recognises that the child has rights with respect to the recognition of the donor as their father.

In the absence of direct legal recognition, such parents may choose to consider **guardianship** as a means to protect the family relationship.

Going forward, it is hoped that throughout the legislative process around the Assisted Human Reproduction Bill 2017 (AHR Bill), that recognition of children born through home insemination can be sought alongside areas such as surrogacy and reciprocal IVF.

RECIPROCAL IVF

Reciprocal IVF, also known as ‘shared motherhood’, involves using donor sperm but also the birth-parent (and legal mother) carrying a child conceived using the egg of the other intended parent. Currently in Ireland there is no enacted legislation that addresses reciprocal IVF as a pathway to parenthood. From a legal perspective this situation is somewhat similar to the position around surrogacy except that both parties involved (the birth-parent and egg donor) are intended parents in this context.

The exclusion of reciprocal IVF conceived children from the CFRA 2015 appears to have been an unintended consequence of focussing on the donor’s consent to give up parenting rights with respect to the child. In this context the donor of the egg is an intended parent and such consent would defeat the purpose of reciprocal IVF.

At the moment, in the absence of direct legal recognition, such parents may wish to consider **guardianship** as a means to protect the family relationship. However, going forward, it is hoped that throughout the legislative process around the Assisted Human Reproduction Bill 2017 (AHR Bill), that recognition of children born through reciprocal IVF can be sought alongside areas such as surrogacy and home inseminations.

GUARDIANSHIP

It is important to recognise that Guardianship is very different from parentage especially as most parents are automatically recognised as guardians but not all guardians are parents. Most significantly however ceases when the child turns 18 whereas as parentage is recognised indefinitely. This can have considerable impact on things like inheritance.

The following table sets out the main differences:

PARENT	GUARDIAN
Right to make all major decisions in relation to the child’s upbringing e.g. school, religion, etc.	Right to make all major decisions in relation to the child’s upbringing e.g. school, religion, etc.
Duty to maintain the child until no longer dependent.	Duty to maintain the child until no longer dependent.
Entitled to full inheritance rights as child and natural parent	No automatic inheritance rights although provision can be made for the child through the guardian’s will
Full tax benefit available as parent and child (to the relevant threshold)	Inheritance treated as 3 rd party inheritance unless the guardian is married or civilly partnered to the parent. [Step-child step-

	parent relationships treated the same as natural parent and child for tax purposes]
Child automatically has legal relationships with relatives of parent e.g. aunts, uncles, cousins.	Child is not legally considered related to guardian's relatives.
Child entitled to tax reliefs on inheritance from relatives	Inheritance treated as 3 rd party inheritance