

Submission on the General Scheme of the Assisted Human Reproduction Bill 2017

1. About LGBT Ireland

LGBT Ireland is a national charitable organisation which provides quality support services to Lesbian, Gay, Bisexual, and Transgender (LGBT) people across the country. Informed by the issues and experiences raised through our frontline services, we also provide training and advocacy support, to enhance the visibility, inclusion and rights of the LGBT people living in Ireland. In 2017, we responded to 1,957 contacts to our helpline, web chat and email services and over 63,000 people visited our website www.lgbt.ie, for support and information.

2. LGBT People's Needs in relation to AHR Services in Ireland

People contact us on a range of issues relating to sexuality and gender identity, including same sex couples and LGBT individuals, looking for information about parenting pathways and family rights and recognition in Ireland. The information most commonly sought in these areas include:

- The AHR options available to same-sex couples in Ireland and which clinics are open to treating same-sex couples.
- The current legal situation regarding recognising both partners in a same sex couple as the legal parents of their child/children born through AHR, including whether both parents can be registered on the child/children's birth certificate.
- The legal situation regarding whether a non-birth parent can apply for legal documents on behalf of their child/children (e.g.) a passport.

To inform our submission further, we also called for LGBT people to contact us specifically about their needs in relation AHR services. From this consultation, additional issues identified include:

- The importance of AHR services being accessible to people with a transgender identity. A growing number of younger transgender¹ people are making decisions concerning their fertility before starting hormone therapy or undergoing surgery to remove/alter their reproductive organs. This may include the preservation of sperm, or the freezing of eggs or embryos. Currently they do so without clarity in relation to the AHR pathways, including surrogacy, which will be available to them, should they wish to have a child in the future.

Many of the issues identified through our own services were also raised in a national study undertaken with LGBT parents and those planning parenthood, in 2011. The LGBT Parents in Ireland

¹ The term transgender refers to a person whose gender identity and/or gender expression differs from the sex assigned to them at birth. This term can include diverse gender identities.

Report² detailed the experiences of 153 LGBT parents and 170 LGBT people planning to become parents.

In relation to study participants who were already parents, 20% had their child/children through AHR with a clinic, while 44% of those planning parenthood, intended to use AHR in a clinic. The study found that the LGBT people who had accessed AHR services abroad, reported much higher levels of satisfaction than those accessing the services in Ireland. A key finding of this research was **the need for clear policies and information to be developed on the AHR options for LGBT people living in Ireland, including surrogacy, particularly in relation to equality and non-discrimination in service provision.**

3. Legislation on AHR

3.1 Implementation of existing provisions from the Children and Family Relationships Act 2015

Parts 2 and 3 of the Children and Family Relationships Act 2015 provide for legal parentage for intending parents in cases where a child is born following donor-assisted human reproduction (DAHR). These provisions are part of the 2015 Act as signed into law; however, they have yet to be commenced. This has generated a high degree of legal uncertainty for people who are raising children born following donor-assisted human reproduction. In particular, it creates an uncertain environment for children born following DAHR who are being raised by couples, where only the mother is the legal parent.

Non-commencement of these provisions is particularly problematic for female same-sex couples, where the presumption of paternity does not apply. **Parts 2 and 3 of the 2015 Act should be commenced as soon as possible to provide stability and certainty for children born following DAHR.**

3.2 Discrimination and Equality-proofing

LGBT Ireland welcomes the proposed scheme as it has the potential to bring the law and regulation in the area of AHR up to date with the realities of 21st century life and recognises that increasing numbers of same-sex and single people are having children. In particular Head 17, prohibiting discrimination on grounds of gender, marital status, and sexual orientation is very welcome as a general principle.

Ideally, however, it should also clearly state that **discrimination based on gender identity is also not permitted**. In addition, the reference to **marital status should refer instead to 'civil status'**, which (as used in the Employment Equality Act 1998 and Equal Status Act 2000) includes the condition of

² Jane Pillinger & Paula Fagan 2011: *Report from a study into the experiences of Lesbian, Gay, Bisexual and Transgender People in Ireland who are parents or who are planning parenthood*. LGBT Diversity, Cork.

being married, widowed, separated, divorced, single, in a civil partnership or being a former civil partner.

The Scheme should be **carefully examined to ensure that it adequately addresses and accounts for the particular situation of same-sex couples**. For instance, under Head 8 counsellors providing counselling to intending parents wishing to undergo AHR treatment should have, in particular, specific training in the counselling of same-sex couples and people who are LGBT. LGBT Ireland notes that the Irish Human Rights and Equality Commission has a statutory obligation³ to examine and report its views on any implications for human rights and equality.

3.3 International dimensions

The Scheme directs itself primarily to arrangements that parties make and procedures carried out in the State. For instance, Head 36 refers to and permits surrogacy specifically in a domestic context, where both the surrogate and intending parent are habitually resident in the State and the embryo transfer takes place in the State. It seems, therefore, that a parental order made under Head 47 may only be made in respect of a domestic surrogacy. No provision is made for international surrogacy or to clarify the legal implications of surrogacy carried out abroad. The Scheme seems to prohibit surrogacy arrangements made by Irish-based couples outside the State or the involvement of surrogate mothers who are habitually resident abroad. It prohibits people from providing a technical, professional or medical service that facilitates a non-domestic surrogacy arrangement.

This will greatly limit the options for intending parents and close down avenues currently available to such parents. The Scheme also fails to address the situation of couples who have already entered into foreign surrogacy arrangements, who currently face a challenging legal situation on their return to Ireland.

3.4 Donor preferences

Notably, Head 12(7) allows a donor to specify the circumstances in which the clinic may use his or her gametes. For instance:

“In providing his or her consent to the donation of his or her embryos, under Subheads (2) or (3), a donor— (i) shall, in the context of subhead (2), specify the AHR treatment procedures that his or her embryos may be used in...”

LGBT Ireland recommends that specific language is included in this provision such as, “in accordance with the law”, to ensure that a donor cannot specify that they do not wish their gametes to go to a lesbian or gay couple. Under the Equal Status Act 2000, it would be unlawful for a clinic or other service provider to discriminate in the provision of their services. Additionally, given the strong protections afforded to same-sex couples under the Irish Constitution and the European Convention on Human Rights (ECHR), steps should be taken in law to ensure that discrimination in the provision

³ Irish Human Rights and Equality Act 2014, section 10 (2)(c).

of AHR services cannot take place on grounds of sexual orientation (or other protected categories such as the nine grounds under the Equal Status Acts).

3.5 Posthumous parenting

The provisions of Head 24 appear to presuppose that at least one of the couple will be female. Head 24(1)(b) states “The gametes or embryo specified in paragraph (a) shall only be made available for use by the deceased person’s surviving partner, where she will carry the pregnancy.” It is unclear what would happen where a male partner in a same-sex relationship wishes to preserve his sperm for use after his death in a surrogacy arrangement involving the man’s partner and a surrogate.

3.6 Sex selection

The provisions of Head 32 (prohibiting sex selection except in cases where there are firm medical reasons for so doing) are welcome, and are in line with the principle of gender equality underpinning the Scheme.

4. Summary of Recommendations

- LGBT Ireland recommends that existing provisions in the Children and Family Relationships Act 2015, be commenced as soon as possible, to provide stability and certainty for children born following DAHR.
- Head 17 of the Scheme should clearly state that discrimination based on gender identity is also not permitted. In addition, the reference to marital status should refer instead to ‘civil status’.
- LGBT Ireland recommends that the Scheme address the situation of couples who have already entered into foreign surrogacy arrangements and who currently face a challenging legal situation on their return to Ireland.
- LGBT Ireland recommends that international surrogacy should be permitted where the relevant state has rules analogous to those contained in the Scheme."
- LGBT Ireland seeks clarity in the scheme as to the circumstances that a donor can specify in the use of his or her gametes via the inclusion of specific language to denote that human rights and equality protections afforded by law cannot be superseded by individual donors' directions.

- Clarity is also recommended in relation to whether male partners in a same sex relationship are cover under Head 24 Posthumous Parenting.