



# Parts 2 & 3 of the Children and Family Relationships Act (CFRA) 2015

LGBT Ireland and FLAC are working together to provide support and information on family rights to LGBTI+ parents, and those planning parenthood.

Following on from our information event on Parts 2 & 3 of the Children and Family Relationships Act 2015, we have compiled this Frequently Asked Questions sheet which answers many of the questions raised during the event.

The information provided here is not legal advice. If your question is not listed or you have any doubts about whether the legislation applies to you, you should contact your solicitor if you have access or alternatively you can contact:

- FLAC on Lo-Call 1890 350 250 or 01-8745690
- If you are in need of emotional support you can call the National LGBT Helpline on Lo-Call 1890 929 539 or chat online at [lgbt.ie](http://lgbt.ie)

# Parts 2 & 3 of the Children and Family Relationships Act (CFRA) 2015

## Q. When do Parts 2 & 3 of the CFRA commence?

Parts 2 & 3 of the Act commence on the 4<sup>th</sup> May 2020.

## Q. Who is covered by Parts 2&3 of the CFRA?

The commencement of Parts 2 & 3 of the Child and Family Relationships Act 2015 will allow certain same-sex female parents to be legally recognised as co-parents of their children.

The provisions set out in Parts 2 & 3 allows the birth mother and the intending parent (the mother's spouse, civil partner or cohabitant) of a donor-conceived child who is born as a result of a Donor Assisted Human Reproduction (DAHR) procedure, to register with the Registrar for Births, Deaths and Marriages, as parents, and obtain a birth certificate which reflects this.

There are two different scenarios covered depending on the date of conception:

### For a child conceived after the 4th May 2020

The DAHR procedure must have been undertaken in a DAHR facility in Ireland using a traceable sperm donor. Both parents can be registered in these cases through the Registrar as normal with the provision of a certificate from the clinic (see further information below).

### For a child conceived prior to the 4th May 2020

The DAHR procedure may have been undertaken in a DAHR facility in Ireland OR abroad using an anonymous OR traceable sperm donor. However, in these cases a Declaration of Parentage is required from Court, to enable both parents to be registered on the child's birth certificate at re-registration.

(See the attached Checklist which sets out the criteria which must be met to make an Application to the District Court for a Declaration of Parentage under the Act).

## Applying for a Declaration of Parentage

### Q. What documents are required to make an application to Court under the Act?

The following documents are required:

- District Court Summons (as per the District Court Rules), and
- Grounding Affidavit of the Mother, and
- Grounding Affidavit of the Intending Parent, and
- where available, correspondence from the relevant DAHR facility containing the details of the DAHR procedure.

See the attached Checklist which sets out the documents required for a District Court application in more detail.

**Q. Does being a legal Guardian already qualify as proof of being an intended parent?**

No. Even if you have been appointed as a guardian of the child that does not make you a parent. Obtaining a Declaration of Parentage enables the intended parent to apply to be registered as a parent of the child along with the mother.

**Q. Is it necessary to have a solicitor involved in making an application to the District Court for a Declaration of Parentage under the Act?**

No, you do not need a solicitor. You can make the application yourself. However, if you are unsure about the process or need further information, it may be worth seeking legal advice or using the services of a solicitor to make the application for you.

**Q. When is it necessary to go to the Circuit Court for a Declaration of Parentage under the Act?**

The application to the District Court is a joint application by the mother of the child and the intended parent of the child (i.e.) where there is no dispute between the parties.

An application can be made to the Circuit Court by an individual to get a Declaration of Parentage in circumstances where a joint application is not possible. This is likely to arise where parents are no longer in a relationship but may also apply in other situations.

An application to the Circuit Court can be made by:

- the child, or
- the mother of the child, or
- a relevant person (ie) the person who was the intended parent at the time the DAHR procedure was performed.

This allows for an intending parent who is no longer in a relationship with the mother of the child, to apply to Court for a Declaration of Parentage and be named on the child's birth certificate where the Court Order is granted.

**Q. Is it necessary to have a solicitor involved in making an application to the Circuit Court for a Declaration of Parentage under the Act?**

No, you can represent yourself in any court. That said It is strongly recommended that you seek legal advice when making an application to the Circuit Court as it is unlikely to be a consent application and the proceedings will be more complex.

**Q. What does it mean that the child must be joined as a party to the application and does this mean the child has to attend Court?**

It means that the child must be named as a party to the proceedings. It is not clear yet whether the child has to be named as an applicant or a respondent or a notice party however this should become clearer when necessary forms become available from the

Courts Service. A child is entitled to separate legal representation, in consent applications this may not be necessary. Any party, or the Court, can ask for a Section 32 report to ascertain views and wishes of a child who has reached an age where they can be ascertained. This report is carried out by a suitably qualified professional.

**Q. When will information and the necessary forms be available from the Court Service?**

The Minister for Justice cannot sign the court rules in respect of applications under Parts 2 & 3 of the CFRA until those parts of the Act have commenced (which will be on the 4<sup>th</sup> May 2020). The Court service have indicated they will be ready to publish guidelines and forms on their website once these parts of the legislation have commenced.

## Re-registration of Births

**Q. What steps are involved in re-registering the birth of a child so that both parents are named on the birth certificate?**

The steps outlined by the General Registration Office (GRO) are as follows:

- Obtain the court order (Declaration of Parentage) as outlined above.
- Download and complete the application form from [www.gov.ie/gro](http://www.gov.ie/gro) (available 5<sup>th</sup> May).
- Email completed application and copy of court order to [dahrbirths@gro](mailto:dahrbirths@gro). ie or post to DAHR Section, GRO, Government Building, Convent Road, Roscommon.
- GRO will interact with parents to ensure claim is ready for re-registration
- Parents will be notified when preliminaries are complete.
- Birth will then be ready on the GRO system for parents to attend their local registration office to complete the re-registration and sign the register.
- Once completed the new birth certificate will be available from any registration office or online.

**Q. Who can apply to re-register the birth of a child under the CFRA?**

- The mother of the child, or
- the person declared parent in the Court Order, or
- the child (once they are 18 years of age).

Where possible it is recommended that both parents (where a child is under 18) make the application jointly as this will be the quickest process for re-registration.

**Q. What information is required on the application to re-register the birth?**

- The surname for the child, and
- Parent label: The birth mother can pick either the label 'Mother' or 'Parent' and the second female parent the label 'Parent', and
- the form must be signed and dated by both parents where an application is made jointly and a new surname is requested.

**Q. Can the surname of a child be changed in the re-registration process?**

Yes, the surname of the child can be changed, for example from a single surname to a double barrel surname (with or without a hyphen), provided the chosen surname is that of one or both parents and both parents have signed the re-registration application form.

It is recommended that if the child's name is to be changed that that change would be reflected in the Court order.

A different surname to the surname of the parents can be requested however additional information will be required by the GRO to justify such a change.

## Registration of a donor-conceived child after the 4th May

**Q. I have not yet registered my baby's birth, should I wait until after 4th May to avoid having to go through the re-registration process?**

No, it is the date the DAHR procedure is performed (conception), not the date of birth of the child, which is relevant. If the DAHR procedure is carried before the 4<sup>th</sup> May then only the birth mother will be registered. An application for declaration of parentage will have to be made so that the birth can be re-registered.

**Q. What will the process be for new registrations,(i.e.) for donor-conceived children where the DAHR procedure was performed after the 4th May?**

- The parents have to notify the DAHR facility in the event that a procedure has resulted in a viable pregnancy.
- The facility will then supply a certificate to the parent(s). A copy of the certificate to be furnished by the DAHR facility is outlined [here](#).
- The parents will have to supply this certificate with their application to register the birth of the child.
- The application process will be similar to the re-registration process, in that there will be a centralised application process, and GRO will liaise with the parents to ensure that the birth is ready for registration in any local registration office.

**Q. Does this Registration process for donor-conceived children differ from the existing registration of births process?**

After the birth of any child, a birth notification is set up on the registration computer system. When any birth is registered, the basis for the registration are the details recorded on this notification. The registrar will input the notification number or get it from searching the parent details, and then proceed to finish the process by registering the birth in the presence of one or both of the parents.

Where the DAHR birth registration differs, is that the parents have to sign a statutory declaration and provide a copy of the DAHR facility certificate before the registration can be completed.

The statutory declaration will be provided to the parents from GRO and it declares that the parent(s) consented to being the parent(s) of the child, and that no other person is the parent of the child.

The system for DAHR birth registration differs from the current birth registration system in two ways:

- Firstly, a note has to be made in the system (that will not be visible on the birth certificate) to indicate that the child is a DAHR child. Once the child is over 18, and they request a copy of their birth certificate, they have to be informed by the registration service that there is information available to them in relation to the donor.
- Secondly, the system will allow the registration of a same sex female couple as the parents of the child.

## Donor gametes in storage

**Q. We have a child already and we want to use the same donor to try for another child, can we do this after the 4th May 2020?**

For a three year period following the commencement of Parts 2&3, donor sperm from existing donors can be used, provided:

- the sperm was acquired by the DAHR facility prior to the 4th May 2020, and
- the donor has consented to the sperm being used in a DAHR procedure, and
- the intended parent has a child already that was born as a result of a DAHR procedure performed before the 4th May 2020, using the same donor.

This includes anonymous sperm donors which would not otherwise be permitted after 4<sup>th</sup> May 2020 and traceable sperm donors who have not signed a relevant consent form to comply fully with the CFRA requirements.

**Q. To qualify for the three year amnesty, do we need to have the donor sperm stored in a DAHR facility in Ireland?**

Yes, to qualify you do need to have the sperm stored in a DAHR facility in Ireland. Alternatively, if your donor provides his consent to the use of the sperm and the consent is substantially in the format of the prescribed consent under the CFRA, then you can use sperm not already in the country. If it is not certain that your donor will provide his consent or if you have not got the consent well in advance of 4<sup>th</sup> May then the safest option is to get the sperm transferred before 4<sup>th</sup> May.

**Q. We have a child already who was donor-conceived, we have embryos stored to try for another child, is there a time limit on their use?**

No, there is no time limit on the use of an embryo, provided:

- the embryo was formed prior to the 4th May 2020, and
- the embryo was acquired by the DAHR facility before this date, and
- the donor or donors used to form the embryo have consented to the gametes being used in a DAHR procedure.

# Checklist for Application under s.21 CFRA for a Declaration of Parentage (District Court consent application)

NOTE: This Checklist is presented for information and guidance purposes only and does not amount to legal advice. If you are unsure about any aspect of the legislation and how it may or may not apply, you should obtain legal advice. You may also contact the FLAC free legal information phone line on Lo-Call 1890 350 250 or 01 8745690

If you need legal advice and cannot afford it, you may wish to apply to the Legal Aid Board for civil legal aid at <https://www.legalaidboard.ie/en/> You should note that civil legal aid is means tested and is not free. However, if you cannot afford to pay a contribution towards your legal advice or representation, you can apply for a waiver. There can also be very lengthy waiting times for appointments.

	Criteria	Applies? [Yes/No]
1.	The child was born in the Republic of Ireland	
2.	The child was conceived prior to the 4 <sup>th</sup> May 2020	
3.	The child was conceived via a DAHR procedure (which used one or both gametes, to form the resulting embryo, which was or were provided by a donor or an embryo which was provided by a donor(s)) <ul style="list-style-type: none"> <li>- Performed in Ireland OR</li> <li>- Performed Abroad</li> </ul>	
4.	If performed abroad, the person who performed the procedure was legally permitted to do so	[n/a permitted]
5.	At the time of the conception, the second parent was the only 'intending parent'* of the child	
6.	At the time of the conception, the donor(s) was/were unknown to the mother and intending parent (i.e. anonymous or traceable donor(s) only)	
7.	At the time of the court application, the donor(s) will remain unknown to the mother and intending parent	
8.	At the time of conception, the donor(s) was/were not an intending parent of the child	
9.	At the time of the court application, the birth mother is the only person recorded on the child's birth registration as mother (i.e. no one as father or parent)	

## If the answer is No to any of the Criteria, s.21 does not apply

\*'intending parent' means, in relation to a child who is born as a result of a DAHR procedure, a person, other than the intending mother of the child who, at the time the DAHR procedure is performed, was aware of the performance of the procedure and undertook to care for, and exercise responsibilities towards, any child born as a result of the procedure, as if he or she were the parent of the child.



Documents/Steps Required	Available? [Yes/No]
District Court Summons (as per the District Court Rules)	
Child must be joined as a Party	
Grounding Affidavit of the Mother, to include:	
(a) Statement that s.20 applies to the child	
(b) Statement that the second applicant is the intending parent	
(c) Confirmation of consent to the application (by the mother)	
It should also detail (and refer to proof where available) of all of the relevant points 1. to 9. above to verify application of s.20 to the child	
Grounding Affidavit of the Intending Parent, to include:	
(a) Statement that s.20 applies to the child	
(b) Statement that they are the intending parent	
(c) Confirmation of consent to the application (by the intending parent)	
It should also detail (and refer to proof where available) of all of the relevant points 1. to 9. Above to verify application of s.20 to the child	
Additionally, where available, correspondence from the relevant clinic containing the details of the DAHR procedure verifying, as much as possible, relevant points 1. to 9.	
Additionally, where available, for foreign clinics, the correspondence should confirm the clinic was legally permitted to perform the procedure OR, where available, independent confirmation that the clinic was officially licensed/permitted (this could take the form of confirmation from a local lawyer, an extract from a publicly available register, etc.)	(n/a permitted)

