Policy Considerations of the Health (Assisted Human Reproduction) Bill 2022

By LGBT Ireland, Equality for Children, Irish Gay Dads, the National Infertility Support and Information Group and Independent Living Movement Ireland.

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Introduction

The intention behind this policy document[1] is to set out the positions of LGBT Ireland, Equality for Children, Irish Gay Dads, the National Infertility Support and Information Group and Independent Living Movement Ireland in respect of the Health (Assisted Human Reproduction) Bill 2022. We believe that this legislation is best placed to create a legal framework around domestic surrogacy, international surrogacy, and retrospective surrogacy, as well as expanding the scope of the Bill to include necessary and inclusive amendments to the Children and Family Relationships Act 2015.

Our core policy is that children are at the centre of all donor assisted human reproduction and surrogacy agreements and it is, by default, in their best interests to have legal relationships with their parents who we see as the persons who intended and consented to be their parents, who brought about the child's birth and who care for that child every day. The aim of the legal framework should be to set out criteria that incentivises best practice while also recognising that principles of inclusivity and non-discrimination should lay the foundations of any process proposed. The proposed model under the 2022 Bill requires strict adherence to prescribed criteria and does not include judicial discretion. This is out of sync with the existing family law legislation, which recognises that no two families are the same. We believe that the immovable application of aspirational frameworks interferes with the child's legal certainty, prevents any safeguards against exploitation, and leaves intending parents reliant on their own best efforts to navigate complex medical, legal, and psychological technical areas of knowledge. Our proposals focus on the individual autonomy of each party and recognise that there are international and constitutional obligations on the Irish legislature that require decisive and proactive action in order to vindicate the rights of those involved. The following is a list of proposed amendments and areas of concern for us and our members.

This legislation is our priority, for us, for our children, for the persons who have brought our families into being and for all families who by reason of disability, infertility or sexuality are excluded from the current Irish legislative framework of family law. We appreciate you taking the time to review these, and we are available to discuss these with you at any point.

LGBT IRELAND

IRISH GAY DADS

Equality for Children

NISIG
we share your journey

ILMI

[1] Prepared by Claire O'Connell

Part 1: Preliminary and General

Section 1: Short Title, Collective Citation and Commencement

Legal recognition of the parental relationship with children who have already been born through surrogacy is a key priority for us and our members. Section 1 of the 2022 Bill deals with commencement and it is imperative that there is a point of crystallisation for intending parents to abide by in terms of retrospective and prospective recognition of the parental link. We recognise that there will be a considerable period of time required to establish and staff the proposed Assisted Human Reproduction Regulatory Authority (the AHRRA). However, for completeness, we propose that the commencement of any prospective provisions does not apply to any surrogacy arrangements for at least 12 months following enactment. Kindly refer to the Part 7A, at schedule 1 below, and to how it pertains to the definition of child (RISA, RDSA, DTIB, ITDB and ISA).

Section 2: Interpretation

Based on our amendments below, there will be natural follow-on insertion of the following amendments:

"Act of 1956" means the Irish Nationality and Citizenship Act 1956

"Act of 1964" means the Guardianship of Infants Act 1964

"Act of 1965" means the Succession Act 1965

"Act of 1976" means the Family Law (Maintenance of Spouses and Children) Act 1976

"Act of 1987" means the Status of Children Act 1987

"Act of 1995" means the Family Law Act 1995

"Act of 1996" means the Family Law (Divorce) Act 1996

"Act of 2004" means the Civil Registration Act 2004

"Act of 2005" means the Social Welfare Consolidation Act 2005

"Act of 2008" means the Passport Act 2008

*Please also refer to the Part 7A, at schedule 1 for further insertions in the international and retrospective context.

In relation to adult (AHR) and child (AHR), it is our position that there should be no age limit on the child obtaining identifying information in relation to the donor and / or surrogate. Therefore, these definitions should be removed. The disclosure and identity process, as drafted, is threefold and only prospective in nature (a retrospective model is proposed within Part 7A below). The first is that the child obtains identifying information at 16, the second is that the parents obtain non-identifying information at any time and the third is that the child is proactively informed that there is further information about them in the National Surrogacy Register (NSR) or the National Donor Conceived Person's Register (NDCPR) when they apply for their birth certificate. There are a number of issues with this:

- The right to identity is the right of the child, not the parents. Where a framework exists where no parental rights of responsibility arise in respect of the donor or surrogate, then the parental autonomy of the intended parents is not interfered with.

- The psychological studies carried out to date demonstrate that the earlier the child is told about the nature of the conception, in child-friendly terminology, the better for both child and parent.
- Given that the surrogate and donor must prospectively be known to the intending parents, there is no need for an application process by the parent to the NSR / NDCPR to obtain this information. The NSR / NDCPR therefore only becomes relevant where the child finds out through the civil registration process.
- The current process under the 2022 Bill, if left unchanged, registers the child's surrogate as their mother on their birth certificate and a copy of the entry in the Register of Parental Orders is provided to the intended parents. The form of this has not yet been prescribed however it is our assumption that this will not be termed "birth certificate" and so the child will naturally recognise that this certificate arises from the parental order, it is different to other children's and that they were born using AHR treatment.
- In all reality, a young child will not seek out their own birth certificate and if they do, the system at the moment is administrative with no support attached for the child who discovers from the relevant civil registration office that there is further information for them.

We propose that the definition of "AHR counsellor" should include reference to secondary legislation that further defines the qualifications required to act as an AHR counsellor so as to provide intending parents with as much guidance as possible on how to comply with the legislation.

We propose that the definition of "gamete" should be amended to mean a human sperm or a human egg. We believe the wording "which is formed in the body of and provided by a man / woman" is superfluous and exclusionary to transgender persons.

We propose that the references to a "surrogate mother" be replaced with "surrogate" based on research carried out by Dr Kirstie Horsey that concludes that women who act as surrogates are resistant to the term.

Part 2: General Provisions Relating to Relevant Activities

Section 7: Application

We do not believe that cohabitation should be a prerequisite in order for intending parents to be provided with AHR treatment. This is primarily based on the European Court of Human Rights case *Oliari v Italy (Application no. 18766/11)* which states that the right to respect for family life does not require a cohabitation element.

We believe as a general proposal that there should not be such a level of duplication between the 2015 Act and the 2022 Bill in relation to upper age limits, consents, revocation of consents, use of gamete donation in further AHR treatment, embryo donation, compensation for donation, screening, disposal of relevant storage and information to be provided by the gamete donor. We believe that there should be one process that applies to embryo formation and gamete donation with necessary modifications contained within the relevant sections, as opposed to two separate, but vastly similar systems. We believe the provisions as drafted currently will only lend themselves to confusion. However, we ultimately defer to the medical and fertility experts working in fertility clinics and relevant research facilities to further advise on these provisions.

Section 11: Upper age limits for AHR treatment

We propose the removal of section 11(2)(d). This relates to presuming that the best interests of the child include at least one intending parent having a reasonable expectation of living until the child has

attained 18 years of age. The premise, which we acknowledge is being applied in the context of setting age limits, as opposed to individualised assessments, is counter-intuitive in a Bill that provides for posthumous reproduction and is discriminatory against certain disabled people. It also generally suggests a premise that people who have life limiting diseases should not be having children. This is not a restriction imposed on those who reproduce through non-AHR means.

Section 12: Information document

We propose that section 12(1)(a) should include wording that would require the drafting of the information document to include a format in both plain English and easy read. We also propose that the content use gender neutral terminology and include information specific and relevant to the lives and needs of disabled people. This would include a requirement to have end-user consultation prior to its publication.

Section 14: Provisions supplementary to section 12 – Surrogacy

We propose that the sub-provisions of 14(2) would be changed following amendments to the parental order process, as outlined below.

Section 15: Provision of AHR Treatment

We are concerned that this section does not take into consideration that the surrogate is a recipient of AHR treatment, as defined under the Bill, and she would not qualify for treatment under section 15(b). We propose this could be rectified through amending the wording as follows:

15. An AHR treatment provider shall not provide AHR treatment on behalf of an intending parent unless –

(a) subject to sections 9(1)(a) and 11(1)(a) of the Act of 2015 and sections 38, 52(1)(b) and 53(2), the intending parent, gamete donor and surrogate has attained the age of 18 years but has not attained the specified upper limit (if any), and

(b) the provider is satisfied that in all the circumstances of the case, the intending parent is unable or unlikely to become pregnant, give birth or conceive a child without such treatment.

Section 16: Safety of Children

We strongly propose that this section should be removed. This section presumes a risk of harm that must be offset by the assessment of a person who does not have any relevant qualifications to carry out such an assessment. Our concerns are voiced specifically on behalf of disabled people or people with illnesses who have undergone assessments for suitability and eligibility for adoption and have been refused on the basis of ableist prejudices. One member was informed that because she used a wheelchair, she would not be a candidate for adoption as she would not be able to pick up a child from the floor. We have no issue with intending parents being subject to criminal background checks for certain serious criminal offences involving harm against children or checks as to any previous involvement of the Child and Family Agency, as long as they form part of a holistic assessment of that individual. However, this proposed section is vague and invasive. We also note that this section itself does not provide any statutory right of appeal or review and we assume that the applicant's only recourse against such a decision is a judicial review, noting also that such a judicial review would not be possible from a private clinic.

Furthermore, we refer to the ECHR case of *Dickson v United Kingdom (Application No. 44362/04)* where the Court had to consider the level of state intervention permissible in circumstances where a prisoner was unable to engage in DAHR through provision of his gamete to his wife. The prisoner had violently kicked a drunken man to death. It was argued by the Secretary of State that his wife lacked

financial provision, that they could not sanction AHR that withheld a father's care from the child for their formative years (while he was imprisoned) and violent nature of the crime he committed together with the public harm arising from the circumvention of necessary deterrent and punitive elements of a prison sentence. The Chamber ruled that there had been no violation of the applicant's right to respect for private and family life under Article 8 of the ECHR. However, the appeal to the Grand Chamber was upheld. The Court found that becoming a parent was a particularly important facet of an individual's existence and identity therefore the margin of appreciation would be restricted. In this case, the Court found that the interference fell outside the acceptable margin of appreciation. The Court acknowledged that the State has a positive obligation to ensure the effective protection of children however, "*that cannot go so far as to prevent parents who so wish from attempting to conceive a child in circumstances like those of the present case, especially as the [prospective mother] was at liberty and could have taken care of any child conceived until such time as her husband was released*" (at para 76).

We propose that should the section be retained; the retention of data for 30 years is widely disproportionate and would query what lawful purpose underlies such an extensive retention period, particularly given that this information will likely include special categories of personal data (genetic data, data concerning health, personal data concerning an individual's sex life or sexual orientation).

Section 16(4) also appears to enable the AHR provider to discuss the suitability of the intending parents with persons other than relevant persons. We believe this to be a gross invasion of an intending parent's privacy. We see this as an extremely broad provision providing widespread and seemingly limitless authority to AHR providers to breach a patient's confidentiality without their consent.

Furthermore, we consider the designation of AHR treatments providers as mandated persons for the purposes of the Children First Act 2015 would be a preferable mechanism to enable such persons to make a referral to the Child and Family Agency where necessary, in setting aside the presumption of risk that currently exists in the legislation. In addition, there should be specific provision setting out that such assessment shall not discriminate on the basis of disability, health, sexuality, gender identity or socio-economic background (as well as any protected categories of persons under the Equality Acts).

Ultimately however, the section should be removed in its entirety.

Section 17: Counselling

Again, we would query the requirement for the retention of data for 30 years, as per section 16.

Section 22: Posthumous AHR

This section would naturally have to be amended if our proposals below, in relation to men posthumously having a child using the ova of the intending mother or the embryo formed using her ovum, are accepted.

Part 3: Gamete and Embryo Donation for Use in AHR Treatment and ESC Research

Section 34: Compensation for Donation

This provision criminalises any person who receives or makes payment to someone who makes a donation, beyond reasonable expenses, for their donation. We believe that this will lead to further complications for the child in future. Ireland does not have its own sperm bank and so we are reliant

on countries such as Spain, Denmark, and Czech Republic for sperm donation, all of whom pay fees to their donors. While Irish legislation would only permit known donors to be used, many of these banks have identity release donors who would have agreed to provide the information and could be called upon to register this information in the NDCPR or NSR, as required. Section 26(1)(b)(ii) envisions the use of gamete donation where that gamete has originated outside of the State and where the gamete donor consented to the AHR treatment in a manner that is substantially the same as that provided for in section 6 of the 2015 Act. These donors are paid for the donation itself (normally approximately €200) as opposed to anything that could be classified as reasonable expenses.

Section 34 therefore *de-facto* requires intending parents to use donors who are more closely and directly known to them, as opposed to a donor who is perhaps more removed from the family and would have less day-to-day involvement. Given how restrictive the provisions of the 2015 Act and the 2022 Bill are, it is likely that intending parents will through, mistake, ignorance, or purposeful action due to desperation or lack of alternative choice, fall outside the sphere of the legislation, entitling a person closely known to the family to apply for access, guardianship, and custody of that child in a situation akin to that which arose in the case of *JMcD v BL and PM.* This undermines the legal certainty for the child that the legislation intends to create.

It is also difficult to foresee an Irish prosecution of a sperm donor in a sperm bank in Aarhus, or the operator of that sperm bank, and so it should be made clear that donations from foreign fertility clinics are exempt from this provision. This should equally apply to section 19 of the 2015 Act and necessary amendments may apply to section 35 also.

Section 36: Screening and evaluation of potentially relevant donor (G) or (E)

We recognise that the European Communities (Quality and Safety of Human Tissues and Cells) Regulations 2006 (S.I. No. 158/2006) are giving effect to Direction 2004/23/EC of the European Parliament and Commission Directive 2006/17/EC and amendments to such are to a significant extent out of the control of the Irish legislature. Our concern arises from the definition of "partner donation" which we do not believe was drafted with assisted human reproduction in mind. The variation arises in Annex III of the Commission Directive and replicated in reg. 11 and schedule 3 of the Regulations of 2006. Partner donation is defined as "the donation of reproductive cells between a man and a woman who declare that they have an intimate physical relationship". Naturally, the 2022 Bill allows for a situation wherein there is only one intending parent or where the genetic relationship arises from only one intending parent. In both of these contexts, circumstances could arise where such a genetic contribution arises from an intending parent who has HIV. Where there is direct partner donation, the donor selection criteria and laboratory testing do not need to be applied. Where the reproductive cells are processed and / or stored in a way that will result in the cryopreservation of embryos (as in the case of all surrogacy under the 2022 Bill given that traditional surrogacy is excluded) then those cells must be tested for a number of viruses and diseases including HIV 1 and 2, Hepatitis B and Hepatitis C. Where donation is not partner donation, the donor must be negative for HIV 1 and 2, HCV, HBV, syphilis, and chlamydia. HIV Ireland sets out that gay men are the group most affected by HIV in Ireland, accounting for 56% of diagnoses in 2018. It would be useful if clarification could be provided on whether in the context of surrogacy, the surrogate and the person provided the gamete who tests positive for HIV 1 or2 are considered partners in this context, or whether such persons would be excluded. This is in the context of a recent study involving 5000 people by Dr Jeanne Sibiude,[2] which reports that HIV transmission between the pregnant person and the child has reduced

[2] Sibiude J et al. *Perinatal HIV-1 transmission in France: U=U for mothers on ART from conception*. Conference on Retroviruses and Opportunistic Infections, abstract 684, 2022.

to 0% where the pregnant person was taking HIV treatment at the time of conception, had an undetectable viral load at childbirth and did not breastfeed. We are concerned that even in the proven absence of a risk of transmission, people who are HIV positive will be excluded from the right to procreate. If this proposal is accepted, there would have to be corresponding amendments to section 53(5) and (6).

Section 37: Disclosing medical information about certain persons

There would be necessary amendments to this section if our proposals on the removal of the definition of child (AHR) and adult (AHR) are accepted.

The obligation on the AHR provider under section 37 is to give, in an anonymised form, the medical information sought. Again, we would reiterate our position in relation to the removal of any age limitation on the access of the child to identifying information about their donor and we envision situations in which a child may require an organ, or bone marrow and so on, and is unable to locate a match. While the donor would be under no obligation to donate any bodily material or organs, we believe there should be a mechanism to identify the person who would offer a good chance of "matching" with the child, depending on the nature of the illness of the child.

We also believe that it should be a criminal offence for a donor to knowingly, or recklessly, give the AHR provider information which is false or misleading in a material manner in relation to their medical history and / or genetic make-up. We propose that there also be a specific provision on the desirability of the donor to update the AHR provider with any material changes to their health and / or genetic make-up.

Part 4: Storage of Gametes and Embryos

Section 38: AHR Treatment provided to certain children

We propose that a further definition or subsection be included under this section that makes it clear that children who are starting hormone therapy or undergoing surgery to remove / alter their reproductive organs are included under this section. For example:

"(4) In this section –

"medical treatment" includes the suppression of puberty and other gender-affirming medical or surgical therapies."

We do not believe that the consent of a parent should be sufficient in place of a child's consent where that child reaches the age of 18 and has the capacity to consent. We believe that each person at the age of 18, or at the earliest practical opportunity, thereafter, should have their consent proactively requested, as opposed to the continuance of their parent's consent. We propose that the parent's consent should operate until the person has had the opportunity to make their own decision.

We also wish to raise the significant concerns of our members that parents under this section may be uninformed or misinformed as to the fertility prospects of their disabled child and may presume that a disabled child will be unable to care for a child in the future. The concern is that such parents may not see a need for gamete retrieval and storage, and effectively negate the child's right to procreate in the future. We understand that there are two obstacles to remedying this issue. The first is the overwhelming constitutional authority of parents in respect of decisions impacting on their children. The second is the fact that these decisions to refer the child for gamete retrieval and storage would be made by the primary medical practitioner dealing with the child's illness which causes them to require the retrieval and storage, as opposed to the AHR treatment provider itself. We do not

therefore have a specific proposal that could safeguard against ableist presumptions as clearly this is a piece of work that needs to be carried out within the medical profession generally. We would propose however, that the Department consider a mechanism to support parents to ensure that their decisions are being made on an informed basis about the nature of disability as it applies to parenting.

Part 5: Posthumous Assisted Human Reproduction

Section 41: Posthumous AHR – Interpretation

Part 5 which deals with Posthumous AHR yet only provides for a female surviving partner. It does not provide for circumstances wherein a couple form embryos or the female's ova are cryopreserved, and she has consented to their being used in a surrogacy agreement following her death. We cannot think of any policy that would justify this distinction based on gender given that the overall framework of the 2022 is to provide for surrogacy agreements and in particular, surrogacy agreements involving single intending parents. Furthermore, section 41 seems to be at odds with section 42 which relates to the deceased being both a man and a woman. It would follow that a female partner in a same sex relationship availing of surrogacy as a single woman could use her deceased female partner's ova and a sperm donor, whereas a male partner could not.

We propose that the definition of "surviving partner" is amended as follows:

"surviving partner" means the surviving spouse, civil partner, cohabitant, or non-cohabiting partner of a deceased person at the time of the person's death.

Section 42: Requirements applicable to provision of PAHR

We do not understand the underlying basis for the wait period of one year prior to the use of the embryo created. This is particularly the case given that section 18 consents expire after two years and there are also storage and age limitations that may prohibit a person from utilising the formed embryo, without any stated or evident justification for this. We believe this requirement should be removed.

We are also unclear as to why only embryos formed before the death of the deceased can be used in posthumous AHR and not the gametes of the deceased under section 42. This would appear to facilitate posthumous surrogacy agreements but not posthumous DAHR despite the definition of "posthumous assisted human reproduction" being stated as involving the use of gametes of the deceased. Section 41 and 42 appear to conflict quite significantly and we propose that this Part be redrafted in its entirety to ensure that both surviving male and female partners can avail of posthumous reproduction and that both surrogacy agreements and DAHR are catered for.

Part 6: Pre-Implantation Genetic Diagnosis and Sex Selection

We have concerns generally throughout this Part of the use of the language "suffers from" which we consider to be presumptive and potentially emotive ableist language. We propose that this phrasing be amended to, for example, "such child has a life-limiting condition" or "such child experiences a life-limiting condition". This also applies to section 38.

Part 7: Domestic Surrogacy

Section 49: Interpretation

The definition of "permitted surrogacy" should be removed. Please see further proposals in relation to section 50.

Section 50: Permitted Surrogacy

We believe that the criminalisation of non-permitted surrogacy is excessively severe. The criminalisation is of a person who knowingly participated in any non-permitted surrogacy agreement or any person who induces, or attempts to induce, another to participate in non-permitted surrogacy. There are myriad reasons why intending parents may engage in non-permitted surrogacy. These include the habitual residency requirement not being met, the surrogate using their own egg, there being no genetic link to the child, the surrogate having not had a child before, the surrogate being 24 years old at the time of conception etc. The intending parents who engage in this non-permitted surrogacy have not necessarily engaged in non-ethical surrogacy, have not caused a harm to another, and simply, have not complied with every aspect of a restrictive system. Under the 2022 Bill as currently drafted, they will be penalised in the first instance by being refused their parental order as the court currently has no discretion in granting a parental order to overlook de minimis breaches of the "permitted surrogacy" model. Secondary to this, they will be subject to criminal prosecution.

We believe the better model is one which sets out justifiable criteria and prerequisites for intending parents which should be abided by, because the criteria are, at a high level, intended to create a foundation for an ethical framework. However, these families should be subject to a case-by-case assessment by the courts against a set of principles that ultimately view the child's best interests as the paramount consideration. Subjective assessments and discretionary provisions are a cornerstone of family law legislation. The court has discretion in awarding guardianship, custody, access, maintenance, domestic violence orders, points of welfare relating to the child (which often involves dispensing with a guardian's consent), adoption orders, care orders, orders relating to qualified cohabitants, spouses, civil partners and so on. This legislation disregards that families do not lend themselves well to regulation and there is no one perfect way to have a child. We believe that there must be evidence of *male fides*, harm or exploitation before a person involved in a surrogacy agreement is subject to criminal sanction. We therefore propose that section 50 and the criminal sanction under section 51(3) be removed and replaced with a criminal offence for those who have engaged in unethical surrogacy with evidence of harm, exploitation, undue influence, duress and so on.

We also propose that a definition be inserted into the section defining "technical" and "professional" service.

Section 51: Approval of surrogacy agreements

It follows from our position in respect of section 50, that section 51 should be amended to set out all pre-conception requirements. A best practice model should be prescribed, and we suggest that it is preferable to set out this criteria prior to the conception of the child. We agree that a surrogacy agreement should be set out in writing, that all parties to the agreement should have legal advice and counselling and that informed consent to the surrogacy agreement should be given prior to conception. Evidence of each of these requirements should be set out to the AHHRA and a certificate of pre-approval should be granted on foot of receipt of evidence of each – please see section 84 of Part 7A. We believe that the AHRRA should provide a supportive function, where it notifies intending parents of potential mistakes or deficiencies in the surrogacy agreement. The intending parents should be notified of such without the AHRRA necessarily refusing the application. The intending parents should be given an opportunity to remedy any deficits and re-submit for approval.

We would also propose that the two year approval validity of the AHRRA, as a default, is too short. We recommend that there be a framework for a streamlined process to apply for an extension whereby the AHHRA is provided with a statutory declaration from each party to the surrogacy

agreement that there have been no material changes to the agreement or to the circumstances of the individuals involved. There must also be confirmation that no revocations of consent have been provided to the AHR treatment provider.

Furthermore, we acknowledge that while a decision under section 51(5) should be capable of being judicially reviewed, we believe a statutory right to appeal should also be included. Section 119 of the 2022 Bill, which deals with appeals of decisions made by the AHRRA, refers only to decisions under sections 109(1) or 115(1)(b). These sections deal with the refusal to grant a license or refusing an application to surrender a license. There is no statutory right to appeal a decision by the AHRRA to refuse to give pre-conception approval.

Section 52: Surrogate mothers

We generally do not believe there should be conditions on a woman's informed consent to medical treatment. We believe that the counselling report and her proven receipt and understanding of legal advice are the foundations to her consent being informed and therefore permissible under the 2022 Bill. However, the requirement for her to have given birth to a child and to only be able to act as a surrogate on two occasions are not requirements driven by best practice or medical evidence. Evidence of surrogate input was presented at the Joint Oireachtas Committee on International Surrogacy, and it is clear that surrogates do not see their own children as comparable to children born to them as a surrogate. It is a completely different mindset. In addition, this section presumes that a woman who has not yet had children does know her own mind and that counselling, her thoughtful consideration and legal advice are insufficient for her to give informed consent. This provision is paternalistic, and we propose that subsection (1)(a) and (2) should be removed.

Section 53: Intending Parents

This section requires that at least one intending parent provide the gamete (subsection (2)(b)) that contributes to the conception of the child. We believe that this should not be a requirement for a number of reasons. The first is that while the genetic link between parent and child has historically had a level of significance, this has been vastly diminished through legislative intervention. The genetic link alone has long since been acknowledged as carrying no constitutional protection and, even prior to the splitting of motherhood, was subject to statutory malleability. In the context of donor assisted human reproduction and in surrogacy, the genetic link has, in certain circumstances, been set to zero insofar as it relates to the creation of parental rights and responsibilities, where it relates to a donor. Therefore, at a minimum, the legislature has already decided that the genetic link no longer results in a parental link under DAHR. The Act of 2015 has also provided for double donation in the form of donated embryos in DAHR.

We recognise that each context of reproduction, either non-AHR, DAHR or surrogacy, is a context onto its own and the importance attached to genetic or gestational links vary depending on the context. However, we submit that if the 2022 Bill is to be truly inclusive, it should not exclude individuals who are single and cannot found a family because of their infertility or age.

A common justification for the requirement of a genetic link is to offset any potential for child traffickers to take advantage of the legislation in the international context. Firstly, we believe that any conflation of surrogacy with child trafficking is intentionally provocative and unhelpful to the proper assessment of how to regulate this area of reproduction. Secondly, there is no common call for the genetic link to be maintained in the domestic setting and in fact, this is one of the key recommended reforms of the UK system at the moment. Thirdly, the proposed lack of genetic link in international surrogacy agreements and the subsequent legal recognition of parentage does not exist in a vacuum. We propose a system involving a pre-conception approval from the AHHRA involving a requirement

for legal advice and counselling. We also propose that evidence of a person exceeding the legal age of gamete use or proof of their infertility or genetic condition be required where a genetic link is not being provided from an intended parent. Following this, we propose there is a court application to affirm the parental order if the court is satisfied in all the circumstances that it should be made. We believe that this comprehensive and onerous process will not be undertaken by child traffickers.

We are also mindful of the test arising in the European Court of Human Rights in determining the proportionality of the interference with a person's right to respect for private and family life under Article 8. Specifically, we are conscious that the interference must be minimally invasive and that, if the aim sought by the legislature can be achieved by less drastic means, then the interference will not be considered proportionate. While it could be argued that the genetic link requirement seeks to achieve the legitimate aim of offsetting child trafficking, this can be achieved by a comprehensive framework of regulation, as opposed to viewing this singular provision as the start and the end of the regulation. We therefore propose a holistic framework with the inclusion of a provision that the absence of a genetic link is justified through evidence of a relevant medical condition, genetic condition, or lack of eligibility on account of age or other requirements.

Furthermore, we propose the removal of section 53(2)(b) for the same reasons set out above in relation to section 11(2)(d).

We also note that the intending parents are required to make an undertaking that they will make an application for a parental order in respect of any child born through the relevant surrogacy agreement. While we acknowledge that we have endorsed the use of this mechanism in Part 7A, in relation to disclosure of the nature of conception to a child (which we would also support in the domestic context), we nonetheless believe it to be a particularly weak legal mechanism with a low level of incentive to comply. Our understanding is that a person who breaches an undertaking may be held in contempt of court if the undertaking is made to the court. We are unsure of the enforceability of an undertaking made to a public body such as the AHRRA. Furthermore, we would question the usefulness of imposing a further court procedure on intending parents who for their own reason have determined that they should not care for the child. We do not believe that the child in those circumstances benefits from the prolonged uncertainty of their care and parental arrangements. The case could arise where the child is placed in the care of the Child and Family Agency while the intending parents make an application for a parental order that must subsequently be severed by an adoption order, or a care order, as the case may be. We also object to this subsection (section 53(4)) given the corresponding provisions that allow for unenforceable surrogacy agreements and the absolute right of the surrogate to refuse to consent to the parental order, or to the child living with the intending parents, with no potential for dispensing with her consent (unless she is deceased or cannot be found). In these circumstances, an intending parent could be potentially penalised in not applying for a costly parental order, even where the surrogate is clear and absolute in her refusal.

Finally, we propose that section 53(6) be revisited in light of our comments under section 36.

Section 54: Prohibition of Commercial Surrogacy

We do not believe that the remuneration of a woman for her time, discomfort, and medical risk in acting as a surrogate should be subject to criminal prosecution or result in the refusal of a parental order. We believe that there are a number of principles that arise in this context which were enumerated especially well within the Joint Committee on International Surrogacy (JCIS) hearings from April – June 2022. These include that altruistic surrogacy does not necessarily mean ethical surrogacy, and "commercial" surrogacy should not render a surrogacy agreement unethical, in circumstances where the surrogate provides her informed consent to the treatment, where she has

received legal advice and counselling and where she decides what she wishes to do with her body. We also do not believe that women living in countries outside of Ireland, or women from lower socio-economic backgrounds, should be presumed to be unable, or less able, to consent to medical treatment or express their agency and autonomy in acting as a surrogate simply because of their means or country of origin.

Our position is that monetary recognition is a common mechanism in all walks of life to demonstrate gratitude and specifically in this instance to recognise the special gift that has been given to the intending parents. Essentially, the remuneration of the legal teams, the employees of the AHRRA, the AHR treatment providers, the agencies (if any), the airlines is permissible because of the value placed on their time and expertise or service. In contrast, the absence of remuneration for the surrogate places no value on her time and any sacrifices she has to make within the pregnancy. A woman who is pregnant can experience spotting, morning sickness, fatigue, increased urination, change in mood, bloating, cramping, food aversions, constipation, nasal congestion, backache, high blood pressure, dizziness, blurred vision, swelling and heartburn. These would be the most common and less concerning symptoms of pregnancy. A pregnant woman can also experience pressure on her diaphragm and difficulty breathing, cervical infections, preterm labour, ectopic pregnancy, placental abruption, and preeclampsia. Her body also changes, she may be less able to be as active as she was prior to the pregnancy, and she is carrying the weight of a baby on her at all times. We cannot comprehend why such a person should be asked to do this for nothing in return, when every other person involved is being compensated, nothing that she can further her own life or further the life of her family. Ms Natalie Gamble told a story at the JCIS of a surrogate who "had a business that she ran with her husband, but it had been destroyed by flooding. The surrogacy enabled the family to restart that business and get back on their feet. That woman was incredibly proud that she could do that to help her family". This one story demonstrates a case study of one woman who with one act helped her own family considerably and created another.

We propose that remuneration above and beyond the compensation of reasonable expenses be permissible in a surrogacy agreement, where such payment is vouched and transparent, and where an individual assessment has been carried out by both the AHRRA and the court as to any risk of exploitation. However, we should note, that it is our position that where the surrogate has received independent legal advice and counselling, and there is no evidence of duress or undue influence, there would be very little reason to refuse to recognise the lived reality of the child and the wishes of all autonomous adults involved. We note that should the current framework under the 2022 Bill be replicated in the international context; the prohibition on remunnerating the surrogate would immediately exclude surrogacy agreements in the USA and Canada, which our members note are some of the few countries that provide surrogacy agreements for same sex male couples.

Section 55: Surrogacy Agreements and reasonable expenses

We are concerned that the intending parents under section 55(3)(c)(ii) are being asked to substitute the role of the State social welfare system in respect of illness benefit. We would however be open to the intending parents being responsible for any differential between the State supplement in such circumstances and the surrogate's salary.

Section 56: Non-enforceability of surrogacy agreements

It follows from our comments above and below that we do not believe that a provision on the enforceability of the surrogacy agreement is necessary. The written surrogacy agreement should be seen as a useful information document for each party as to what are their intentions and agreements. However, we believe that the Supreme Court case of *JMcD v PL & BM* clarified that any such

agreement is only enforceable insofar as it does not run counter to the child's best interests or constitutionally protected rights. Therefore, we propose that the enforceability of the surrogacy agreement should be left open where its contents do not interfere with any constitutionally protected rights. It is clear from the 2022 Bill that a surrogacy agreement, insofar as it relates to parentage, is not enforceable without the pre-approval of the AHHRA and order of the court. We also believe that a court should be able to dispense with a surrogate's consent to the parental order in certain circumstances and the intentions set out in the surrogacy agreement will be useful to the court in determining the pre-conception intentions of each party. Therefore, we do not believe that the current section 56(1) is necessary, nor do we believe it is necessary to provide that every surrogacy agreement is enforceable.

We do however believe that it is useful to reinforce in statute that the surrogate has the right to manage all aspects of her health (section 56(2)(a)) and this is a principle that we fully support. We do however propose that a clarifying subsection be inserted within section 56, to provide that the right to privacy and confidentiality of the surrogate in relation to her medical treatment does not extend to providing information in relation to the health, welfare, and development of the intended child to the intending parents.

Section 57: Advertisements for surrogacy

Our members are particularly concerned about this section and how it may criminalise intending parents or advocates from connecting surrogates and intending parents on a support group or other voluntary organisation's social media page or WhatsApp group message, for example. Our members agree with such a prohibition on agencies who profit from such advertising however, we do not believe it should apply to individuals or not-for-profit agencies that function fundamentally as a supportive organisation, akin to Brilliant Beginnings in the UK.

Section 61: Consent to child born to live with intending parents

We believe that this section should be removed for many reasons. The first is that a statutory provision providing for a potential residence with the consent of the surrogate is not equivalent to legal custody and this issue is better resolved with a pre-birth court approval of the surrogacy agreement, that can include orders as to the custody of the child, as we propose below. The current process would require the child to reside with intending parents who have no automatic right to legal custody of the child. Therefore, it is open to the surrogate to change her mind repeatedly with no legal basis for the intending parents to refuse to return the child. This is an incredibly precarious legal position for the child to be in.

The next issue is that this section appears on its face to negate the genetic father's right to apply for custody of the child as currently provided for under section 11(2) of the Act of 1964, in that, the surrogate's consent is absolute unless she is dead or cannot be located.

It is also unclear as to who would dispense with the surrogate's consent as this section does not deal with a court application and therefore appears to act more so as a defensive provision for intending parents who are found to be living with the child prior to their application for a parental order.

Therefore, we propose that this section should be removed, and the court should be entitled to make the parental order pre-birth, or shortly thereafter, as set out below, and that the custody of the child should follow from the parentage.

Section 62: Application for a Parental Order

Again, we would reiterate that we do not believe that a genetic connection between the child and intending parents is required and so that would require an amendment to section 62(3)(a)(i).

We would also question the need to exclude surrogacy involving the surrogate's own egg, particularly in the case of a single male or a same sex male couple. We understand that surrogacy is a standalone context for parentage and that certain criteria must be met to distinguish it from non-AHR treatment and the resulting parentage. However, we believe that it is the informed consent, counselling and pre-conception approval that distinguishes it. The variations in importance assigned to gestational and genetic links are inconsistent across the Act of 2015 and the 2022 Bill. Ultimately, and on balance, we propose that this requirement remains, in order to create the standalone surrogacy context. However, we believe that in certain circumstances, and at the discretion of the court, a parental order could be made regardless of the use of the surrogate's own egg, as doing so requires less invasive treatments for the surrogate, no invasive treatment for the egg donor, one less person in the child's life who contributed to their conception and less unnecessary expense and medical intervention in general.

We also reiterate our position in relation to the requirement for the child to reside with the intending parent at the time of the application. We do not believe it is in the child's best interests to be in the care of their parents who have no legal custody in respect of that child. There may also be circumstances in which the child is hospitalised, and the intending parents need to apply for the parental order. In such an instance, the child would not be living with the intending parents. It follows from this that we believe the required period of 28 days before the intending parents can make their application is too long. We believe these subsections, (3)and (4), should be removed and replaced with a pre-birth order and custody flowing from the parental order. We believe a child needs certainty from birth and the care that they receive in those early days and weeks are crucial to their safe and secure attachment to their parents. We cannot see a justification for such a waiting period where all parties consent to the order and the court is satisfied that the surrogacy agreement and its application was ethical. We also believe that the benefits such as parental leave and parental benefit will be required from the point at which the child is in the custody of their parents. Therefore, the eligibility should crystallise from the order, from the point of birth.

We also note that there appears to be a typographical error in section 62(1)(b) where Part 4A of the First Schedule should refer to the Civil Registration Act 2004, as opposed to the Civil Registration (Amendment) Act 2014. The 2022 Bill proposes to insert Part 4A into the principal Act of 2004.

Section 63: Grant of Parental Order

Please refer to Part 7A for a detailed example of how an application for a parental order could be made to the court during the pregnancy and the parental order could be affirmed upon confirmation of the surrogate's consent within 7 days of the birth. Part 7A also sets out the process where the surrogate does not consent to the order. We believe this should be replicated in the domestic setting with the necessary modifications in the domestic context. We note that there is legislative precedent for such a disposal in an application for an adoption order under sections 31 and 54 of the Adoption Act 2010. The disposal is made possible by the child being placed for adoption as a first instance. We propose that entering into a pre-conception surrogacy agreement constitutes that same first instance step that results in the possibility of the dispensing of the surrogate's consent to the parental order.

In particular, it is imperative that the court have ultimate discretion to grant the parental order notwithstanding the prescribed criteria have not been met and this includes dispensing with the consent of the surrogate where it is unreasonably held or where it is in the best interests of the child

for the order to be made. Part 7A sets out a list of guiding principles for the court that we believe could offer support to the judiciary in exercising its discretion.

We note that the UK system is a prescribed system with criteria that must be met in a similar manner to the 2022 Bill. However, this framework is subject, through the application of section 1 of the Adoption and Children Act 2002, to the principle that the child's welfare is the paramount consideration, and it is frequently the case that the parental orders are often granted regardless of a lack of compliance with the criteria prescribed.

We note that while the best interests of the child are already a consideration for the court under section 63(1)(v), it is one of 5 that must be complied with. We propose that notwithstanding a lack of compliance with the prescribed criteria, the court would have discretion to make the order if it is in the best interests of the child. The 2022 Bill also does not contain provision for post-facto corrections, where such are possible, and we believe provision should also be made for this.

Section 64: Effect of Parental Order

We propose that the following two provisions be inserted in section 64(1):

> *(e) a reference in any enactment to a mother, father or parent shall be construed as including, in relation to the child to whom the order relates, those named as parents, or the parent of the child, as the case may be, in the parental order.*
>
> *(f) a reference in any enactment to a mother, father or parent of a child shall be construed as not including, in relation to the child to whom the order relates, the surrogate, the donor or their spouses, if any.*

Such provisions would replicate the provision set out in section 5(3) and (7) and section 23 of the Act of 2015. We also propose that the following provision be inserted (in the same manner as section 21(10) and 22(8) of the Act of 2015).

> *(2) Where notice of the application, and subsequent order, under section 63, (**78 and 86 of Part 7A**) has been served on the Attorney General, the order shall be binding on the State.*

We also note that 64(1), as drafted, states that the order has the effect of the child no longer being the child of any person declared not to be a parent in the order. This would require the donor and surrogate to be named in the order. This, on its face, appears to be inconsistent with the requirement to enable a parent to obtain information from the NSR. It would appear that they would always have had this information. It may be the case that the intending parents do not apply for a parental order however in such circumstances, it is likely that they did not go through pre-approval, do not have the surrogate / donor's information, or do not wish to provide this to the child, and there would be no obligation to register the information in those circumstances. We recognise that this may simply be out of an abundance of caution to provide for all potential circumstances however, we do wish to raise that the provisions are slightly at odds with each other.

Section 66: Interaction of National Surrogacy Register and Register of Births

We reiterate our position that there should be no age restriction on a child obtaining identifying information in respect of their donor or surrogate. We recognise that under section 66(2), the Department is attempting to provide a proactive solution to a situation where the child's parents have not disclosed the nature of the child's conception to the child, or the identity of the donor and / or surrogate. We very much appreciate such an effort as it demonstrates the commitment of the Department to vindicate the child's right to identity. However, we are concerned as to the

administrative nature of the process whereby a child's birth certificate is annotated, and they will be notified of such an annotation upon their request for their birth certificate, with no corresponding support.

We first propose the removal of subsection (3) and the amendment of (4) in order to lift the age restriction. We secondly recommend that there be a statutory requirement that the office of an tArd-Chláraitheoir provide an information document, akin to that under section 12, in child-friendly, easy read and plain English versions. Please refer to section 89(3) of Part 7A at schedule 1 below for a proposed process. This information document should:

> *(a) include information as to what assisted human reproduction is and how surrogates and gamete donors can be included in the process;*
>
> *(b) inform the child that further information relating to them is available in the National Surrogacy Register and explain the process of obtaining this information;*
>
> *(c) inform the child that further information relating to their surrogate, donor, and potential donor or surrogate siblings is available on the National Surrogacy Register and explain the process of obtaining this information; and,*
>
> *(d) include referral information to age-appropriate counselling services.*

Section 67: Access to certain information from National Surrogacy Register and National Donor-Conceived Person Register

We reiterate our recommendation to remove any and all references to child (AHR) and adult (AHR) throughout the sections under this Part and otherwise in the 2022 Bill, in addition to references to "donor conceived child who has not attained the age of 16 years" and "donor conceived child who has attained the age of 16 years".

We also suggest that there is a typographical error in subsection (4): "by giving notice in writing to the applicant setting out the information sought by the applicant". We propose that notice be given to the relevant donor that such an application has been made.

We would also suggest that there is now an overlap between the Act of 2015 and the 2022 Bill and this is evident from section 67(3) of the 2022 Bill and section 34(1) of the Act of 2015. Similar to the provisions on embryo / gamete storage, age limitations and so on, there is overlap between the two pieces of legislation that could easily cause confusion and is unnecessary. The two pieces of legislation either need to be streamlined or consolidated into one Act.

Section 68: Information in respect of intending parents or surrogate mother to be given to child

Again, we believe there should be no age restriction of the obtaining of identifying information of intending parents, donors, or surrogates and so a number of sections could be amalgamated. We do however support the process of obtaining information once requested and a notice going to the relevant person in both section 68 and 69.

Section 70: Information in respect of other persons that may be requested from AHRRA

We reiterate our position in relation to age restrictions. This section (3)(a) provides for an adult to apply to the AHRRA for identifying information in respect of a child who is essentially their donor sibling. The AHHRA then sends a notice to a child saying that their donor sibling is seeking such

information and allows for a 12-week objection period. Our concern again is that this information is being provided to a child who may not know they are donor conceived or conceived through surrogacy and there is no supportive function or informational requirement imposed on the AHRRA to that child. We would suggest that an information document, akin to that proposed in section 89(3) of Part 7A, would be provided to the donor sibling at the point of notification that another donor sibling is seeking their identifying information.

Part 8 Assisted Human Reproduction Regulatory Authority

Section 80 – Establishment and membership of Board of AHRRA

We propose that there should be an evident commitment to gender equality and a reflection of diversity in the membership of the Board of the AHRRA. We believe that there should be subsections inserted akin to section 12(2) and section 13(13)(b) of the Irish Human Rights and Equality Commission Act 2014.

Section 87 – Meetings of the Board

We propose that provision be made for the inclusion of hybrid board meetings in order to make them as accessible as possible to all persons.

Part 9: Licenses

Sections 108: Criteria to which the AHRRA shall have regard in determining licence application

We believe that in order to be granted a license, there must be specific requirements for both public and private AHR treatment providers to be accessible to disabled people and also, that staff will have an ongoing policy of training in the application of equality criteria. In practice, this would specifically refer back to sections such as section 15 and 18 whereby the medical practitioners or other staff members involved in the assessments of intending parents would be trained not be employ ableist perspectives in determining whether a person has capacity to make a relevant decision, or whether the "disproportionate risk to her health or health of the child" is construed in a manner that presupposes that certain disabilities or exacerbation of a person's disability is reason enough to deny them AHR treatment despite their capacity to give informed consent. This same recommendation is made in respect of section 110 and schedule 3.4.

Part 10: Enforcement

Section 147: Offences – General

It follows from our recommendations above that we believe the offences in respect of sections 50(2), 50(3), 51(1), 54(3) and 57(1) should be removed/amended.

Part 11: Consequential Amendments

Section 156: Amendment of Guardianship

We very much welcome the expansion of guardianship to include both intending parents, notwithstanding the lack of genetic link, with immediate effect upon birth. These approaches are extremely positive. However, there are a number of further provisions that could be made. These amendments currently do not include any amendments to the application for custody of a child nor is there any provision for application for guardianship to the court where the consent of the surrogate can be dispensed with. We also do not agree that such guardianship should cease upon the refusal to

make a parental order if the child's social reality is that they are living with such a person (in this instance, it is envisioned this would apply mostly to genetic mothers or non-genetic female intending parents). Please note that we have proposed a number of amendments to the Act of 1964, and these can be found below.

Section 157: Amendment of Civil Registration Act 2004

We note that the purposes of these amendments are to register the surrogate on the birth certificate, to create a register of parental orders and to issue entries from that register as a certificate that can be used for all intents and purposes as a birth certificate where it is required in administrative matters. The proposed section 35B provides that this part shall only apply where a child's birth has already been registered in the register of births. We note that under the Act of 2004, a child must be registered within 3 months of their birth. Therefore, despite an application under the 2022 Bill being able to be made to the courts from day 28 onwards, the surrogate must nonetheless be named as the mother on the child's birth certificate notwithstanding the fact that she may no longer be the child's parent in law. As is evident from our proposals above, we believe that the parental order should be approved in principle prior to the child's birth and affirmed shortly thereafter upon the court confirming the consent of the surrogate to the order.

We propose that given the surrogate and donor are already registered in the NSR and NDCPR, and named in the parental order, there is no doubt that their details will be available to the child upon application. We also refer to the evidence presented at the JCIS by surrogates who themselves do not wish to be registered as the mother on the birth certificate as that is not their role, nor do they see it as their role. Again, we do not support an age restriction on the child accessing the identifying information in relation to their donor and / or surrogate and believe that the focus should shift to informing intending parents of the benefits of early disclosure. We also note that section 35D, in granting a child the opportunity to view the parental order, essentially grants them access to the names of both the donor and surrogate and again, there is a level of duplication here.

We do not however have any particular issue with maintaining a register of parental orders as we believe this is good practice. Our issue is that certified copies of such entries would replace the child's birth certificate.

Section 159: Amendment of Act of 2015

We welcome the lowering of the age restriction for children accessing identifying information in relation to their donor, however, again, we reiterate our belief that there should be no such age restriction. We propose a number of further amendments to the Act of 2015 and these can be found below.

Insertions to the Health (Assisted Human Reproduction) Bill 2022

Section XX: General Principles

We propose to include a set of guiding principles for the judiciary in determining applications under the Act. We note that this has previously been included in the Assisted Decision Making (Capacity) Act 2015 and the Mental Health Act 2001 and have been proposed as good practice in a number of Law Reform Commission Reports and Issues Papers.

XX. In the determination of any proceedings under this Act, the court shall:

(a) Regard the best interests of the child as the paramount consideration;

(b) Regard each party to a surrogacy agreement as an autonomous individual whose actions are presumed to be predicated on full and informed consent;
(c) Regard the bodily autonomy of the surrogate as absolute;
(d) Regard the decisions made prior to the conception of the child as enforceable as against all parties, save for exceptional circumstances;
(e) Regard the right of the child to information in relation to their biological origins as a right of particular importance which should be vindicated insofar as possible.

Section XX: Parental Leave and Parental Benefit Entitlements

We propose that instead of amending the Maternity Protection Act 1994, the Adoption Leave Act 1995 or the Paternity Leave and Benefit Act 2016, there should be a standalone provision in the 2022 Bill for Parental Leave arising from a child born through a surrogacy agreement. The Act of 1994 refers to a pregnant person's entitlement to leave and we believe it is important that a surrogate retain a statutory entitlement to leave following the birth of the child. The standard amount of maternity leave under the Act of 1994 is 26 weeks. The standard amount of adoptive leave under the Act of 1995 is 24 weeks to one parent of the adopting couple, or a parent who is adopting alone. The other parent, if any, is entitled to two weeks paternity leave.

We propose that provision be made with the 2022 for both surrogacy leave and surrogacy benefit.

We propose that the intending parents jointly be entitled to 26 weeks leave between them, to be divided as they so choose. We also propose that there should be possible extensions and postponements for unpaid leave and extenuating circumstances such as premature birth, the child being hospitalised or delays in returning to Ireland following an international surrogacy agreement. We believe the surrogacy benefit should follow from the surrogacy leave.

We propose that child benefit should explicitly apply to parents whose child or children were born through surrogacy.

Transport and Importation of Gametes and Embryos.

We note the significant work that has already been carried out in giving effect to Commission Directive (EU) 2015/566 into the Regulations of 2006 through the European Communities (Quality and Safety of Human Tissues and Cells) (Amendment) Regulations 2019. The 2019 Regulations primarily amended the Regulations of 2006 that are mentioned throughout the 2022 Bill.

This Directive and the 2019 amendments relate to importing tissue and cells which would appear to be quite relevant to many of our members who may have begun their surrogacy or DAHR journey in a clinic outside the jurisdiction and wish to import such gametes and embryos into Ireland. We propose that there be a level of interaction between these provisions and the 2022 Bill in terms of the ability of an intending parent to import such tissue and cells so that it can be clearly set out for intending parents in primary legislation as to how it applies to the surrogacy and DAHR context. While we acknowledge that there is reference to the Regulations of 2006 in the 2022 Bill, we note that this refers primarily to testing and screening of gametes.

Amendments to the Children and Family Relationships Act 2015

There are a number of families who are currently excluded from the Act of 2015. Primarily, these include :

- retrospective declarations of parentage under sections 21 or 22 where a known donor was used,
- prospective declarations of parentage made in respect of children conceived outside of Ireland,
- all declarations of parentage where a child was conceived outside of a DAHR facility,
- all declarations of parentage where a child was born outside of Ireland.

We also propose the removal of the cohabitation requirement for non-spouses / civil partners.

While we understand that there has been an acknowledgement from the Office of the Attorney General that nothing in the Act of 2015 prevents reciprocal IVF, we wish to make this explicit within the legislation.

In line with our proposals above, we also believe that there should not be an age restriction on accessing identifying information in respect of a child's donor, that there should be a tracing service for donors retrospectively and an exception to the prohibition on payment of donors in the online and international context, as set out below in section 26A(3).

We further believe that Parts 2 and 3 of the Act of 2015 should be compared with Parts 2,3 and 4 of the 2022 Bill and streamlined, to avoid repetition and confusion.

Furthermore, we believe that there should be provisions akin to those in the 2022 Bill that deal with post-facto changes of opinion in relation to donation / embryo formation and so on.

The following amendments are intended to address these proposals.

XX. The Act of 2015 is amended –

(a) In section 4 -
    (i) In the definition of "DAHR procedure", the substitution of the words "performed in the State or outside of the State" for "performed in the State".
    (ii) In the definition of "donor-conceived child", the substitution of the words "a child" for "a child born in the State"
    (iii) In the definition of "gamete", the deletion of the following:
        i. "which is formed in the body of and provided by a man", and
        ii. ", which is formed in the body of and provided by a woman"

(b) By the insertion of section 4A after section 4:

"4A. Reciprocal IVF and the use of the gamete of the male intending parent.
4A. (1) For the avoidance of doubt, any reference within Part 2 and 3 of this Act to a donor of a gamete shall be construed as excluding the intending parent and the use of his or her own gamete in the DAHR procedure or insemination.

(2) A reference to an intending parent as defined by section 4 of this Act shall include an intending parent who used his or her gamete for the purposes of a DAHR procedure or insemination."

(c) In section 5 –
    (i) The substitution of "civil partner, cohabitant or partner" for "civil partner, or cohabitant" in every place where it occurs.

(ii) The insertion of the following subsection after subsection (1):

"(1A) The parents of a donor-conceived child who is born as a result of a DAHR procedure performed outside of the State, to which section 26A applies, are

(a) the mother, and

(b) the spouse, civil partner, cohabitant, or partner as the case may be, of the mother.

(1B) The parents of a donor-conceived child who is conceived outside of a DAHR facility without medical intervention, to which section 26C applies, are

(a) the mother, and

(b) the spouse, civil partner, cohabitant, or partner as the case may be, of the mother."

(d) In section 9 –

(i) The insertion of (d) after subsection (1)(c) –

"(d) specifies what to do in the event of post factum differences of opinion with any other intending parent, as the case may be, occur or where changes of circumstances occur,"

(e) In section 11 –

(i) The substitution of "civil partner, cohabitant or partner" for "civil partner, or cohabitant" in every place where it occurs.

(ii) The insertion of (e) after subsection (1)(d) –

"(e) the person specifies what to do in the event of post factum differences of opinion with the intending mother occur or where changes of circumstances occur,"

(f) In section 20 –

(i) The deletion of section 20(1)(a),

(ii) In subsection (b) –

i. By the substitution of "State," for "State, or"

ii. By the Substitution of "performed, or" for "performed,"

iii. By the insertion of subsection (iii) –

"(iii) was performed outside of a DAHR facility without medical intervention"

(iii) In subsection (d), by the removal of the following – "– (i) was unknown to the mother of the child and the person referred to in *paragraph (c), and (ii)"*

(iv) The deletion of section 20(1)(e),

(v) In subsection (f), the substitution of "births, either maintained under section 13(1)(a) of the Civil Registration Act 2004, or a register for births outside of the State" for "births",

(vi) The deletion of the definition of "register of births".

(g) In section 21, in subsection (9), the substitution of "or (b) notwithstanding that the child is not a child to whom section 20 applies," for "and (b) where the child has not attained the age of 18 years",

(h) In section 22 –
    (i) In subsection (4), the substitution of “Subsections (5) to (9)” for “Subsections (5) to (8)”,
    (ii) The deletion of subsection (7).

(i) In section 25 –
    (i) The substitution of “civil partner, cohabitant or partner” for “civil partner, or cohabitant” in every place where it occurs.

(j) By the insertion of the following section after section 26 -

“Donor Assisted Human Reproduction Procedure that takes place outside of the State.

26A. (1) The intending parents of a donor conceived child who was conceived outside of the state under section 5(1A) must comply with the requirements under Parts 2 and 3 of this Act in substantially the same manner as set out therein.

(2) Notwithstanding the generality of subsection (1), the following requirements must be complied with in order for section 5(1A) of this Act to apply:

(a) The person who performed the procedure was authorised to do so under the law of the place where the procedure was performed;

(b) At the time when the DAHR procedure referred to in paragraph (a) was performed, a person was an intending parent, as defined by section 20, of the child and was the only intending parent of the child;

(c) The donor of the gamete used, or each donor of the embryo used, as the case may be, has, prior to the conception of the child -
    (i) consented to the use of the gamete in a DAHR procedure, in substantially the same manner as section 6, and such consent has not been revoked prior to the conception of the child,
    (ii) made a statutory declaration in a form prescribed by the Minister containing the statements as set out in section 6(3),
    (iii) received substantially the same information as set out in section 7, and
    (iv) provided the information required under section 24(3) to the National Donor-Conceived Person Register;

(d) The intending mother has, prior to the conception of the child -
    (i) been habitually resident in Ireland or an Irish citizen for at least one year,
    (ii) consented to the parentage under subsection (1A) of section 5 of a child born in substantially the same manner as section 9 and such consent has not been revoked prior to the conception of the child,
    (iii) made a statutory declaration in a form prescribed by the Minister containing the statements as set out in section 9(3),
    (iv) received substantially the same information as set out in section 13, and
    (v) provided the information required under section 25(3)(a) to the National Donor-Conceived Person Register;

(e) A person, being the spouse, civil partner, cohabitant, or partner of the intending mother has, prior to the conception of the child -
   (i) been habitually resident in Ireland or an Irish citizen for at least one year,
   (ii) consented to the parentage under subsection (1A) of section 5 of a child born in substantially the same manner as section 11, and such consent has not been revoked prior to the conception of the child,
   (iii) made a statutory declaration in a form prescribed by the Minister containing the statements as set out in section 11(3),
   (iv) received substantially the same information as set out in section 13, and
   (v) provided the information required under section 25(3)(a) to the National Donor-Conceived Person Register;

(f) The intending parent has, within 3 months of the conception of the child, provided the particulars under section 28(4) to the National Donor-Conceived Person Register;

(g) The intending parent has either-
   (i) provided the particulars under section 28(5) to the National Donor-Conceived Person Register, within 3 months of the anticipated birth of the child, or,
   (ii) provided the particulars under section 33(3) to the National Donor-Conceived Person Register, within 3 months of the birth of the child.

(3) For the avoidance of doubt, the consent of a donor under subsection (2)(a)(i) shall not be deemed to be invalid by virtue of the payment of a nominal fee in addition to such reasonable expenses as defined in section 19(3), where the donation is made directly to the DAHR treatment facility without direct request from the intending parents.

(4) In this section: -

"Minister" means the Minister for Justice and Equality.

26B. Declaration that person is an intending parent of a donor conceived child conceived outside of the state

26B. (1) A person specified in subsection (2) may apply to the court for a declaration under this section that a person named in the application is or is not an intending parent by virtue of the circumstances set out in section 26A of a child named in the application (in this section referred to as the 'child concerned').

(2) An application for a declaration under this section may be made, in relation to a child concerned, by a person seeking a declaration that he or she is or is not an intending parent by virtue of the circumstances set out in section 26A of the child concerned.

(3) An application for a declaration under this section shall not be made in relation to a child concerned other than—

(a) where the application is made by a person referred to in subsection (2)(a), on notice to each intending parent and gamete donor of the child and the person named in the application in relation to whom the declaration is sought, and

(b) where the application is made by a person referred to in subsection (2)(b), on notice to each guardian of the child.

(4) The court may direct that notice of any application for a declaration under this section shall be given to such other persons as the court thinks fit and where notice is so given or where notice is given under subsection (3) to any person the court may, either of its own motion or on the application of that person or any party to the proceedings, order that that person shall be added as a party to those proceedings.

(5) Where on an application for a declaration under this section it is proved on the balance of probabilities that a person named in the application is or is not an intending parent by virtue of the circumstances set out in section 26A of the child concerned, the court shall make the declaration accordingly.

"Donor Assisted Human Reproduction Procedure that takes place outside of a DAHR Facility

26C. (1) The intending parents of a donor conceived child who was conceived outside of a DAHR facility under section 5(1B) must comply with the requirements under Parts 2 and 3 of this Act in substantially the same manner as set out therein.

(2) Notwithstanding the generality of subsection (1), the following requirements must be complied with in order for section 5(1B) of this Act to apply:

(a) At the time when the insemination was performed, a person was an intending parent, as defined by section 20, of the child and was the only intending parent of the child;

(b) The donor of the gamete used, has, prior to the conception of the child -
   (i) consented to the use of the gamete in the insemination, in substantially the same manner as section 6, and such consent has not been revoked prior to the conception of the child,
   (ii) made a statutory declaration in a form prescribed by the Minister containing the statements as set out in section 6(3),
   (iii) received substantially the same information as set out in section 7, and
   (iv) provided the information required under section 24(3) to the National Donor-Conceived Person Register;

(c) The intending mother has, prior to the conception of the child –
   (i) consented to the parentage under subsection (1B) of section 5 of a child born in substantially the same manner as section 9 and such consent has not been revoked prior to the conception of the child,
   (ii) made a statutory declaration in a form prescribed by the Minister containing the statements as set out in section 9(3), and a statement as to her compliance with the Regulations of 2006.
   (iii) received substantially the same information as set out in section 13, and
   (iv) provided the information required under section 25(3)(a) to the National Donor-Conceived Person Register;

(d) A person, being the spouse, civil partner, cohabitant, or partner of the intending mother has, prior to the conception of the child, –
   (i) consented to the parentage under subsection (1B) of section 5 of a child born in substantially the same manner as section 11, and such consent has not been revoked prior to the conception of the child,

(ii) made a statutory declaration in a form prescribed by the Minister containing the statements as set out in section 11(3), and a statement as to their compliance with the Regulations of 2006.
(iii) received substantially the same information as set out in section 13, and
(iv) provided the information required under section 25(3)(a) to the National Donor-Conceived Person Register;

(e) The intending parent has, within 3 months of the conception of the child, provided the particulars under section 28(4) to the National Donor-Conceived Person Register;

(f) The intending parent has either-
(i) provided the particulars under section 28(5) to the National Donor-Conceived Person Register, within 3 months of the anticipated birth of the child, or,
(ii) provided the particulars under section 33(3) to the National Donor-Conceived Person Register, within 3 months of the birth of the child.

(3) In this section: -

"Minister" means the Minister for Justice and Equality.

26D. Declaration that person is an intending parent of a donor conceived child conceived outside of a DAHR facility

26D. (1) A person specified in subsection (2) may apply to the court for a declaration under this section that a person named in the application is or is not an intending parent by virtue of the circumstances set out in section 26C of a child named in the application (in this section referred to as the 'child concerned').

(2) An application for a declaration under this section may be made, in relation to a child concerned, by a person seeking a declaration that he or she is or is not an intending parent by virtue of the circumstances set out in section 26C of the child concerned.

(3) An application for a declaration under this section shall not be made in relation to a child concerned other than—

(a) where the application is made by a person referred to in subsection (2)(a), on notice to each intending parent and gamete donor of the child and the person named in the application in relation to whom the declaration is sought, and

(b) where the application is made by a person referred to in subsection (2)(b), on notice to each guardian of the child.

(4) The court may direct that notice of any application for a declaration under this section shall be given to such other persons as the court thinks fit and where notice is so given or where notice is given under subsection (3) to any person the court may, either of its own motion or on the application of that person or any party to the proceedings, order that that person shall be added as a party to those proceedings.

(5) Where on an application for a declaration under this section it is proved on the balance of probabilities that a person named in the application is or is not an intending parent by virtue

of the circumstances set out in section 26C of the child concerned, the court shall make the declaration accordingly.

26E. Effect of declaration under section 26B or 26D

26E. Where a person is declared under section 26B or 26D to be a parent of a child, from the date on which the declaration is made -

(a) the person shall be deemed to be the parent, under section 5(1A)(b), or section 5(1B)(b) as the case may be, of the child,
(b) the person, referred to in section 26A(2)(b), or section 26C(2)(b) as the case may be, who provided a gamete that was used in the DAHR procedure or insemination that resulted in the birth of the child -
  (i) is not the parent of the child, and
  (ii) has no parental rights or duties in respect of the child,

  and

(c) a reference in any enactment to a mother, father or parent of a child shall be construed as not including, in relation to the child to whom the declaration relates, the person referred to in *paragraph (b).*"

(k) In section 34 –
  (i) The removal of the words "who has attained the age of 18 years",
  (ii) The removal of the words "who has not attained the age of 18 years",

(l) In section 35, the removal of the words "who has attained the age of 18 years" in every place where it occurs,

(m) In section 36, the removal of the words "who has attained the age of 18 years" in every place where it occurs,

(n) In section 37, the removal of the words "who has attained the age of 18 years" in every place where it occurs,

(o) In section 38, the removal of the words "who has not attained the age of 18 years",

(p) In section 39, the removal of the words "who has attained the age of 18 years",

Amendments to the Irish Nationality and Citizenship Act 1956

The purpose of this amendment is to ensure that every child born through DAHR or surrogacy is entitled to Irish citizenship in respect of the parents named in a declaration of parentage or parental order.

XX. The Act of 1956 is amended –

(q) In section 2(1) by the insertion of the following definitions:

"The Act of 2015" means the Children and Family Relationships Act 2015
"The Act of 2022" means the Health (Assisted Human Reproduction) Act 2022

(r) In section 7, by the insertion of the following subsection after subsection (4)

"(5) For the avoidance of doubt, a reference to a parent in *subsection (1)* shall be construed as including the parent, or parents, as the case may be of a donor-conceived child under section 5(1), 5(1A) or 5(1B) of the Act of 2015."

(s) By the insertion of the following section after section 11:

11A. — (1) Upon a parental order being made, being a parental order within the meaning of section 63, (78 and 86 of Part 7A) of the Act of 2022, in a case in which either intending parent is an Irish citizen, the child subject to the parental order, if not already an Irish citizen, shall be an Irish citizen.

(2) Upon a declaration of parentage being made, being a declaration of parentage within the meaning of section 21, 22, 26B, 26D of the Act of 2015, in a case in which either intending parent is an Irish citizen, the child subject to the declaration of parentage, if not already an Irish citizen, shall be an Irish citizen.

Amendments to the Guardianship of Infants Act 1964

The purpose of this amendment is to ensure that the persons named in the parental order are automatic guardians of the child the subject of the parental order.

XX. The Act of 1964 is amended –

(a) in section 2(1) –

(i) by the insertion of the definition -"Act of 2022" means the Health (Assisted Human Reproduction) Act 2022

(ii) by the substitution of the definition of "parent" for .
""parent" means a father or mother as defined by this subsection"

(iii) by the substitution of the definition of "father" for -

""father" means -
(a) a male who is genetically related to the child and who is not -
(i) a gamete donor under section 23(b) or 26E(b) of the Act of 2015, or
(ii) a relevant donor (G) under section 60(1), (79(1)(c) or 87(1)(c) of Part 7A) of the Act of 2022
(b) a male adopter under an adoption order under the Act of 2010,
(c) a male parent of a donor-conceived child under section 5 of the Act of 2015, or
(d) a male parent named in a parental order under sections 63, (78 and 86 of Part 7A) of the Act of 2022,"

(iv) by the insertion of the definition of "intending parent" for -

"intending parent" means –
(a) In relation to a donor conceived child, an intending parent as defined by section 4 of the Act of 2015

(b) In relation to a child born through a surrogacy agreement, an intending parent as defined by section 2 of the Act of 2022"

(i) by the substitution of the definition of "mother" for -

""mother" means -
(a) a female who is both genetically and gestationally related to the child,
(b) a female adopter under an adoption order under the Act of 2010,
(c) a female parent of a donor-conceived child under section 5 of the Act of 2015, or
(d) a female parent named in a parental order under sections 63, (78 and 86 of Part 7A) of the Act of 2022,"

(ii) by the insertion of the definition of "parental order" -

"'parental order' has the meaning assigned to it by the Act of 2022;".

(iii) by the insertion of the definition of "surrogacy agreement" -
"'surrogacy agreement' has the meaning assigned to it by the Act of 2022;".

(iv) by the deletion of subsection (3), (4) and (4A).

(v) by the substitution of "(2) In this Act -" for "(5) In this Act".

(vi) by the insertion of subsection (3) after (2):
"(3) Nothing in this Act shall be construed as preventing two women or two men from acting jointly as a child's parents"

(e) By the insertion of the following after section 2A:

"2B. Voidable marriages
(1) Where the parents of the child concerned have at some time gone through a ceremony of marriage and the ceremony resulted in -
(a) a voidable marriage in respect of which a decree of nullity was granted after, or at some time during the period of 10 months before, the birth of the child, or
(b) a void marriage which one parent reasonably believed (whether or not such belief was due to a mistake of law or of fact) resulted in a valid marriage -
(i) where the ceremony occurred before the birth of the child, at some time during the period of 10 months before that birth, or
(ii) where the ceremony occurred after the birth of the child, at the time of that ceremony.
(2) It shall be presumed for the purposes of subsection (b), unless the contrary is shown, that the relevant parent reasonably believed that the ceremony of marriage to which that subsection relates resulted in a valid marriage.

2C. Unmarried parents
Where two parents of a child who are not already joint guardians of that child under this Act -
(a) have not married each other,

(b) have not entered into a civil partnership,
(c) declare that they are the parents of the child concerned,
(d) agree to the appointment of the non-guardian parent as a guardian of the child, and
(e) have made a statutory declaration to that effect as may be prescribed by the Minister.

Such parents shall be jointly named as the child's guardians.

2D. Guardianship arising from cohabitation

Where two parents of a child who are not already joint guardians of that child under this Act -

(a) have not married each other,
(b) have not entered into a civil partnership, and
(c) have been cohabitants for not less than 12 consecutive months occurring after the date on which this subsection comes into operation, which shall include a period, occurring at any time after the birth of the child, of not less than three consecutive months during which both parents have lived with the child

Such parents shall be jointly named as the child's guardians."

(f) By the substitution of section 6 -
"6. (1) The two parents of a child shall be the guardians of that child jointly.

(2) On the death of one parent, the surviving parent shall be guardian of the child either alone or jointly with any guardian appointed by the deceased parent, or by the court.

(3) Nothing in this section shall require a child to have two parents for the purposes of this Act.

(4) A reference to a father within the meaning of the definition of parent for the purposes of subsection (1) shall not include a father as defined by subparagraph (a) of the definition of father, where the parents have not married or entered into a civil partnership with each other, unless the provisions of sections 2B, 2C or 2D apply."

(g) in section 6A, the insertion of the following subsection (3) -

"(3) A reference to a parent under this section shall be construed as including a reference to an intending parent of a child who has been born, but where a parental order has not been granted."

(h) in section 6B, in subsection (1)(a), by the substitution of "section 5(1)(b), section 5(1A)(b) or section 5(1B)(b)" for "section 5(1)(b)".

(i) in section 6E, by the substitution of "section 2D or 6B(3)" for "section 2(4A) or 6B(3)" in every place where it occurs.

(j) in section 6F, -
(i) in subsection (4)(c), by the substitution of "guardian," for "guardian, and"

(ii) in subsection (4)(d), by the substitution of “Agency, and” for “Agency.”
(iii) the insertion of subsection (4)(e):
“(e) an intending parent (if and) of the child, who is not the child’s guardian.”
(iv) in subsection (10)(b), by the substitution of “guardian,” for “guardian, and”
(v) in subsection (10)(c), by the substitution of “Agency, and” for “Agency.”
(vi) the insertion of subsection (10)(d):
“(d) an intending parent (if and) of the child, who is not the child’s guardian.”

(k) in section 8, by the substitution of “section 2C or 2D” for “subsection (4) or (4A) of section 2” in every place where it occurs.

(l) in section 11B -
(i) in subsection (1)(a) by the substitution of “child,” for “child, or,”

(ii) in subsection (1)(b) by the substitution of “resided, or,” for “resided,”

(iii) by the insertion of (1)(c):

“(c) is an intending parent of a child”

(m) in section 11E -
(i) in subsection (1)(a) by the substitution of “child,” for “child, or,”

(ii) by the substitution of (1)(b):

“(b) a person with whom the child resides or has formerly resided, or ”

(iii) by the insertion of (1)(c):

“(c) an intending parent of a child”

(iv) by the deletion of subsection (2).

(v) in subsection (5), by the substitution of “subsection (1)(b)” for “subsection (2)”.

Amendments to the Succession Act 1965

The purpose of these amendments are to ensure that the child the subject of the parental order is entitled to inherit from the persons named as the child’s parents in the parental order.

XX (1) The Act of 1965 is amended -

(a) in section 3 by the insertion of the following definition:

“‘Act of 2022’ means the Health (Assisted Human Reproduction) Act 2022;”.

(b) in section 4A –
(i) in subsection (1), by the substitution of “Subject to subsection (1A) and (1B), in deducing any relationship” for “Subject to subsection (1A), in deducing any relationship”,

(ii) by the insertion of the following subsection after subsection (1A)

"(1B) In deducing any relationship for the purposes of this Act, the relationship between every child born through surrogacy (within the meaning of the Act of 2022) and his or her parents shall be determined in accordance with section 63, (78 and 86 of Part 7A) of the Act of 2022 and all other relationships shall be determined accordingly."

(iii) in subsection (2), by the substitution of "Subject to subsections (2A) and (2B), where a person" for "Subject to subsection (2A) (inserted by section 65 (d) of the Act of 2015), where a person",

(iv) by the insertion of the following subsection after subsection (2A):

"(2B) The reference to father in subsection (2) does not include a man who is, under section 63, (78 and 86 of Part 7A) of the Act of 2022, a parent of the first-mentioned person referred to in that subsection.".

(c) in section 27A -

(i) in subsection (2)(a), the substitution of "in the State," for "in the State, or"

(ii) in subsection (2)(b), the substitution of "person, or" for "person."

(iii) by the insertion of subsection (2)(c) after subsection (b)

"(c) they are the parents, under section 63, (78 and 86 of Part 7A) of the Act of 2022."

Amendments to the Family Law (Maintenance of Spouses and Children) Act 1976

This amendment would allow the legal parent (birth mother in DAHR or genetic father in surrogacy) to seek maintenance from the second parent notwithstanding the court denied the parental order / declaration of parentage or, in circumstances where the parent had refused to apply for the parental order / declaration of parentage notwithstanding their intention throughout the AHR treatment.

XX (1) The Act of 1976 is amended in section 3 –

(b) in subsection (1) by the insertion of the following definitions:

"The Act of 2015" means the Children and Family Relationships Act 2015

"The Act of 2022" means the Assisted Human Reproduction Act 2022

"The Act of 1987" means the Status of Children Act 1987

(c) in subsection (1) by the substitution of the following definition for the definition of "parent":

"Parent", in relation to a dependent child, includes

(a) a person who has adopted the child under the Adoption Act 2017,
(b) an intending parent under the Act of 2015,
(c) an intending parent under the Act of 2022,
(d) a person who has been named as a parent in a parental order under section 63 (78 and 86 of Part 7A) of the Act of 2022,
(e) a person who has been declared to be a parent under section 21, 22, 26B, 26D of the Act of 2015,
(f) a person who has been declared to be a parent under section 35 of the Act of 1987.

Amendments to the Status of Children Act 1987

These amendments are intended to set out the relationships between children and the intending parents named in a parental order. They are also proposed to align with the amendments to the 1976 Act where we propose that maintenance should be possible to obtain from an intending parent regardless of a parental order being in force. These amendments allow for no order of maintenance to be made where a dispute as to whether a person is in fact an intended parent is resolved. Finally, these amendments create a presumption of maternity for spouses or civil partners of the mother of a donor conceived child under the Act of 2015. The process under sections 5, 21, 22, 26B, 26D of the Act of 2015 can still be followed and will continue to be the default process by which parentage is established in the event of a dispute however, this allows for a rebuttable presumption in favour of the second parent based on marriage, civil partnership, or registration on the birth certificate.

XX. The Act of 1987 is amended –

(a) In section 3, by the insertion of the following subsection after subsection 2:

"(3) A child the subject of a surrogacy agreement shall, for the purposes of subsection (1) of this section, be deemed from the date of the parental order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022 to be the child of the intending parents named in the parental order and not the child of any other person or persons.

(b) In section 14, by the insertion of the following definitions:

"Act of 2015" means the Children and Family Relationships Act 2015

"Act of 2022" means the Health (Assisted Human Reproduction) Act 2022

"intending parent" means –

(c) In relation to a donor conceived child, an intending parent as defined by section 4 of the Act of 2015

(d) In relation to a child born through a surrogacy agreement, an intending parent as defined by section 2 of the Act of 2022"

(c) In section 15, by the substitution of "parent or intending parent" for "parent" in each place it occurs.

(d) In section 46, by the substitution of

(i) "her spouse" for "the husband of the marriage"

(ii) "her spouse" for "her husband" in each place it occurs.

(iii) "father or second parent, as the case may be," for "father" in each place it occurs.

Amendments to the Family Law Act 1995

This amendment is to allow a person to take family law proceedings in relation to the same parties, same children, same family home etc at the one time. This will also now include a court being able to make parental orders or declarations of parentage at the time of granting a judicial separation. At the moment, the practice is to issue separate proceedings and issue a motion to consolidate. It is causing unnecessary expense and duplication.

XX. The Act of 1995 is amended -

(a) in section 6 –

(i) by the substitution of subsection (b) for:

"(b) an order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,"

(ii) by the substitution of "1976." for "1976," in subsection (c)

(iii) by the insertion of the following subsection after subsection (c)

"(d) an order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,

(e) an order under section 21, 22, 26B, 26D of the Children and Family Relationships Act 2015."

(b) in section 10 –

(i) by the substitution of subsection (f) for

"(f) "an order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,"

(ii) by the insertion of the following subsection after subsection

"(g) an order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,

(h) an order under section 21, 22, 26B, 26D of the Children and Family Relationships Act 2015."

Amendments to the Family Law (Divorce) Act 1996

This amendment is to allow a person to take family law proceedings in relation to the same parties, same children, same family home and so on, at the one time. This will also now include a court being able to make parental orders or declarations of parentage at the time of granting a decree of divorce. At the moment, the practice is to issue separate proceedings and issue a motion to consolidate. It is causing unnecessary expense and duplication.

XX. The Act of 1996 is amended -

(a) in section 11 –

(i) by the substitution of subsection (b) for:

"(b) an order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,"

(ii) by the substitution of "1976." for "1976," in subsection (c)

(iii) by the insertion of the following subsection after subsection (c)

"(d) an order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,

(e) an order under section 21, 22, 26B, 26D of the Children and Family Relationships Act 2015."

(b) in section 15 –

(iii) by the substitution of subsection (f) for

"(f) "an order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,"

(iv) by the insertion of the following subsection after subsection

"(g) an order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,

(h) an order under section 21, 22, 26B, 26D of the Children and Family Relationships Act 2015."

Amendments to the Civil Registration Act 2004

These amendments follow our proposals above that the intending parents as named in a parental order under the 2022 Bill would be able to re-register as the parents on the child's birth certificate. We also propose corresponding amendments to those proposed above under the Act of 2015 in relation to section 26B and 26D declarations.

We agree with the proposed amendments under section 157 (a), (b) and (c) of the 2022 Bill.
We oppose the proposed section 35B(2). We propose that the birth of a child be capable of being registered on foot of a parental order, for the first time. However we propose that this be tied to a pre birth application which finalises upon the receipt of the consent of the surrogate / the dispensing of the surrogate's consent.

XX. The Act of 2004 is amended -

(a) in section 19A -

(i) by the deletion of subsection (7)

(ii) in subsection (10), by the deletion of the words "has attained the age of 18 years".

(b) By the insertion of the following 19C -

19C. Special provisions in relation to registration of birth of a child born as a result of AHR treatment provided pursuant to (or for the purposes of) a surrogacy agreement.

19C. (1) Where a child is born as a result of AHR treatment provided pursuant to (or for the purposes of) a surrogacy agreement, the person referred to in paragraph (a) or (b) of section 19(1) shall comply with that section in relation to the birth, and shall also give the registrar a copy of the parental order made under the Act of 2022.

(2) Where section 19(3) applies in relation to a birth referred to in subsection (1), the qualified informant concerned shall comply with that section, and shall also give the registrar such evidence in his or her possession or within his or her power to so furnish relating to the consent by the parent or parents, or any other person, under Part 7 of the Act of 2022 to being the parents of the child.

(3) Where—

(a) paragraphs (i) to (iii) of section 19(1) and subsection (1), or

(b) as the case may be, paragraphs (a) to (c) of section 19(3) and subsection (3),

have been complied with in relation to a birth to which subsection (1) applies, the registrar concerned shall register the birth in accordance with this section and in such manner as an tArd-Chláraitheoir may direct.

(4) In registering the birth of a child under this section, the registrar shall note on the register that the child is a child to whom subsection (1) applies.

(5) Where—

(a) the birth of a child has been registered other than under this section, and

(b) the registrar receives information from the Minister for Health to the effect that the child is a child to whom subsection (1) applies,

the registrar shall contact the persons who complied with section 19(1) in relation to the birth of the child and such other persons as he or she considers necessary, and make the enquiries necessary to determine whether the birth of the child should be re-registered under this section.

(6) Where the registrar, having made the enquiries referred to in subsection (5), is of the opinion that the child concerned is a child to whom subsection (1) applies, he or she shall re-register the birth of the child under this section and enter in the register the name of the person who is, or persons who are, under section 63 (78 and 86 of Part 7A) of the Act of 2022, the parent or parents of the child.

(7) Where a person whose birth was registered in accordance with this section and who applies for a birth certificate, the registrar shall contact that person to inform him or her that further information relating to him or her is available from the National Surrogacy Register."

(c) In section 23B -

(i) In subsection (1), the substitution of the words "section 22, 22B or 22D" for "section 22".

(ii) The deletion of subsection (3).

Amendments to the Passport Act 2008

The purpose of this amendment is (if the 2022 Bill as currently drafted is not amended to reflect our recommendations) to ensure an entry in the register of parental orders is included in the definition of certificate of birth. We otherwise note that this definition appears to be out of date in any regard as it relates to adoption and gender recognition. We note that the proposed section 35F should be sufficient to ensure such an entry is treated like a certificate of birth regardless however, one could argue that statutory interpretation dictates that the inclusion of such a definition sets out an exception to the general application of sections such as the proposed section 35F of the 2004 Act, sections 87 and 91 of the Adoption Act 2010 and section 30D(3) of the Act of 2004.

XX. The Act of 2008 is amended in section 2 by the insertion of subsection (f) after subsection (e):

> (f) a certified copy of an entry in the register of parental orders for surrogacy maintained under section 35C of the Act of 2004 which is issued under subsection (1) of that section.

Amendments to the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

This amendment is to allow a person to take family law proceedings in relation to the same parties, same children, same family home and so on, at the one time. This will also now include a court being able to make parental orders or declarations of parentage at the time of granting a dissolution of civil partnership, or orders under cohabitation proceedings. At the moment, the practice is to issue separate proceedings and issue a motion to consolidate. It is causing unnecessary expense and duplication.

XX. (1) The Act of 2010 is amended -

(a) in section 115 –

(i) by the substitution of subsection (b) for:

"(c) an order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,"

(ii) by the insertion of the following subsection after subsection (c)

"(d) an order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,

(e) an order under section 21, 22 or 226B of the Children and Family Relationships Act 2015."

(b) in section 119 –

(i) by the substitution of subsection (f) for
"(f) "an order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,"

(ii) by the insertion of the following subsection after subsection
"(g) an order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,
(h) an order under section 21, 22 or 226B of the Children and Family Relationships Act 2015."

(c) By the insertion of section 172A: Miscellaneous preliminary and ancillary orders

"172. (1) Where an application is made to the court for an order under sections 174, 175 and 187, or any of them, the court, before deciding whether to grant or refuse the orders sought, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders—

a. An order under the Act of 2018,
b. An order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,
c. An order under section 31 of the Land and Conveyancing Law Reform Act 2009;
d. An order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,
e. An order under section 21, 22 or 226B of the Children and Family Relationships Act 2015.

(2) Within proceedings brought under Part 15 of this Act, the court, on granting an order under sections 174, 175 and 187 or any of them, on application to it in that behalf by either cohabitants, may make one or more of the following orders:

a. An order under the Act of 2018,
b. An order under section 6A, 6C, 6E, 6F, 11, 11B, 11E or 32 of the Act of 1964,
c. An order under section 31 of the Land and Conveyancing Law Reform Act 2009;
d. An order under section 63, (78 and 86 of Part 7A) of the Health (Assisted Human Reproduction) Act 2022,
e. An order under section 21, 22 or 226B of the Children and Family Relationships Act 2015.

Schedule 1: Part 7A[3]

We endorse the following proposals for the inclusion of retrospective and international surrogacy in the 2022 Bill.

HEALTH (ASSISTED HUMAN REPRODUCTION) BILL 2022

PROPOSED PART 7A:
INTERNATIONAL AND RETROSPECTIVE SURROGACY

Section 75. Interpretation

Section 76: Principles

Section 77: Jurisdiction

Section 78: Parental Orders in respect of Retrospective International and Domestic Surrogacy Agreements

Section 79: Effect of an Order made under section 78

Section 80: Information to be Provided to the National Surrogacy Register in Respect of an Order made under Section 78

Section 81: The Disclosure of Conception and the Information Document

Section 82: Access to Information in the National Surrogacy Register

Section 83: Ancillary orders in proceedings for Parental Orders

Section 84: Review of Prospective International Surrogacy Agreements by the AHHRA

Section 85: Information to be Provided to the National Surrogacy Register in respect of Prospective International Surrogacy Agreements

Section 86: Parental Orders in relation to children born through International Surrogacy Agreements

Section 87: Effect of an International Parental Order granted under section 86

Section 88: Information to be Provided to the National Surrogacy Register

Section 89: The Disclosure of Conception and the Information Document in respect of children the subject of proceedings under section 86

Section 90: Access to Information in the National Surrogacy Register in respect of children the subject of proceedings under section 86

Section 91: Offence of giving false or misleading information to the AHRRA under certain provisions

Interpretation

75. (1) In this Part -

"Act of 1956" means the Irish Nationality and Citizenship Act 1956;

"Act of 1964" means the Guardianship of Infants Act;

[3] Drafted by Claire O'Connell

"Act of 1976" means the Family Law (Maintenance of Spouses and Children) Act 1976;

"Act of 2004" means the Civil Registration Act 2004;

"Act of 2008" means the Passport Act 2008;

"Act of 2010" means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

"agency" includes any third-party body or professional service that facilitated the matching of the intending parents to the surrogate, assisted in the drafting of the international surrogacy agreement or provided other relevant services ancillary to the international surrogacy agreement;

"child (RISA)" means the child born through an international surrogacy agreement to intending parents or where applicable, an intending parent, in respect of whom the age of majority does not apply and where the birth of the child has taken place either:

(a) Before the commencement of this Part or,
(b) Where this Part commences within 12 months of the enactment, within 12 months of the enactment of this Part.

"child (RDSA)" means the child born through a domestic surrogacy agreement to intending parents or where applicable, an intending parent, in respect of whom the age of majority does not apply and where the birth of the child has taken place either:

(a) Before the commencement of this Part or,
(b) Where this Part commences within 12 months of the enactment, within 12 months of the enactment of this Part.

"child" (ITDB) means the child born through a surrogacy agreement to intending parents or, where applicable, an intending parent, in respect of whom the age of majority does not apply and where the conception of the child took place in another jurisdiction and where:

(a) the birth of the child has taken place in the State

and

(b) (I) Before the commencement of this Part or,
(II) Where this Part commences within 12 months of the enactment, within 12 months of the enactment of this Part.

"child" (DTIB) means the child born through a surrogacy agreement to intending parents or, where applicable, an intending parent, in respect of whom the age of majority does not apply and where the conception of the child took place in the State and where:

(a) the birth of the child has taken place in another jurisdiction

and

(b) (I) Before the commencement of this Part or,
(II) Where this Part commences within 12 months of the enactment, within 12 months of the enactment of this Part.

"child (ISA)" means the child born through an international surrogacy agreement where the birth of the child has taken place either:

(a) After the commencement of this Part or,

(b) Where this Part commences within 12 months of the enactment, any point following 12 months of the enactment of this Part.

"court" means the Circuit Court;

"compensation" means a payment made to the surrogate by the intended parents in respect of reasonable expenses incurred by the surrogate, as well as reasonable remuneration for the time and effort of the surrogate, while becoming or trying to get pregnant, during the pregnancy or birth and entering into and giving effect to the international surrogacy agreement;

"conception" means the implantation of the embryo into the womb of the surrogate or the insemination of the surrogate with a gamete;

"documentation" includes consent forms, information forms, books, records, online communications and other correspondence through letter, social media application, email, text message, or otherwise;

"exploitative" means a practice of unduly influencing a person through economic pressure in order to entice or convince them to participate in a surrogacy agreement, or other medical procedure ancillary to the surrogacy agreement;

"gamete" means a human sperm or a human egg which is provided by either a donor or intended parent for the purposes of use in an international surrogacy agreement;

"gamete donor" means a person who donated a gamete as part of a surrogacy agreement, who is not an intended parent and who consented to, or consents to, the use of their gamete in the relevant AHR treatment and did not, or does not, intend to exercise parental responsibility over the child conceived using their gamete, at the time of donation, and at the time of the conception of the child;

"intended parent" includes a person who intended, committed, and consented to take on the parental role in respect of either a child (RISA), a child (RDSA), a child (ITDB), a child (DTIB) or a child (ISA) born through a surrogacy agreement to which they are a party;

"international surrogacy agreement" means an agreement entered into by a surrogate and intending parent or where applicable, two intending parents, where both the implantation of the embryo in the womb of the surrogate and the birth of the child took place in another jurisdiction and involves a surrogate who consented to attempting to become pregnant and if successful, to recognise the assignment of the parentage of any child born as a result of the pregnancy to the intending parent, or intending parents, as applicable;

"parental role" means the taking on of actions by a person acting in the capacity of a parent without the legal status of parentage, to include making decisions in respect of, and being responsible for, the child's day to day physical and emotional welfare;

"reasonable expenses" have the same meaning as that set out in section 55(3), (4) and (5);

"sibling" includes any person who was conceived through the use of gamete by the same gamete donor either alone, or through the formation of the embryo implanted in the surrogate, as the child or any person who was born to the same surrogate as the child.

"social reality", in relation to a child, includes their physical custody, the day-to-day provision of their care and the substantive parental role in the child's life;

"surrogate" means a person who consents to act as a carrier of a child pursuant to a surrogacy agreement for an intending parent or intending parents as the case may be;

"the Minister" means the Minister for Foreign Affairs;

Principles

76 (1) In the determination of any proceedings under this Part, the court shall:

(f) Regard the best interests of the child as the paramount consideration;
(g) Regard each party to a surrogacy agreement as an autonomous individual whose actions are presumed to be predicated on full and informed consent;
(h) Regard the bodily autonomy of the surrogate as absolute;
(i) Regard the decisions made prior to the conception of the child as enforceable as against all parties, save for exceptional circumstances;
(j) Regard the right of the child to information in relation to their biological origins as a right of particular importance which should be vindicated insofar as possible.

(2) In this section: -

"child" means either a child (RISA), a child (RDSA), a child (ITDB), a child (DTIB) or a child (ISA), depending on the relevant proceedings;

Jurisdiction

77 (1) Subject to subsection (2), a reference in this Part to an application being made to the court shall be construed as a reference to an application being made to the Circuit Court and the Circuit Court shall have jurisdiction to hear and determine proceedings under this Part in relation to any such application.

(2) The Circuit Court for the purposes of subsection (1) shall be—

(a) subject to paragraph (b), the Circuit Court for that circuit in which the applicant concerned ordinarily resides or carries on any profession, business, or occupation,

or

(b) where the applicant concerned neither ordinarily resides nor carries on any profession, business or occupation in the State, the Circuit Court for the Dublin Circuit.

Parental Orders in respect of Retrospective International and Domestic Surrogacy Agreements

78 (1) This section shall apply to an application for a parental order in respect of a child.

(2) A relevant applicant, or relevant applicants where applicable, subject to the conditions in this section, may apply to the Court for a parental order in respect of a child born as a result of a surrogacy agreement to which the relevant applicant is, or the relevant applicants are, a party.

(3) An application for a parental order under this section shall be grounded on an affidavit, by the relevant applicant, or where applicable, relevant applicants, and shall contain the following:

(a) a declaration by the relevant applicant of their belief that the, or each, as the case may be, relevant applicant constitutes a relevant applicant.

(b) specific evidence tending to indicate that each relevant applicant is a relevant applicant and that all other relevant persons are relevant persons, as necessary, which shall include:

(i) any documentation from any agency, or any additional other documentation as between the relevant persons party to the surrogacy agreement, to include any:

(I) explanatory information documents in relation to the surrogacy process in the relevant jurisdiction provided to, or obtained by, any relevant person;

(II) consent to any medical procedures inherent or ancillary to the surrogacy agreement engaged in by relevant persons or any gamete donor;

(III) consent to any actual or intended assignment of parentage arising from the surrogacy agreement;

(IV) evidence of any counselling offered to, or undertaken by, a relevant person;

(V) evidence of any physiological assessment, psychological assessment or other relevant assessment conducted on a relevant person or gamete donor;

(VI) evidence of any genetic testing and known medical history of the surrogate, or genetic donor, where applicable;

(VII) evidence of any provision of legal advice to a relevant person or gamete donor and that person's understanding of same;

(VIII) agreements between to the parties as to any issues ancillary to the conception and parentage of the child; and,

(IX) details of any decisions made as between the parties in relation to post-factum differences of opinion.

(ii) any evidence of any biological connection between the relevant persons who were party to the surrogacy agreement and the child born as a result of the surrogacy agreement,

(iii) any evidence of any compensation offered or paid to the surrogate,

(iv) any of the following information that is available to the relevant applicant

(I) the name, date of birth, nationality, and contact details of each relevant person, child, and any gamete donor and;
(II) in respect of each of the intending parents, whether or not either, or both of them provided a gamete used under the surrogacy agreement;
(III) the date of the child's conception;
(IV) the country in which the child was born

and where such information is not available to the relevant applicant, evidence of the reasons for such unavailability, and evidence of the relevant applicant's reasonable efforts to obtain such information:

(v) evidence of any agreements reached between:

(I) the surrogate and the intending parent(s) and;
(II) the gamete donor, if any, and the intending parent(s)

as to the disclosure of the identifying or non-identifying information relating to the surrogate and gamete donor, if any, to the child.

(vi) details of the child's understanding of the nature of their conception and whether full identifiable details of the child's surrogate and any gamete donor have been disclosed to the child.

(4) (a) In determining the application, the Court shall have regard to the following criteria:

(i) Whether the surrogate provided full and informed consent to the AHR treatment prior to conception and to the subsequent assignment of parentage or the parental role to the intended parent, or intending parents, as applicable,
(ii) Whether the surrogate and the intended parents understood the legal implications of entering into the surrogacy agreement,
(iii) Whether the compensation was not to such an excess as to render the agreement exploitative, having regard to the standard of living in the relevant jurisdiction and
(iv) Whether the child's social reality is being that of the child of the intending parent, or intending parents, as applicable,
(v) Whether the child's right to identity has been vindicated to the fullest extent possible in the individual circumstances of the application.

(b) In determining whether the surrogate's consent was free and informed, the court shall have regard to any legal advice provided to her and any counselling she had received prior to the conception of the child.

(c) In deciding whether or not to make an order under this section the Court shall, to the extent possible given his or her age or understanding, give the child the opportunity to make his or her views on the matter known, either directly or by way of a child's views expert, and shall have regard to those views.

(5) Where the Court has considered that the circumstances of the relevant applicant, and the surrogacy agreement meets the criteria under subsection (4)(a), it shall make the order.

(6) Notwithstanding subsection (5), where, having regard to the principles as set out in section 76, the Court believes that it would be in the interests of justice to make the order, it shall make the order.

(7) A court shall not grant an order in respect of an application taken under subsection (2) by one intended parent where two intended parents entered into the surrogacy agreement, other than with the consent of all relevant persons.

(8) Where any relevant person, or the child who is the subject of the application, objects to the making of the order, they shall be given the opportunity to make submissions to the court, by way of replying affidavit, within 21 days of the day on which notice of the application was served on them, and such submissions shall be considered by the court in light of the principles set out in section 76.

(9) Upon receiving a submission under subsection (8), the Court may, of its own motion, or on application to the court by a notice party, may join that notice party as a party to the proceedings.

(10) The Court may direct that notice of any application under this section shall be given to such other persons as the Court thinks fit and where notice is so given to any such other person the Court may, either of its own motion or on the application of that person or any party to the proceedings, order that that person shall be added as a party to those proceedings.

(11) Where the proceedings are ongoing, the court may extend the time within which to make submissions under subsection (8) where it is in the interest of justice and in the best interests of the child to do so.

(12) An application under subsection (2) shall—

(a) be on notice to:

(i) the Attorney General,

(ii) every other relevant person party to the surrogacy agreement which resulted in the birth of the child who is the subject of the application,

(iii) the child who is, or the children who are, as applicable, the subject or subjects of the application.

(b) be heard otherwise than in public.

(13) Service of any persons residing in another jurisdiction shall be proven by way of:

(a) an affidavit of service exhibiting evidence of confirmed receipt through registered post;

(b) an affidavit of personal service by a person authorised to carry out such service in the jurisdiction within which service was effected;

(c) an affidavit by the notice party confirming that they have received the relevant judicial or extra-judicial documentation

(14) The Court may dispense with the need to serve a notice party where it has been demonstrated by the relevant applicant that the notice party:

(a) cannot be found after reasonable enquiries,

(b) is purposefully evading service in bad faith, or

(c) is deceased

which shall be demonstrated by the relevant applicant on affidavit.

(15) (a) A child under this section may apply to the Court at any point for an order lifting the *in camera* rule in respect of any proceedings brought under this section and the Court shall grant the order where it is in the best interests of the child to do so.

(b) An order under paragraph (a) shall have the effect of opening the court file to the child in order to allow the child to access the pleadings and orders available to the court.

(16) In this section:

"child" means either a child (RISA), a child (RDSA), a child (ITDB) or a child (DTIB);

"international surrogacy agreement" means an agreement entered into by a surrogate and intending parent or where applicable, two intending parents, and involves a surrogate who resides in another jurisdiction and who consented to the conception of the child and if successful, to recognise the assignment of parentage of any child born as a result of the pregnancy to the intending parent, or intending parents, as applicable;

"relevant applicant" means an intending parent or surrogate who were party to a surrogacy agreement which resulted in the birth of a child in respect of whom the application is made;

"relevant jurisdiction" means the jurisdiction in which the conception of the child took place;

"relevant person" means an intending parent or surrogate;

"surrogacy agreement" includes an international surrogacy agreement;

Effect of an Order made under section 78

Section 79 (1) Where a court grants a parental order in respect of a child under section 78:

(a) the child shall be considered in law to be the child of the intending parents, or, in the case of a single intending parent, that intending parent, named in the order, and shall be so considered from the date of the child's birth.

(b) the surrogate mother of the child will lose all claim to parental rights and is freed from any parental duties otherwise imposed on her in respect of the child.

(c) the gamete donor, if any, will lose all claim to parental rights and is freed from any parental duties otherwise imposed on them in respect of the child.

(d) a reference in any enactment to a mother, father or parent shall be construed as including, in relation to the child to whom the order relates, those named as parents, or the parent of the child, as the case may be, in the parental order.

(e) a reference in any enactment to a mother, father or parent of a child shall be construed as not including, in relation to the child to whom the order relates, the surrogate, the donor or their spouses, if any.

(2) Where notice of the application, and subsequent order, under section 78, has been served on the Attorney General, the order shall be binding on the State.

(3) A reference to a "person" in section 7(1) of the Act of 1956 shall be construed as including a child (RISA) and a child (DTIB), where applicable, who is the subject of a parental order granted under section 78.

Information to be Provided to the National Surrogacy Register in Respect of an Order made under Section 78

Section 80 (1) Where the court grants a parental order in respect of a child under section 78, it shall, within 14 days immediately following such grant, give, or cause to be given, a copy of the order to an tArd-Chláraitheoir and the AHRRA in order to allow—

(a) an tArd-Chláraitheoir to make, or cause to be made, an entry, in the register of parental orders for surrogacy established and maintained under section 13(1)(m) of the Act of 2004, in accordance with section 35C (2) of that Act, and

(b) the AHRRA to make an entry in the National Surrogacy Register under section 65(3).

(2) Nothing in this section shall be read as prohibiting any person from applying to the AHHRA to register the information sought under section 78(3)(b)(iv) prior to the making of an application under section 78(2).

(3) Where a person seeks to register the information sought under section 78(3)(b)(iv) in the National Surrogacy Register, the AHHRA shall record this information once the information is verified through corresponding documentation.

The Disclosure of Conception and the Information Document

Section 81 (1) Where a child applies:

(a) for a copy of their birth certificate, an tArd-Chláraitheoir shall, when issuing a copy of the birth certificate provide the child with an information document prepared by the AHHRA.

(b) for a copy of their entry in the foreign births register, the Minster shall, when issuing a copy of the entry in the foreign birth registrar in respect of that child, provide the child with AHR information document prepared by the AHHRA.

(2) The information document referred to in subsection (1) shall be prepared by the AHHRA as soon as practicable after the commencement of this section and shall be prepared for both a child (AHR and an adult (AHR).

(3) The information document shall:

(a) include information as to what assisted human reproduction is and how surrogates and gamete donors can be included in the process;

(b) inform the child that further information relating to them may be available on the National Surrogacy Register depending on laws in force at the time at which they were conceived and explain the process of obtaining this information;

(c) inform the child that further information relating to their surrogate, donor, and potential siblings may be available on the National Surrogacy Register depending on laws in force at the time at which they were conceived and explain the process of obtaining this information; and,

(d) include referral information to age-appropriate counselling services.

(4) The information document shall be published on the AHRRA's website and the AHHRA shall:

(a) update the document within 3 months of each legislative change relevant to the information contained therein, and,

(b) review the document annually to assess whether any updates are necessary.

(5) In this section,

"birth certificate" means a document issued under section 13(4) of the Act of 2004 in respect of an entry in the register of births;

"child" means either a child (RISA), a child (RDSA), a child (ITDB) or a child (DTIB);

"register of births" means a register of births maintained by an tArd-Chláraitheoir under—

(a) section 13(1)(a) of the Act of 2004, or

(b) the repealed enactments (within the meaning of the Act of 2004).

Access to Information in the National Surrogacy Register

Section 82 (1) A child may make an application to the AHRRA for the AHRRA to give them the following information, where applicable:

(a) Information in respect of the gamete donor that is record on the National Surrogacy Register and the number of persons who have been born as a result of such use of such donation, and the sex and year of birth for each of them;

(b) Information in respect of the surrogate that is on record on the National Surrogacy Register and the number of persons who have been born to the same surrogate, and the sex and year of birth for each of them.

(2) Where the AHRRA receives an application under subsection (1), it shall make all reasonable efforts to trace the relevant person in respect of whom the details are sought under the application and if located, shall:

(a) serve notice of an application under subsection (1) on the relevant person;

(b) request that the relevant person would consent to the release of either their identifying or non-identifying information;

(c) request the contact preferences of the relevant person in respect of the applicant;

(d) request that they provide any updates in respect of their information that they deem relevant;

(e) notify the relevant person that should they not respond within 42 days, the information shall be released;

(f) notify the relevant person that should they refuse the request to release within 42 days, the matter may be referred for adjudication within the AHRRA; and

(g) notify the relevant person that should they refuse the request to release within 42 days, they should provide such submissions as to the reasons why the information should not be released which shall be considered by the adjudication body within the AHRRA, if the matter is so referred for adjudication, and may be provided to the child in the event that such refusal or submission is deemed by the AHRRA to be based on vexatious or unreasonable grounds.

(3) Where the AHHRA has been able to prove service to the relevant person of the notice of the application under subsection (1), it shall release the information where the relevant person:

(a) consents to the release of the information, whether identifying or non-identifying; or

(b) does not respond to the request within 6 weeks.

(4) Where the AHRRA cannot make contact with the relevant person following all reasonable efforts to trace such a person, or where it has confirmed that the relevant person is deceased, it shall release the information requested.

(5) Where the relevant person has responded within the 42-day period and refuses to the release of the either the identifying information, the non-identifying information, or both, the AHRRA shall:

(a) consider any submissions that accompany the refusal provided by the relevant person; and,

(b) assess whether the submissions and refusal of the relevant person constitute vexatious or unreasonable grounds for refusal.

(6) Where the AHRRA considers the refusal of the relevant person and any accompanying submissions as constituting either vexatious or unreasonable grounds for refusal, it shall:

(a) notify the child as soon as practicable of the refusal of the relevant person;

(b) release the information requested by the child;

(c) provide a copy of the refusal and any submissions provided by the relevant person to the child where the AHHRA is of the opinion that it is in the best interest of the child to do so;

(d) notify the relevant person of its decision in respect of the release, which shall be accompanied by the reasons for such release.

(6) Where the AHRRA considers the refusal of the relevant person and any accompanying submissions as constituting a sufficient basis for adjudication, it shall

(a) notify the child as soon as possible of the refusal of the relevant person and the decision to refer the matter to the adjudication panel;

(b) request that the child provide submissions in support of the release of the information within 21 days; and,

(c) once the time period referred to in paragraph (b) has been exhausted, refer the matter to the adjudication panel of the AHRRA.

(7) The adjudication panel referred to in subsection (6) shall consist of 3 members, of which:

(a) one shall be a clinical psychologist;

(b) one shall be a practising barrister, solicitor or legal academic;

(c) one shall be a person other than a person referred to in paragraphs (a) or (b) and who is suitably qualified to adjudicate on such matters.

(8) In determining an adjudication referred to in subsection (6), the adjudication panel shall have regard to:

(a) the best interests of the child as the paramount consideration;

(b) any expectation of privacy relied upon by the relevant person prior to the child's conception to include evidence of any assurances provided to the relevant person by the intending parents;

(c) the personal circumstances of both the relevant person and the child;

(d) the submissions, if any, of both the relevant person and the child;

(e) the detrimental effect of the release of the information on the relevant person; and

(f) the detrimental effect of the refusal to release the information on the child.

(9) Where the adjudication panel determines the information should be released, the AHRRA shall:

(a) notify the child and relevant person as soon as practicable of the determination of the adjudication panel, to include their reasons for such a determination; and,

(b) release the information requested by the child.

(10) Where the adjudication panel determines the information should not be released, the AHRRA shall notify the child and relevant person as soon as practicable of the determination of the adjudication panel, to include their reasons for such a determination.

(11) A child may request the AHHRA to register their contact details and their preference for contact in respect of any applications for such contact with the child from the surrogate, any gamete donor, or any sibling.

(12) A child may request that AHHRA remove or amend any contact preference from the National Surrogacy Register.

(13) A child may request to be informed of the contact preferences of any sibling registered in the National Surrogacy Register.

(14) The AHHRA shall comply with a request under subsections (11), (12), (13) and (14).

(15) Where any sibling of the child has registered their contact preference as being open to contact with siblings, the AHHRA shall:

> (a) if such preference has been registered within one year of the child's request, shall release the contact information registered in respect of that sibling;
>
> (b) if such preference has been registered more than one year prior to the child's request, shall notify the relevant sibling of:
>
> > (i) the request by a child for contact; and,
> >
> > (ii) the AHHRA's intention to release the sibling's contact information with the consent of the sibling or, if no response is received, within 42 days of the notification.

(16) Where the AHRRA does not receive any response from the sibling under subsection (15)(b) or where the sibling consents to the release of their contact information to the child, the AHHRA shall release the sibling's information to the child.

(17) Where any gamete donor or where the surrogate of the child requests contact with a child who has registered their contact preference as being open to contact with their gamete donor, if any, and their surrogate, the AHHRA shall:

> (a) if such preference has been registered within one year of the gamete donor or surrogate's request, shall release the contact information registered in respect of that child;
>
> (b) if such preference has been registered more than one year prior to the gamete donor or surrogate's request, shall notify the child of:
>
> > (i) the request by the child's gamete donor or surrogate for contact; and,
> >
> > (ii) the AHHRA's intention to release the child's contact information with the consent of the child or, if no response is received, within 42 days of the notification.

(18) Where the AHRRA does not receive any response from the child under subsection (17)(b) or where the child consents to the release of their contact information to their gamete donor or surrogate, the AHHRA shall release the child's information to the gamete donor or surrogate, as applicable.

(19) The AHRRA shall not release the information in subsections (16) or (18) where it has been unable to prove service of the notification referred to in subsection (15)(b) or (17)(b).

(20) Service under this section can be proven by way of:

> (a) tracked or registered post;

(b) personal service;

(c) a response, either verbally or in writing, from the relevant person confirming receipt of the notification

(21) In this section: -

"child" means either a child (RISA), a child (RDSA), a child (ITDB) or a child (DTIB);

"relevant person" means any surrogate or gamete donor in relation to the child

Ancillary orders in proceedings for Parental Orders

Section 83(1) Where an application is made to the court under sections 78 or 86, for the grant of a parental order, the court, either before deciding whether to grant or refuse to grant the parental order, or at the time of determining the application, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders—

(a) sections 6A, 6C, 6E, 6F, 11, 11B, or 11E of the Act of 1964;
(b) sections 5, 5A, 5B or 5C of the Act of 1976;
(c) section 45 of the Act of 2010.

(2) For the avoidance of doubt, subsection (1) shall apply in circumstances where the court refuses to grant the parental order.

Review of Prospective International Surrogacy Agreements by the AHHRA

Section 84 (1) Prior to the conception of the child, any intending parents, or any intending parent, as the case may be, are obliged to apply to the AHHRA for preliminary approval of the international surrogacy agreement.

(2) The application under subsection (1) by the intending parent(s) shall include:

(a) evidence of the consent of the surrogate and any gamete donor to the conception of the child;

(b) evidence of the surrogate and any gamete donor's intent to abdicate all parental rights and responsibilities in respect of any child born through the international surrogacy agreement;

(c) evidence of counselling underdone by the surrogate in relation to her role as surrogate;

(d) evidence of the provision of legal advice to the surrogate and her understanding of same;

(e) evidence of the provision of legal advice to any gamete donor and their understanding of same;

(f) evidence that the surrogate and any gamete donor have been notified that:

(i) the information in section 88(1)(b) shall be registered in the National Surrogacy Register;

(ii) any child born as a result of the implantation of the embryo, may access such information and may contact the surrogate or gamete donor, as they wish; and,

(iii) having regard to the child's right to know his or her origins, that it is desirable that the information provided be kept updated.

(g) a declaration that the intending parents understand that the surrogate has, in relation to her pregnancy, the same rights as a woman, not being a surrogate mother, has in relation to her pregnancy, including

(i) the right to manage all aspects of her health during the pregnancy and, in that regard, to freely seek and obtain medical services in relation to the pregnancy, and

(ii) the right to privacy and confidentiality in relation to her medical treatment during the course of the pregnancy.

(h) the following information:
- (i) the name, date of birth, nationality, and contact details of each relevant person;
- (ii) in respect of each of the intending parents, whether one, both, or neither of the intending parents intend to provide a gamete to be used under the international surrogacy agreement;
- (iii) the jurisdiction in which the implantation of the embryo is due to take place.

(i) Where an intending parent or intending parents, as applicable, notify the AHHRA under section 84(2)(h)(ii) that only gametes donated from a person, or persons, other than an intending parent shall be used to form the embryo that is to be implanted in the womb of the surrogate, they shall provide either:

(i) a medical certificate from a registered medical practitioner confirming that the intending parent cannot provide a gamete:

- (I) where to do so would cause, or have a reasonably likely chance of causing the child to have a genetic disease the name of which is for the time bring entered in the Register of Genetic Diseases; or
- (II) due to a medical condition that impacts upon the production of the relevant gamete in the intending parent's body.

(ii) evidence that they do not satisfy the age restrictions on gamete use in AHR treatment in the relevant jurisdiction by reference to a form of photo identification and the relevant regulations of the relevant jurisdiction confirming the age restrictions imposed.

(j) evidence that the international surrogacy agreement is compliant with the laws of the relevant jurisdiction, which can be provided in the form of a declaration by a legal professional in the relevant jurisdiction swearing to the compliance of the agreement with the laws of the relevant jurisdiction.

(3) Upon receipt of such an application, the AHHRA shall conduct their review expeditiously and provide the intending parent(s) with an information document prepared by the AHRRA which explains the necessary prerequisites of a parental order under section 86, and shall provide a certificate of preliminary approval of the international surrogacy agreement, if:

(a) the criteria of subsection (2) are met;

(b) an independent verification assessment by the AHHRA has taken place, which may include:

(i) contacting any foreign agency engaged by the relevant persons;

(ii) contacting the surrogate directly;

(iii) contacting the counsellor or legal advisor engaged by the relevant persons;

(iv) requesting relevant financial records from any relevant person;

(v) any other necessary enquiries that are necessary and relevant to the preliminary approval of the international surrogacy agreement

(4) In addition to the preliminary approval, the AHRRA may make recommendations in respect of the information received under subsection (2) in a report to the intending parents as to notable corrections required by the Court under section 86.

(5) Where the AHRRA is not satisfied after conducting its independent verification assessment under subsection (3)(b) that preliminary approval can be granted, it shall, as soon as is practicable, by notice in the specified form, given to each intending parent, state the reasons why the AHHRA is not so satisfied.

(6) For the avoidance of doubt, any report or recommendations provided by the AHHRA are to be considered as guidance only and will not be considered by the court under section 86, as a substitute for legal advice.

(7) The information document referred to in subsection (3) shall be prepared by the AHHRA as soon as practicable after the commencement of this section.

(8) The information document shall be published on the AHRRA's website and the AHHRA shall:

(a) update the document within 3 months of each legislative change relevant to the information contained therein, and,

(b) review the document annually to assess whether any updates are necessary.

(9) Subject to subsection (10), the preliminary approval of an international surrogacy agreement under subsection (3) by the AHRRA shall expire when the period of two years has elapsed from the date of such approval.

(10) The AHRRA shall specify in the preliminary approval of an international surrogacy agreement under subsection (3) a shorter period than the two years referred to in subsection (9) where that is necessary in order to ensure that a specified upper age limit in the relevant jurisdiction is complied with.

(11) In this section:

"child" means either a child (ISA);

"relevant person" means any intended parent, gamete donor and the surrogate.

"relevant jurisdiction" means the jurisdiction in which the implantation of the embryo is due to take place;

Information to be provided to the National Surrogacy Register in respect of Prospective International Surrogacy Agreements

Section 85(1) This section shall apply where, following the preliminary approval in respect of an international surrogacy agreement has been granted by the AHHRA under section 84, an attempt has been made to implant an embryo in a surrogate in another jurisdiction.

(2) The intending parents, within 3 months of the implantation referred to in subsection (1), shall notify the AHHRA, in the prescribed form, of whether the embryo implantation has resulted in pregnancy and if so, shall provide the following information:

(i) the date on which any gamete donor made their donation;
(ii) the date on which the embryo was implanted;
(iii) the clinic at which the donation and implantation took place;
(iv) the anticipated date of birth of the child; and
(v) confirmation of the jurisdiction in which the implantation of the embryo took place.

(3) The information provided in subsection (2) shall be accompanied by a sworn declaration by the person who had performed the implantation of the embryo in the relevant jurisdiction, swearing to the accuracy of the information provided.

(4) Where the AHRRA becomes aware of an error in any information given under this section, it shall, without delay, correct such an error upon receipt or procurement of information verifying the error and corrected information.

(5) Where the AHRRA becomes aware of a failure to give information to it as required by this section to be so given, it shall, without delay, contact the intending parent(s) and request that the information be provided within 14 days.

(6) In this section: -

"relevant jurisdiction" means the jurisdiction in which the implantation of the embryo took place;

Parental Orders in relation to children born through International Surrogacy Agreements

Section 86 (1) This section shall apply to an application for a parental order in respect of a child.

(2) A relevant applicant, or relevant applicants where applicable, subject to the conditions in this section, may apply to the Court for a parental order in respect of a child born as a result of an international surrogacy agreement to which the relevant applicant is, or the relevant applicants are, a party.

(3) (a) An application under this section can be issued at any time after the surrogate reaches 16 weeks gestation until the child is born and shall be dealt with expeditiously by the Court.

(b) Where an application under subsection (3)(a) has not been brought within the time required, the Court may extend the time within which to make such an application where:

(i) there are exceptional circumstances involved;

(ii) it is in the interests of justice; and,

(iii) it is in the best interests of the child.

(4) An application for a parental order, under this section, shall be grounded on an affidavit, by the relevant applicant, or where applicable, relevant applicants, and shall contain the following:

(a) a declaration by the relevant applicant of their belief that the, or each, as the case may be, relevant applicant constitutes a relevant applicant.

(b) specific evidence tending to indicate that each relevant applicant is a relevant applicant and that all other relevant persons are relevant persons, as necessary, which shall include:

(i) documentation from any agency, or any additional other documentation as between the relevant persons party to the international surrogacy agreement, to include:

(I) any explanatory information documents in relation to the surrogacy process in the relevant jurisdiction provided to, or obtained by, any relevant person;

(II) consent to any medical procedures inherent or ancillary to the international surrogacy agreement engaged in by relevant persons;

(III) consent to the actual or intended assignment of parentage arising from the international surrogacy agreement;

(IV) evidence of counselling offered to, or undertaken by, a surrogate;

(V) evidence of any physiological assessment, psychological assessment or other relevant assessment conducted on a relevant person;

(VI) evidence of any genetic testing and known medical history of the surrogate, or genetic donor, where applicable;

(VII) evidence of the provision of legal advice to a relevant person and the relevant person's understanding of same;

(VIII) agreements between to the parties as to any issues ancillary to the conception and parentage of the child; and,

(IX) details of any decisions made as between the parties in relation to post-factum differences of opinion.

(ii) evidence of any genetic connection between the intended parents who were party to the international surrogacy agreement and the child born as a result of the international surrogacy agreement,

(iii) confirmation that the surrogate is not genetically related to the child;

(iv) evidence of any compensation offered or paid to the surrogate,

(v) confirmation that the information has been provided to the AHHRA pursuant to sections 84(2)(h) and 85(2), and where such information is not available to the relevant applicant, evidence of the reasons for such unavailability, and evidence of the relevant applicant's reasonable efforts to obtain such information:

(vi) evidence that the surrogate and any gamete donor have been notified that the information in section 88(1)(b) shall be registered in the National Surrogacy Register and that any child born as a result of the conception, may access such information and may contact the surrogate or gamete donor, as they wish.

(vii) evidence of any agreements reached between:

(I) the surrogate and the intending parent(s) and;
(II) the gamete donor, if any, and the intending parent(s)

as to the disclosure of the identifying or non-identifying information relating to the surrogate and gamete donor, if any, to the child.

(viii) details of the child's understanding of the nature of their conception and whether full identifiable details of the child's surrogate and any gamete donor have been disclosed to the child.

(c) Confirmation that the intending parents have, or the intending parent has, as applicable, attended at least one information session in relation to the importance of the child's identity.

(d) An undertaking by the relevant applicant that they intend to disclose the nature of the child's conception and to facilitate the child's access to the surrogate and any applicable donor's identifying information.

(e) A copy of the AHRRA's certificate of preliminary approval under section 84(3).

(f) A copy of any report or recommendations provided by the AHHRA under section 84(4).

(g) evidence that the international surrogacy agreement is compliant with the laws of the relevant jurisdiction, which can be provided in the form of a declaration by a legal professional in the relevant jurisdiction swearing to the compliance of the agreement with the laws of the relevant jurisdiction.

(5) (a) In determining the application, the Court shall have regard to the following criteria:

(i) Whether the surrogate provided full and informed consent to the AHR treatment prior to conception and to the subsequent assignment of parentage or the parental role to the intended parent, or intending parents, as applicable,
(ii) Whether the surrogate and the intended parents understood the legal implications of entering into the international surrogacy agreement,
(iii) Whether the compensation was not to such an excess as to render the agreement exploitative, having regard to the standard of living in the relevant jurisdiction and
(iv) Whether the child's social reality is being that of the child of the relevant applicant, or relevant applicants, as applicable,
(v) Whether the child's right to identity has been vindicated to the fullest extent possible in the individual circumstances of the application.

(b) In determining whether the surrogate's consent was free and informed, the court shall have regard to the legal advice provided to her and the counselling she had received prior to conception.

(c) In determining applications under this section, where the intending parents failed or were unable to comply with this section due to the time between the start of their AHR treatment and the conception of the child, the Court will have regard to whether such compliance would have caused undue hardship to any relevant person.

(6) Where the Court has considered that the circumstances of the relevant applicant, and the international surrogacy agreement meets the criteria under subsection (5)(a), it shall make the order.

(7) Notwithstanding subsection (6), where, having regard to the principles as set out in section 76, the Court believes that it would be in the interests of justice to make the order, it shall make the order.

(8) A court shall not grant an order in respect of an application taken under subsection (3) by one intended parent where two intended parents entered into the international surrogacy agreement, other than with the consent of all relevant persons.

(9) The Court may, if it is satisfied under subsections (6) or (7) that an order should be made, certify that the relevant applicant meets the criteria under this subsection.

(10) The certification by the court under subsection (9) has the effect of both granting and staying the final parental order until such time as the child has been born and the surrogate has been given an opportunity to convey her final consent to the court within 7 days following the birth of the child.

(11) The surrogate may confirm her consent in evidence and such evidence shall be facilitated by remote hearing.

(12) Where the surrogate refuses to provide her consent, she may make submissions to the court, by way of replying affidavit or direct evidence, within 21 days of the day on which notice of the application was served on her, or within 7 days following the birth of the child, and such submissions and/or evidence shall be considered by the court in light of the principles as set out in section 76.

(13) Where the surrogate fails to provide her consent following the birth of the child, the relevant applicant shall make submissions as to the reasons for such failure and where such failure arises from exceptional circumstances, to include incapacity or medical illness, the Court shall have the discretion to extend the time for her to make submissions only where:

(i) it is in the interests of justice; and,
(ii) it is in the best interests of the child.

(14) The Court may if it is satisfied that the principles set out in section 76 require it to dispense with the consent of the surrogate, it may so dispense with her consent however, it may only do so:

(a) after the birth of the child; and
(b) where there is no genetic link between the surrogate and the child born.

(15) Where the court, having stayed the final parental order under subsection (10),

(i) receives the consent of the surrogate following the birth of the child; or
(ii) dispenses with the consent of the surrogate following the birth of the child

the Court shall lift the stay and confirm the final parental order under this section.

(16) Upon receiving a submission under subsection (12), the Court may, of its own motion, or on application to the court by a notice party, may join that notice party as a party to the proceedings.

(17) The Court may direct that notice of any application under this section shall be given to such other persons as the Court thinks fit and where notice is so given to any such other person the Court may, either of its own motion or on the application of that person or any party to the proceedings, order that that person shall be added as a party to those proceedings.

(18) An application under subsection (3) shall—

(a) be on notice to:

(i) the Attorney General,

(ii) every other relevant person party to the international surrogacy agreement which resulted in the birth of the child who is the subject of the application,

(iii) the child who is, or the children who are, as applicable, the subject or subjects of the application.

(b) be heard otherwise than in public.

(19) Service of any persons residing in another jurisdiction shall be proven by way of:

(a) an affidavit of service exhibiting evidence of confirmed receipt through registered post;

(b) an affidavit of personal service by a person authorised to carry out such service in the jurisdiction within which service was effected;

(c) an affidavit by the notice party confirming that they have received the relevant judicial or extra-judicial documentation

(20) The Court may dispense with the need to serve a notice party where it has been demonstrated by the relevant applicant that the notice party:

(a) cannot be found after reasonable enquiries,

(b) is purposefully evading service in bad faith, or

(c) is deceased

which shall be demonstrated by the relevant applicant on affidavit.

(21) (a) A child under this section may apply to the Court at any point for an order lifting the *in camera* rule in respect of any proceedings brought under this section and the Court shall grant the order where it is in the best interests of the child to do so.

(b) An order under subsection (20)(a) shall have the effect of opening the court file to the child in order to allow the child to access the pleadings and orders available to the court.

(22) In this section:

"child" means a child (ISA);

"relevant applicant" means an intending parent or surrogate who were party to an international surrogacy agreement which resulted in the birth of a child in respect of whom the application is made;

"relevant jurisdiction" means the jurisdiction in which the implantation of the embryo took place;

"relevant person" means an intending parent or surrogate.

"undue hardship" includes the following, and in particular, in light of the lack of regulation prior to the enactment of this Part:

(a) A significant financial burden that would have been oppressive to the intending parent(s) right to beget a child, having regard to the specific means of the intending parent(s);

(b) The foregoing of a genetic relationship between siblings by using gametes that are compliant with this Part, where gametes donated by the donor who donated gametes in respect of a child already born to the intending parent(s) had already been stored or had been formed into an embryo at the time of the enactment of this Part;

(c) An inability to facilitate the conception of the child in light of various time limitations, as relating to:
    (i) Age requirements;
    (ii) Embryo storage; or,
    (iii) Gamete storage.

(d) An inability to facilitate the conception of the child as a result of medical restraints as attested to by a registered medical practitioner.

Effect of a Parental Order granted under section 86

Section 87 (1) Where a court grants a parental order in respect of a child under section 86:

(a) the child shall be considered in law to be the child of the intending parents, or, in the case of a single intending parent, that intending parent, named in the order, and shall be so considered from the date of the child's birth.

(b) the surrogate mother of the child will lose all claim to parental rights and is freed from any parental duties otherwise imposed on her in respect of the child.

(c) the gamete donor, if any, will lose all claim to parental rights and is freed from any parental duties otherwise imposed on them in respect of the child.

(d) a reference in any enactment to a mother, father or parent shall be construed as including, in relation to the child to whom the order relates, those named as parents, or the parent of the child, as the case may be, in the parental order.

(e) a reference in any enactment to a mother, father or parent of a child shall be construed as not including, in relation to the child to whom the order relates, the surrogate, the donor or their spouses, if any.

(2) Where notice of the application, and subsequent order, under section 86, has been served on the Attorney General, the order shall be binding on the State.

(3) A reference to a "person" in section 7(1) of the Act of 1956 shall be construed as including a child who is the subject of a parental order under section 86.

(4) Where the court certifies the application under section 86(9), it shall, within 14 days immediately following such grant, give, or cause to be given, a copy of the certification to the Minister for the purposes of any application for an emergency travel certificate under section 15(2) of the Act of 2008.

(5) (a) A person named in a certification provided under section 86(9) may make an application to the Minister for an emergency travel certificate under section 15(2) of the Act of 2008.

(b) The Minister shall issue the emergency travel certificate upon receipt of an application under subsection (5)(a) which includes:

(i) certification from the court under section 85(9);

(ii) proof of the birth of the child; and,

(iii) such information and documents in relation to the child as the Minister may require for the purposes of the application.

(6) In this section: -

"Minister" means Minster for Foreign Affairs

Information to be Provided to the National Surrogacy Register

Section 88 (1) Where the court grants, or refuses to grant, a parental order in respect of a child under section 86, and where that order becomes operational, it shall, within 14 days immediately following such grant, give, or cause to be given, a copy of the order to an tArd-Chláraitheoir and the AHRRA in order to allow—

(a) an tArd-Chláraitheoir to make, or cause to be made, an entry, in the register of parental orders for surrogacy established and maintained under section 13(1)(m) of the Act of 2004, in accordance with section 35C (2) of that Act, and

(b) the AHRRA to make an entry in the National Surrogacy Register registering:

(i) the information received under section 84(2(h);

(ii) the information received under section 85(2);

(iii) the date of birth of the child;

(iv) the place at which the child was born;

(v) the date of determination of the parental order; and,

(vi) whether the parental order was granted or refused.

The Disclosure of Conception and the Information Document in respect of children the subject of proceedings under section 86.

Section 89 (1) Where a child applies for a copy of their entry in the foreign births register, the Minster shall, when issuing a copy of the entry in the foreign birth registrar in respect of that child, provide the child with the AHR information document prepared by the AHHRA.

(2) The information document referred to in subsection (1) shall be prepared by the AHHRA as soon as practicable after the commencement of this section and shall be prepared for both a child (AHR and an adult (AHR).

(3) The information document shall:

(a) include information as to what assisted human reproduction is and how surrogates and gamete donors can be included in the process;

(b) inform the child that further information relating to them is available in the National Surrogacy Register and explain the process of obtaining this information;

(c) inform the child that further information relating to their surrogate, donor, and potential donor or surrogate siblings is available on the National Surrogacy Register and explain the process of obtaining this information; and,

(d) include referral information to age-appropriate counselling services.

(4) The information document shall be published on the AHRRA's website and the AHHRA shall:

(a) update the document within 3 months of each legislative change relevant to the information contained therein, and,

(b) review the document annually to assess whether any updates are necessary.

(5) In this section,

"child" means a person in respect of whom proceedings were taken for a parental order under section 86;

Access to Information in the National Surrogacy Register in respect of children the subject of proceedings under section 86

Section 90 (1) A child may make an application to the AHRRA to access the following information, where applicable:

(a) Information in respect of the gamete donor that is record on the National Surrogacy Register and the number of persons who have been born as a result of such use of such donation, and the sex and year of birth for each of them;
(b) Information in respect of the surrogate that is on record on the National Surrogacy Register and the number of persons who have been born to the same surrogate, and the sex and year of birth for each of them.

(2) A child may request the AHHRA to register their contact details and their preference for contact in respect of any applications for such contact with the child from the surrogate, any gamete donor, or any sibling.

(3) A child may request that AHHRA remove or amend any contact preference from the National Surrogacy Register.

(4) A child may request to be informed of the contact preferences of any sibling registered in the National Surrogacy Register.

(5) The AHHRA shall comply with a request under subsections (1), (2), (3) and (4).

(6) Where any sibling of the child has registered their contact preference as being open to contact with siblings, the AHHRA shall:

(a) if such preference has been registered within one year of the child's request, shall release the contact information registered in respect of that sibling;

(b) if such preference has been registered more than one year prior to the child's request, shall notify the relevant sibling of:

(i) the request by a child for contact; and,

(ii) the AHHRA's intention to release the sibling's contact information with the consent of the sibling or, if no response is received, within 56 days of the notification.

(7) Where the AHRRA does not receive any response from the sibling under subsection (6)(b) or where the sibling consents to the release of their contact information to the child, the AHHRA shall release the sibling's information to the child.

(8) Where any gamete donor or where the surrogate of the child requests contact with a child who has registered their contact preference as being open to contact with their gamete donor, if any, and their surrogate, the AHHRA shall:

(a) if such preference has been registered within one year of the gamete donor or surrogate's request, shall release the contact information registered in respect of that child;

(b) if such preference has been registered more than one year prior to the gamete donor or surrogate's request, shall notify the child of:

(i) the request by the child's gamete donor or surrogate for contact; and,

(ii) the AHHRA's intention to release the child's contact information with the consent of the child or, if no response is received, within 56 days of the notification.

(9) Where the AHRRA does not receive any response from the child under subsection (8)(b) or where the child consents to the release of their contact information to their gamete donor or surrogate, the AHHRA shall release the child's information to the gamete donor or surrogate, as applicable.

(10) The AHRRA shall not release the information in subsections (7) or (9) where it has been unable to prove service of the notification referred to in subsection (6)(b) or (8)(b).

(11) Service, as referred to in subsection (10), can be proven by way of:

(a) tracked or registered post;

(b) personal service;

(c) a response, either verbally or in writing, from the sibling or child, as applicable, confirming receipt of the notification

(12) In this section: -

"child" means a person of any age in respect of whom proceedings were taken for a parental order under section 86;

Offence of giving false or misleading information to the AHRRA under certain provisions

Section 91 Any person who knowingly, or recklessly, gives the AHHRA information which is false or misleading in a material particular in, with, or in connection with—

(a) an application under section 84(2),
(b) a request under section 84(3), and
(c) a notification under section 85(2), (3).

is guilty of an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months or both.