

PREPARING FOR YOUR FUTURE SURROGACY JOURNEY NOW

How to Future Proof your Surrogacy Journeys in
Anticipation of the Commencement of the
Health (Assisted Human Reproduction) Act 2024



LGBT
IRELAND

TABLE OF CONTENTS

About this Document	03
---------------------	----

Embryos	06
---------	----

Habitual Residence	11
--------------------	----

Subsequent Journeys	12
---------------------	----

About Us	14
----------	----



Disclaimer: We very much hope that this guide assists you in the preparation of your surrogacy journey; however it does not purport to constitute legal advice and we recommend that you seek legal advice from a qualified professional before initiating your surrogacy journey.



ABOUT THIS DOCUMENT

This guide has been prepared by LGBT Ireland and Irish Gay Dads to highlight some important aspects of surrogacy journeys that you will need to consider in order to comply with the Health (Assisted Human Reproduction) Act 2024. While we have published guides setting out the criteria for applying for your parental order and the steps that need to be taken in preparation for that, this guide is for those who are **forward planning** for their surrogacy journey in the years to come.

Why is this Necessary?

At the moment, intending parents will find it very difficult to know what specific legal standard will apply to their surrogacy journey because there is no law currently in effect in relation to surrogacy in Ireland. While there is published and enacted law in relation to surrogacy (the 2024 Act), it has not yet come into effect (also known as “commenced”).

The 2024 Act provides a framework for what criteria will need to be met in order to be eligible for a parental order both before commencement and after commencement. Once commenced, the legislation will separate all those who have transferred their embryo from those who have not yet done so.

Those whose embryos have already been transferred at the time of commencement will have to comply with the **retrospective surrogacy part** of the 2024 Act in order to be eligible for their parental order and those who have not transferred their embryo will have to comply with the **prospective surrogacy part**.

The prospective surrogacy part is considerably more restrictive and so we have made this guide to give you all as best a chance as possible to be informed about what you will have to do to “future proof” your surrogacy journeys. We recommend that you read this guide in tandem with our guides on retrospective, prospective, domestic and international surrogacy.



EXPLAINING COMMENCEMENT

When legislation is being passed through the houses of the Oireachtas, the primary objective is to make good, workable law but certain legislation, such as the 2024 Act, requires the preparation of various components of the process before the law can be put into effect. For example, the prospective process requires each intending parent to apply to a newly established Assisted Human Reproduction Regulatory Authority (the AHRRA). Therefore, that new authority has to be established, housed, staffed etc. Under the 2024 Act, there are many details that have to be prescribed in regulations by the Minister in conjunction with the AHRRA. Registers must be set up such as the National Surrogacy Register and the Register of Parental Orders in Surrogacy. New court rules and prescribed forms are required. As you can imagine, there is a lot of work that goes into this process and so it may be many years before this legislation is commenced.

Do we have any idea when the law will be commenced?

The 2024 Act was not commenced prior to the general election and there is now a new Minister for Health who is responsible for signing the commencement order for the legislation. At best, we know that the intention is to publish amending legislation in June 2025 and enact it by the end of the year. Assurances in relation to the commencement of the current 2024 Act and the amending legislation have not been forthcoming. It is also unclear what level of notice, if any, will be provided in relation to any impending commencement. This will make it difficult for intending parents to know when they should transfer their embryos based on their eligibility for parentage under the 2024 Act.

How Can I Best Plan my Surrogacy Journey now?

While the 2024 Act is not yet commenced, you may simply wish to make sure that you comply with the retrospective frameworks on surrogacy and plan to transfer the embryo as soon as possible. However, if your surrogacy journey is going to take longer than you expected and you cannot guarantee yourself that you will get your embryo transferred before commencement, or, if you are planning multiple surrogacy journeys that span both the retrospective and prospective framework, then this guide is for you.



HOW CAN I CHECK IF PARTS OR ALL OF THE HEALTH (ASSISTED HUMAN REPRODUCTION) ACT 2024 HAVE BEEN COMMENCED?

Open the Health (Assisted Human Reproduction) Act 2024 on the Irish Statute Book by clicking this [link](#)

Click on “[Commencement, Amendments, SIs made under the Act](#)”

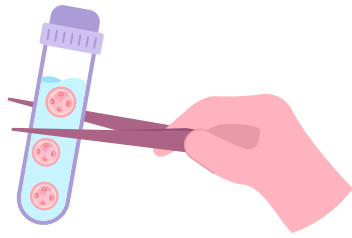
Health (Assisted Human Reproduction) Act 2024

[View by Section](#)[View Full Act](#)[Bill History](#)[Commencement, Amendments, SIs made under the Act](#)

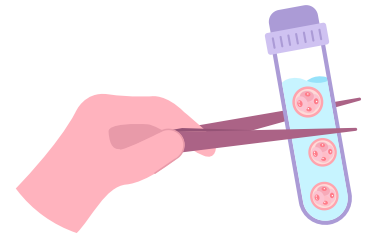
At the top of the webpage, you will see a box like this:

Commencement		
Section	Commencement Date	Commencement Information
Ss. 1-225		Not yet commenced. Commencement order required under s. 1(4)
Ss. 226-228		Not yet commenced. Commencement order required under s. 1(5)
S. 229		Not yet commenced. Commencement order required under s. 1(6)
S. 230		Not yet commenced. Commencement order required under s. 1(7)
S. 231		Not yet commenced. Commencement order required under s. 1(5)
Ss. 232-234		Not yet commenced. Commencement order required under s. 1(4)

If a commencement order has been published, the “commencement information” will be updated by the Law Reform Commission to show you when the relevant section will be commenced.



EMBRYOS



One of the biggest issues that you will have to plan around to future proof your surrogacy journey is how your embryos are formed. This is because the prospective part of the legislation has many more criteria for embryos than the retrospective part. In order to comply with the retrospective part of the surrogacy legislation, your embryo must have been formed using a gamete from at least one intending parent, without using the gamete of the surrogate, or that of her husband, and:

Domestic Surrogacy

- transferred prior to the commencement of section 204 of the 2024 Act and
- transferred in Ireland or in a place outside of Ireland by a person authorised by law to do so.

International Surrogacy:

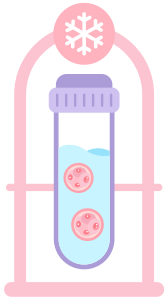
- transferred prior to the commencement of section 216 of the 2024 Act and
- transferred in the relevant surrogacy jurisdiction (where the surrogate is habitually resident) by a person authorised by law to do so.

While the Children and Family Relationships Act 2015, which deals with donor conception, contains a clause that all embryos formed before the commencement of that legislation (4 May 2020) can continue to be used, **there is no such provision in the 2024 Act.**

The 2024 Act does however provide that if there is a conflict between the 2015 Act and the 2024 Act, the conflict shall be decided in favour of the 2015 Act. Regrettably, we do not believe that this can be relied upon to continue to use pre-existing embryos in surrogacy, as the 2024 Act sets out its own framework for approved embryos, separate to the donor conception pathway in the 2015 Act. We do not therefore believe this could be classed as a mere conflict.

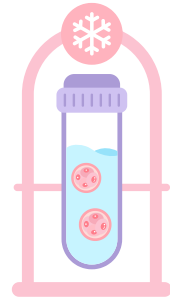
Some Added Context:

As part of the LGBT+ Parenting Alliance, we have advocated for a provision to be inserted into the 2024 Act to state that embryos formed before the commencement of the legislation could continue to be used. We were given assurances from the former Minister for Health in August 2024 that such a provision would be included in the supplemental legislation which his Department was working on, in conjunction with the Department of Justice and the Department of Children (DCEDIY) prior to the general election. No such legislation was published before the election in November 2024; however the new Minister for Health has stated that she wishes to publish the amending bill in June 2025. We do not yet know what this amending legislation will contain.



EMBRYOS

Prospective Embryos: The Criteria



If possible, we recommend not to form your embryos, or any further embryos, for **future use** unless absolutely necessary. This is because there are many aspects of the legislation, as currently enacted, that make it very difficult to future proof your embryos. We also cannot guarantee that the legislation will not be amended further before commencing. However, you may understandably be conscious of the time involved in the journey as a whole and perhaps your own age, which might exceed the age threshold if you wait too long. If you are forming your embryos, we therefore note the following list of aspects of your embryo formation that you will have to comply with in order to be covered by the prospective surrogacy framework of the 2024 Act:

Domestic Surrogacy (includes donations made in Ireland or made in accordance with the law of another jurisdiction):

- There will be upper age limits for donors prescribed in regulations, not yet published, by the Minister for Health.
- There will be prescribed storage periods for gametes and embryos, prescribed in regulations, not yet published, by the Minister for Health. Prior to commencement, the storage of the embryos must be lawfully undertaken. After the AHRRA is established, Assisted Human Reproduction (AHR) treatment providers who provide storage must apply for a license from the AHRRA within 6 months.
- An AHR treatment provider cannot facilitate a person making a donation, or using a donation unless that person has received AHR counselling.
- You cannot pay for a donation beyond reasonable expenses, meaning travel, medical, counselling, legal expenses, net loss of income expenses. The donor must have actually incurred these expenses and must be able to vouch a receipt or other documentation to verify that the expense was incurred.
- At least one intending parent must contribute a gamete to the embryo.

Domestic and International Surrogacy:

- The donor must be known, and their identifying information will have to be registered in the National Surrogacy Register which has not yet been formed. Therefore either you or the clinic/bank will have to have a mechanism to have ongoing contact with your donor.



EMBRYOS

Prospective Embryos: Consent in Domestic Surrogacy



- Consent must be provided in a specified form (not yet published) by the donor who must:
 - confirm their consent under section 19 of the 2024 Act and **section 6 (if donating a gamete) or section 14 or 16 (if donating an embryo)** of the 2015 Act,
 - specify the specific AHR treatment for which the donation may be used,
 - specify that they have been given the opportunity to reduce the number of families to four total families who are able to receive their donation and have either reduced the number or declined to do so,
 - specify whether they consent to their donation being used by another AHR treatment provider either in Ireland or in another country,
 - confirm their consent to the recording of their identifying information by the AHR treatment provider, namely their name, date and place of birth, nationality, the date on which they made their donation and their contact details,
 - confirm that they understand that under Irish law, they are not the parent of the child born as a result of such use of such donation,
 - confirm that they understand that the relevant information in relation to them shall be recorded on the National Surrogacy Register,
 - confirm that they understand that the child when they turn 16 may access the donor's identifying information and may seek to contact them,
 - confirm that they understand that the information that the donor is entitled to obtain from the National Surrogacy Register is restricted to the number of persons who had been born from their donation and the sex and year of birth of each of them,
 - confirm that they understand that it is desirable to keep their information on the National Surrogacy Register updated,
 - confirm that they understand that they have the right to revoke and/or replace their consent.



EMBRYOS

Prospective Embryos: Consent in International Surrogacy



- In order for the AHRRA to approve an international surrogacy agreement, consent must be provided from the donor in a specified form (not yet published) stating that they:
 - consent to the recording of their identifying information by the AHR treatment provider, namely their name, date and place of birth, nationality, the date on which they made their donation and their contact details,
 - confirm that they understand that under Irish law, they are not the parent of the child born as a result of such use of such donation,
 - confirm that they understand that the relevant information in relation to them shall be recorded on the National Surrogacy Register,
 - confirm that they understand that the child when they turn 16 may access the donor's identifying information and may seek to contact them,
 - confirm that they understand that the information that the donor is entitled to obtain from the National Surrogacy Register is restricted to the number of persons who had been born from their donation and the sex and year of birth of each of them,
 - confirm that they understand that it is desirable to keep their information on the National Surrogacy Register updated,
 - confirm that they understand that they have the right to revoke and/or replace their consent.
- In addition, the AHR treatment provider in the relevant surrogacy jurisdiction must give an undertaking in a specified form (not yet published) before an application for pre-approval is made to the AHRRA:
 - that it will not transfer an embryo unless it has the necessary consent from the donor and such consent permits the use of the donation in such a surrogacy agreement, and
 - that it will not disclose the personal details of the donor to the intending parent(s).

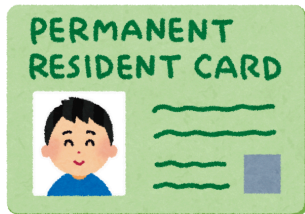


EMBRYOS

Prospective Domestic Embryos Screening



- The donor of a gamete (including intending parents) must undergo the testing required under the European Communities (Quality and Safety of Human Tissues and Cells) Regulations 2006 (S.I. No. 158 of 2006). These include:
 - HIV 1 and 2
 - Anti-HIV-1,2
 - Hepatitis B
 - Hepatitis C
 - HBsAg
 - Anti-HBc
 - Anti-HCV-Ab
- Non partner donors must also be negative for HIV 1 and 2, HCV, HBV and syphilis and sperm donors must additionally be negative for Chlamydia.
- HTLV-I antibody testing must be performed for donors living in, or originating from, high-prevalence areas or with sexual partners originating from those areas or where the donor's parents originate from those areas.
- Donors must be selected on the basis of their age, health and medical history, provided on a questionnaire and through a personal interview performed by a qualified and trained healthcare professional. This assessment must include relevant factors that may assist in identifying and screening out persons whose donation could present a health risk to others, such as the possibility of transmitting diseases (such as sexually transmitted infections), or health risks to themselves (e.g; superovulation, sedation or the risks associated with the egg collection procedure or the psychological consequences of being a donor).
- In certain circumstances, additional testing may be required depending on the donor's history and the characteristics of the tissue or cells donated. Genetic screening for autosomal recessive genes known to be prevalent, according to international scientific evidence, in the donor's ethnic background and an assessment of the risk of transmission of inherited conditions known to be present in the family must be carried out, after consent is obtained.
- In international surrogacy, the intending parent contributing their gamete to the embryo must prove that they have been tested as appropriate under the 2006 Regulations **in Ireland** before the embryo transfer takes place.



HABITUAL RESIDENCE



Past Surrogacy Agreements

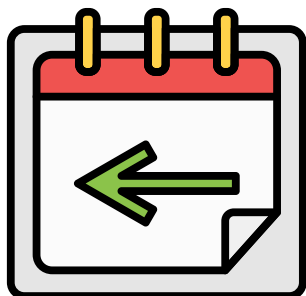
Domestically, the surrogate must be habitually and lawfully resident in Ireland for one year before entering into the surrogacy agreement.

Internationally, the surrogate must be habitually and lawfully resident in the surrogacy jurisdiction for one year before entering into the surrogacy agreement.

For both domestic and international surrogacy, at least one intending parent must be habitually and lawfully resident in Ireland for one year before entering into the surrogacy agreement.

Domestically, the embryo must be transferred in Ireland or in a place outside of Ireland where it was lawful to do so.

Internationally, the embryo must be transferred in the jurisdiction in which the surrogate was habitually resident.



Prospective Surrogacy Agreements

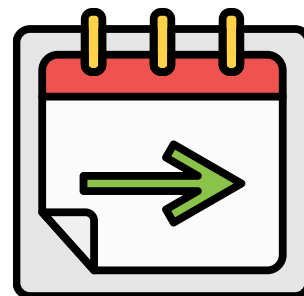
Domestically, the surrogate must be habitually and lawfully resident in Ireland for two years before entering into the surrogacy agreement.

Internationally, the surrogate must be habitually and lawfully resident in the surrogacy jurisdiction for two years before entering into the surrogacy agreement.

For both domestic and international surrogacy, at least one intending parent must be habitually and lawfully resident in Ireland for two years before entering into the surrogacy agreement.

Domestically, the embryo must be transferred in Ireland.

Internationally, the embryo must be transferred in the jurisdiction in which the surrogate is habitually resident.



SUBSEQUENT JOURNEYS

The Surrogate

You may be engaging with a surrogate who may wish to carry a sibling for your child. If so, it would be important to make sure that you match with a surrogate who has already had a child but who has not been a surrogate before. This is because the 2024 Act provides that a surrogate cannot act as a surrogate on more than two occasions in total. She can also only have two clinical pregnancies in total. This does not mean two pregnancies carried to term, but rather two pregnancies that were at least 6 weeks in gestation. To clarify, if a surrogate carried one child to term and had a miscarriage in respect of a second pregnancy after 6 weeks, she cannot act as a surrogate again. It would be wise also to advise your surrogate of the prospective surrogacy framework (including counselling, assessment, legal advice, birth registration, recording of information in the National Surrogacy Register, altruism, etc) and parental order process in Ireland to ensure that she is aware and open to the process. You can review this process in our relevant booklets.



Surrogacy Jurisdiction

It's important to keep in mind that the Minister of Health will have to approve a surrogacy jurisdiction under the prospective framework. While we do not yet know what jurisdictions will be approved, the Minister will order approvals based on criteria such as altruism, habitual residence requirements, the protections afforded to children, any concerning civil or military activities, the regulatory oversight of medical professionals, the law of intermediaries, the vindication of the rights of pregnant women and the ability to monitor compliance with the 2024 Act.

As the embryo must be transferred in the approved surrogacy jurisdiction, it would be helpful to consider whether you will form your embryos in an approved jurisdiction or can organise a plan to transport them if necessary.

SUBSEQUENT JOURNEYS

Intermediaries

If you are working with an intermediary that you would like to work with again in the future, it is important to note that intermediaries under the prospective framework can only be engaged with if the provision of the intermediary services they are providing is lawful in that jurisdiction.

One example of this is Canadian law which prohibits acting as an intermediary or making payments to an intermediary. In practice, intermediaries operate without challenge in Canada. Under the 2024 Act, it is the lawfulness of the activity that matters, not the practical reality on the ground. Even though the 2024 Act allows intending parents to pay intermediaries, it will not permit payments if such payments are unlawful in that country.

The payments made to an intermediary must be reasonable. The reasonableness of any payments is judged having regard to the nature of the services and the level of fees paid in that jurisdiction for comparable services. Intermediaries can include the legal, medical or counselling service fees into their total fees, having paid for those services directly on behalf of the intending parents. However, these fees cannot be inflated to offset unreasonable intermediary fees.



ABOUT US

IRISH GAY DADS

Our Group's Purpose and Goals

The community we serve is made up of families seeking advice and support on surrogacy, adoption, fostering, and co-parenting. We aim to provide a welcoming and informative space for dads and dads-to-be, while also striving to influence and shape laws that impact our children, surrogates, and families.

Our primary goals are twofold:

- To provide a supportive and friendly environment where members can share their personal experiences and seek guidance.
- To advocate for change and work towards legal equality for all families, regardless of their background or composition.



LGBT
IRELAND

LGBT IRELAND

LGBT Ireland is a national organisation underpinned by localised knowledge and responses. Together with our network members, we provide support, training, and advocacy which aims to improve the lives of LGBT+ people across Ireland.