



An Bille um Leanaí agus Cónais Teaghlaigh (Leasú) 2023
Children and Family Relationships (Amendment) Bill 2023

Meabhrán Mínitheach
Explanatory Memorandum



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Introduction/Purpose of this Bill

The purpose of this Bill is to expand pathways to parentage for persons parenting donor conceived children without legal recognition as a parent.

This Bill allows for individuals to apply for parentage where their child is born outside of the State, conceived outside of the State, born outside a donor assisted human reproduction (DAHR) facility and where, they used a known donor prior to the commencement of the Children and Family Relationships Act 2015 (“The 2015 Act”).

This Bill also incorporates the best interests principle into the 2015 Act and provides for ancillary matters, including a presumption of maternity for same sex female couples, citizenship for donor conceived children and a confirmation of the 2015 Act’s application to parents who use their own gamete.

Provisions of this Bill

PART 1

Preliminary and General

Section 1 (*Short Title and Commencement*)

This section sets out the title and the date of commencement.

Section 2 (*Interpretation*)

Section 2 sets out the definition of the Principal Act.

PART 2

Declarations of Parentage

Section 3 (*Amendment of section 4 of the Principal Act*)

Section 3 amends section 4 of the 2015 Act in its application of the 2015 Act to donor conceived children conceived or born outside of the state. This section acts in conjunction with sections 5, 9-12.

Section 4 (*Insertion of section 4A into the Principal Act*)

Section 4 inserts the best interests principle into the 2015 Act. This principle provides that the child's best interests must be the paramount consideration in any court application under the 2015 Act. Such court applications relate to the retrospective framework of DAHR. This allows for an element of judicial discretion where intending parents do not otherwise comply with the retrospective provisions of the 2015 Act but should nonetheless, in the view of the Court, be granted parentage of their child.

Section 5 (*Amendment of section 5 of the Principal Act*)

This section amends section 5 of the 2015 Act and provides that intending parents who comply with section 26A (where the child is born outside of the State) and/or section 26C (where the child is born outside of a DAHR facility), are parents of the donor conceived child.

Section 6 (*Insertion of section 5A into the Principal Act*)

This section inserts section 5A into the 2015 Act. Section 5A provides confirmation that intending parents who use their own gamete are not excluded from parentage by virtue of using their own gamete. The need for this provision arises from the definition of "donor" in conjunction with section 6 of the 2015 Act which refers to persons whose gamete is used in DAHR treatment as donors only. Such persons consent to their parentage having never arisen by virtue of the 2015 Act.

Section 7 (*Amendment of section 9 of the Principal Act*)

This section amends section 9 of the 2015 Act to provide for a process of decision making prior to conception, in respect of potential post factum differences of opinion between intending parents. Section 9 relates to the consent of the gestational mother.

Section 8 (*Amendment of section 11 of the Principal Act*)

This section amends section 11 of the 2015 Act to provide for a process of decision making prior to conception, in respect of potential post factum differences of opinion between intending parents. Section 11 relates to the consent of the intending parent, if any, who is not the gestational mother.

Section 9 (*Amendment of section 20 of the Principal Act*)

This section amends section 20 of the 2015 Act in order to amend the application of the 2015 Act to donor conceived children conceived prior to the commencement of the 2015 Act. Section 20 relates to the criteria that must be proven before the Court for a declaration of parentage of such children. This amendment removes the requirements for a child to

have been born in the State, conceived in the State, conceived in a DAHR facility, or conceived using an unknown donor.

Section 10 (*Amendment of section 21 of the Principal Act*)

This section amends section 21 of the 2015 Act to remove the age restriction on a declaration of parentage meaning that a declaration of parentage can be sought in respect of a donor conceived child over the age of 18. This amendment also incorporates judicial discretion into court applications pursuant to section 21, allowing for declarations of parentage to be granted by the Court, notwithstanding a lack of compliance with the 2015 Act, where the Court deems it to be in the best interests of the child to do so.

Section 11 (*Amendment of section 22 of the Principal Act*)

Section 11 amends section 22 of the 2015 Act in order to harmonise the judicial standards imposed on both applications to the District Court under section 21 and applications to the Circuit Court under section 22. Both applications would now be subject to the best interests of the child principle.

Section 12 (*Insertions of section 26A, 26B, 26C and 26D into the Principal Act*)

This section inserts sections 26A, 26B, 26C, and 26D into the 2015 Act. These sections provide for opt-in mechanisms for intending parents whose donor conceived child is conceived outside of the State and/or conceived outside of a DAHR facility. Section 26A applies to donor conceived children conceived outside of the State. Section 26C applies to donor conceived children conceived outside of a DAHR facility, whether within or outside the State. Both sections require intending parents and donors, prior to the conception of the child, to comply with the 2015 Act, in substantially the same way as the pre-existing framework, in relation to the consent of each party prior to conception, the information received, the identifying information registered in the National Donor Conceived Persons Register etc. The standing to make a court application under these sections emanates from the habitual residence or Irish citizenship of the intending parents for one year prior to conception. These insertions also seek to negate any potential breaches of the 2015 Act in obtaining donor gametes from international sperm or egg banks where the donors have been paid beyond reasonable expenses. This relates to the practice of Irish clinics availing of identifiable gametes from international banks which do pay a fee to their donors, and the absence of any Irish sperm or egg banks. Section 26B and 26D provide for a court application for a declaration of parentage for either scenario.

PART 3

Miscellaneous

Section 13 (*Amendment of section 23B of the Civil Registration Act 2004*)

This section amends section 23B of the Civil Registration Act 2004 in order to facilitate the re-registration of a donor conceived child's birth certificate to reflect a declaration of parentage under section 26B or 26D. It also removes the requirement to obtain the consent of a Superintendent Registrar before re-registration takes place.

Section 14 (*Insertion of Section 2A into the Status of Children Act 1987*)

This section inserts section 2A into the Status of Children Act 1987 ("the 1987 Act"). Parentage previously under the 1987 Act was based in the genetic link or the balance of probabilities where a putative parent refused to engage in DNA testing. Following the 2015 Act, applications relating to compliance with the prospective DAHR framework contained within the 2015 Act, were dealt with through section 35 of the 1987 Act. This insertion requires that the Court, in any application for a declaration of parentage in respect of the prospective framework of the 2015 Act, must regard the best interests of the child as the paramount consideration. This allows for an element of judicial discretion where intending parents do not otherwise comply with the prospective provisions of the 2015 Act but should nonetheless, in the view of the Court, be granted parentage of their child.

Section 15 (*Amendment of section 14 of the Status of Children Act 1987*)

This section amends section 14 of the 1987 Act. This provides the necessary insertion of definitions to facilitate the amendment in section 16.

Section 16 (*Amendment of section 15 of the Status of Children Act 1987*)

This section amends section 15 of the 1987. This section relates to lump sum maintenance from one parent to another in respect of the birth or funeral expenses of their child. This amendment expands this provision to include maintenance from intending parents under the 2015 Act who have not yet obtained a declaration of parentage.

Section 17 (*Amendment of section 46 of the Status of Children Act 1987*)

This section amends section 46 of the 1987 Act. This amendment creates a presumption of maternity in respect of same sex female couples who are married. This means that any donor conceived child born within the marriage of two women shall be presumed to be the child of both women unless proven to the contrary.

Section 18 (*Amendment of section 2 of the Irish Nationality and Citizenship Act 1956*)

This section amends section 2 of the Irish Nationality and Citizenship Act 1956 (“the 1956 Act”) to include a definition for the 2015 Act.

Section 19 (*Amendment of section 7 of the Irish Nationality and Citizenship Act 1956*)

This section amends section 7 of the 1956 Act to explicitly confirm that any child born through the prospective provisions of the 2015 Act benefits from the Irish citizenship of either of their intending parents regardless of their gestational or genetic link.

Section 20 (*Amendment of section 11 of the Irish Nationality and Citizenship Act 1956*)

This section amends section 11 of the 1956 Act to ensure that every donor conceived child born through the retrospective provisions of the 2015 Act benefits from the Irish citizenship of either of their intending parents regardless of their gestational or genetic link, from the making of the declaration of parentage under sections 21 or 22 of the 2015 Act.

Section 21 (*Amendment of section 3 of the Family Law (Maintenance of Spouses and Children) Act 1976*)

This section amends section 3 of the Family Law (Maintenance of Spouses and Children) Act 1976 (“The 1976 Act”) by inserting relevant definitions to facilitate all parents, and intending parents, of donor conceived children to apply for maintenance from the other in respect of the child.

Section 22 (*Amendment of section 6 of the Family Law Act 1995*)

This section amends section 6 of the Family Law Act 1995 (“The 1995 Act”) to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing interim parentage proceedings under the 2015 Act, and expanding the type of interim guardianship, custody and access applications that can be made, within judicial separation proceedings.

Section 23 (*Amendment of section 10 of the Family Law Act 1995*)

This section amends section 10 of the 1995 Act to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing parentage proceedings under the 2015 Act, and expanding the type of guardianship, custody and access applications that can be made, within judicial separation proceedings.

Section 24 (*Amendment of section 11 of the Family Law (Divorce) Act 1996*)

This section amends section 11 of the Family Law (Divorce) Act 1996 (“The 1996 Act”) to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing interim parentage proceedings under the

2015 Act, and expanding the type of interim guardianship, custody and access applications that can be made, within divorce proceedings.

Section 25 (*Amendment of section 15 of the Family Law (Divorce) Act 1996*)

This section amends section 11 of the 1996 Act to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing parentage proceedings under the 2015 Act, and expanding the type of guardianship, custody and access applications that can be made, within divorce proceedings.

Section 26 (*Amendment of section 115 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*)

This section amends section 115 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing interim parentage proceedings under the 2015 Act, and expanding the type of interim guardianship, custody and access applications that can be made, within civil partnership proceedings.

Section 27 (*Amendment of section 119 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*)

This section amends section 115 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing parentage proceedings under the 2015 Act, and expanding the type of guardianship, custody and access applications that can be made, within civil partnership proceedings.

Section 28 (*Insertion of section 172A into the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*)

This section inserts section 172A into the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to facilitate the hearing of various family law applications at the one time under one set of proceedings. This specific amendment relates to hearing parentage proceedings under the 2015 Act, equity proceedings, domestic violence proceedings and guardianship, custody, and access proceedings within cohabitation proceedings.

Financial Implications

This Bill has no direct financial implications.