

	Domestic Surrogacy	Proposed International Surrogacy
“Green Listing” jurisdictions – chosen by the AHRRA	N/A	Yes
Age Limits for Donors	Yes	Yes
AHR treatment must take place in a clinic	Yes, by necessity (gestational only surrogacy)	Yes, by necessity (gestational only surrogacy)
At least one IP must be habitually resident in Ireland	Yes, for two years	Yes, for two years
At least one IP must have objectively a reasonable expectation of living to parent a child, until that child is 18, according to a registered medical practitioner	Yes	Yes
Best Interests Test an additional criteria as opposed to a catchall	Yes	Yes - Section 19 of the 2010 Act, not section 32 of the 1964 Act
Citizenship arising from parental order (and DAHR under the CFRA)	Yes	Yes
Consent given by donor	Yes	Yes
Criminal sanction for advertising for surrogacy in Ireland, commercial surrogacy, knowing participation in non-permitted SA/non-approved SA, providing technical/medical/professional service to SA.	Yes	Yes
Criminal sanctions for intending parents for non-permitted surrogacy	Yes	Seemingly yes
Criminal sanctions in relation to past surrogacy arrangements	No	No
Declarations to be made by donor, surrogate, IP	Yes	Yes
Documentary evidence to verify that all the criteria required in the jurisdiction has been met	No	Yes
Donor and Surrogate Information Registered on National Surrogacy Register	Yes	Yes
Genetic Link with one intended parent required	Yes	Yes
Gestational Surrogacy only	Yes	Yes

International Surrogacy Policy Paper Review – Inter Departmental Working Group

Guardianship to be available from birth	Only with surrogate's consent and alongside the surrogate	Only with surrogate's consent and alongside the surrogate
Guardianship to be available where parental order is not granted	Only with surrogate's consent	Yes (general statement – on other avenues)
Information Session for donors, surrogates and intending parents in clinic	Yes	Assumed
Intending parents must be spouses, civil partners, or cohabitants	Yes	Not mentioned in Policy Paper
Intending parents to give undertakings to accept custody of the child/apply for a parental order – if they fail to do so, AHRRA can go to the High Court to get directions on the child's welfare (maintenance, exclusion from future ISA/SA)	Yes	Yes
Intermediaries Banned	Yes	No as long as it is proven that the payment to intermediaries is not unreasonably excessive and is proportionate to services provided
IPs must be 21 years old	Yes	Yes
IPs must be unable to gestate a pregnancy to birth, or conceive for medical reasons, or include a woman unlikely to survive birth, or unlikely to have her health significantly affected by a pregnancy or giving birth	Yes	Yes
Judicial Discretion/Best Interests Test	No	No
Limits on number of families donor can donate to	Yes (ish)	Yes (ish)
Medical screening must take place of any donors (under 2006 regs/comparable standard)	Yes	Yes
Parental Order applications must be brought between 28 days and 6 months after birth (given the time required for a surrogate to recover medically)	Yes	Yes
Parental recognition only applies from date of parental	Yes	Yes

order – (important for social welfare purposes?)		
Payments to Donors/Surrogates beyond itemised and vouched reasonable expenses	No	No
Relevant Court	Circuit Court	High Court
Remote Hearings	Possible but not stated – matter for court rules, practice direction etc.	In court hearings preferable, requirement for IP and child to travel. Exception if remote is deemed necessary and appropriate.
Risk Assessment of Intending Parents by AHHRA not provider	Yes	Yes
Surrogate and Intending Parents must receive AHR counselling	Yes	Yes
Surrogate and Intending Parents must receive legal advice	Yes	Yes
Surrogate can only act as a surrogate twice	Yes	Yes
Surrogate must be 25 years old	Yes	Yes
Surrogate must be habitually resident in the jurisdiction	Yes, for two years	Yes, for two years
Surrogate must have had a child before (“critical aspect of informed consent”)	Yes	Yes
Surrogate must receive physiological assessment – that she has a favourable prognosis for the successful outcome of a transfer of a single embryo in AHR treatment	Yes	Yes
Surrogate’s consent to the child living with the intending parents from birth can be dispensed with	No	No
Surrogate’s consent to the parental order can be dispensed with (IDG state to do so would be incompatible with non-enforceability of SA)	No (only where deceased or can’t be found)	No (detail unknown)
Two-step process, AHHRA then post birth court application	Yes	Yes
Written Agreement made by Surrogate and Intending Parent(s) for AHHRA	Yes	Yes

Requirements for International Surrogacy Agreement – Parental Order

- Cross Border surrogacy must be permitted in the country in which the surrogacy is proposed to take place.
- The proposed surrogacy agreement is lawful in the jurisdiction.
- The jurisdiction is on the “green list”.
- Irish provisions are imposed above and beyond foreign legal process, **but** stricter regulation applies depending i.e. if a surrogate mother must be 25 in Ireland and 30 in Greece – 30 applies.

- Surrogacy agreement must contain:
 - name, address, telephone number, e-mail of IP, surrogate, and donor (AHR treatment provider is to give an undertaking that it will provide this info to the AHRRA)
 - name, address, telephone number, e-mail, company registration/medical registration (as applicable) and contact name of any surrogacy agency/AHR provider,
 - details of the country in which the ISA (international surrogacy agreement) is to take place,
 - declaration that the surrogate has received independent legal advice in Ireland, in the country where the ISA is taking place, AHR counselling, been physically and psychologically approved to act as a surrogate and provided fully informed consent to attempting to become pregnant by the use of an egg other than her own,
 - declaration by the IPS that they have received independent legal advice in Ireland, in the country where the ISA is taking place, AHR counselling, will make provision in respect of all necessary healthcare for the surrogate’s pregnancy and that they will inform the child, at an appropriate age, that they were born as a result of AHR.
 - Documentary evidence of a certified ISA, statement of all reasonable expenses, itemised anticipated fees to be paid to, and paid by, a surrogacy agency,
 - Undertaking by the IPs that they will contact the Irish mission (? – embassy) as soon as the ISA has been approved by the AHRRA, **take all necessary steps to provide care and protection to, prevent harm or neglect to, and ensure the welfare of, any child born as a result of AHR treatment pursuant to the ISA**, and that they will apply for a parental order.
 - Confirmation from the IP who provided the gamete that they went through 2006 regs medical screening, in Ireland.

- The surrogate must meet all the jurisdictional requirements to be a surrogate in the other country.
- The surrogacy agency operating in the jurisdiction has to have been officially authorised to so operate.
- Confirmation of itemised expenses due to be paid to the surrogate under the AHRRA authorisation should be provided to the court at the parental order application stage.
- Emergency Travel Certificate only authorised with surrogate’s consent and proof of genetic link – proposal that genetic link would be also the mother’s and the “genetic link parent” would not have to be the “Irish citizen parent”.

Retrospective Parental Orders

- High Court is jurisdiction,
- Requires consent of the surrogate unless deceased or cannot be found,
- Surrogate must provide her identifying information for the NSR, (not stated in Annex A but stated on page 37, point 11)
- Child and surrogate must be party to the proceedings,
- All living siblings must be part of the same PO application,
- Surrogacy arrangement must not have been unlawful in the jurisdiction in which it took place,
- IPs must have complied with legal framework of jurisdiction,
- IPs must have been IPs at the time of conception, and intention was that it was a surrogacy arrangement,
- The embryo used must have contained the gamete of at least one IP,
- Must have been gestational surrogacy,
- At least one IP must have been habitually and lawfully resident in the State for not less than two years prior to the application (application as opposed to conception?)
- The child must be residing with at least one IP (unless they are over 18),
- The granting of the PO must be in the best interests of the child,
- No scrutiny of payments to surrogates,
- Must be applied for within 3 years of commencement of part, with provision for exceptional circumstances.