

2021

Assisted Human Reproduction Coalition Position Paper

Position paper from the Assisted Human Reproduction Coalition.

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Executive summary

This position paper, prepared by the Assisted Human Reproduction (AHR) Coalition, aims to inform policy makers, politicians, human rights, children’s rights and LGBT+ organisations, the media, women’s groups, support groups and organisations and the general public about

1. The current legislation governing the legal relationships that children born through AHR can establish with their intended parents. This includes the Children and Family Relationships Act, 2015 and the Adoption Amendment Act, 2017.
2. Drafting, reports and pre-legislative scrutiny on proposed legislation to govern the relationships that children born through AHR can form with their intended parents. This includes the General Scheme of the Assisted Human Reproduction Bill, pre-legislative scrutiny from the Joint Committee on Health and the Government commissioned report from the Special Rapporteur on Child Protection, “Children’s rights and best interests in the context of donor-assisted human reproduction and surrogacy in Irish law”.
3. The AHR Coalition’s response and recommendations to current and proposed legislation.

The AHR Coalition represents seven member organisations, LGBT Ireland, Equality for Children, the National Infertility Support and Information Group (NISIG), Rainbow Family Equality Network (RFEN), Irish Families through Surrogacy, Independent Living Movement Ireland (ILMI) and Irish Gay Dads. The AHR Coalition fully supports the recommendations made by both the Joint Committee on Health and the Special Rapporteur on Child Protection. The AHR Coalition outlines eighteen recommendations for an inclusive, equality-proofed, practical framework which will ensure that up-to-date legislation is put in place that both keeps up with advancing AHR procedures and places the best interests of the child at the centre.

Assisted Human Reproduction (AHR) Coalition

The Assisted Human Reproduction (AHR) Coalition was formed in 2020 is made up of not-for-profit organisations and groups whose members are affected by the lack of legislation around AHR in Ireland. The driving principle behind the work of the AHR Coalition is to ensure that equality is secured, and the human rights of children conceived using AHR, their intended parents and families, are protected and advanced in laws or policies, while also protecting the rights and best interests of women who act as or have acted as surrogates.

The primary objective of the AHR Coalition is to inform the development of laws or policies pertaining to Assisted Human Reproduction (AHR) from the perspective of the best interests and welfare of the children conceived through AHR, and the human rights and equality of their intended parents and families.

The AHR Coalition is currently made up of LGBT Ireland, the National Infertility Support and Information Group (NISIG), Equality for Children, Rainbow Family Equality Network (RFEN), Irish Families through Surrogacy, Independent Living Movement Ireland (ILMI) and Irish Gay Dads.

- LGBT Ireland is a national charity and was established in 2010 as a national support service for Lesbian, Gay, Bisexual and Transgender people and their families and friends. LGBT Ireland works with the government on a variety of issues affecting LGBT+ people.
- The National Infertility Support and Information Group (NISIG) has been established for 25 years and provides emotional and information support to all those both exploring and undergoing fertility treatment including those on the donor conception and surrogacy journey.
- Equality for Children was established in 2019 as a campaign for equality for children of LGBT+ families. EFC is a not-for-profit organisation that is entirely volunteer led. EFC works with the government to influence positive inclusive change to the rights of children born to LGBT+ parents while also raising societal awareness of the issue.
- Rainbow Family Equality Network (RFEN) was established in 2020 and works to bring together representative organisations in LGBTQI community to both disseminate relevant information and take feedback on AHR.
- Irish Families Through Surrogacy was established in 2020 to campaign for children to have the protection and benefits of a legally recognised relationship with both parents, for the recognition and legislation of surrogacy and to advocate for retrospective declarations of parentage for mothers of children born through surrogacy arrangements. IFTS provides support

to all intended parents who are considering pursuing surrogacy domestically and internationally through advice, guidance, and practical tips from other intended parents.

- Independent Living Movement Ireland (ILMI) is led by disabled people and promotes a rights-based social model of disability, challenging the unacceptable charity / medical model of disability. ILMI is working towards the removal of societal barriers that prevent equal participation of disabled people, challenging the denials of people's rights and the promotion of the philosophy of independent living.
- Irish Gay Dads provides an online space of friendly support and information for dads and dads-to-be who are members of the LGBTQ+ community, and who live in Ireland or are Irish living abroad. Irish Gay Dads advocates for changes in the law to advance the rights of children and families of gay dads.

1. Introduction

This position paper from the Assisted Human Reproduction (AHR) Coalition sets out the position of the Coalition and its member organisations on the issue of assisted human reproduction and what progress is needed in order to ensure the rights of the child born through AHR is central to the legal framework on AHR.

The information presented here is informed by the experiences and expertise of those involved in the AHR Coalition. This includes charity and not-for-profit organisations, parents, medical and legal experts. This is a live document and any updates, clarifications or corrections deemed required will be included in later versions.

2. Current AHR legislation

2.1 Children and Family Relationships Act (CFRA) 2015

The Children and Family Relationships Act 2015 (CFRA)¹ was commenced on the 4th May, 2020. The CFRA is a major first step towards providing legislation to recognise the relationships between children born through assisted human reproduction and their intended parents. It created a framework and legal pathways for the recognition of the legal parent-child relationship between children and their intended parents if all of the following criteria are met:

- The child is conceived in an Irish fertility clinic through either intrauterine insemination (IUI), intro-vitro fertilisation (IVF) or reciprocal IVF.
- The child is conceived using either a traceable or known sperm donor.
- The child is born in Ireland.

Children who are born in Ireland through AHR who meet these criteria can have a legal parent-child relationship with their intended parent(s) recognised upon the registration of their birth.

The CFRA also provided for retrospective recognition for children conceived born before the 4th May 2020 through a parental order process if they met the following criteria:

- The child was conceived in an Irish fertility or international clinic through either intrauterine insemination (IUI), intro-vitro fertilisation (IVF) or reciprocal IVF.
- The child was conceived using either an anonymous or traceable gametes (sperm and or egg donors).
- The child was born in Ireland.

¹ <http://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/html>

2.2 Adoption Amendment Act, 2017

The Adoption Amendment Act, 2017², provides a legal pathway for a child to establish a legal child-parent relationship with their second parent (the parent who is not automatically recognised as the parent of the child) through a step-parent adoption process. The second parent can 'adopt' the child with the first parent's³ consent through this process.

Adoption is a complex, lengthy and invasive process that involves⁴:

1. An application made by the couple including relevant consent by the parent who is registered on the child's birth certificate.
2. An assessment of suitability through a number of interviews and home visits by a Tusla social worker. This involves examination of financial, mental and physical well-being.
3. The report from the Tusla social worker is reviewed by the local adoption committee and a recommendation is made.
4. The Adoption Authority of Ireland considers the recommendations and decides whether to grant a declaration of eligibility and suitability. If a declaration is granted, it is for a period of two years.
5. An Adoption Order is granted within the two years.
6. The child's parents go before the Board of the Adoption Authority of Ireland.
7. An Adoption certificate is issued.

The Adoption Authority, has not yet processed any adoption applications which relate to Assisted Human Reproduction citing the absence of AHR legislation. The AHR Coalition notes that there is also a lack of clarity around how step-parent adoption would work in the case of children born to intended parents through AHR. For example, what would happen in the case where a step-parent is not successful in attaining a declaration of eligibility and suitability?

² <http://www.irishstatutebook.ie/eli/2017/act/19/enacted/en/html>

³ In some procedures the first parent, i.e. the parent who is automatically recognised as the parent of a child born through AHR, may not be the child's biological parent, for example with Reciprocal IVF and Surrogacy.

⁴ https://www.citizensinformation.ie/en/birth_family_relationships/adoption_and_fostering/adopting_a_child.html

3. General Scheme of Assisted Human Reproduction Bill

In 2017, the government published the General Scheme of the Assisted Human Reproduction Bill⁵. The intention of the AHR Bill was that it would fill the gaps left by the CFRA. The General Scheme for the AHR Bill indicated that the Bill would provide regulations for assisted human reproduction cases that are not yet defined in law: egg, sperm, and embryo donation for use in surrogacy, and conditions for posthumous procedures that involves egg, sperm, and embryos of a deceased person. The General Scheme of the AHR Bill also seeks to clarify rules for procedures like embryo genetic diagnostics, sex selection, embryo and stem cell research, and establishes a regulatory authority for assisted human reproduction.

3.1 Surrogacy Model Proposed

The General Scheme for the AHR Bill proposes a restricted model of surrogacy that allows only non-compensated (altruistic) domestic gestational surrogacy where there is a genetic link with at least one of the intending parents and explicitly prohibits any form of advertising that can be used to match a surrogate with intended parents.

The details of a surrogacy agreement must be submitted by the clinic to the Regulatory Authority for approval in advance of any treatment. The Regulatory Authority verifies that all the criteria is met such as the surrogate's age and residency, the intended parents medical reason for needing surrogacy, consent is provided, and more and records the surrogacy in the National Surrogacy Register. The surrogacy agreement is "not an enforceable contract" except for clarifying the expenses.

Any surrogacy arrangement that does not comply with these rules would be prohibited. This implicitly includes all international surrogacy. There are no arrangements for retrospective recognition of children already conceived or born through surrogacy.

The General Scheme for the AHR Bill also prohibits any person providing technical, professional or medical service that would facilitate a prohibited surrogacy agreement but that medical services can be provided to a surrogate once pregnant.

3.2 Establishing a Legal Parent-Child Relationship

The General Scheme for the AHR Bill proposes that when a child is born through surrogacy, a legal parent-child relationship is established through a post-birth Parental Order obtained in court after

⁵ <https://www.gov.ie/en/publication/4ac72d-general-scheme-of-the-assisted-human-reproduction-bill-2017/>

proceedings that involve the intended parents, surrogate (seen as the legal mother), the surrogate's husband (where applicable), the Attorney General, and any other person the court considers appropriate.

The AHR bill proposes that the intended parents can obtain the Parental Order through a court process if the surrogate, the surrogate's husband, and intended parents consent, if the child lives with the intended parents, and the court decides that it is in the best interest of the child.

Upon granting a Parental Order the child becomes the child of the intending parents, an tArd Chláraitheoir and the Regulatory Authority are notified of the decision and they register the birth and make an entry into the National Surrogacy Register respectively.

An tArd-Chláraitheoir would release a surrogacy certificate with the intended parents named parents of the child which would be used as any birth certificate.

The National Surrogacy Register would keep a record of the child born under a surrogacy agreement, the surrogate, each intended parent, and the donor if applicable. The child would be able to access this information when they reach 18 years.

3.3 Pre-Legislative Scrutiny

The Joint Committee on Health published its Report on Pre-Legislative Scrutiny of the General Scheme of the Assisted Human Reproduction Bill in July 2019⁶. The Committee was generally supportive of the objectives of the General Scheme but made 11 recommendations for amendments / further consideration (see Annex 1). The most relevant recommendations in respect of surrogacy were that further consideration should be given to the provisions regarding surrogacy, with specific attention to:

- inconsistencies that may arise relating to international surrogacy arrangements (ISA) and in particular to parentage issues that may arise for children born through ISA;
- the proposed ban on providing legal or practical advice to people who intend to enter into surrogacy arrangements other than those permitted under the proposed legislation;
- only providing for gestational surrogacy;
- supporting international collaboration with the view of examining complex issues such as the transfer of parentage.

The Committee also supported entering bilateral or multilateral agreements to recognise and introduce standards in relation to international surrogacy.

⁶ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_health/reports/2019/2019-07-10_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-assisted-human-reproduction-bill_en.pdf

The AHR Coalition notes the glaring absence of voices / experiences of people identifying as disabled from the public meeting list of witnesses and 31 written submissions of the Pre-legislative Scrutiny of the General Scheme of the Assisted Human Reproduction Bill 2017.

4. Report for the Special Rapporteur on Child Protection

In January 2020, recognising the gaps in the CFRA and the general scheme of the AHR bill, the then Minister for Health, Simon Harris and Minister for Children, Katherine Zappone, commissioned the government's Special Rapporteur on Child Protection Professor Conor O' Mahony, to complete a report on "Children's rights and best interests in the context of donor-assisted human reproduction and surrogacy in Irish law". This report was completed in December 2020 and published by the government in April 2021⁷.

Professor O' Mahony aligns his report recommendations with the UN Special Rapporteur, the European Convention of Human Rights (ECHR) and the Convention of the Rights of the Child (CRC) and notes that Ireland is legally obliged to comply with at least the minimum obligation of the in Article 8 of the ECHR which requires "States Parties to allow for the possibility of domestic recognition of parent-child relationships arising from international surrogacy arrangements at a minimum in all cases involving a genetic link between the child and the parents".

The report places the child's rights and best interests at the centre of how legislation should be constructed and recommends large scale updates to the Assisted Human Reproduction (AHR) Bill as well as amendments to the Children and Family Relationships Act (CFRA), 2015.

The report highlights the need to provide comprehensive legislation on AHR including a framework for surrogacy in Ireland, recognition of international surrogacy, and recommends that the gaps of both the CFRA 2015 and the general scheme of the AHR Bill are addressed by providing pathways for children already born through surrogacy, children conceived using a known donor and children conceived outside of clinical settings to have legal parent-child relationships with their intended parents.

The report acknowledges the distress caused to children born through assisted human reproduction and their families with the absence of appropriate legislation "Children have been left in vulnerable legal positions for lengthy periods of time due to the failure of the Oireachtas to legislate to address their status".

⁷<https://www.gov.ie/en/publication/3e601-a-review-of-childrens-rights-and-best-interests-in-the-context-of-donorassisted-human-reproa-review-of-childrens-rights-and-best-interests-in-the-context-of-donor-assisted-human-reproduction-and-surrogacy-in-irish-law-duction-and-surrogacy-in-irish-law/>

The report recognises the uneven impact the CFRA has had on children conceived outside of clinical settings and born to LGBT+ parents who cannot rely on the presumption of paternity/maternity that male-female couples can by highlighting “the discriminatory position that arises whereby some second parents of children born following non-clinical procedures would be recognised as parents, while others would not.”

The report calls for the Government to “amend the Children and Family Relationships Act 2015 to address a number of anomalies arising in respect of the recognition of family relationships in DAHR procedures, and enact comprehensive legislation regulating surrogacy at the earliest opportunity”.

Professor O’ Mahony makes 27 recommendations to the government on AHR legislation in the report, see Annex 2.

5. Response from the AHR Coalition

The AHR Coalition welcomes the ongoing work in introducing legislation to provide a framework for regulating surrogacy in Ireland and addressing the gaps in the Children and Family Relationships Act, 2015. Equally, we recognise that the drafting of the AHR Bill presents a significant opportunity to address the many legislative gaps that have left many Irish children born through assisted human reproduction with either unnecessarily complex and expensive pathways or no pathway at all to establish a legal parent-child relationship with their intended parents who love, care and take responsibility for them on a daily basis.

We welcome the drafting of the General Scheme for the Assisted Human Reproduction Bill, the Report on Pre-Legislative Scrutiny published by the Joint Committee on Health as well as the report from Special Rapporteur Professor Conor O' Mahony⁸ on the gaps in legislation for children born to LGBT+ parents.

We believe that the AHR Bill should be used as a vehicle to address gaps in the Children and Family Relationships Act 2015 (CFRA) and that all children should be treated equally regardless of how and where they were conceived.

We consider that the General Scheme for the Assisted Human Reproduction Bill, in its current form however, has fundamental gaps in key aspects of providing for the reality of AHR in Ireland and it is not fit for purpose. **The AHR Coalition would be willing to support the upcoming AHR Bill if, at minimum, all of the below six recommendations are adopted:**

1. The recommendations from the Joint Committee on Health are addressed in the legislation.
2. All of the recommendations in the report on AHR legislation from Special Rapporteur Professor O' Mahony are adopted in the legislation (see Annex 2), including:
 - Retrospective recognition of all children already conceived or born through surrogacy.
 - Recognition of international surrogacy.
 - A framework for domestic surrogacy with pre-birth determination – i.e. the intended parents are recognised as parents from when the child is born.
 - Amendments to the CFRA to include children conceived outside of clinical settings and children conceived using known donors prior to commencement of the Act.

⁸ A Review of Children's Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law https://opac.oireachtas.ie/Data/Library3/Documents%20Laid/2021/pdf/CEDIYdocs/260321_260321_161924.pdf

3. The intended parents of children born through AHR are recognised as parents from when the child is born and benefit from all parental benefits provided by the state.
4. A regulator is established with transparent membership including an intersectional approach to the patient voice before legislation is passed.
5. The AHR Bill is equality-proofed to ensure it is inclusive and does not discriminate in any way, for example, access to AHR services, criteria used to assess the welfare of the child and criteria used to grant parentage and parental responsibility through the courts and / or the regulator are equality proofed to ensure that there is no scope for discrimination on the basis of gender, marital status, sexual orientation, religious belief, age, disability, race and membership of the traveller community.
6. Adoption, in its current form, is not proposed as a suitable alternative to recognition of the legal relationship between any cohort of intended parents and their children born through AHR.

In addition, the AHR Coalition **proposes** that for fully workable, equitable and inclusive legislation that is future-proofed, the **following twelve recommendations** are adopted into the CFRA and AHR Bill:

1. The voices of people with lived experience is central to the drafting of all relevant legislation, the establishment of and operation of a regulatory authority.
2. There are clear guidelines and informed consent for all individuals engaging in the AHR process which is informed by the establishment of an equality proofed ethics committee.
3. Retrospective and prospective arrangements enabling children to establish a legal child-parent relationship with their intended parents when the child conceived through ICI, IUI, IVF or reciprocal IVF is born outside of Ireland.
4. Prospective arrangements enabling children to establish a legal child-parent relationship with their intended parents when the child conceived through ICI, IUI, IVF or reciprocal IVF is conceived in a clinic outside of Ireland.
5. Posthumous arrangements are given further consideration and equality proofed.
6. A public AHR funding model is in place.
7. An appeals mechanism is put in place regarding applications for pre-authorisation.
8. In the case of surrogacy, the surrogate has access to maternity leave.
9. Data relating to the number of people accessing AHR in Ireland is made publically available.
10. There is a model for compensated surrogacy.
11. Access to legal advice is not prohibited.
12. Counselling guidelines are guided by best practice.

Annex 1: Joint Committee on Health Recommendations

The below recommendations are outlined in the Joint Committee on Health report pages 7-9⁹.

“The Committee recommends as follows:

1. That provision is made for a review of the operation of the legislation and that a related report be brought to the Houses of the Oireachtas within twelve months of the enactment of the Bill.
2. The provisions relating for counselling to be mandatory for all recipients of Assisted Human Reproductive (AHR) treatment be deleted. In that regard, the Committee is supportive of the availability of counselling services for all AHR treatment but recommends that, in some situations, the decision to undertake such services is more appropriately decided between a clinician and the person(s) availing of AHR treatment.
3. That the legislation makes provision to allow for the Minister to regulate for age limits within AHR treatment which would then enable the Authority to issue guidelines.
4. That further consideration be given to the number of embryos allowed in each AHR treatment. The Committee recommends that the provisions underpinning the number of embryos to be transferred during IVF should be subject to guidelines which should be underpinned by secondary legislation. The Committee also recommends that more autonomy should be provided to clinicians, with regard to the number of embryos used in each AHR treatment, in the case of specific scenarios.
5. That an ethics committee to be established as part of the oversight and governance by the Board of the Authority, which would be responsible for examining and determining issues relating to the welfare of children, as set out in the provisions under Head 6(1) of the Bill.
6. That further clarity be provided in respect to the provision dealing with the welfare of the child. The Committee acknowledges that the term ‘welfare’, as used in the Bill, may have a different criteria to the term ‘best interests’ as defined in the explanatory note.
7. That further consideration be given to the provisions regarding surrogacy (Part 6), with specific attention to:
 - inconsistencies with may arise relating to international surrogacy arrangements and in particular to parentage issues with may arise for children born through ISA

⁹ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_health/reports/2019/2019-07-10_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-assisted-human-reproduction-bill_en.pdf

- the proposed ban on providing legal or practical advice to people who intend to enter into surrogacy arrangements other than those permitted under the Joint Committee on Health Page 8 proposed legislation
 - only providing for gestational surrogacy within the provisions for surrogacy. The Committee notes the argument of stakeholders that the provision to only provide for this approach is too restrictive, excludes many people from accessing surrogacy arrangements and is not consistent with other provisions within the General Scheme.
 - supporting international collaboration with the view of examining complex issues such as the transfer of parentage. The Committee also supports entering bilateral or multilateral agreements to recognise and introduce standards in relation to international surrogacy.
8. In relation to Part 3 of the General Scheme (gamete and embryos), that:
- further consideration be given to the proposed time limits for storage of gametes and embryos. The Committee recommends that provision is made to allow specific cases, such as those of children undergoing cancer treatment, additional dispensation.
 - the availability of medical information to donor-conceived people be provided where it would indicate that they are predisposed to certain disease(s).
9. that further clarification be provided by the Department of Health on whether or not egg-sharing is allowable under the General Scheme. 9. Further consideration be given to Part 4 of the Bill, regarding Posthumous Assisted Reproduction (PAR), and specifically to:
- inconsistencies with regard to excluding male surviving partners (in opposite sex and same sex couples) from accessing posthumous AHR treatment.
 - inconsistencies regarding the treatment of children born before and after 36 months through PAR treatment, specifically with regard to parentage and inheritance rights.
10. With regard to Part 5 of the General Scheme (pre-implantation genetic diagnosis):
- that Pre-implantation Genetic Diagnosis should be included in any public provision/ funding of AHR treatment,
 - that adequate resources be made available to ensure that the appropriate number of geneticists and genetic counsellors are available to fulfil the provisions of the General Scheme.
11. That further consideration be given regarding the powers and functions of the Authority (Part 8), with specific attention given to:

- investigating consumer complaints
- protecting against financial exploitation Joint Committee on Health
- collecting and providing information regarding success rates between service providers and providing information on infertility and related support
- protecting the financial interests of patients in the case of the closure of a service provider and a role in safeguarding patients' gametes/ embryos
- amending the proposed powers of the Authority to include a research function, specifying that it will conduct and publish research on services, demand, patient experience, short and long-term health and well-being on patients and children born through AHR and the broader social, ethical, health, legal and economic implications of AHR.”

Annex 2: Recommendations from Special Rapporteur on Child Protection

The below recommendations are outlined in the Special Rapporteur on Child Protection report, “A Review of Children’s Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law” pages 48-50¹⁰.

“This report recommends that the following measures be implemented in order to safeguard children’s rights and best interests in the context of DAHR procedures and surrogacy arrangements:

1. The Oireachtas should amend the Children and Family Relationships Act 2015 to address a number of anomalies arising in respect of the recognition of family relationships in cases where children were born following DAHR procedures.
2. The Oireachtas should enact comprehensive legislation regulating surrogacy at the earliest opportunity. This legislation should provide that the best interests of the child are the first and paramount consideration for all bodies (including courts and regulatory authorities) exercising functions under the legislation.
3. Surrogacy legislation should make provision for the recognition of both domestic and international surrogacy arrangements, and should incentivise reliance on domestic arrangements by adopting a more streamlined and less burdensome framework than for international arrangements.
4. Provision should be made for a pathway to parentage in respect of surrogacy arrangements which occurred before the commencement of the new legislation.
5. The process leading to the enactment of such legislation should include, so far as possible, consultation with children and young people born as a result of DAHR procedures and surrogacy arrangements.
6. A broader review of the implications of DAHR, surrogacy and modern family forms for the system of registration of births should be considered. Specific measures necessary to implement the above recommendations are set out below.

Parentage in DAHR Procedures

7. The Children and Family Relationships Act 2015 should be amended to make provision for second parents of children born through non-clinical procedures to apply to the District Court at any time after the birth of the child for either parentage or guardianship.

¹⁰ https://opac.oireachtas.ie/Data/Library3/Documents%20Laid/2021/pdf/CEDIYdocslaid260321_260321_161924.pdf

8. Subject to a best interests assessment, the court should be empowered to grant parentage where information regarding the gamete donor has been provided by the parties to the National Donor-Conceived Person Register. If such information has not been provided, the court should be empowered to appoint the second parent as the child's guardian.
9. Provision should be made allowing the parents to provide information on the gamete donor to the National Donor-Conceived Person Register.

Parentage in Domestic Surrogacy Arrangements

10. Recognition of domestic arrangements should be restricted to altruistic surrogacy. Provision should be made to regulate the payment of reasonable expenses and prohibit the payment of fees.
11. In advance of all domestic surrogacy arrangements, the parties should be required to make an application to the District Court for authorisation. Before authorising the arrangement, the Court should be required to satisfy itself that all parties have given free and informed consent to the arrangement, and that the intending parents are suitable parents.
12. Provision should be made that the Court, when authorising the arrangement, would simultaneously make a parental order that would grant the intending parents parentage of and parental responsibility for the child from birth and relieving the surrogate of parentage of and parental responsibility for the child.
13. Provision should be made for the surrogate to raise an objection to the transfer of parentage during a prescribed period of time following the birth of the child. This objection would be heard before the High Court. a. An alternative to recommendations 12 and 13 above would be to provide that the surrogate retains joint parental responsibility for the child with the intending parents after birth, but that the surrogate would consent to being relieved of this responsibility within a prescribed period of time. Provision should be made for the intending parents to apply to the High Court to dispense with the consent of the surrogate in cases where it is withheld. Such applications should be determined by reference to the best interests of the child.

Right to Identity

14. Existing legislation governing DAHR procedures should be amended to ensure that the right to identity can be exercised by children while they are still children, in line with their evolving capacities. In order to comply with the principle of non-discrimination, future legislation governing surrogacy arrangements should make identical provision, subject to the additional requirement that records of identity include the details of the surrogate.

15. Non-identifying information should be made available at any point to children born following either a DAHR procedure or a surrogacy arrangement, or to their parents.
16. Identifying information should be available on request to parents at any point after the child's birth, so that they can share it with the child if they so wish.
17. Identifying information should be made available on request directly to the child from the age of 12 years.
18. No exception should be included that allows for information about genetic parents or surrogates to be withheld on the basis of a potential risk to the safety of the genetic parents or surrogates, since adequate provision is made in criminal law to address any such risk. Instead, provision should be made requiring that a child requesting for information has been given a suitable opportunity to receive proper counselling about the implications of compliance with the request before the information is released. The Children and Family Relationships Act 2015 should be amended accordingly.
19. Legislation should require that intending parents should undergo counselling as a precondition to authorisation of a DAHR procedure or a surrogacy arrangement. Provision should be made that such counselling would advise parents of their child's right to identity and of the benefits of early disclosure.
20. Consideration should be given to regulations that would require counsellors providing counselling to parties to AHR procedures to undergo training in children's rights.

Recognition of International Surrogacy Arrangements

21. Legislation should make provision for the High Court, upon the application of the intending parents, to grant a parental order to the intending parents, and nationality and citizenship to 50 the child, where the Court has satisfied itself (upon provision of suitable evidence) of a range of prescribed criteria (see section 5.1 above).
22. Legislation should stipulate that such applications should be made before the child is brought into the jurisdiction. Provision should be made to allow the initial application to be filed before the child is born, and for hearing dates to be provisionally listed on a fast-track basis very shortly after the due date.
23. Provision should be made to allow the intending parents in international surrogacy arrangements to submit information about the child's genetic origins to the National Surrogacy Register. Where this does not occur, the law should stipulate that guardianship may be granted to the intending parents, but not full parentage.

24. Future legislation governing surrogacy should not contain any provisions restricting access to legal advice.

Retrospective Declarations of Parentage in DAHR and Surrogacy

25. The proviso in section 20(1)(d) of the Children and Family Relationships Act 2015 relating to known donors should be repealed. Sections 21 and 22 should be amended to provide that a known donor must be notified of an application for a declaration of parentage and given the opportunity to object. Where this occurs, the Court should have discretion to make the declaration of parentage applied for, or to deal with the case under the pre-existing guardianship regime, in line with its assessment of the best interests of the child.
26. Legislation should make provision for the District Court, upon the application of the intending parents, to grant parentage and parental responsibility to the intending parents of children born through surrogacy arrangements occurring before the date on which the governing legislation comes into effect (and, where necessary, nationality and citizenship to the child), where the Court has satisfied itself (upon provision of suitable evidence) of a range of prescribed criteria (see section 6.2 above). In cases where all of the above criteria cannot be proven to the satisfaction of the Court, a declaration of parentage could not be made; but the normal rules governing applications for guardianship or adoption would remain operable.

Genetic Link

27. There should be no requirement that domestic surrogacy arrangements involve a genetic link between the child and at least one intending parent. However, such a requirement should be included in the conditions governing recognition of international surrogacy arrangements to act as a safeguard against the sale and trafficking of children.”