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## **An Comhchoiste Um Máthairionadaíocht Idirnáisiúnta**

An Tuarascáil Deiridh ón gComhchoiste um  
Máthairionadaíocht Idirnáisiúnta

Iúil 2022

## **Joint Committee on International Surrogacy**

Final Report of the Joint Committee on  
International Surrogacy

July 2022



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## CATHAOIRLEACH'S FOREWORD



I welcome the publication of this report on International Surrogacy. The Joint Committee was tasked with expeditiously considering and making recommendations on measures to address issues arising from international surrogacy, having particular regard to the rights, interests and welfare of children born through surrogacy (both in the future, and existing children), of surrogates and of intended parents.

The pathways to parenthood are evolving with assisted human reproduction becoming a complex and fast-moving area of health care. Ireland must keep pace with this evolution and implement changes when necessary. However, Ireland has been a laggard in this area for some time, and the resulting legal lacuna has had a significant impact on children and families from all across Ireland and presents risks to those on a surrogacy journey.

The Assisted Human Reproduction Bill 2022 (AHR Bill), which is currently going through the Houses, provides Ireland with an opportunity to bridge this gap in our laws which has long been a cause of concern to international human rights bodies and to the Irish Supreme Court. The AHR Bill provides for domestic surrogacy and countries such as the UK and New Zealand are currently reviewing their long existing laws on international surrogacy, so the time for debate is now timelier than ever.

The topic of international surrogacy is a complex, and sometimes divisive area, with issues regarding the safeguarding of children and surrogates being a key concern. The committee would like to acknowledge these concerns and hope that this report provides a framework from which a robust system can be implemented.

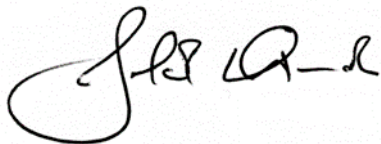
It was indicated by many of the stakeholders that while the AHR Bill provides for domestic surrogacy, intended parents will still seek international surrogacy as a pathway to parenthood and that non regulation of the area could see children, surrogates and intended parents left exposed to exploitation. It will also see families left in legal limbo with workarounds being their only option to obtaining any parenting rights. While considering all parties, it is the children born through international surrogacy who must remain at the forefront of any framework implemented and we must ensure that no child is treated differently based on the circumstances of their birth.

The Committee met over several weeks and engaged extensively with academics, legal experts and stakeholders from various organisations, nationally and internationally, on measures that can be taken in the implementation of a framework to address the issues raised. Members also engaged with individuals born through surrogacy, families and surrogates who have lived experience of the surrogacy

journey. By sharing their personal stories, they provided members with direct insight into the challenges they faced and continue to face in their daily lives by the lack of legislation in this area.

On behalf of the Committee, I would like to sincerely thank all the witnesses who assisted the Committee in this important work. I would also like to thank the members for their engagement and commitment during this process, and the committee secretariat for all their support over the last number of months. The Committee has made a number of recommendations and we hope they will assist Government in this important area.

It is my hope that Ireland can take a lead in this very important global issue by tackling this complex, yet important, area and providing a timely and robust framework that will protect all those involved.



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Jennifer Whitmore, TD  
Cathaoirleach  
Joint Committee on International Surrogacy  
July 2022

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## GLOSSARY OF TERMS AND ACRONYMS USED

AHR	Assisted human reproduction. Any treatment or procedure that involves the handling of gametes and embryos for the purposes of establishing a pregnancy.
AHR Bill	The Health (Assisted Human Reproduction) Bill 2022. It sets out provisions for the regulation of assisted human reproduction practices and related areas of research.
AHRRRA	The Assisted Human Reproduction Regulatory Authority. A body proposed by the <i>AHR Bill</i> , which would be responsible for regulating and licencing of assisted human reproduction treatments
Birth Certificate	For the purposes of this report, this is birth certificate issued by the country of the child's birth on the registration of that birth. The Committee recognises that Irish authorities cannot amend or alter that birth certificate.
Child Born through surrogacy	A child born as a result of a <i>surrogacy arrangement</i> .
Compensated surrogacy	A <i>surrogacy arrangement</i> where the <i>surrogate</i> does not receive payment for entering into the <i>surrogacy arrangement</i> but may still receive compensation for expenses occurred due to being pregnant.
Declaration of parentage	Fathers who are not married to the surrogate will need to prove paternity through DNA testing. Where this is proven, the Circuit Court will issue a declaration of parentage.
Domestic surrogacy	A <i>surrogacy arrangement</i> where the <i>surrogate</i> and <i>intended parents</i> live in the same country. For the purposes of this report, that country would be Ireland.
Gamete donor	A person who donates a gamete or gametes (sperm or ovum) for reproductive purposes.



Intended parents	<p>People who enter a <i>surrogacy arrangement</i> with the intention of becoming parents to the <i>child born through surrogacy</i> and raising that child from birth.</p> <p>The term commissioning parents is sometimes used with the same meaning. The Committee has used intended parents, as this was the preferred term of witnesses who gave evidence.</p>
International surrogacy	A <i>surrogacy arrangement</i> where the <i>surrogate</i> and <i>intended parents</i> live in different countries. For the purposes of this report, the intended parents would live in Ireland.
National Donor-Conceived Person Register	A register established under the Children and Family Relationships Act 2015, containing information regarding the donor-conceived child, the child's parents, the donor and the donor assisted human reproduction procedure
National Surrogacy Register	A register proposed under the <i>AHR Bill</i> which would include information on all parties involved in the conception and birth child born through surrogacy, including the <i>intended parents</i> , the <i>surrogate</i> and any <i>gamete donor(s)</i> .
Parental order	A court order which makes the <i>intended parents</i> the legal parents of the <i>child born through surrogacy</i> , and permanently extinguishes the parenthood of the <i>surrogate</i> .
Surrogate	<p>A woman who agrees to become pregnant and carries the child for the <i>intended parents</i> in a <i>surrogacy arrangement</i>.</p> <p>The terms <i>surrogate mother</i> and <i>birth mother</i> are sometimes used with the same meaning. The Committee used surrogate, as this was the preferred term of the witnesses who gave evidence.</p>
Surrogacy arrangement	An arrangement between a <i>surrogate</i> and <i>intended parents</i> where the surrogate agrees to carry and give birth to a child for the <i>intended parents</i> , which they will raise.
Verona Principles	A set of principles to guide the regulation of surrogacy within a children's rights framework, developed and published in 2021 by

	International Social Service and endorsed by the United Nations Committee on the Rights of the Child.
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## INTRODUCTION

Surrogacy is not currently regulated in Ireland and there is no official data or reliable source recording the number of children born as a result of surrogacy arrangements in Ireland or born abroad and brought to Ireland. However, it is acknowledged that many Irish people avail of surrogacy services outside of the jurisdiction. The 2020 Programme for Government “*Our Shared Future*” commits to enacting the *Assisted Human Reproduction Bill. The Health (Assisted Human Reproduction) Bill 2022 (AHR Bill)* is currently at third stage before the Dáil. The includes provisions for the regulation of altruistic domestic surrogacy but not for international surrogacy arrangements.

While regulation of domestic surrogacy is to be welcomed, it is widely acknowledged that this is unlikely to lead to a total cessation of Irish intended parents engaging in surrogacy arrangements in other jurisdictions. For a variety of reasons, Irish citizens will continue travelling abroad to avail of surrogacy.

As it stands, there is no mechanism in law to allow for the recognition of lifelong legal parent-child relationships for children born through international surrogacy with their mothers. The surrogate is recognised as the legal mother of a child and this means that the intended mother in a surrogacy arrangement, while she can be recognised as the legal mother in the jurisdiction where the surrogacy arrangement occurred, is not recognised as the mother under Irish law.

A lack of regulation and recognition of surrogacy arrangements has detrimental consequences for all parties, including serious emotional and financial strain. However, most alarmingly, the lack of legal parentage for intended parents and particularly a mother who is often the primary caregiver cannot consent to emergency medical treatment for the first two years of their child’s life, prior to obtaining guardianship. Intended parents are unable to make basic decisions around their child’s care. Meanwhile, surrogates are left with parental responsibilities they never anticipated towards children which they never thought of as their own. A regulatory framework for international surrogacy must address concerns around the welfare of surrogates. Surrogates must be safeguarded to ensure, as far as possible, that they

are not exploited or coerced in any way. The surrogate's autonomy and agency must be maintained throughout the surrogacy.

The rights of children born through surrogacy must also be protected. Safeguards must be in place to prevent the possibility of the trafficking or sale of children. These concerns are more acute in international surrogacy, where children are taken across borders. Children's right to know their history and identity, including their genetic, gestational and social origins must also be protected as underpinned by the Verona Principles. The Committee has taken the Verona Principles into account in all of its deliberations as far as possible. Children should also be able to have a full relationship with their intended parents and have the social and legal reality of this relationship recognised.

Intended parents must also be protected. Navigating complicated medical and legal processes across two countries is a stressful and difficult experience. Intended parents are vulnerable to agencies acting in bad faith which may take advantage of them. Committee deliberations noted that Irish families will continue to engage in surrogacy arrangements in other countries even after the regulation of domestic surrogacy under the AHR Bill. Professor Conor O'Mahony, Special Rapporteur on Child Protection, consequentially recommends the State guides intending parents travelling abroad for surrogacy to travel to countries whose surrogacy frameworks and protections most closely align with Ireland's, so that the risk of double standards in protection and safeguards for domestic and international surrogates is minimised.

Any regulation of surrogacy arrangements should take into account existing families created through surrogacy and ensure that they are not left behind. Many of these families have spent years in legal grey areas, with one or both intended parents not legally recognised. These families should not be further discriminated against and must be given the opportunity to regularise their legal status.

The Committee believes that there are omissions in the Child and Family Relationships Act 2015 and AHR Bill regarding the types of AHR treatment and make-up of families covered. These omissions leave and would continue to leave many

families unable to gain legal recognition, and should be addressed as a matter of urgency.

Ireland cannot legislate for what happens in other countries and cannot control how surrogacy occurs elsewhere. However, in setting out a clear framework of requirements that must be met for the State to recognise international surrogacy arrangements, we can try to guide intended parents towards safer and more ethical surrogacies that respect the rights and welfare of all involved.



## EXECUTIVE SUMMARY

The Joint Committee on International Surrogacy was established to expeditiously consider and make recommendations on measures to address issues arising from international surrogacy.

The Committee held 11 public meetings,<sup>1</sup> the proceedings of which constitute the core evidence base for this report.

The Committee's examination focussed on four areas.

- Overview of the current situation regarding international surrogacy
- The rights, interests and obligations of intending parents in future international surrogacy arrangements and of intending parents of existing children already born through international surrogacy arrangements
- The rights, interests and welfare of children born through international surrogacy
- The rights, interests and welfare of surrogate mothers

The Committee considered what form recognition of international surrogacy should take. Evidence received suggests that failing to recognise international surrogacy arrangements will not limit their occurrence even if domestic surrogacy is allowed. The Committee believes that a parental order system, as set up in the Children and Families Relationship Act 2015 should be used to transfer parentage from the surrogate to the intended parents in the event of an international surrogacy arrangement being approved. The State must ensure that the manner in which parentage is transferred is in accordance with Article 8 of the UN Convention on the Rights of the Child.

The Committee considered what requirements should be met before an international surrogacy arrangement should be recognised. The Committee believes that the surrogacy arrangement should be legal in the country that it takes place, and that all parties involved should give full and informed consent. The surrogate should not be financially disadvantaged due to the pregnancy, and that the intended parents should

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<sup>1</sup> See Appendix II for a full list of public meetings [here](#)

be allowed to reimburse her for all reasonable expenses, including loss of earnings, related to the surrogacy. There should be a genetic connection between the child, and at least one intended parent.

The Committee examined the best process for recognising international surrogacy arrangements, considering whether the transfer of parental rights should occur before or after the birth. The Committee believes that the final transfer of parental rights should not occur until after the birth, to allay concerns around the sale and trafficking of children. It believes that a two-step process comprising an administrative process before the birth for evidence to be submitted to the AHRRA, and a post-birth court hearing to consider the issuing of a parental order, would best protect the rights and welfare of all parties. This would also minimise the period of legal uncertainty faced by families formed through surrogacy. As a contingency to ensure that a child is not left without a guardian to make decisions on their behalf if the situation necessitates, an interim guardianship order, or permissible order of similar effect, naming the intended parents as guardians could be considered and triggered in exceptional circumstances.

The Committee considered the issue of existing children born through international surrogacy, and the necessity of providing a route for their family status to be legally recognised and regularised. The Committee believes that since these surrogacies took place before any regulations or requirements were in place, the process for recognition should be quick, smooth and as close to automatic as possible, depending on the individual circumstances, as discussed later in the report.

The Committee considered the most appropriate legislative vehicle for regulating international surrogacy. It believes that amending the Health (Assisted Human Reproduction) Bill 2022 (AHR Bill) to include international surrogacy is the most appropriate way to do so. This would minimise any delay in regulating international surrogacy, and would coherently and comprehensively address the entire sphere of assisted human reproduction.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee's work was informed by four fundamental principles, which it drew from evidence presented to it. These are:

1. that the Committee acknowledges that the State has no control over actions undertaken by individuals in other jurisdictions,
2. that the Committee cannot control the laws and procedures of other countries, including the layout and content of a birth certificate,
3. that individuals and couples will continue to travel abroad to pursue international surrogacy arrangements, and
4. that the Committee notes that there was significant agreement among the witnesses that the biggest risk to the welfare and rights of children, surrogates and intended parents currently is the lack of regulation by the State.

The Committee, having regard to the evidence presented to it, recommends that:

### **Recommendation 1**

where an international surrogacy arrangement meets the criteria set out in the guidelines recommended by this Committee, the intended parents should be able to apply to the courts for a parental order in respect of both parents. This must be carried out in an expeditious process.

### **Recommendation 2**

the parental order shall name the intended parents and child born through international surrogacy, and shall declare the intended parents to be the parents of the child, equal in rights to the child regardless of biological connections, and that the order creates an entitlement to all rights and an obligation to all duties, prescribed by statute or otherwise for the parents and child in relation to each other.

### Recommendation 3

the parental order shall name the surrogate, declaring the severance of any parental relationship with the child and removing all parental duties and responsibilities from her prescribed by statute or otherwise.

### Recommendation 4

*The Irish Nationality and Citizenship Act, 1956* should be amended to provide that following a parental order being issued, in a case where either intended parent is an Irish citizen, the child born through surrogacy named in the parental order, if not already an Irish citizen, shall be an Irish citizen.

### Recommendation 5

intended parents in international surrogacy arrangements should be obliged to provide evidence that the necessary requirements are met in order for a parental order to be issued. This should not bar the exercise of judicial discretion in exceptional circumstances.

### Recommendation 6

no surrogacy arrangement should be entered into in a country which prohibits surrogacy and this should be a bar to a parental order in the event that a surrogacy arrangement is engaged in such circumstances. The surrogacy arrangement should

be legal in the country in which it takes place, and all local requirements on the surrogate and intended parents should be met.

### **Recommendation 7**

the surrogate should receive independent legal advice, medical advice and counselling before the surrogacy. The cost of this should be borne by the intended parents.

### **Recommendation 8**

the intended parents should receive independent legal advice, in Ireland and the country the surrogacy is taking place, medical advice and counselling before the surrogacy.

### **Recommendation 9**

a written agreement should be drawn up between the intended parents and surrogate, detailing the particulars of the arrangement, to ensure all parties are aware of their rights and consent to their responsibilities.



### Recommendation 10

the surrogate should sign an affidavit following the birth, confirming her consent for the transfer of parentage to the intended parents, and confirming that her right to bodily autonomy was not breached during the surrogacy.

### Recommendation 11

*The Health (Assisted Human Reproduction) Bill 2022* should be amended, so that following the issuing of a parental order, the intended parents of a child born through surrogacy should have access to the information stored on the National Surrogacy Register, on behalf of the child, until the child reaches the age of 12, and that when a child born through surrogacy reaches the age of 12, they should be entitled to access their information stored in the National Surrogacy Register themselves.

### Recommendation 12

international surrogacy arrangements should be fairly and ethically compensated in order for a parental order to be issued.

### Recommendation 13

the surrogate should not be financially disadvantaged by her participation in the surrogacy. Intended parents should reimburse her for reasonable expenses caused by her pregnancy including loss of earnings, specific food and supplements to meet

recommended dietary requirements, and payment for domestic labour which her pregnancy precludes her from doing.

#### **Recommendation 14**

a statement of the financial arrangements anticipated within the compensated surrogacy arrangement should be included in the surrogacy agreement and provided to the AHRRA in advance of conception. At the application for the parental order evidence of payments consistent with the agreement must be produced as legal proofs.

#### **Recommendation 15**

surrogacy agencies should be required to itemise all expenses and fees paid by them for any professional services on behalf of the intended parents. A list of these expenses should be submitted by the intended parents to the AHRRA.

#### **Recommendation 16**

the intended parents must supply evidence of registration with both the National Surrogacy Register and, where applicable, the National Donor-Conceived Persons Register as legal proofs in any parental order application.

### Recommendation 17

there should be a genetic link between a child born through international surrogacy and at least one intended parent. This link should be confirmed through DNA testing, which should take place as soon as possible following the birth.

### Recommendation 18

intending parents resident in Ireland should be obliged to engage with the AHRRA prior to engaging in an international surrogacy agreement. The AHRRA should provide them with information on an international surrogacy arrangement including what to expect from the process, what will be required from all parties involved, and a list of recommended countries where surrogacy is legal, and the regulation aligns closely with Ireland.

Prior to conception intended parents should be required to submit the following to the AHRRA:

- the country in which the surrogacy is to take place
- evidence that the intended parents and the surrogate have undertaken counselling
- evidence that the intended parents have received legal advice both in Ireland and the country in which the surrogacy is to take place
- evidence that the surrogate has received legal advice
- The details of the clinic (or clinics) that will be carrying out any procedures involved
- the details of any surrogacy agency providing professional services as part of the surrogacy arrangement
- a copy of the surrogacy agreement
- a commitment to discuss the child's gestational and genetic origins with them

- a commitment to register with the National Surrogacy register, and if appropriate the National Donor-Conceived Persons Register.

All court documents must be translated into the native language of the surrogate.

### **Recommendation 19**

if the AHRRA is satisfied that the pre-birth conditions for an international surrogacy arrangement have been met, it shall issue the intended parents with a pre-authorisation certificate certifying this.

### **Recommendation 20**

all reimbursements of expenses or compensation paid by the intended parents to the surrogate be paid before the birth of the child and be non-refundable.

### **Recommendation 21**

the intended parents be obliged to make contact with the Department of Foreign Affairs following conception, allowing relevant steps to be taken in preparation for the issuing of an Emergency Travel Certificate.

**Recommendation 22**

family court hearings for parental order applications be arranged in line with the due date of the child. Such hearings should be flexible in relation to date but take place between 7 and 21 days after the birth of the child. The hearings should be remote, to allow them to take place before the intended parents return to Ireland with the child.

**Recommendation 23**

following a court hearing, if the court is satisfied based on evidence submitted that the legal requirements have been met, it should issue a parental order without delay.

**Recommendation 24**

in cases where international surrogacy arrangements have taken place before the introduction of legislation regulating them, intended parents should be able to apply for parental orders.

**Recommendation 25**

there should be no time limit on applying for a parental order in cases where the surrogacy took place before the introduction of regulations.



### **Recommendation 26**

there should be no upper age limit on the individual born through surrogacy or intended parents when applying for a parental order.

### **Recommendation 27**

the requirements for granting a parental order for an international surrogacy arrangement retrospectively should be less onerous than those for future surrogacy arrangements.

### **Recommendation 28**

the intended parents applying for a retrospective parental order must have been the intended parents at the time the conception took place, and the pregnancy must always have been intended to be a surrogacy arrangement.

### **Recommendation 29**

surrogacy must not have been prohibited at the time of conception in the country in which the surrogacy took place.

### Recommendation 30

when the child born through surrogacy is under 18, the court should carry out a 'best interests test' as part of the parental order application.

### Recommendation 31

when a parental order is granted retrospectively, the intended parents should submit identifiable information on themselves, the child and the surrogate to the AHRRA to be included on the National Surrogacy Register.

### Recommendation 32

*The Health (Assisted Human Reproduction) Bill 2022* should be amended to include provisions for the regulation and recognition of international surrogacy arrangements to ensure that

- families formed through all types of assisted human reproduction (AHR) are treated equally
- provisions for both domestic and international surrogacy arrangements are addressed in a comprehensive and consistent fashion.
- The AHR Bill shall provide recognition for the legal parentage of children conceived through surrogacy abroad after it is enacted. The provisions shall allow the parents to apply for a parental order in Ireland after the birth of the child so long as the international surrogacy meets conditions set out in Irish legislation, for example that the surrogacy was gestational, and fairly and ethically compensated.

## LEGAL RELATIONSHIPS FOLLOWING SURROGACY

This section deals with Legal Relationship Following Surrogacy. This is only one aspect of the familial relationship built through surrogacy. Witnesses before the committee stressed their families looked like any other and demonstrated the same connection, attachment and bonding. While the legal aspects of families may be different it is important to not lose sight of the other aspects of familial relationships. Research presented to the Committee outlined the positive outcomes for families built through surrogacy. The Committee also heard that the best support that we can offer families is that we give them legal certainty. As it stands, there is no mechanism in law to allow for the recognition of lifelong legal parent-child relationships for children born through international surrogacy with their mothers. The birth mother is recognised as the legal mother of a child and this means that the intended mother in a surrogacy arrangement, while can be recognised as the legal mother in the jurisdiction where the surrogacy arrangement occurred, is not recognised as the mother under Irish law.

The intended mother cannot apply for a declaration of parentage. Mothers can only apply to the courts for guardianship after caring for their children for two years and only then following the granting of a declaration of parentage to the biological father. The father must grant permission for the mother to apply for guardianship, which leaves mothers vulnerable in situations of relationship breakdown or domestic abuse. Guardianship status ends when the child is 18 years of age. The status of guardianship can be given by the court but can also be taken away by the court, whereas parental rights cannot be taken away.

All legal links with the mother end when the child reaches 18 years of age. This lack of legislation has lifelong and far-reaching implications. Mothers can't access maternity benefits which can cause financial and emotional strain. Many mothers have to return to work early due to financial strains. A child born through surrogacy receiving a gift or inheritance from a father is treated as a parent, child relationship. Whereas a child receiving a gift or inheritance from their mother and maternal grandparents is treated as a stranger in blood relationship.

Failure to regulate international surrogacy also creates an inequality in the status of intended parents. An intended father, if he is genetically related to the child, can be legally declared the father through DNA testing. There is currently no route for an intended mother to be recognised as a legal parent, even if her egg was used for conception, and she is the child's genetic mother. The principle of 'mater semper certa est', that the woman who gives birth is recognised as the legal mother of the child has usually been upheld in Irish law. This fails to take account of advances in reproductive science.

Only one parent being legally recognised can cause additional stress and uncertainty if the legal parent becomes ill. If the legal parent dies, the second intended parent may have to deal with the additional heartbreak and anguish of having no legal rights in relation to the child they have parented. In the event of a relationship breakdown, second parents face a possible power imbalance where the legal parent has all the control regarding the welfare of the child, and the second parent may struggle to gain any form of custody.

Same sex couples who undertake a surrogacy arrangement are also left with at least one intended parent unable to acquire legal parental recognition. If one of a male same sex couple is the genetic father, then they can be legally recognised as father of the child, but the second parent has no route to legal parenthood. Neither intended parent in a female same-sex couple who engage in surrogacy have a route to legal parenthood currently.

The intentions of surrogates must also be respected in the outcomes from surrogacy arrangements. Women do not become surrogates because they want to have a child, but because they want to help another couple or person to grow their family. Indeed, many surrogates have asserted that being permanently recognised as the mother of the child would discourage them from being a surrogate at all. Severing the legal relationship between the surrogate and the child provides certainty to all parties that the surrogate has no ongoing responsibilities towards the child which she never considered to be hers.

Intended parents can currently apply for guardianship of the child, under the *Guardianship of Infants Act 1964*. If the intended father is the genetic father, he can do so following the birth. The intended mother (or second intended father) does not have an immediate right to apply for guardianship, as their right to apply for guardianship comes through their relationship with the intended father. Instead, they must wait at least two years before applying. The guardianship process is designed for the creation of blended families, where a parent marries, enters a civil partnership or begins cohabiting with a partner. The spouse or co-habitant must show that they have shared the parental responsibility for the day-to-day care of the child with the parent they live with for at least two years. In a surrogacy arrangement, this fails to take into account the intention for the intended mother or second father to be the child's parent from even before conception. It also creates a legal lacuna for at least two years, leaving intended parents facing the same problems discussed above. Guardianship also ends when the child reaches age 18, severing the legal connection between parent and child. For these reasons, guardianship is not suitable as a replacement for legal parental recognition in surrogacy arrangements.

The Committee believes that the best way of realigning the legal relationships following a surrogacy is through a court-issued parental order. Such a parental order should name the intended parents as the parents of the child, with all the related rights and duties of that relationship. The parental order should also name the surrogate mother, and free her from all parental responsibilities in respect of the child.

Adoption has been mooted as a possible way to recognise family relationships formed through international surrogacy. However, adoption does not take into account the intentions of all parties going into the surrogacy arrangement that the intended parents are the parents of the child. This is a significant factor that distinguishes surrogacy and adoption, that while there may be parallels, adoption is very distinct from surrogacy and not an appropriate vehicle for the creation and severing of legal rights. Additionally, many intended parents engage in surrogacy due to medical issues which prevent them having children naturally. Many of these conditions would lead to them being disqualified from adopting, meaning adoption is not a viable alternative for them to surrogacy.

An effect of a parental order is the granting of citizenship rights to the child, if either intended parent named in the parental order is an Irish citizen. Following the issuing of a parental order, the child born through surrogacy shall be entitled to Irish citizenship through either intended parent, and not solely through the parent with whom there is a genetic link. This will require an amendment to the *Irish Nationality and Citizenship Act, 1956*.

The AHR Bill should be amended so that parental, maternity and surrogacy leave are provided for.

The Committee recommends that

### Recommendation 1

where an international surrogacy arrangement meets the criteria set out in the guidelines recommended by this committee, the intended parents should be able to apply to the courts for a parental order in respect of both parents. This must be carried out in an expeditious process.

### Recommendation 2

the parental order shall name the intended parents and child born through international surrogacy, and shall declare the intended parents to be the parents of the child, equal in rights to the child regardless of biological connections, and that the order creates an entitlement to all rights and an obligation to all duties, prescribed by statute or otherwise for the parents and child in relation to each other.

### Recommendation 3

the parental order shall name the surrogate, declaring the severance of any parental relationship with the child and removing all parental duties and responsibilities from her prescribed by statute or otherwise.

### Recommendation 4

The Irish Nationality and Citizenship Act, 1956 should be amended to provide that following a parental order being issued, in a case where either intended parent is an Irish citizen, the child born through surrogacy named in the parental order, if not already an Irish citizen, shall be an Irish citizen.

## REQUIREMENTS AND SAFEGUARDS FOR INTERNATIONAL SURROGACY ARRANGEMENTS

The provisions in the *Health 2022 (Assisted Human Reproduction) Bill* (AHR Bill) for regulating domestic surrogacy arrangements are a welcome development, and the Committee believes that intended parents should be encouraged to engage in surrogacy within Ireland where possible. However, even if domestic surrogacy is introduced in Ireland, it is likely that many Irish intended parents will continue to avail of surrogacy abroad. They may do so for a variety of reasons.

Failing to acknowledge and regulate for international surrogacy would leave families in legal limbo and discriminate against children based solely on the manner of their conception. Instead, the Committee believes that a list of key requirements for international surrogacy arrangements should be drawn up, and where these requirements are met, a parental order should be issued. This does not prohibit the exercise of judicial discretion in cases where a failure to adhere to the requirements arose from circumstances beyond the control of the intended parents. It should be incumbent on intended parents to provide evidence that these requirements have been met. The most basic requirement for any international surrogacy arrangement is that it must be legal in the country in which it occurs.

The aim of international surrogacy regulation should be to safeguard the rights, interests and welfare of all parties involved. This includes the surrogate, the intended parents, and particularly the child born through surrogacy. The Committee recognises that Ireland cannot legislate for how surrogacy happens in other countries. However, intended parents can be encouraged to pursue an ethical surrogacy arrangement that closely aligns with Ireland's regime. This can be done by providing intended parents with information and advice regarding the legal status of surrogacy in other countries, recommending travel or avoidance of particular countries, and by clearly listing the requirements that must be met before a parental order will be successfully obtained.

Countries that have a regulatory framework for surrogacy, will have set out the specific conditions that must be met. These may include maximum and minimum age ranges for surrogates, age ranges for intended parents, a maximum number of times



someone can act as a surrogate, and a condition that the surrogate must previously have given birth, among others. *The Health (Assisted Human Reproduction) Bill 2022* (AHR Bill) contains a list of such provisions which will apply for Irish surrogacy, if the Bill is enacted. While it would be desirable for all international surrogacy agreements to match this list of conditions, it would also be almost impossible to enforce. The Committee believes that as long as the medical and safety conditions of the country of the surrogacy are met, this should be considered sufficient.

In order to ensure that consent is fully informed, both the intended parents and the surrogate should each receive independent medical advice, legal advice and impact counselling. This is to ensure that they are fully aware of any potential consequences of the surrogacy, and of their rights and responsibilities. The intended parents should receive legal advice both in Ireland, and in the country in which the surrogacy will occur. This should happen prior to conception and evidence of compliance with these requirements must be produced in advance of any possibility of conception. These proofs should support any application to the AHRRA as part of the surrogacy process and form proofs for the parental order application.

While in some countries a surrogacy contract is required between the surrogate and the intended parents, it should be a requirement in all instances where a parental order will be sought in Ireland. It is the view of the Committee that intended parents and surrogates should draw up and sign a written agreement at the outset of any international surrogacy arrangement. While such an agreement would not be legally binding in Ireland, it would make the intentions, expectations and obligations of all parties clear from the outset. Open communication between parties is vital in surrogacy arrangements to minimise the chance of disputes later in the process. All parties must also give full and informed consent to the surrogacy, and a written agreement is evidence of such initial consent. The surrogacy contract/agreement should be a required legal proof in any application for a parental order.

Principle 10 of the *Principles for the protection of the rights of the child born through surrogacy* (or *Verona Principles*) sets out that surrogates should also be able to withdraw their consent for the transfer of parental rights following the birth. With this in

mind, surrogates should be required to sign an affidavit after the birth of the child, stating that they continue to consent.

The bodily autonomy of the surrogate is an important aspect of ensuring that she is not coerced and must be respected throughout a surrogacy. This means that she must be free to refuse any medical procedure or treatment that the intended parents might request. Conversely, she must be free to request any procedure or treatment that is legal in the country, up to and including termination even if this it is against the wishes of the intended parents. This right to bodily autonomy should be acknowledged in the written surrogacy agreement and confirmed in the surrogate's post-birth affidavit.

The Committee considered whether payment should be permitted to the surrogate or whether the surrogacy arrangement should be purely altruistic. Concerns have been raised that payment can give rise to a risk of exploitation and coercion. The Committee notes that compensation to the surrogate in respect of costs arising in connection with the surrogacy is provided for in the AHR Bill, where it is defined as altruistic surrogacy. This terminology should be amended to be re-termed as compensated surrogacy, to better recognise the compensatory nature of the arrangement, and provisions made for international surrogacy arrangements of a similar nature to be permitted. Compensated surrogacy will be recognised by transparency in respect of the payments to the surrogate being paid directly to her, that they are vouched and arise directly from the circumstances of the pregnancy. The Committee believes that assumptions should not be made regarding capacity or incapacity to consent based on the surrogate's country of origin or socio-economic background.

The Committee is also of the view that even in altruistic surrogacy arrangements, the surrogate should not be left financially disadvantaged by the surrogacy and should receive recompense for any expenses she accrues due to the pregnancy. This means that firstly, all of her legal advice, counselling and medical advice and treatment should be paid for by the intended parents. Secondly, any loss of earnings due to being unable to work because of the pregnancy should be compensated for by the intended parents. Examples of other pregnancy related expenses could include specific dietary requirements or supplements, or payments to cover domestic labour which the

surrogate is unable to do such as housework or childcare. These additional expenses should be recommended in writing by a doctor or other healthcare professional.

Third party agencies are often engaged by intended parents to help them match with surrogates and arrange professional legal and medical services in the county in which the surrogacy takes place. Agencies, clinics and any entities involved in the surrogacy arrangement should be required to itemise all expenses and fees paid to them and by them for any professional services provided.

All individuals have a right to know their identity, including their genetic, gestational and social origins. This means that children born through surrogacy should be able to access information about the identity of their surrogate, intended parents and any gamete donor whose sperm or egg was used in their conception. The Committee considered how such information should be stored. Children born through international surrogacy will receive birth certificates from the country of their birth, and Ireland has no authority over what information is recorded on these. The AHR Bill includes provisions for the establishment of a National Surrogacy Register, administered by the AHRRA which will be used to store details of all parties in domestic surrogacy arrangements. The Committee believes that this Register should also be used for international surrogacy arrangements, and that intended parents should be obliged to submit the details of all parties with the AHRRA for inclusion on the register. The Committee also recommends that where a donor gamete has been used, this should be registered on the National Donor-Conceived Persons Register. Evidence of notice being provided to one or both registers and an undertaking to complete the registration should be provided as legal proofs in any parental order application.

Based on the evidence of witnesses, the Committee acknowledges that best practice for informing a child born through surrogacy of their gestational and genetic origins is that the intended parents should be open in discussing with their child their gestational and genetic origins from as early an age as possible.

Regarding the information stored on the National Surrogacy Register, the Committee acknowledges that as an independent rights holder, the child is entitled to this information from birth. The AHR Bill as drafted sets out that a child born through

surrogacy should have access to the information in the register once they reach the age of 16. The Committee believes that as the child's legal guardian, the intended parents should have the right to access the information stored in the National Surrogacy Register on the child's behalf, until the child reaches the age of 12. When the child reaches the age of 12, they should be allowed to access the information stored on the Register themselves.

The Committee considered whether there should be a requirement for a genetic link between a child born through international surrogacy and at least one intended parent. The Committee does not believe that a genetic link should be required in domestic surrogacy, as this would preclude couples who are both medically unable to provide gametes from engaging in surrogacy. However, in international surrogacy there are greater concerns regarding the sale and trafficking of children. For this reason, the Committee believes that there should be a genetic link between at least one intended parent and the child. This link should be proven through DNA testing which should be organised for as soon after the birth as possible.

The Committee recommends that:

#### **Recommendation 5**

intended parents in international surrogacy arrangements should be obliged to provide evidence that the necessary requirements are met in order for a parental order to be issued. This should not bar the exercise of judicial discretion in exceptional circumstances.

#### **Recommendation 6**

no surrogacy arrangement should be entered into in a country which prohibits surrogacy and this should be a bar to a parental order in the event that a surrogacy arrangement is engaged in such circumstances. The surrogacy arrangement should

be legal in the country in which it takes place, and all local requirements on the surrogate and intended parents should be met.

### **Recommendation 7**

the surrogate should receive independent legal advice, medical advice and counselling before the surrogacy. The cost of this should be borne by the intended parents.

### **Recommendation 8**

the intended parents should receive independent legal advice, in Ireland and the country the surrogacy is taking place, medical advice and counselling before the surrogacy.

### **Recommendation 9**

a written agreement should be drawn up between the intended parents and surrogate, detailing the particulars of the arrangement, to ensure all parties are aware of their rights and consent to their responsibilities.

### Recommendation 10

the surrogate should sign an affidavit following the birth, confirming her consent for the transfer of parentage to the intended parents, and confirming that her right to bodily autonomy was not breached during the surrogacy.

### Recommendation 11

*The Health (Assisted Human Reproduction) Bill 2022* should be amended, so that following the issuing of a parental order, the intended parents of a child born through surrogacy should have access to the information stored on the National Surrogacy Register, on behalf of the child, until the child reaches the age of 12, and that when a child born through surrogacy reaches the age of 12, they should be entitled to access their information stored in the National Surrogacy Register themselves.

### Recommendation 12

international surrogacy arrangements should be fairly and ethically compensated in order for a parental order to be issued.

### Recommendation 13

the surrogate should not be financially disadvantaged by her participation in the surrogacy. Intended parents should reimburse her for reasonable expenses caused by her pregnancy including loss of earnings, specific food and supplements to meet

recommended dietary requirements, and payment for domestic labour which her pregnancy precludes her from doing.

#### **Recommendation 14**

a statement of the financial arrangements anticipated within the compensated surrogacy arrangement should be included in the surrogacy agreement and provided to the AHRRA in advance of conception. At the application for the parental order evidence of payments consistent with the agreement must be produced as legal proofs.

#### **Recommendation 15**

surrogacy agencies should be required to itemise all expenses and fees paid by them for any professional services on behalf of the intended parents. A list of these expenses should be submitted by the intended parents to the AHRRA.

#### **Recommendation 16**

the intended parents must supply evidence of registration with both the National Surrogacy Register and, where applicable, the National Donor-Conceived Persons Register as legal proofs in any parental order application.

### Recommendation 17

there should be a genetic link between a child born through international surrogacy and at least one intended parent. This link should be confirmed through DNA testing, which should take place as soon as possible following the birth.



## MODEL FOR INTERNATIONAL SURROGACY AGREEMENT RECOGNITION

All parties to an international surrogacy arrangement must be aware of their rights and their obligations from the outset. A model which informs intended parents and surrogates of these rights and obligations and that encourages transparency will lead to better outcomes for all.

The rights and best interests of the child should be of paramount concern throughout the process. Regarding the transfer of parentage, members considered if a parental order should be issued before or after the birth of the child in international surrogacy arrangements. The Committee acknowledges that a **pre-birth parentage transfer** would allow for legal certainty as early as possible, and more closely align with the intentions of the intended parents and surrogate. A **post-birth parentage transfer** provides better safeguards against the sale or trafficking of children, as set out in the Verona Principles, allowing the surrogate a short consideration period to withdraw her consent for the transfer of parentage.

The Committee believes that a two-step model is most appropriate (including pre-birth and post-birth elements). The pre-birth section will be an administrative process with intended parents registering the surrogacy agreement with the AHRRA before conception occurs and depositing with the AHRRA all documentary evidence (e.g., written surrogacy agreement, evidence of legal and medical advice) as is possible to gather before the birth. If it is satisfied with the evidence, the AHRRA shall issue a pre-authorisation certificate stating that the pre-birth requirements have been met. This certificate will be required for the post-birth court hearing. The Department of Foreign Affairs should also be informed of the surrogacy arrangement during the pregnancy, so that the local embassy or consulate can open a file and prepare to issue an Emergency Travel Certificate when the child is born.

The role of the AHRRA should be expanded to act as a resource for intended parents, providing information on surrogacy regimes in other countries, and potentially advice on prospective clinics or surrogacy agencies. There should be sufficient expertise and

competencies within the AHRRA to provide information on medical and legal issues arising from surrogacy.

Following the birth of the child, a court hearing should be held to determine whether a parental order should be issued. This hearing should take place at least 7 days after the birth, to allow the surrogate a consideration period before confirming her consent by signed affidavit. The hearing should be no more than 21 days after the birth, to avoid delays and long periods of uncertainty. The court hearing would examine the remaining documentary evidence, including the pre-authorisation certificate and would include a 'best interests of the child' test. The factors the court should consider in such a test should align with those set out Part V of the Guardianship of Infants Act 1964, and should include in so far as applicable:

- The benefit to the child of having a meaningful relationship with each parent and with the other relatives and people who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships
- The views of the child concerned if they can be established
- The physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on them of any change of circumstances
- The history of the child's upbringing and care, including the nature of the relationship between the child and each of the parents and other relevant people and the desirability of preserving and strengthening such relationships
- The child's social, intellectual and educational upbringing and needs
- The child's age and any special characteristics
- Any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being the capacity of each person in respect of whom an application is made to care for and meet the needs of the child; to communicate and co-operate on issues relating to the child; and to exercise the relevant powers, responsibilities and entitlements to which the application relates.

If the court were satisfied that the requirements for recognising an international surrogacy arrangement had been met, then a parental order would be issued.

### Summary of the proposed two-step model (for recognising an international surrogacy arrangement)

#### Pre-conception and pre-birth

- Intended parents register a written surrogacy agreement with the AHRRA (pre-conception)
- The following documentary evidence is submitted to the AHRRA (pre-birth), including:
  - a) Written surrogacy agreement (as above)
  - b) Outline of the surrogate's financial position, including income and regular outgoings;
  - c) Evidence that independent medical advice, legal advice and counselling on the implications of surrogacy have been received by the intended parents;
  - d) Details regarding the intended parents, surrogate, and any gamete donors to be entered into the National Surrogacy Register.
  - e) Details of all (non-refundable) reimbursements of expenses or compensation paid by the intended parents to the surrogate be made (pre-birth)
- Inform Department Foreign Affairs of the surrogacy arrangement to facilitate preparation of Emergency Travel Certificate (pre-birth)
- If the AHRRA is satisfied with the submitted evidence, they shall issue a pre-authorisation certificate to the intended parents.

#### **Post-birth**

- Consideration period of 7-21 days
- Surrogate consent confirmed / signed via affidavit
- Remote / online family court hearings for parental order applications arranged in line with the due date of the child no **sooner than 7 days and no later**

than 21 day after the birth, held to examine remaining evidence including affidavit and the pre-authorisation certificate

- Court carries out 'best interest of the child test'
- If all requirements satisfied, court issues parental order.

The Committee believes that the court hearings set out above could be held remotely, before the intended parents and child return to Ireland in order to expedite the process, and minimise the period that the intended parents are not the legal parents. It would also mean that the intended parents would be legally recognised as the parents of the child before even arriving in Ireland, removing all legal uncertainty, and preventing even a short period of the child being cared for by anyone not recognised legally as parents.

A criminal sanction is provided for in the AHR Bill where any of the requirements for domestic surrogacy are not met, but this does not bar parental orders from being granted. This means that the child is not discriminated against for the deeds of their parent and only the parent is sanctioned with a potential criminal conviction. A similar criminal sanction for intended parents in international surrogacy arrangements should be introduced, where the requirements are not met. This should be aligned with the sanction relating to domestic surrogacy as outlined in the AHR Bill.

The Committee believes that in order for an international surrogacy arrangement to be recognised, it should be incumbent on the intended parents to provide evidence that the core standards for a surrogacy arrangement have been met. These include:

- that all parties to the arrangement have consented to it freely and fully, with the surrogate free to withdraw her consent following the birth no sooner than seven days and no later than 21 days following the birth
- that no payments have been made to the surrogate beyond reasonable expenses so that she is not left at a financial loss by the process
- that the surrogacy arrangement is legal in the jurisdiction in which the arrangement will take place, and
- that the surrogate's right to bodily autonomy has been respected at all times.

The Committee recommends that -

### Recommendation 18

intending parents resident in Ireland should be obliged to engage with the AHRRA prior to engaging in an international surrogacy agreement. The AHRRA should provide them with information on an international surrogacy arrangement including what to expect from the process, what will be required from all parties involved, and a list of recommended countries where surrogacy is legal, and the regulation aligns closely with Ireland.

Prior to conception intended parents should be required to submit the following to the AHRRA:

- the country in which the surrogacy is to take place
- evidence that the intended parents and the surrogate have undertaken counselling
- evidence that the intended parents have received legal advice both in Ireland and the country in which the surrogacy is to take place
- evidence that the surrogate has received legal advice
- The details of the clinic (or clinics) that will be carrying out any procedures involved
- the details of any surrogacy agency providing professional services as part of the surrogacy arrangement
- a copy of the surrogacy agreement
- a commitment to discuss the child's gestational and genetic origins with them
- a commitment to register with the National Surrogacy register, and if appropriate the National Donor-Conceived Persons Register.

All court documents must be provided and translated into the native language of the surrogate.

**Recommendation 19**

if the AHRRA is satisfied that the pre-birth conditions for an international surrogacy arrangement have been met, it shall issue the intended parents with a pre-authorisation certificate certifying this.

**Recommendation 20**

all reimbursements of expenses or compensation paid by the intended parents to the surrogate be paid before the birth of the child and be non-refundable.

**Recommendation 21**

the intended parents be obliged to make contact with the Department of Foreign Affairs following conception, allowing relevant steps to be taken in preparation for the issuing of an Emergency Travel Certificate.

**Recommendation 22**

family court hearings for parental order applications be arranged in line with the due date of the child. Such hearings should be flexible in relation to date but take place between 7 and 21 days after the birth of the child. The hearings should be remote, to allow them to take place before the intended parents return to Ireland with the child.

### Recommendation 23

following a court hearing, if the court is satisfied based on evidence submitted that the legal requirements have been met, it should issue a parental order without delay.

## **RETROSPECTIVE RECOGNITION OF PAST INTERNATIONAL SURROGACY ARRANGEMENTS**

The Committee believes that any system regulating the recognition of international surrogacy arrangements must also provide for the retrospective recognition of past surrogacy arrangements. Existing families formed through surrogacy must be allowed to regularise their relationships in the same way as future families will be. Failure to allow this would be in violation of the rights of the child under the European Convention on Human Rights and the UN Convention on the Rights of the Child.

Failure to allow for retrospective recognition of past surrogacy arrangements would mean leaving families in a continuing situation of legal uncertainty. All parties to the surrogacy arrangement will continue to have their intentions disregarded and their welfare and rights negatively affected.

Where a surrogacy arrangement has taken place before the implementation of the recommendations of this report, it should be open to the intended parents, to apply for a parental order in relation to the child. There should be no time limit for such applications, provided the surrogacy occurred before the introduction of the regulation of international surrogacy.

The parent child relationship does not end when the child reaches age 18. A lack of a legal parental relationship between an adult born through surrogacy and their intended parents would have negative implications in matters such as inheritance. For that reason, there should be no limitation on the age of the child born through surrogacy for the parental order to be issued. In these applications there should be no upper age limit on the age of the intended parents either, as at the material time of applying for the parental order they may be above the recommended age due to the passage of time between the birth of their child and the legal provision of being able to apply for a parental order.

Many, if not all, retrospective parental order applications will not be able to meet the requirements set out in Chapter Two of this report. This is to be expected, as at the time the surrogacy took place, none of the parties could have predicted if Ireland would ever recognise international surrogacy arrangements, let alone what the requirements



for recognition would be. It would be grossly unfair to punish families created through surrogacy for failing to adhere to requirements that did not exist at the time. For that reason, the criteria for retrospective recognition of a surrogacy agreement should be far less onerous than for future surrogacies.

Two conditions should be met in respect of all retrospective parental order applications: the first being that the intended parents were the intended parents at the time of conception. The court must be satisfied that the pregnancy was always intended as a surrogacy, and that it was always envisaged that the intended parents would be the parents of the child. Additionally, the surrogacy should have been legal in the country it occurred, at the time it occurred.

Retrospective applications will derive from a number of categories of intending parent and each should have a response to match their stage of process in respect of regularising the parent child relationship under Irish family law. These include, but are not limited to:

- a. Where intending parents have a declaration of parentage in respect of one parent and have already completed the court process in respect of that parent and where the second parent has obtained a guardianship order, the parental order should be applied for in the District Court and as the documentation has already received judicial scrutiny, the issuing of a parental order could be done without unnecessary judicial scrutiny, subject to proofs such as identity consistent with the name on the surrogacy agreement.
- b. Where intending parents have a declaration of parentage in respect of one parent and have completed the court process in respect of that parent and where the second parent has not as yet obtained a guardianship order, the guardianship order application should be dispensed as unnecessary and a parental order instead applied for. This should be applied for in the District Court and the proofs for application be the same as those of the guardianship application. All other documentation has already received judicial scrutiny.

- c. Where intending parents have commenced proceedings for the first parent declaration of parentage and usual attending applications, this should be amended to include a parental order in respect of both parents and continued in the court where the proceedings were commenced, either the Circuit or High Court.
- d. Where intending parents have not commenced any proceedings, they should be obliged to apply for their parental order in the High Court but the application can commence in respect of both parents applying for a parental order.
- e. Applications for parental order in respect of the second parent should not be contingent upon the consent of the first parent, but from the establishment by legal proofs that the second parent was the intended parent at the time of conception. This is to ensure that in cases where the intending parents are no longer in a relationship, the parental order entitlement cannot be unreasonably withheld from the second parent.
- f. In circumstances where one or both parents are deceased, an application for a parental order can be made either by the child if an adult, or in the child's name. In such circumstances, The Revenue Commissioners should refund any excess Capital Acquisitions Tax paid, which would not have been owed had a parental order been in place.

In any such application the consent of the surrogate can be inferred from the intention contained in the surrogacy agreement and any post birth affidavits as including applications in respect of the second parent. In the alternative the consent of the surrogate may be sought, but failure to appear should be sufficient to dispense with the need to provide consent and the consent can be dispensed with as part of the judicial determination.

The court should, if the child is under 18, undertake a 'best interests of the child' test as set out in Chapter Three of this report.

If a parental order is granted retrospectively, the intended parents should submit details of themselves, the child, the surrogate and any gamete donors, where known, to the AHRRA to be entered into the National Surrogacy Register, as with any other surrogacy arrangement.

The Committee recommends that -

#### **Recommendation 24**

in cases where international surrogacy arrangements have taken place before the introduction of legislation regulating them, intended parents should be able to apply for parental orders.

#### **Recommendation 25**

there should be no time limit on applying for a parental order in cases where the surrogacy took place before the introduction of regulations.

#### **Recommendation 26**

there should be no upper age limit on the individual born through surrogacy or intended parents when applying for a parental order.

**Recommendation 27**

the requirements for granting a parental order for an international surrogacy arrangement retrospectively should be less onerous than those for future surrogacy arrangements.

**Recommendation 28**

the intended parents applying for a retrospective parental order must have been the intended parents at the time the conception took place, and the pregnancy must always have been intended to be a surrogacy arrangement.

**Recommendation 29**

surrogacy must not have been prohibited at the time of conception in the country in which the surrogacy took place.

**Recommendation 30**

when the child born through surrogacy is under 18, the court should carry out a 'best interests test' as part of the parental order application.

### Recommendation 31

When a parental order is granted retrospectively, the intended parents should submit identifiable information on themselves, the child and the surrogate to the AHRRA to be included on the National Surrogacy Register.

## LEGISLATIVE FRAMEWORK FOR INTERNATIONAL SURROGACY

The Committee deliberated on what would be the most appropriate legislative vehicle for regulating international surrogacy. The Committee considered:

- whether international surrogacy should be included in the *Health (Assisted Human Reproduction) Bill 2022* (AHR Bill) which provides for the domestic regulation of a wide range of assisted human reproduction technologies including surrogacy,
- whether domestic surrogacy should be removed from the AHR Bill altogether, and a new bill addressing both domestic and international surrogacy should be introduced or
- international surrogacy should be addressed in a standalone piece of legislation.

The Committee believes that the regulation and recognition of international surrogacy needs to be instituted as quickly as possible. Any delay in doing so would mean more families created through surrogacy being left in legal uncertainty and existing families with few rights. Any separate surrogacy legislation, whether covering solely international surrogacy or both domestic and international, is likely to take significantly longer to be introduced than including international surrogacy with the AHR Bill. International surrogacy should be provided for in the context of assisted human reproduction provisions as it is such a provision albeit that some or all of it will be conducted abroad. While it is acknowledged that some of the legislative provisions needed will require amendments to legislation that was introduced by the Department of Justice, it is noted that it is not unusual for amendments to existing legislation to occur in Acts that were not introduced by the presenting department. It is also noted that the Interdepartmental Surrogacy Group has worked for some years in relation to surrogacy provisions; therefore cooperation between the relevant departments already exists relative to this legislation. Further, it would be preferable that where the eggs of the intending parent are being used in the embryo creation, that the egg retrieval be carried out in Ireland to support the wellbeing of that parent in a process that can have attendant risks.

Some concerns have been raised that incorporating international surrogacy into the AHR Bill would lead to a long delay in the Bill's progress towards enactment. The Committee does not agree with this view. It should be possible to include a new part in the AHR Bill setting out a regulatory framework for international surrogacy without causing the Bill's progress to be significantly delayed. The General Scheme of the Assisted Human Reproduction Bill was first published in 2017, and it has taken five years to reach this point. The Committee believes that in this context any short delay to include provisions on international surrogacy would be worthwhile to ensure that the bill comprehensively addresses all forms of family formation through assisted human reproduction.

The Committee also believes that including provisions for international surrogacy in the AHR Bill would allow for surrogacy and assisted human reproduction more generally to be addressed in a more comprehensive and consistent fashion. Separate legislation could lead to anomalies and possibly discriminatory outcomes for children and families depending on the method of their conception. A single piece of legislation that comprehensively addresses the entire sphere of assisted human reproduction is more likely, in the Committee's opinion, to result in the rights of all families and individuals being fully and equally recognised.

The Committee recommends that -

### Recommendation 32

*The Health (Assisted Human Reproduction) Bill 2022* should be amended to include provisions for the regulation and recognition of international surrogacy arrangements to ensure that

- families formed through all types of assisted human reproduction (AHR) are treated equally
- provisions for both domestic and international surrogacy arrangements are addressed in a comprehensive and consistent fashion.

- The AHR Bill shall provide recognition for the legal parentage of children conceived through surrogacy abroad after it is enacted. The provisions shall allow the parents to apply for a parental order in Ireland after the birth of the child so long as the international surrogacy meets conditions set out in Irish legislation, for example that the surrogacy was gestational, and fairly and ethically compensated.



## APPENDIX I COMMITTEE ORDERS OF REFERENCE

That, notwithstanding anything in Standing Orders–

(1) a Special Committee consisting of nine members of Dáil Éireann be appointed, to be joined with a Special Committee to be appointed by Seanad Éireann, to form the Joint Committee on International Surrogacy;

(2) the Joint Committee shall expeditiously consider and make recommendations on measures to address issues arising from international surrogacy having particular regard to:

(a) all aspects of the rights, interests and welfare of children born through international surrogacy who are independent rights holders with a specific focus on–

(i) ensuring that children born through international surrogacy can preserve their identity, including their genetic, gestational and social origins, and

(ii) ensuring safeguards against the sale, trafficking and exploitation of children;

(b) the rights, interests and welfare of surrogate mothers, who should be in a position to make independent and informed decisions about international surrogacy arrangements free from exploitation and coercion;

(c) the rights, interests and obligations of intending parents in future international surrogacy arrangements, with a specific focus on the question of access to a legal route to parentage and guardianship under Irish law;

(d) the rights, interests and obligations of intending parents of existing children who have already been born through international surrogacy arrangements, with a specific focus on the question of access to a legal route to parentage and guardianship under Irish law;

(3) the Joint Committee shall undertake consultations to hear and consider the views of organisations representing the rights and interests of children born through surrogacy, surrogate mothers and intending parents, and of such other organisations and individuals as the Committee considers appropriate;

(4) the Joint Committee shall report to both Houses of the Oireachtas on the matters contained in paragraph (2) within three months of its first public meeting;

(5) where the Joint Committee considers that an extension is required to the timeframe set out in paragraph (4), it shall make an interim report to both Houses requesting such extension and setting out the timeframe for its final report;

(6) members of either House, not being members of the Joint Committee, may attend and take part in proceedings of the Joint Committee, or any sub-Committee thereof, but without having a right to vote or to move motions or amendments, save where they attend, pursuant to Standing Orders, as a substitute for an absent member (or for a substitute not in attendance);

(7) the member of Dáil Éireann nominated by the Social Democrats to serve on the Joint Committee shall be Cathaoirleach;

(8) the quorum of the Joint Committee shall be four, at least one of whom shall be a member of Dáil Éireann, and one a member of Seanad Éireann; and

(9) the Joint Committee shall have the powers defined in paragraphs (1), (2), (3), (4), (5), (9) and (10) of Standing Order 96.

## APPENDIX II LIST OF PUBLIC MEETINGS

Date	Witnesses	Link to Transcript
7 April 2022	Officials from the Department of Children, Equality, Disability, Integration and Youth Officials from the Department of Justice Officials from the Department of Health Professor Conor O'Mahony, Government Special Rapporteur on Child Protection	<a href="#">Transcript</a>
14 April 2022	Dr Andrea Mulligan, Trinity College, Dublin Professor Mary Winfield, Merrion Fertility Clinic	<a href="#">Transcript</a>
20 April 2022	Dr Kirsty Horsey, London Women's Clinic Ms Natalie Gamble, NGA Law	<a href="#">Transcript</a>
21 April 2022	Ms Elaine Cohalan, Assisted Human Reproduction Coalition Mr Gearóid Kenny Moore, Irish Gay Dads Ms Claire O'Connell, LGBT Ireland Ms Ciara Merrigan, Irish Families Through Surrogacy Ms Ranae von Meding, Equality for Children Ms Selina Bonnie, Independent Living Movement Ireland	<a href="#">Transcript</a>
28 April 2022	Dr Lydia Bracken, University of Limerick. Mr Gearóid Kenny Moore, Irish Gay Dads, Mr Shane Lennon, Irish Gay Dads Officials from the Department of Justice Officials from the Dept. of Foreign Affairs	<a href="#">Transcript</a>
5th May 2022	Ms Claire O'Connell, LGBT Ireland Ms Fiona Duffy, Patrick F. O'Reilly and Company Solicitors Dr. Aine Sperrin, , Independent Living Movement Ireland Ms Selina Bonnie, Independent Living Movement Ireland	<a href="#">Transcript</a>

	<p>Ms Maeve Delargy, Equality for Children</p> <p>Ms Ranae Von Meding, Equality for Children</p> <p>Ms Cathy Wheatley, Ms Ciara Merrigan, Irish Families Through Surrogacy</p> <p>Ms Gillian Keegan - The National Infertility Support and Information Group</p>	
12 May 2022	<p>Dr Niall Muldoon, Ombudsman for Children</p> <p>Ms. Sarah Groarke Ombusman for Children's Office</p> <p>Dr Karen McAuley, Ombudsman for Children's Office</p> <p>Ms Caoimhe Nic Dhomhnaill , Clinical Child Psychologist</p> <p>Professor Conor O'Mahony, Government Special Rapporteur on Child Protection</p>	<a href="#">Transcript</a>
19 May 2022	<p>Ms. Maud de Boer-Buquicchio, former UN Special Rapporteur on the sale and sexual exploitation of Children</p> <p>Ms Tanya Ward, Chief Executive, Children's Right Alliance</p> <p>Ms Rachel Rowley Smith, individual born through surrogacy</p> <p>Ms Georgina Roberts, individual born through surrogacy</p> <p>Ms Meredith Baldwin, individual born through surrogacy</p>	<a href="#">Transcript</a>
26 May 2022	<p>Professor Deirdre Madden, UCC</p> <p>Dr Brian Tobin, NUI Galway</p> <p>Professor Susan Golombok, Centre for Family Research, Cambridge</p> <p>Mr Jean Ayoub, International Social Service</p> <p>Ms Jeannette Woellenstein, International Social Service</p> <p>Ms Carlotta Alloero, International Social Service</p>	<a href="#">Transcript</a>

2 June 2022	<p>Ms Sara Cohen, Fertility Law Canada</p> <p>Ms Edwina Oakes, The Irish Fertility Counsellors Association</p> <p>Ms Marian O'Tuama, The Irish Fertility Counsellors Association</p> <p>Ms Victoria Reid, surrogate</p> <p>Ms Sharon O'Shea, surrogate</p>	<a href="#">Transcript</a>
9 June 2022	<p>Ms Annette Hickey, Poe Kiely Hogan Lanigan</p> <p>Ms Justice Bronagh O'Hanlon</p> <p>Mr Richard Vaughn, International Fertility Law Group</p> <p>Ms Cindy Wasser, Hope Springs Fertility Law</p> <p>Ms Jennifer Armstrong, surrogate</p> <p>Ms Meghan Schiewe, surrogate</p> <p>Ms Ivanna Holub, surrogate</p> <p>Ms Ellen Embury, Carbert Waite LLP</p>	<a href="#">Transcript</a>

## APPENDIX III WRITTEN SUBMISSIONS RECEIVED

Submissions Received
221+ CervicalCheck Patients Support Group
The Adoption Authority of Ireland
Ms Ciana Brady
The International Coalition for the Abolition of Surrogate Motherhood
Irish Families Through Surrogacy
Ms Claire O'Connell
Stop Surrogacy Now UK
Tusla Child and Family Agency

## APPENDIX IV VOTING RECORD OF COMMITTEE

### 30<sup>th</sup> June 2022

1. Question put that amendment no 134 be made.

The Committee divided **Tá 5 Níl 1**

**For:** Deputies Patrick Costello, Jennifer Whitmore, Kathleen Funchion

Senators Mary Seery Kearney, Lynn Ruane

**Against:** Senator Sharon Keogan

### 4<sup>th</sup> July 2022

2. Question put that the amendment be agreed.

The Committee divided **Tá 6 Níl 1**

**For:** Deputies Patrick Costello, Emer Higgins, Jennifer Whitmore

Senators Lorraine Clifford Lee, Lynn Ruane, Mary Seery Kearney

**Against:** Senator Sharon Keogan

3. Question put that the amendment be agreed.

The Committee divided **Tá 6 Níl 1**

**For:** Deputies Patrick Costello, Emer Higgins, Jennifer Whitmore

Senators Lorraine Clifford Lee, Lynn Ruane, Mary Seery Kearney

**Against:** Senator Sharon Keogan

4. Question put that the report as amended be adopted.

The Committee divided **Tá 6 Níl 1**

**For:** Deputies Patrick Costello, Emer Higgins, Jennifer Whitmore

Senators Lorraine Clifford Lee, Lynn Ruane, Mary Seery Kearney

**Against:** Senator Sharon Keogan





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