

This is how Ireland intends to change 'outdated' laws on bringing up children...

A new piece of legislation will address the legal status of children in civil partnerships, surrogacy arrangements and assisted human reproduction.

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Image: [Gay Couple with Children](#) via Shutterstock

THE GOVERNMENT INTENDS to modernise Ireland's "substantially outdated" laws on the care and upbringing of children during 2014.

The front page of the Irish Times today declares that the Children and Family Relationships Bill – or a related piece of legislation – will allow for adoption by same-sex couples.

The proposed laws will also cover the legal status of children in civil partnerships, surrogacy arrangements and assisted human reproduction.

According to a [recent briefing](#) note published by the Department of Justice, the Bill will provide for a "contemporary legal architecture on guardianship, custody, access and the upbringing of children in diverse family forms".

This will include married families, families that rely on the care of children by relatives, families based on cohabiting couples and civil partnerships.

Surrogacy

The department says that there is a growing concern around the practice of commercial surrogacy in Ireland and the use of international commercial surrogacy by Irish people.

This has “very serious implications” for the birth registration of children in Ireland, as well as concerns relating to the possible exploitation of people involved in the arrangements.

A number of cases related to surrogacy have already made their way to the Irish courts with the Supreme Court to hear another early next year.

When enacted, the Bill will permit non-commercial surrogacy arrangements. At the same time, it will prohibit people or agencies from advertising surrogacy services. It will also be illegal to try and persuade a woman to act as a surrogate.

Under the legislation, it will be an offence for a person to receive payment for making or facilitating a surrogacy or advertising surrogacy arrangements.

The reimbursement of “reasonable” surrogacy costs, including medical bills, travel, accommodation and loss of earnings, can only be enforced where an arrangement was put in place before conceptions.

The laws will mean that parentage of a child can be legally assigned by the court on the basis of genetic connection to one of the intending parents and the spouse, civil partner or cohabiting partner of that person.

The consent of any surrogate will be essential. If that consent is not given, she will be the legal mother of the child if she does not consent to the application.

Parentage can be declared by the court when the child is born in the State or the alleged parent ordinarily resides here.

The bill will oblige parties to an arrangement to obtain legal advice before conception.

Adoption

This specific bill will not address matters related to adoption, including adoption by same-sex couples. That will be an issue for the Minister for Children.

However, the Irish Times says a related bill allow for same-sex couples and unmarried opposite-sex couple to adopt children for the first time.

The Department says that the current law which provides for adoption by married couples and single people (regardless of sexual orientation) but prohibits adoption by cohabiting couples and civil partners needs to be considered.

“A law which permits the adoption of a child by an individual who is gay but excludes the adoption of a child by a same sex couple makes little sense and can properly be regarded as discriminatory,” it said in the briefing note.

The Children and Family Relationships Bill will allow civil partners (as well as step parents, those cohabiting with the already-established parent and those acting in loco parentis for a certain period of time) apply for guardianship of a child.

Assisted Reproduction

The laws also propose a number of rules for assigning parentage in cases of assisted human reproduction, other than surrogacy cases.

- Where the genetic link is to the intending father, the parents are the birth mother and the genetic father.
- Where the genetic link is to the intending mother, the parents are the birth mother and her consenting spouse, civil partner or cohabiting partner.
- Where the genetic link is to the intending father and the intending mother, they are both the parents.
- Where there is no genetic link to either intending parent, the parents are the birth mother and her consenting spouse, civil partner or cohabiting partner.

Other elements

The laws governing general parentage will also be updated and the presumption of paternity will be modified to include a “negative presumption”. That is, a husband will be presumed *not* to be the father of a child his wife gives birth to more than 10 months after the last occasion when there was contact between the pair.

The issue of child maintenance will also be addressed in the legislation to ensure that there is no comparative disadvantage to a child born outside the constitutional marital family to one born within marriage. This change will reflect a European Court of Human Rights judgement which highlighted the issue.

The bill will mean a child over the age of 12 must be consulted in relation to applications for guardianship, custody and access orders in the future. He or she will also be entitled to refuse consent.

In making orders, the court will be mandated to regard the best interests (which is currently labeled as ‘the welfare’) of the child as the “paramount consideration”.

Finally, the Bill also intends to increase the number of non-marital fathers who are automatically guardians of their children by providing that a non-marital father is a guardian of his child if he cohabits with the child’s mother for at least a year before the child’s birth and the cohabitation ends (if applicable) less than 10 months before the child’s birth.