

Summary and Detailed Provisions of the Children and Family Relationships Bill

The Children and Family Relationships Bill is a child-centred reform of family law which is intended to address the needs of children living in diverse families. It will make provision for parentage, guardianship, custody and access across a range of family situations that are not addressed adequately in current law.

The Bill is designed to modernise the law in relation to children living in diverse family forms. It is intended to address the need of those children for security in their family situations whether living with:

- their married parents;
- their unmarried parents;
- a parent and the parent's partner;
- a grandparent or other relative who is parenting the child.

It includes provisions for children being parented by same-sex couples or who have been born through donor-assisted human reproduction (AHR).

The Bill:

- makes the best interests of the child paramount in decisions on guardianship, custody and access.
- empowers the court to appoint an expert to ascertain the child's views in proceedings on guardianship, custody and access, where the child is not able to express his or her views directly.

In relation to Guardianship:

- sets out who, other than a child's parents, can apply for guardianship in respect of a child. This is to take account of the diverse family types in which children live.
- enables a wider range of unmarried fathers to become guardians of their child automatically. A father who has lived with the child's mother for 12 consecutive months, including at least 3 months with the mother and the child following the child's birth, will automatically become a guardian.
- enables a parent's spouse or civil partner or a parent's cohabitant of not less than three years' duration to apply to the court to become a guardian where s/he has co-parented the child for 2 years. These guardians will generally have restricted powers limited to decisions on day-to-day matters other than where it is in the best interests of the child for the guardian to have full guardianship powers. The issues that will not normally be extended to these guardians will include decisions on the child's residence or religious and cultural upbringing. The consent of any existing guardian will be required.

- enables a guardian parent to appoint a temporary guardian for his / her child, through a court-based process, where the parent is suffering from serious illness or injury which prevent him or her from exercising his or her guardianship responsibilities in respect of the child. The court can specify limitations on the type of decisions to be taken by the temporary guardian and must have regard to any limitations specified by the parent.

In relation to Custody and Access:

- enables a relative to apply for custody of a child. A parent's spouse or civil partner or a parent's cohabitant of not less than three years' duration can also apply for custody where s/he shared parenting of the child for 2 years. A person can apply for custody if s/he has parented the child for a year and if there is no parent or guardian willing or able to exercise the powers and responsibilities of guardianship.
- enables grandparents and other relatives to have access more easily to children in the context of relationship breakdown. They will be able to apply directly to the court for access rather than having to go through the existing two-stage process whereby they have to apply to the court for leave to make an application for access.
- puts in place a set of enforcement procedures in relation to custody and access. These provisions are intended to ensure that both parents can have meaningful relationships with their child even in a context of relationship breakdown. Measures will promote compliance with court orders on custody and access. These include requiring a parent who is persistently flouting a court order to attend a parenting programme or to compensate the other parent for time lost with the child.

In relation to parentage of children born through donor Assisted Human Reproduction

The Bill sets out the arrangements that will apply with regard to the parentage of a child born through donor assisted human reproduction (AHR):

- A birth mother's partner can become the child's second parent if s/he consented to the AHR treatment, if the treatment was carried out in a clinical setting and if the donor clearly consented to be a donor rather than a parent.
- It will not be possible for the partner to become the child's second parent if the donor has not clearly consented to the donation or if the AHR treatment is carried out in a non-clinical setting. This is because of the need to be able to have clear consents as to the status of all parties – the birth mother, the second 'social' parent and the donor.
- It will be possible for a parent's civil partner or cohabiting partner to become a full guardian of a child born to the couple jointly even if the civil partner / cohabiting partner cannot fulfil the conditions necessary to be recognised as a parent.

- The birth mother and the partner will be able to register the birth of the child jointly, rather than requiring them to undertake court proceedings to establish parentage. They will be able to have the parentage registered on the Register of Births by the General Register Office if the couple make a statutory declaration confirming that both have consented to the partner becoming the parent of the child, and provide evidence from the clinic confirming the treatment and the consent of each parent and the donor.
- A child born through donor AHR will be able to trace his / her genetic identity through a national donor-conceived person register. In this context, anonymous donations will be prohibited other than some limited exceptions (such as where a couple wish to have a sibling for an existing child using donor gametes donated pre-commencement of the legislation, or where embryos were already formed before the commencement date).

Adoption eligibility and Parental/Maternity leave extended:

- civil partners and cohabiting couples who have lived together for 3 years will be eligible to apply to adopt jointly.
- one member of a civil partnered or cohabiting same-sex couple will be enabled to qualify for adoptive leave. The couple will have the right to choose which member of the couple can take the leave.
- the rights held by fathers in respect of parental leave and maternity leave will be extended to second female parents.

Detailed Description of Measures in the Children and Family Relationships Bill

The Bill comprises 12 Parts and goes to over 100 pages and 170 Sections overall. The Bill, whilst heralding a major modernisation of our existing family law relating to guardianship,

custody, access and parentage and related matters, is drafted in very many instances as a series of amendments to existing legislation in a range of areas. The description below is an informal summary of the measures set out in the various Parts.

Part 1 of the Bill deals with preliminary and general matters and:

- sets out provisions relating to commencement, repeals and expenses.
- Provisions relating to donor assisted reproduction are to be commenced by the Minister for Health.
- provisions amending the Civil Registration Act 2004 will be commenced in consultation with the Minister for Social Protection.
- Provisions relating to adoption will be commenced by the Minister for Children and Youth Affairs;
- sets out the definitions which will be applied under the legislation.

Part 2 deals with Parentage in Cases of Donor Assisted Human Reproduction and provides that:

- the parents of a donor-conceived child will be the birth mother and the mother's husband, civil partner or cohabiting partner where the latter has consented to become the parent through AHR and where the status of the donor is clear (i.e. that the donor has consented to being a donor rather than a parent). A birth mother can also be recognised as the only parent of the child.
 - the second female parent will have all the rights and responsibilities of a parent in respect of the child.
 - the donor will not be the parent of the child and will have no parental rights or responsibilities in respect of the child. Provisions on consent have been provided to address the consent needed from the birth mother, the second parent (if any) and the donor. The donor will also have to consent that information will be retained on the national donor-conceived person register to enable the child to trace his / her genetic identity. Consent can be revoked but only prior to the implantation of the embryo.
 - a woman or a couple who have completed their donor AHR treatment and have had children as a result of such treatment may donate an embryo to another woman or couple. Consent can be revoked up to the point of transfer of the embryo.
 - It will not be permitted for a person to receive a payment other than reasonable expenses for the donation of gametes ('gametes' are sperm or ova to be used for reproductive purposes)
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- Provision is also made for declaration of parentage through a court-based procedure for donor-conceived children in circumstances where the parent other than the mother (being the mother's husband, civil partner or cohabitant of either sex) clearly intended to be a parent at the time of the donor AHR treatment and where the

donor is unknown to the parents. The court can take account of the best interests of the child when deciding whether or not to make the declaration of parentage.

Part 3 deals with Donor Assisted Human Reproduction and addresses the obligations that a donor assisted human reproduction (DAHR) facility will be required to observe and the categories of information required for, and available from, the national donor-conceived person register.

Under this part:

- Obligations are being placed on a donor assisted human reproduction (DAHR) facility which will prevent the use of anonymous gametes ('gametes' are sperm or ova to be used for reproductive purposes) or embryos in DAHR procedures other than under tightly circumscribed transitional arrangements. The DAHR facility will be obliged to seek specified personal information from the intended parties and to verify consents.
- Provision is made for the establishment of a national donor-conceived person register that will record details of donor-conceived children and of donors. The register will be operated on an interim basis by an office within the Department of Health.
- The Minister for Health will have the right to require the DAHR facility to provide specified information with regard to a child born through a DAHR procedure, and identifying information in relation to the child's parents and the donor or each donor of a gamete. Provisions have also been included to enable the facilities to be inspected to verify compliance with these obligations. The offences for non-compliance with these obligations are in the form of fines and / or imprisonment.
- the categories of person entitled to request information from the national register are set out. A donor-conceived child over 18 can seek non-identifying information on the donor and on any potential siblings. A donor can seek non-identifying information on any child conceived from his / her donated material. Commissioning parents can request non-identifying information on a donor and the sex and year of birth of other children conceived from material provided by the donor. A child or donor can also provide contact details for inclusion on the register.
- Procedures are set out regarding the release of information from the national register. The release of information on a donor-conceived sibling will be subject to the latter's consent while a donor-conceived child will also have the right to consent to the release of information to a donor. However, refusal of consent by a donor will be permitted only in exceptional circumstances given the importance of safeguarding a child's right to trace his / her identity. In such cases, non-identifying information will be released.

Part 4 of the Bill deals with Guardianship and sets out amendments to the Guardianship of Infants Act 1964 making provision in relation to guardianship, custody and access for a diversity of family types and specifying the court's powers in this regard.

Under this Part:

- The married mother and father continue to be automatically the guardians of their child.
- The best interests of the child will be the paramount consideration in proceedings on guardianship, custody and access. The factors that can be considered by the court in this regard are set out in this Part.
- It extends the categories of non-marital fathers who will automatically be guardians: an unmarried father will automatically be guardian of his child if he cohabits with the child's mother for 12 consecutive months, including at least 3 months with the mother and the child following the child's birth. However, an unmarried father will be able to apply to the court, as at present, to become a guardian or will be able to make a statutory declaration jointly with her stating that he is the guardian of the child.
- Provision is made for a person other than a parent to become the child's guardian. A person will be able to apply to court to be appointed as a child's guardian if married to or in a civil partnership with the child's parent or if s/he has cohabited with the child's parent for over 3 years and if the person has shared responsibility for the child's day-to-day care for more than 2 years.
- It will also be possible for the court to appoint a person as a child's guardian if that person has been responsible for the child's day-to-day care for over a year and if no parent or guardian is willing to assume the responsibilities of guardianship.
- The powers of court-appointed guardians will generally be limited to decisions on day-to-day matters other than where the court gives them full guardianship powers if deemed in the child's best interests. The decisions that will be reserved to full guardians are decisions on the child's place of residence, his / her religious spiritual and cultural upbringing, on medical matters, on placement for or consent to adoption of the child, and on the issue of a passport for the child.
- Provision is made for the court to appoint a temporary guardian in circumstances, nominated by a guardian, where the guardian is suffering from serious illness or injury. Safeguards have been introduced – Tusla will be notified so that any potential child welfare or child protection issues can be identified. The appointment is subject to review. The temporary guardian can exercise guardianship jointly with the guardian who appointed him or her, and the court can review the situation if the guardian recovers.
- An application for custody can be made by (a) a child's relative (2) a parent's spouse or civil partner or (3) a parent's cohabiting partner if s/he has lived with the parent for over 3 years. The parent's partner must have shared parenting responsibility for the child for over 2 years to be eligible to apply for custody.
- Relatives will be able to apply for access to the court without having to go through the existing two-step process of applying firstly for permission to apply for access.
- The court will have the option of appointing an expert to ascertain the child's views in proceedings on guardianship, custody and access. Provision has also been made for the Minister to make regulations, in consultation with the Minister for Children and Youth Affairs, on qualifications, standards and fees in this regard.

- The Part provides for the court to have a range of enforcement options where a parent or guardian refuses to comply with court orders concerning custody of or access to the child. The options available to the court will range from giving the applicant compensatory time to requiring the parent who has violated the court order to attend family counselling or post-separation parenting programmes.

Part 5 amends the Family Law (Maintenance of Spouses and Children) Act 1976 to provide:

- That a cohabiting partner may have a maintenance responsibility for his / her cohabitant's child. The liability will apply only if the cohabitant is also a guardian of the child.
- The court, when deciding whether or not the cohabitant has a maintenance liability in respect of the child, will be able to take account of factors such as whether or not the cohabiting partner has other dependent children, including children of which s/he is a parent.

Part 6 amends the Status of Children Act 1987 concerning testing to establish parentage.

- It provides for DNA testing on mouth swabs, saliva samples or blood samples to be used as the primary means of establishing parentage. The 1987 Act had specified blood testing as the only type of scientific test to establish parentage.
- These provisions are carefully modified so that a person who is a parent through a DAHR procedure is not excluded from parentage on the basis that he or she is not the child's genetic parent.
- Amendments are also made to section 35 of the 1987 Act, which provides for declarations of parentage, so that a person other than the child may seek a declaration of parentage. In addition, an alleged parent may seek a declaration that he or she is not a person's parent.
- This provision may be particularly valuable for people who have previously been recorded as fathers solely on the basis of the presumption of paternity, and who have not been able to remedy this.

Part 7 provides for the Family Law Act 1995 to be amended to enable the court to make a secured maintenance order or a lump sum maintenance order against a cohabitant who is liable for maintenance in respect of the child of a partner.

Part 8 (sections 81-114) amends the Adoption Act 2010 to enable civil partners and cohabiting couples who have cohabited together for 3 years to be eligible to adopt jointly on the same basis as married couples.

- The Part also makes extensive amendments to the Adoption Act to reflect that the parents of a child born through AHR may be of the same sex. A second female parent has the same legal status as a father in respect of adoption. She is given the right, as with a father, to be consulted on and to give her consent to a proposal for

the child to be placed for adoption, to be notified as to the legal implications of adoption and to be put on notice so to be able to apply to the court to challenge a placement order.

- The part also provides that no pre-placement consultation will be required where the child has been born through donor assisted reproduction and there is no legally recognised parent other than the birth mother.

Part 9 amends the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and:

- Provides for a civil partner to have a potential maintenance liability in respect of a partner's child where that child is a dependent child of the family.
- It also recognises that civil partners will in certain cases be parents jointly of children born to them through AHR.
- The liability may apply in respect of a child under 18 other than where the child is in full-time education in which case the liability can extend until the child is 23 or, fully indefinitely, where the child has a physical or intellectual disability and is unable to maintain himself / herself fully.
- Provision is also made that in proceedings between cohabitants under Part 15 of the Act, the court may also, if appropriate, make an order under section 5A or 5B of the Family Law (Maintenance of Spouses and Children) Act 1976 (as amended by this Bill).

Part 10 deals with consequential and miscellaneous amendments to other Acts:

- technical amendments to the Succession Act so that the parentage is fully recognised of an adopted child who is the child of a non-marital couple or who has been donor-conceived.
- provides for amendments to the Redundancy Payments Act 1967, the Unfair Dismissals Act 1977 and the Adoptive Leave Act 1995 relating to the provision that has been made that where the adoptive parents are a cohabiting couple or are civil partners, one member of the couple will be entitled to adoptive leave. It will be possible for the couple to select which member of the couple should take the leave. The amendment of the Parental Leave Act is intended to enable parental leave provisions to be extended both to same-sex adopting couples and to couples who have a child through donor-assisted reproduction.
- Amendments to the Maternity Protection Act 1994 also allow a female second parent to have the same rights under that Act as a father.
- The amendment of the Child Care Act is intended to enable a judge to adjourn private law proceedings involving civil partners to draw on the protections of the Child Care Act where child welfare issues arise for any children involved.

Part 11 provides for the amendment of the Civil Registration Act 2004 to enable a man or woman to be registered as the second parent of a donor-conceived child.

- A man will be recorded as a 'father' and a female second parent as 'parent'. The birth mother and the intending second parent will need to provide the Registrar

with a statutory declaration confirming that they are the parents of the child and that there is no other parent. They will also need to provide a certificate, in a form which will be prescribed by the Minister for Health, from the DAHR facility, confirming the legal consents of the parents and of the donor.

- Provision is made for a note to be recorded on the register of births that the child is a donor-conceived child. A donor-conceived person over 18 who applies for a birth certificate will be informed by the Registrar that further information is available from the national donor-conceived person register.
- It also corrects minor technical errors in cross-referencing inserted into the Civil Registration Act 2004 by the Civil Registration (Amendment) Act 2014.

Part 12 amends the Passports Act 2008 to allow the Minister for Foreign Affairs to dispense with the consent of a guardian in specified circumstances.