

Address by the Minister for Justice and Equality, Frances Fitzgerald TD at the Children's Rights Alliance Seminar

**Children's Rights Alliance Seminar
on the Children and Family Relationships Bill 2015
Dublin Castle**

Address by the Minister for Justice and Equality, Frances Fitzgerald TD

2 March 2015

I am delighted to have been invited to speak today at the Children's Rights Alliance seminar on the Children and Family Relationships Bill 2015. I would like to congratulate the Children's Rights Alliance for organising this seminar. I want to welcome the fact that the Bill passed Second Stage in the Dáil last Thursday with contributions from sixty members without a vote. It provides a valuable opportunity to highlight the Bill's provisions and to outline its benefits for children and for families. I look forward to hearing Dr Geoffrey Shannon's analysis of the Bill which, I anticipate, will be insightful and informative. Geoffrey's analysis is grounded in his wide-ranging legal expertise and his passionate advocacy for children's rights.

The Children's Rights Alliance performs a very useful role in bringing together such a diversity of organisations to champion children's rights. The Alliance has been very effective in putting the spotlight on children's rights and in highlighting specific issues needing action. I wish the Alliance every success in its current and future work.

Today's seminar focuses on the Children and Family Relationships Bill, which has just passed Second Stage in the Dáil. I am delighted that the Bill has begun its passage through the Oireachtas. I believe that the Bill, when enacted, will be a watershed in the development of Irish family law, aligning our law to the realities of Irish life.

The Children and Family Relationships Bill responds to a world where children are reared within married families, within lone parent households, in blended families, households headed by same-sex couples or by grandparents and other relatives. It recognises that assisted human reproduction has created a new scientific reality where children are born to couples using donor gametes.

The Bill acknowledges that children, no matter what their family circumstances, share a fundamental need for security and stability in their family situations. I am particularly proud that the Bill adopts a child-centred approach. It places a child's interests at the heart of decisions that are fundamental to the child's identity and well-being.

The best interests principle is the golden thread running through this Bill. A child's best interests will be the paramount consideration for a court in proceedings on guardianship, custody and access. The Bill sets out the factors that can be taken into account by the court when determining a child's best interests. These factors will include:

- The benefit to the child of having a meaningful relationship with each parent;
- The child's views, where ascertainable;
- The physical, psychological and emotional needs of the child;
- The child's religious, spiritual, cultural and linguistic upbringing and needs;
- The child's social, intellectual and educational upbringing and needs; and
- The capacity of each person seeking a role in relation to the child to care for and to meet the child's needs.

The court shall also have regard to family violence and its impact on the child's safety and personal wellbeing.

I am pleased that the Bill makes provisions for the child's voice to be heard on matters that are so fundamental

to the child's life. These provisions also comply with Article 12 of the UN Convention on the Rights of the Child which require a child's opinion to be heard on matters affecting him or her. The Bill will enable a child's views to be ascertained in proceedings on parentage, guardianship, custody and access. The child's voice can be heard directly by the judge as appropriate. However, I have also provided for an expert who will have the role explicitly of finding out the child's views and of reporting them to the court.

The most wide-ranging reforms in this Bill relate to guardianship. These reforms have the potential to benefit tens of thousands of families across Ireland. The Bill enables a much 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. A father will also have the option of signing a joint statutory declaration with the child's mother or of recourse to the court where a mother opposes his guardianship. The issue of guardianship rights for unmarried fathers was raised extensively in the Dáil debate on the Bill. I am looking into this issue to see if practical steps can be taken to enable more non-marital fathers to acquire guardianship rights.

One of the most innovative features of the Bill is that it recognises that children are often reared by step-parents, by a parent's cohabiting partner or by relatives. Accordingly, it enables a parent's spouse or civil partner or a parent's cohabitant of not less than 3 years' duration to apply to the court to become a guardian where she or he has co-parented the child for 2 years. This will ensure that key decisions can be taken for a child's benefit by the person actually rearing the child.

A person will also be able to apply to court to become a guardian if she or he has provided day-to-day care for a child and there is no parent or other guardian willing to take on these responsibilities. This provision will be of benefit in situations where a grandparent, aunt or uncle has stepped in because a parent is unable to care for the child. Becoming a guardian will enable that person to take key decisions on the child's behalf. 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 this type of guardian to have full guardianship powers.

The Bill will enable 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 3 years' duration will be able to apply for custody where she or he shared parenting of the child for 2 years. A person will also be able to apply for custody if he or she 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.

One of the principles driving the Bill is that of safeguarding a child's right to enjoy relationships of care and support with both parents and within the wider family. The Bill 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. This provision will ensure that more grandparents do not have to suffer the heartache of being separated from their grandchildren because the relationship between the adults has broken down.

The Bill also seeks to ensure that both parents can have meaningful relationships with their child even in a context of relationship breakdown. It provides for a series of enforcement procedures in relation to custody and access. Measures will promote compliance with court orders on custody and access. A court will be able to require a parent who is persistently flouting a court order to attend a parenting programme. It will also have the power to give the other parent extra time with the child to help rebuild their relationship.

Much of the commentary about the Bill has centred on its provisions in relation to parentage. 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 will be able to become the child's second parent if she or he has 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 has been 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. However, 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 he or she 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 if they provide evidence from the clinic confirming the treatment and the consent of each parent and the donor.

I am pleased that I was able to accommodate the recommendations of the Joint Oireachtas Committee on Justice, Defence and Equality and of the Ombudsman for Children that provisions should be included to enable a donor-conceived child to trace his or her genetic identity. As you are aware, Article 8 of the UN Convention on the Rights of the Child requires States to respect the right of the child to preserve his or her identity.

Accordingly, the Bill provides for a National Donor-Conceived Person Register underpinned by robust enforcement mechanisms. The Register will record details of donor-conceived children, of donors and of parents. A donor-conceived child will be able, when over 18, to track information on the donor and on a genetic sibling. In the interests of safeguarding the child's right to identity, anonymous donations will be prohibited other than for some limited exceptions.

I have also taken on board the desire of stakeholders for provisions on retrospective parentage of donor-conceived children. These provisions will allow a birth parent's partner to become the parent of a donor-conceived child retrospectively through a court-based procedure if certain conditions are fulfilled.

There has been much commentary with regard to the provisions on adoption. Civil partners and cohabiting couples who have lived together for 3 years will be eligible to apply to adopt jointly. The same assessment and eligibility criteria will apply as for married couples. The Bill also provides for these couples to have the same consequential entitlements as are enjoyed by adopting parents at the moment. 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. They will also be eligible for parental leave, as will the second parent of a donor-conceived child.

In 1987, the Status of Children Act, by abolishing the concept of illegitimacy, began the process of dismantling the family law architecture that treated children differently because of the families into which they had been born. The Children and Family Relationships Bill is a major step forward in terms of equality for children. It protects the rights of children of married families. Equally, it gives new rights to children living in other family situations. I am confident that hundreds of thousands of children will benefit from its provisions. Thousands of families will gain a stability and security they've not had up to now. This ambitious Bill sets a blueprint for family law for the decades to come. I hope that we can work together over the next years to ensure that its benefits are enjoyed by children across Ireland.