

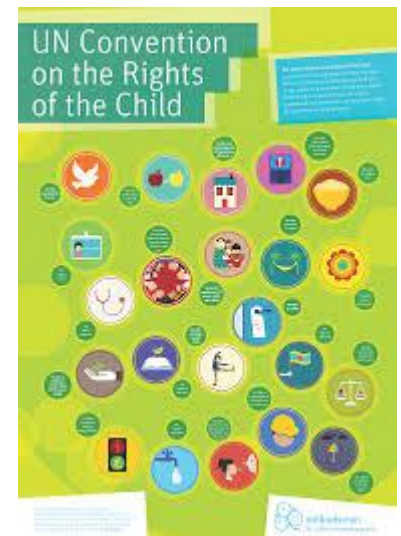
Children and Family Relationships Bill 2014



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Introduction

- ▶ Aim is to create a legal structure to underpin diverse parenting situations and provide legal clarity on parental rights and duties
- ▶ Bill is long overdue and in keeping with the rights of the child under the Constitution, the ECHR, and the UN Convention on the Rights of the Child



Parentage in Assisted Reproduction

- ▶ Aim is to provide clarity and certainty in the legal relationship between children and their parents
- ▶ Policy is that the woman who gives birth is the legal mother and the other parent is determined either (a) by genetic connection to the child (genetic father) or (b) by reference to his/her relationship to the legal mother (marriage, civil partnership, cohabitation)
- ▶ Persons in category (b) must consent to be a parent at time of conception (defined as implantation)



Wording

- ▶ Language and definitions in the Scheme are very convoluted and unnecessarily confusing
- ▶ E.g. Head 10(2) – “if a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by a man only, the parents of the child are
- ▶ Intended to deal with use of donor eggs and intended father’s sperm
- ▶ Should be simple and clear language – Plain English is preferable
- ▶ Examples from other jurisdictions such as BC in Canada

Right to identify genetic parents

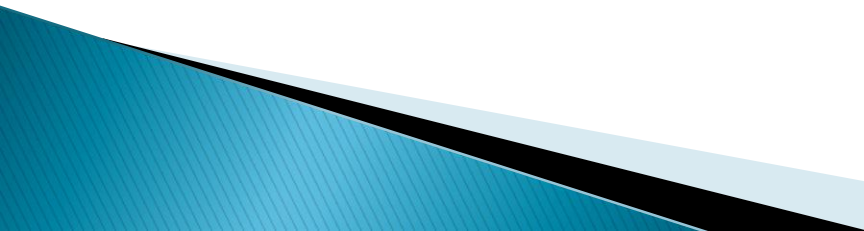
- ▶ Bill does not grant any recognition to the child of a right to identify the donor
- ▶ Clear and unanimous recommendation of the CAHR based on international research and best practice.
- ▶ Austria, England, Finland, Netherlands, New Zealand, Norway, Sweden, Switzerland, Wales, NSW, Vic and W Australia



Payment of donors

- ▶ No provision for payment or expenses
- ▶ Not a controversial policy issue
- ▶ SI 158/2006 Tissue and Cells Regulations state that tissue establishments “may make good the expenses and inconveniences related to the donation in accordance with national guidelines”.

Posthumous reproduction

- ▶ Head 10(9) – consent is not valid after death
 - ▶ Exercise of reproductive autonomy
 - ▶ England, Belgium, Netherlands, Spain, New Zealand and many US states permit posthumous use with written consent
 - ▶ Time periods vary
 - ▶ Administration of estates
 - ▶ Constitutional arguments/property rights
 - ▶ Recognition of child as child of its father
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Surrogacy

- ▶ Policy is that the birth mother is always the legal mother but that an application for parentage may be made by the genetic father and his partner/ genetic mother and her partner
- ▶ *MR v an tArd Chlaraitheoir* – High Court recognised the genetic mother rather than the surrogate as the legal mother
- ▶ Supreme Court judgement awaited

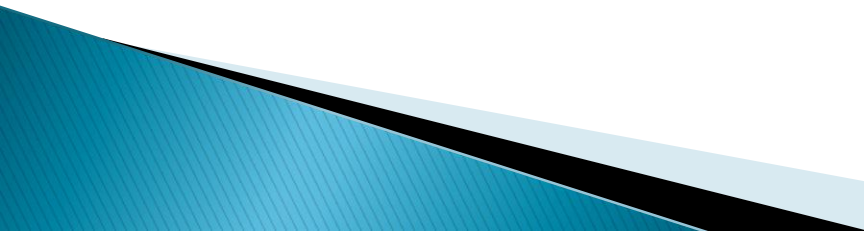


Why gestational surrogacy only?

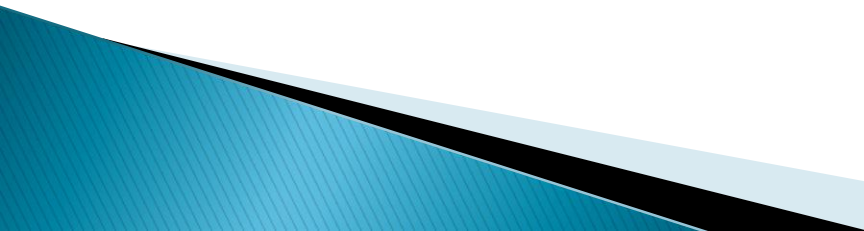
- ▶ Policy facilitates gestational surrogacy only so that surrogate does not have any genetic relationship with the child
- ▶ What if intended mother cannot provide the eggs herself? Would have to find egg donor.
- ▶ Rationale based on public policy ‘against allowing women to contract out of parental responsibility for a child which is clearly hers both by genetics and by birth.’
- ▶ Second rationale is that this is a human rights measure to ‘prevent a surrogate mother from being coerced into selling her own child’.

- ▶ Assumption that surrogates either abandon the child or are forced to relinquish it
 - ▶ No consideration of altruistic surrogacy or the attitudes of surrogates themselves
 - ▶ Pejorative language displays negative bias against surrogacy
 - ▶ Belief that women are unable to make a decision to transfer parental responsibility unless forced to do so
 - ▶ Not sale of a child – transfer of parental responsibility to a genetic parent and his partner
 - ▶ Potential human rights abuses not dealt with
 - ▶ Not in keeping with CAHR recommendations
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Parentage in surrogacy

- ▶ Traditional rule no longer appropriate
 - ▶ Pre-birth orders e.g. California and New Hampshire
 - ▶ Guidance on surrogacy agreements, establishment of parental responsibility, separate legal representation for both, notarisation of agreements prior to medical procedures, presumption of validity.
 - ▶ Advantage is that parentage is established before birth and all parties are protected by judicial scrutiny of the process
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Irish proposals

- ▶ Declaration of parentage can only be made with consent of surrogate
 - ▶ If she does not consent, she will remain the legal mother of the intended parents genetic child, can claim reimbursement of her expenses and child support.
 - ▶ Genetic father can apply for guardianship but genetic mother cannot
 - ▶ Time period for application – 30 days after birth
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Payment

- ▶ Controversial issue with differing responses
 - ▶ Policy of the Bill is to allow expenses only
 - ▶ Altruistic arrangements not available to everyone so travel to other jurisdictions will continue
 - ▶ Consequences of breach of payment provisions – criminal prosecution and loss of eligibility to apply for declaration of parentage
 - ▶ Conflicting policies – practical implications?
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