



UPDATED MARCH 2024

Surrogacy:

A Route To Parenthood In Ireland 5th Edition 2022



Fertility
Law Ireland™




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Welcome

Dear Readers,

We are delighted to welcome you to the fifth 'updated' edition of our surrogacy information guide, "**Surrogacy: A Route to Parenthood in Ireland**".

The Health Assisted Human Reproduction Bill 2022 has made significant progress through the legislative process since the publication of the 5th edition of our eBook in 2022. 

On the 24th January 2024 the Health Committee held their first meeting where they started the process of reviewing and considering Government proposed committee stage amendments. The Health Committee finished this process on the 6th of March.

The Bill now progresses to Report stage. This is the last opportunity for amendments to be proposed to the text of the Bill. We have included some additional information and guidance into this edition of our eBook to reflect some of the important committee stage amendments.

We will update and include additional information and guidance into this eBook if required after Report stage to reflect any additional amendments introduced during that stage.

We have highlighted on the contents page of this eBook the sections that include additional information and guidance to reflect the committee stage amendments.

If you have any queries or would like to discuss surrogacy with one of our team, please do not hesitate to get in touch or visit the resource section on our website (www.pkhl.ie) for more information.



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2024
Updated
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Chapter 1

Introduction

Introduction

The growing demand for infertility services has meant reproductive medical science has advanced tremendously in recent years. Surrogacy is not an easy option but for many couples, it may be their only and last option to have a child. Surrogacy is when a woman (the surrogate) carries a child for a single man or a couple (heterosexual or same sex male couple) unable to conceive and/or carry a child. Traditional Surrogacy is where a woman (the surrogate) is biologically related to the child. Gestational Surrogacy is where the surrogate is not biologically related to the child.

There is currently no surrogacy legislation in Ireland. Assisted human reproduction in Ireland is not regulated although it has been practised since 1987.

In Ireland, the woman who gives birth to the child is recognised as the legal mother. Proof of paternity is evidenced by a DNA test result. Surrogacy is not an option where the intended father is not biologically related to the child. Currently only the biological father can apply for a declaration of parentage after the birth of their child through surrogacy.

Anyone considering surrogacy should speak with their solicitor about updating their will to ensure that their family is protected and provided for.

Chapter 2

Health (Assisted Human Reproduction) Bill 2022

HEALTH (ASSISTED HUMAN REPRODUCTION) BILL 2022

DOMESTIC SURROGACY

The Health (Assisted Human Reproduction) Bill 2022 includes provision for the regulation of domestic surrogacy in Ireland. A domestic surrogacy arrangement is an arrangement where both the surrogate and intended parents are habitually resident in Ireland for not less than two years prior to their surrogacy arrangement and where the embryo transfer is undertaken in Ireland. The Bill provides that domestic surrogacy arrangements must be pre-approved by the Assisted Human Reproduction Regulatory Authority.



The committee stage amendments include provisions which allow parents apply for Parental Orders for past domestic surrogacy arrangements after the commencement of the legislation and before the Assisted Human Reproduction Regulatory Authority has been established.

The provisions include that both the surrogate and parents shall provide evidence to the Court that they were both habitually and lawfully resident in Ireland for one year (or such longer period as may be prescribed) prior to entering into the surrogacy agreement, the embryo transfer has taken place in Ireland or if in a place outside Ireland that the person who undertook such transfer was authorised to do so under the law of that place, that the consent of the surrogate (unless waived because the surrogate is deceased or can't be located after reasonable efforts have been made) and the granting of the Parental Order is in the best interests of the child.

After the Assisted Human Reproduction Regulatory Authority is established parents will be required to comply with the provisions in the legislation, pursue altruistic surrogacy arrangements and apply to this Authority or preconceptions authorisation before starting their surrogacy journey.

INTERNATIONAL SURROGACY

RETROSPECTIVE DECLARATIONS OF PARENTAGE

In 2022 the Minister for Justice, Minister for Health and Minister for Children Equality Disability and Integration and Youth established the Special Joint Oireachtas Committee on International Surrogacy.

In July 2022 the Final Report of the Joint Committee on International Surrogacy was published. This Report includes 32 recommendations which provides a statutory legal framework relating to the regulation of international surrogacy arrangements and the retrospective recognition of past surrogacy arrangements. An Inter-Department Group was formed following the publication of the Final Report

HEALTH (ASSISTED HUMAN REPRODUCTION) BILL 2022

On Tuesday the 13th December 2022, the Government approved policy and legislative proposals on international surrogacy and the recognition of certain past surrogacy arrangements. The inter-departmental group agreed that there should be a two step process involving pre-conception approval by the Assisted Human Reproduction Regulatory Authority (AHRRA) and a post-birth Court process. The criteria for permitted international surrogacy which is proposed in the policy paper is, in the main, identical to the criteria for domestic surrogacy. In addition, the policy paper recommends the AHRRA should be given the statutory duty of “green listing” countries.

The inter-departmental group concluded that the focus of international surrogacy legislation should be on encouraging intermediaries or agencies to act in a fair and reasonable manner and that the emphasis would be on the AHRRA and later on the Courts being satisfied that their level of remuneration is not unreasonably excessive and is proportionate to the actual services rendered. The inter-departmental group also proposes that no payment should be made to the surrogate over and above the reimbursement of itemised and receipted reasonable expenses.



The committee stage amendments include provisions which allow parents apply for Parental Orders for past international surrogacy arrangements after the commencement of the legislation and before the Assisted Human Reproduction Regulatory Authority has been established.

The provisions include that the parents shall provide evidence to the Court that they were habitually resident and lawfully resident in Ireland for one year (or such longer period as may be prescribed) prior to entering into the surrogacy agreement and that the surrogate was habitually and lawfully resident in the surrogacy country where the surrogacy arrangement took place for for one year (or such longer period as may be prescribed) prior to entering into the surrogacy agreement the embryo transfer has taken place in Ireland or if in a place outside Ireland that the person who undertook such transfer was authorised to do so under the law of that place, that the consent of the surrogate (unless waived because the surrogate is deceased or can't be located after reasonable efforts have been made) and the granting of the Parental Order is in the best interests of the child.

After the Assisted Human Reproduction Regulatory Authority is established parents will be required to comply with the provisions in the legislation, pursue altruistic surrogacy arrangements in permitted surrogacy jurisdictions and apply to this Authority or preconceptions authorisation before starting their surrogacy journey.



[For Further Details Please Get In Touch](#)



Chapter 3

DOMESTIC SURROGACY

DOMESTIC SURROGACY

Due to the absence of surrogacy legislation, the legal status of all involved in a domestic surrogacy arrangement is governed by existing family law legislation. The surrogate is considered the legal mother of the child. If the surrogate is married her husband is presumed by law to be the father of the child, until the contrary is proven through DNA evidence. If the surrogate is single, she is the sole guardian of the child at birth. The DNA test result proving paternity is an essential proof that is necessary to apply to the Court for a Declaration of Parentage, Guardianship and Custody by the intended father. The second intended parent cannot establish a legal parental relationship with the child. The second intended parent can, after she/he has shared the day to day care of the child with the biological father for a period of at least two years, apply to the Court for a legal guardianship relationship with the child.

Surrogacy arrangements in Ireland tend to be done altruistically by a surrogate who knows the couple or individual. There has been no definitive statement on the legality or otherwise of surrogacy agreements in Ireland. If you are considering a domestic surrogacy arrangement, the list below includes some of the important points that should be considered:

- 1) the surrogacy agreement should outline the surrogate's and intended parents' rights, roles, and responsibilities both before, during and after the pregnancy.*
- 2) the parentage rights , custody, control over medical decisions during the pregnancy.*
- 3) the costs and expenses of the surrogate mother that the intended parents will pay.*
- 4) the responsibility of the surrogate mother to take care of her physical and psychological health during the pregnancy,*
- 5) the hospital where the delivery will take place ,who will be present at the birth*
- 6) the contact between the intended parents and surrogate during the process.*
- 7) difficult issues including serious illness or death of an intended parent during the pregnancy ,miscarriage and the baby having a serious medical condition or disability.*



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Domestic Surrogacy Checklist

The Court Process that is required after the birth of the child through domestic surrogacy is as detailed and set out at Page 14, Chapter 5 of this ebook.



Chapter 4

INTERNATIONAL SURROGACY

INTERNATIONAL SURROGACY

The Legal Status of Surrogacy in the Country of Birth

Before pursuing international surrogacy, it is very important that intended parents are fully aware of the legal status of surrogacy in the country of birth. Is surrogacy legislated in the country of birth? Is it unregulated? Is it prohibited? Are you eligible to pursue surrogacy in that country?

If your surrogate is living in a different country to where the surrogacy arrangement and delivery will take place it is essential that you are fully aware of the legal status of surrogacy in the surrogate's home country. Is surrogacy legislated in the country of birth? Is it unregulated? Is it prohibited? Are you eligible to pursue surrogacy in that country.

Countries with a regulated framework for surrogacy will have specific conditions and criteria's that must be complied with including

- *whether the intended parents are a heterosexual or same sex couple, whether they are single or married.*
- *whether egg donation must be non anonymous or anonymous.*
- *notarization and registration requirement of documents*
- *pre or post embryo transfer or delivery Court or administrative process*
- *the maximum and minimum age for intended parents and/or surrogate mothers*
- *that the surrogate mother must have given birth previously*

Legal Representation for Intended Parents and Surrogate

It is extremely important that intended parents receive independent legal advice in Ireland and in the country of birth before starting their surrogacy journey. A lawyer in the country of birth will provide advice on the legal status of surrogacy in that country, the local laws and regulations. An experienced surrogacy lawyer in Ireland will provide legal advice, information and guidance to intended parents. They will support intended parents at all stages during the surrogacy journey, working with the lawyer in the country of birth, the surrogate's independent lawyer and agencies/clinic representatives.

It is essential that your surrogate's consent is fully informed and voluntary. When the surrogate receives independent legal advice throughout the surrogacy process you can be confident that her consent is voluntary, that she is fully informed and that her interests and welfare are being protected. It is important that the surrogate receives this independent legal advice before commencing any treatment, after the birth and during the Court proceedings.

INTERNATIONAL SURROGACY

Biological link with the intended father.

The Irish Department of Foreign Affairs will require a DNA test proving the baby is biologically related to the intended father as part of their application for an emergency travel certificate documentary requirements. The Irish Department of Foreign Affairs will not issue an emergency travel certificate if the biological father is not an Irish citizen. The DNA test result proving paternity is also an essential proof that is necessary to apply to the Court for a Declaration of Parentage, Guardianship and Custody by the intended father.

Birth Certificates

The Birth Certificate will issue in the country of birth. The Birth Certificate is not recognised as legal proof of parentage in Ireland.

Birth certificates can name both intended parents or the surrogate and the biological father. This varies depending on the local laws and regulations in the country of birth.

DNA Test

Ormond Quay Paternity Services (OQPS) provide DNA testing services for both domestic and international surrogacy. The Irish Court and the Department of Foreign Affairs recognise the DNA tests carried out by Ormond Quay Paternity Services. Please visit www.oqps.ie for more information.

The surrogate must provide her consent for the DNA test. If the DNA test is carried out in the context of an emergency travel certificate, she will be required to attend at the DNA test appointment.

Coming Home with your Baby

It is important that you know whether your child will be entitled to a passport in the country of birth or whether you will need to apply for an emergency travel certificate from the Irish Department of Foreign Affairs to return to Ireland. Each application for an Emergency Travel Certificate is reviewed on its own merits and its own factual situation. The Department of Foreign Affairs will issue their documentary requirements to intended parents. It is the responsibility of the intended parents to comply with all of the Department of Foreign Affairs requirements. If the biological father is an Irish citizen but he was not born in Ireland, the baby's birth must be registered with the foreign births registration, after Irish Court orders are granted. For more information see www.dfa.ie.

If your baby is entitled to a passport in the country of birth, your lawyer in that country will provide you with advice and guidance on the procedures that need to be followed.

INTERNATIONAL SURROGACY

IMPORTANT NOTE: Intended parents should get written confirmation before they start their surrogacy journey as to who will be responsible for:

- *Obtaining the birth certificate*
- *Translating, notarising and apostilling documents*
- *Arranging attendance of the required parties at the DNA tests and*
- *Submitting the documentation as specified by the Department of Foreign Affairs for an application for an emergency travel certificate.*



Link To:

Department of Foreign Affairs 2012 Guidance & Travel Documentation

1. **USA – “Webinar on Surrogacy in USA”**
A discussion with American lawyers, Andy Vorzimer and Richard Vaughn
2. **Canada – “Webinar on Surrogacy in Canada”**
A discussion with Canadian lawyers, Ellen Embury and Sara Cohen
3. **Greece – “Webinar on Surrogacy in Greece”**
A discussion with Greek lawyer, Maria Vastaroucha
4. **United Kingdom – “Webinar on Surrogacy in UK”**
A discussion with English lawyer, Natalie Gamble
5. **Georgia – “Webinar on Surrogacy in Georgia”**
A discussion with Georgian lawyer, Nino Bogveradze
6. **Argentina – “Webinar on Surrogacy in Argentina”**
A discussion with Argentinian lawyer, Maria Esther Nunez

Chapter 5

The Irish Court Process

THE IRISH COURT PROCESS

THE IRISH FATHER

Pending the introduction of AHR legislation the issue of legal parentage of the father involves an application to the Irish Court under 1964 and 1987 Family Law legislation. The Irish father applies to the Irish Court for a Declaration of parentage, guardianship and custody orders.

The Office of the Attorney General must be joined to the proceedings as a notice party. The Chief State Solicitor's Office represent the Attorney General in the proceedings. They will issue a list of proofs and their requirements which must be satisfied. When their proofs have been satisfied they will confirm that they have no objection to the Irish father's application for a Declaration of parentage, guardianship and custody orders being ruled by the Court.

These Court applications can be made in either the Circuit Court or the High Court.

When you meet with your legal advisors in Ireland they will discuss in detail with you;

- 1) *The stages involved in the court process.*
- 2) *The documents required to commence and proceed with your application.*
- 3) *The timeframe involved from once you return home to Ireland until final orders are granted.*
- 4) *The requirements of the Court.*
- 5) *The requirements of the Chief State Solicitors Office.*

The Irish Second Parent

Pending the introduction of surrogacy legislation in Ireland, the second intended parent, who is married to a partner or co-habitant of the Irish father, can apply to the Court to become a guardian of the child once they have shared the day to day care of the child with the father for a period of at least two years.



Chapter 6

Summary

SUMMARY

Surrogacy in Ireland is legally complex and one which will require input from a qualified experienced solicitor. Given the complexity of the procedure involved, it is crucial that you seek legal advice prior to embarking on your surrogacy journey.

Here at Poe Kiely Hogan Lanigan, our experienced surrogacy/fertility law team has brought couples through their entire surrogacy process. We understand how emotional and stressful the surrogacy journey can be. We know how important this is to you and we have the experience and expertise to help.

We hope this guide has proven useful and informative. If you would like to find out more about how Poe Kiely Hogan Lanigan can help you on your journey through Surrogacy in Ireland, please do not hesitate to get in touch to arrange an appointment with one of our dedicated Surrogacy team.

Please click the link below, fill in your details and we will be in touch to organise an appointment to discuss your situation.

[**Get In Touch**](#)

FURTHER INFORMATION

At Poe Kiely Hogan Lanigan we also understand how difficult it can be to access relevant and accurate information. As a result, our team has taken the time to prepare numerous documents, country guides and videos to help you make informed decisions on your next steps. To access this information, please visit the Resources section on our website by clicking on the link below.

[**Surrogacy Resources**](#)