



Submission for the Joint Committee on International Surrogacy

Authors

Lisa Cahill
Andrei Balcanasu
Gillian Lynch
Ciara Merrigan

Twitter: @IrishFamiliesTS

Instagram: @IrishFamiliesThroughSurrogacy

Email: irishfamiesthroughsurrogacy@gmail.com

IRISH FAMILIES THROUGH SURROGACY



2022

Table of contents

Executive summary	3
1 Introduction	8
2 Aims	20
2.1 Ethical Assisted Pregnancy	20
2.2 The future of IFTS	21
3 Recommendations	23
3.1 Our recommendations for the legal framework for international surrogacy	23
3.2 Parental recognition - creating a legal parent-child relationship	32
3.3 The legal parent-child relationship and for those children already born (Retrospective Parental Recognition)	36
3.4 Summary of Recommendations	43
3.5 Conclusion	46
4 References	49
Appendix	52
A. Voice of the Children	53
B. Surrogate's Voice	54
C. Current safeguards and guidelines	56
D. Examples from other jurisdictions	59
E. Addressing the Issues Paper on International Surrogacy for Special Joint Oireachtas Committee for January 2022	63

”

I have an open relationship with my surrogate mum and my parents too. I've always known I was a surrogate baby and have had a really positive experience :) I can never explain how lucky I feel to have such a wonderful family. **Meredith Baldwin**

Executive summary

Irish Families Through Surrogacy is the advocacy voice for our children and an organisation with practical experience of the international surrogacy process. Our children were created by us albeit in a non-traditional manner, we are their constant, their advocates, we are their mummies, we are their family, there are no other parents other than us. Our children's needs are paramount, they need stability and certainty from having the benefit of two legally recognised intended parents who can effectively provide for their needs. They deserve the same access to the constitutional rights and equalities of all other children in Irish society. As set out in the constitution our children have “natural and imprescriptible rights,” that the State should by its laws, “protect and vindicate those rights.”¹

International surrogacy arrangements are an unavoidable reality, irrespective of Irish law. The reality is that Ireland doesn't provide the surrogacy services that are available overseas to meet the medical needs that some Irish citizens require to create their families. For intended parents undergoing international surrogacy, this is a last resort and is our only chance to build a family. In the absence of regulation, where surrogacy is available legally and ethically in other countries, Irish citizens will continue to avail of it.

“The desire to procreate is one of the most fundamental human imperatives, and while differing regulatory approaches to surrogacy persist around the world, people will cross borders irrespective of the legal complexities”²

As it stands, there is no mechanism in law to allow for the recognition of lifelong legal parent-child relationships for children born through international surrogacy with their mothers. The birth mother is recognised as the legal mother of a child and this maxim in law means that the intended mother in a surrogacy arrangement, while can be recognised as the legal mother in the jurisdiction where the surrogacy arrangement occurred, is not recognised as the mother under Irish law.

¹ Constitution of Ireland 1937 <http://www.irishstatutebook.ie/eli/cons/en/html#article42>

² Gamble, N & Ghevaert, L, Partners, Gamble and Ghevaert LLP, The Chosen Middle Ground: England, Surrogacy Law and the International Arena, International Family Law, 2009

This submission outlines the lived reality of families created via surrogacy, including the difficulties caused by the current legal vacuum. We will address issues surrounding the two guiding principles identified by Professor Conor O'Mahony. International Surrogacy as a phenomenon and the best interests of the child principle. We urgently need comprehensive legislation to address the gaps in Irish law for international surrogacy and create a mechanism to allow for the recognition of legal parent-child relationships that are cognisant of children's welfare and best interests.

What is most alarming is that the legislation does not include a means to create a legal parent-child relationship for those existing children born prior to the commencement of the bill with their mothers. Hundreds of children will remain unprotected and vulnerable. Many have or will turn 18 years of age soon and will lose the opportunity for a lifelong legal relationship with their mothers. This situation is clearly contrary to the best interests and welfare of Irish children.

It is incumbent on our legislators to address this lacuna in the law. To secure our children's access to the same constitutional rights and equalities as all other Irish children, we will present our aims and recommendations for an international surrogacy process that can be supported by Irish legislation. Irish Families Through Surrogacy requests that in its final report to the Oireachtas, this Committee recommends the following recommendations that we believe can deal with the difficult practical and ethical issues³.

- A robust legislative framework is created to protect children and surrogate mothers throughout the process, and allow parental and citizenship rights to be granted in a timely and streamlined manner as soon as possible following birth to both intended parents in future surrogacy arrangements
- The law should recognise and build upon existing arrangements ie. The Department of Foreign Affairs guidelines.⁴
- There should be recognition of parentage granted in another jurisdiction. Where there are similar safeguards as will be in our own domestic legislation
- Full parental rights are granted to both parents of existing Irish children who were born through surrogacy at the earliest opportunity. The outdated maxim in law of Mater Semper Certa Est is not applicable to all parental relationships in today's evolving and diverse society and law has to be crafted to reflect this. Current family

³ Our [Summary of Recommendations](#) chapter contains more detailed arrangements that will ensure an ethical surrogacy process that protects the surrogate, the child's right to identity and intended parents.

⁴ Citizenship, parentage, guardianship and travel documents issues in relation to children born as a result of surrogacy arrangements entered into outside the state CITIZENSHIP, PARENTAGE, GUARDIANSHIP AND TRAVEL DOCUMENT ([justice.ie](https://www.justice.ie))

law processes such as adoption are not suitable in today's diverse and evolving society

- “Provision should be made for a pathway to parentage in respect of surrogacy arrangements which occurred before the commencement of the new legislation,” as recommended by Professor Conor O’Mahony. An expedited process to parenthood through an application for a parental order or legislative provision dispensing with the need for a parental order.⁵

We believe Article 42A of the Constitution states that it is in, “The best interests of the child shall be the paramount consideration.” It is in the best interests of our children that parents through surrogacy are recognised as parents of their children from birth so that they have a secure and certain family life. Our children deserve equal fundamental rights and protection afforded to any other Irish child under Irish law.⁶

The State should not discriminate against our children due to the method or circumstances of their conception. We acknowledge and commend the progress that our Government has made thus far, through the cooperation between three government departments and by establishing the Special Joint Committee. We trust and believe that our government will act in our children's best interests and bring forward appropriate legislation. Legislation that will not only protect our children, but also surrogates and intended parents. We believe that our Government can meet this challenge. **There are no constitutional barriers to establishing appropriate legislation, it is a matter for the Oireachtas.**

⁵ Special Rapporteur on Child Protection, O’Mahony, C, Prof. A Review of Children’s Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020 ([gov.ie](http://www.gov.ie))

⁶ Constitution of Ireland 1937 <http://www.irishstatutebook.ie/eli/cons/en/html#article42>

Mave's Personal Story



Meave and Donnacha are parents to Amy. Amy was born in Lviv, Ukraine in October 2019 via surrogacy.

Maeve and Donnacha had to pursue surrogacy as she has Cystic Fibrosis and received a double lung transplant in 2006. The immune-suppression drugs that Maeve takes daily to keep her healthy would be toxic to a foetus and so it was advised that she should not carry her own pregnancy.

In January 2020, at the height of the Covid 19 pandemic in Ireland, Amy, then aged 1, became very ill. Maeve and Donnacha decided that she should be brought to the local Emergency Department immediately. When they reached the hospital, they realised that the public health restrictions meant that only one parent could attend with a child. Due to Maeve not being legally recognised as Amy's mother in Ireland, Donnacha had to bring their daughter into Emergency alone. This was extremely distressing for everyone, especially Amy who was crying for her mother's comfort. To Maeve and Donnacha's shock, it was discovered that Amy was very ill indeed although the doctor's could not diagnose her immediately and she was admitted into the hospital. Maeve drove home alone, worried sick for her daughter's welfare and distraught that she could not be there to comfort her extremely distressed and unwell baby daughter.

It took one full week for the doctors to diagnose Amy's condition which meant a barrage of tests and investigations on the baby girl. Maeve could not attend the hospital during any of this time. Donnacha had to be the parent with Amy as he needed to be available to consent to a variety of medical tests. Maeve could not legally give consent for any of these investigations. As the week wore on, Amy became increasingly more and more distressed as she became more unwell and was subjected to constant investigation and trial treatments. Maeve in turn was indescribably distraught. She has described the worry for her child and the fact that she could not see her and comfort her as the worst period of her life. Maeve sat outside in the carpark of the hospital for most of this time in order to feel closer to baby Amy. Amy was eventually diagnosed with PIMS-TS. Upon receiving appropriate treatment, she quickly improved and returned home after spending 10 days in hospital.

Amy, however, was traumatised from the time spent in hospital. For weeks, she would wake at night screaming and would struggle to be comforted. Amy would only now accept comfort from her father Donnacha during this time as she trusted that he would be there for her while Maeve, her mother, had not been there. This was an incredibly difficult time for the family, made so much worse by the separation of a mother and her baby daughter due to the lack of Irish surrogacy legislation.



IRISH FAMILIES THROUGH
SURROGACY

Introduction

1 Introduction

1.1 Who are Irish Families Through Surrogacy?

Irish Families Through Surrogacy (IFTS) is a group of Irish parents who have had or are planning to have children through surrogacy. We are a voluntary organisation, campaigning for our children and future children born through surrogacy to have the protection and benefits of a legally recognised relationship with both parents like all other Irish children. IFTS was started by a group of mothers who have already undertaken the international surrogacy journey to motherhood due many failed medical procedures, multiple miscarriages and health conditions. This journey has been further compounded by the lack of legal recognition and exclusion of Irish mothers in the legal process and the high legal costs they face when they arrive home with their new born babies.

Irish families through Surrogacy are a strong advocacy voice for children born through surrogacy and their parents. We support a community of several hundred parents through surrogacy from all corners of Ireland that help and support each other through this journey. From our own lived experience and through the support we offer to other Irish couples, we understand the urgent need for appropriate legislation in Ireland.

The Health Bill (2022), in its current form provides for the establishment of an Assisted Human Reproduction Regulatory Authority and details its functions regarding the oversight and regulation of compliance with the proposed legislation regarding surrogacy arrangements. Its role will include the issuing of licences to AHR treatment providers and researchers.⁷ Given the ethical, legal and social concerns arising in relation to AHR, the need for a specific regulatory framework in these areas has been highlighted in a number of Irish and international expert reports, and high-profile Irish court cases, including the Supreme Court⁸. There are similar ethical, legal and social concerns regarding international surrogacy and yet there is no provision for legislation for international surrogacy arrangements.

International surrogacy is and will continue to be more desirable to intended parents due to the:

- restrictive nature of domestic legislation
- costs of domestic arrangements
- lack of surrogate mothers available for domestic arrangements

⁷ The Health (Assisted Human Reproduction) Bill 2022

⁸ M.R. and D.R. (suing by their father and next friend O.R.) & ors -v- An t-Ard-Chláráitheoir & ors, Supreme Court Record Number: 263/2013

- The availability of international surrogacy with robust legislation available in other jurisdictions with parental recognition for intended parents

“One should not underestimate the impact of globalisation and the information revolution on the phenomenon of cross-border surrogacy. [...] with global information at everyone’s fingertips, [...] is not a phenomenon which is likely to go away.”⁹

Table 1. Numbers of Emergency Travel Certificates Issued by the Irish Consulate in Ukraine.

Year	Number
2010	2
2011	5
2012	5
2013	2
2014	3
2015	2
2016	12
2017	27
2018	25
2019	27
2020	25

We want a society where people who want to raise a family feel supported and cherished, free of prejudice and discrimination. Our current legal framework in relation to assisted human reproduction is rooted in the past and represents a simplistic and, in some cases, regressive concept of lineage, citizenship and parentage. It does not recognise or cater for some of the amazing advancements in reproductive medicine that have become a reality. This needs to change.

⁹ Gamble, N & Ghevaert, L, Partners, Gamble and Ghevaert LLP, *The Chosen Middle Ground: England, Surrogacy Law and the International Arena*, International Family Law, 2009

Table 2. Numbers Engaging in Surrogacy by Country of Origin 2016-2017

Country of Origin	Total No.	Cross Border No.	Population ('000s)	Indexed to Population	Rank
Israel	639	639	8713	0.73	1
Georgia	160	0	3718	0.43	2
Ireland	69	69	4784	0.14	3
Norway	61	61	5258	0.12	4
Sweden	101	101	9995	0.10	5

Irish society has become much more tolerant and progressive, however our current legislation in this regard does not reflect our modern society. Our legislation needs to recognise and be more inclusive of modern family units and acknowledge not all families are formed as traditional family units, but all families should be equal. There is an opportunity to adapt to new needs, methods and approaches to conception, pregnancy, birth and family in a way that represents Irish values and ethics. We want to do this in a way that sets the highest standards for the protection and well-being of children and women.

Recognition of different methods of having children should

- ensure all children are treated equally regardless of the method of conception, pregnancy or birth
- ensure that children of assisted pregnancy have access to all relevant information regarding their genetic origins
- prioritise full, informed consent and well-being of women who partner with families as surrogates
- ensure all families are treated equally and free of prejudice and discrimination

Our wish to raise a family is not a right or expectation but a shared hope for healthy, happy, and rewarding lives. We wish for equal pregnancy partners (surrogates or donors) who can share our hope and the experience of creating a new life.

The well-being of children is our central and enduring priority. We believe children need the secure, loving and nurturing environment of family to flourish.

- Our children's identity and emotional wellbeing is paramount. We would welcome legislative guidelines which reflect best practice on fostering positive children's identity issues and emotional wellbeing. Please see [Appendix A](#) to hear some of our children's views on their family and experience of surrogacy.
- The following link contains the views of some adults born through surrogacy: [The Kids Are Alright: Surrogate-Born Children Are Speaking Out](#)

- The University of Cambridge's Centre for Family Research have studied 42 families created through surrogacy and found that, "Few, if any, psychological differences between children conceived by such means and those conceived naturally with regard to behaviour, the presence of psychological disorders or their perceptions of the quality of family relationships."¹⁰ This longitudinal study is the only one of its kind to be conducted in parenting, surrogacy and child development, found there was no difference in the relationship between those children who had a genetic link to their mothers to those conceived through surrogacy and other means of assisted reproduction.¹¹
- Regardless of whether there is a genetic link to just one or both parents. After reviewing social research, Dr Lydia Bracken also states that, "Overall, the research conducted to date suggests that 'optimal' outcomes for children are not dependent on genetic relationships but are based on love and quality of interactions."¹²

We believe our laws and regulations should be designed as an 'invisible' protector and enabler of children's well-being and their right to family and citizenship. Our children are Irish children and Irish citizens. Deserving of the same recognition, support and protection as all Irish children. They should never be labelled, categorised or treated differently because of the method of their conception or gestation. Our families are families. Not different. Equal.

”

I am from Ireland, I was born in Ukraine. A nice lady called Lina helped my mummy and daddy have me. My family are my uncles, aunts, cousins and lots of friends in the estate and my mummy and daddy - **Liam**, Age 5 from Clonmel, Co Tipperary

1.2 The medical need for assisted pregnancy

We families who, for many different reasons, can not bear children ourselves. Infertility is an increasing problem worldwide.

¹⁰ University of Cambridge's Centre for Family Research <https://www.cfr.cam.ac.uk/>

¹¹ Golombok, S. Ilioi, E. Blake, L. Roman, G and Jadva, V. The assessment of the "psychological adjustment" of a child included measures such as self-esteem, engagement, perseverance, optimism, connectedness and happiness: "A Longitudinal Study of Families Formed Through Reproductive Donation: Parent Adolescent Relationships and Adolescent Adjustment at Age 14" (2017)

¹² Bracken, L., Dr, Surrogacy and the Genetic Link, Child and Family Law Quarterly, Vol 32, No 3, 2020

“The absolute number of couples affected by infertility increased from 42.0 million (39.6 million, 44.8 million) in 1990 to 48.5 million (45.0 million, 52.6 million) in 2010..”¹³

Some of the many health and infertility issues that our members experience which induce the need for to avail of surrogacy are as follows:

- Cancer
- Congenital Heart Disease
- Cystic Fibrosis
- Post organ transplant due to immuno-suppression medications
- Immune issues such as Lupus
- Premature menopause
- Multiple miscarriages
- MRKH
- Diabetes
- Endometriosis
- Adenomyosis
- Asherman’s Syndrome

The World Health Organisation recommends that,

“Enabling laws and policies that regulate third party reproduction and ART are essential to ensure universal access without discrimination and to protect and promote the human rights of all parties involved.”¹⁴

1.3 Legal background

- As set out in the constitution our children have “natural and imprescriptible rights,” that the state should by its laws, “protect and vindicate those rights.”¹⁵
- Article 42A of the Constitution states that it is in, “The best interests of the child shall be the paramount consideration.” It is in the best interests of our children that parents through surrogacy are recognised as parents of their children from birth so that they have a secure and certain family life. Our children deserve equal fundamental rights and protection afforded to any other Irish child under Irish law. ¹⁶

¹³ Limitations of the study include gaps in survey data for some countries and the use of proxies to determine exposure to pregnancy.
<https://journals.plos.org/plosmedicine/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1001356>

¹⁴ <https://www.who.int/news-room/fact-sheets/detail/infertility>

¹⁵ Constitution of Ireland 1937 <http://www.irishstatutebook.ie/eli/cons/en/html#article42>

¹⁶ Constitution of Ireland 1937 <http://www.irishstatutebook.ie/eli/cons/en/html#article42>

- The UN Special Rapporteur highlights the need for legislation by saying it is, “Imperative that States put in place clear frameworks for the protection of children and for ensuring the primacy of their best interests, in the context of surrogacy arrangements.”¹⁷
- The European Court of Human Rights has tasked its member states to find a pathway to secure legal recognition of family relationships. “The child’s right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the “legal mother”¹⁸
- Court judgements such as those in the case of MR & Another v An tArd Chláraitheoir [2014] recognise the fact that,
 - “The detrimental psychological impact upon a child’s sense of identity if he or she does not have core information which will help him or her to develop an understanding of his or her place in the world. It is submitted that a similar impact will be felt by a child born through surrogacy who is aware of his birth circumstances, and aware that the person that he or she regards as his mother is not in fact his mother in the eyes of the law.”
 - O’Donnell J stated that the need for legislation was urgent “it is clearly and profoundly wrong from the point of children born through an unregulated process into a world where their status may be determined by happenstance, and where simple events such as registration for schools, attendance at a doctor, consent to medical treatment, acquisition of a passport and even joining sports teams may involve complications, embarrassment and the necessity for prior consultation with lawyers resulting in necessarily inconclusive advice”.¹⁹

¹⁷ Report of the UN Special Rapporteur on the sale and sexual exploitation of children, safeguards for the protection of the rights of children born from surrogacy arrangements, A/74/162, 15 July 2019.

¹⁸ European Court of Human Rights, Judgements and decisions of the Court, Advisory opinion concerning the recognition in domestic law of a legal parent child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001), Unite de la Presse, November 2020

¹⁹ MR & Another v An tArd Chláraitheoir [2014] IESC 60

1.4 The current situation in Europe

“The EU landscape is extremely varied when it comes to surrogacy policies and legislation. Despite general similarities related to whether states adopt prohibiting or permissive policies, each case is unique and any attempt at generalisation would obscure significant aspects of diverse legislative and policy itineraries. ... It is impossible to indicate a particular legal trend across the EU. [H]owever all Member States appear to agree on the need for a child to have clearly defined legal parents and civil status”^{20 21}

Even where surrogacy is prohibited the European Court of Human Rights has granted parentage to parents who have challenged their home countries' lack of legislation or refusal to create/recognise legal parenthood.²²

Generally surrogacy is dealt with in three ways by countries in the EU and the wider European context²³:

- Surrogacy is dealt with via legislation or regulations covering the medical and legal procedures domestically, and a pathway to parenthood is available to both parents for domestic and international surrogacy:
 - Legislated: Cyprus, Czech Republic, United Kingdom, Greece, Netherlands, Ukraine, Belarus, Georgia, and others
 - No laws, but regulated or allowed by the government: Belgium, Czech Republic
- Some countries recognise surrogacy that takes place abroad and allow a path to parenthood for one or both parents indifferent if they have a legal framework or not, but:
 - No legislation: Bulgaria, Croatia, Estonia, Malta, Lithuania, Romania, Slovakia, Slovenia, Sweden
 - Does not permit domestic surrogacy: Austria, Denmark, Finland, France, Germany, Hungary, Iceland, Norway, Spain, Switzerland
- No legislation or regulation, and no pathway to parenthood available:

²⁰ Brunet, L., Carruthers, J., Davaki, K., King, D., Marzo, C., McCandless, J., A Comparative Study on the Regime of Surrogacy in EU Member States, Policy Department C: Citizens' Rights and Constitutional Affairs, European Parliament, 2013

²¹ O'Mahony, C., Prof. Bensusan, R., Byrne, D., English, L., Lhamo, Y., Massons Ribas, A., Noonan, T., Smith, M., Comparative Materials on Surrogacy Law, The Child Law Clinic, School of Law, University College Cork, March 2022

²² European Court of Human Rights, Judgements and decisions of the Court, Advisory opinion concerning the recognition in domestic law of a legal parent child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001), Unite de la Presse, November 2020

²³ Information received from the European Council Committee on Bioethics questionnaire on surrogacy practices, published November 2021. (rm.coe.int)

- Lithuania, Croatia, and Montenegro
- Note: Iceland prohibits surrogacy but is proposing legislation to allow it (see Annex 1 of the document²⁴)

Full legal framework for surrogacy in place	Path to parenthood available to one or both intended parents	No path to parenthood available
Czech Republic	Belgium	Luxembourg
United Kingdom	Romania	Turkey
Greece	Netherlands	Bosnia and Herzegovina
Ukraine	Sweden	Lithuania
Cyprus	Ireland	Croatia
Georgia	Andorra	Montenegro
Belarus	Hungary	Portugal
Russian Federation	Finland	
	Spain	
	Austria	
	Denmark	
	Iceland	
	Norway	
	Switzerland	
	Germany	
	France	
	Italy	

For further reading please refer to [A Comparative Study on the Regime of Surrogacy in EU Member States \(2013\)](#)²⁵

1.5 Challenges and gaps with the current legislation

- Surrogacy is never a choice, it is a last resort. It can be a couples only opportunity to build a family due to debilitating infertility and medical conditions after a long, difficult journey.
- The woman who gives birth rather than the genetic mother or the intended mother is considered the legal mother. This is not the intention of any of the parties, in fact it is

²⁴ <https://rm.coe.int/inf-2016-4-addendum-update-october-2021-e-/1680a5655e>

²⁵ [https://www.europarl.europa.eu/RegData/etudes/STUD/2013/474403/IPOL-JURI_ET\(2013\)474403_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf)

wholly contradictory to the intention of all the parties who entered into the arrangement. The intended mother is excluded.

- The intended mother and primary caregiver cannot sign any document or perform any role as a parent or guardian until they are granted guardianship status after 2 years of caring for their child. This guardianship is only granted if the father of the child gives his written permission. This needlessly and severely affects our ability to provide and care for our children. As Dr Lydia Bracken states, “Socially, it says these families are lesser, but it also places children in a vulnerable position. If a parent is not recognised, they have no decision-making powers around medical issues and they, for instance, can’t sign consent forms for class trips. The child of an Irish parent may lose out on their passport, citizenship and inheritance rights.”²⁶
- Only the father of a child can apply for a declaration of parentage when they return to Ireland. The court processes to secure parental rights for the father only are lengthy, mothers are excluded. During this court process, which has taken up to 5 years in some cases, children are left in limbo and unprotected.
- The mother cannot apply for a declaration of parentage. Mothers can only apply to the courts for guardianship after caring for their children for two years and after the father is granted his declaration of parentage. The father must grant permission for the mother to apply for guardianship, which leaves mothers vulnerable in situations of relationship breakdown or domestic abuse. Guardianship status ends when the child is 18 years of age. The status of guardianship can be given by the court but can also be taken away by the court, whereas parental rights cannot be taken away.
- All legal links with the mother end when the child reaches 18 years of age. This lack of legislation has lifelong and far reaching implications.
- A child born through surrogacy receiving a gift or inheritance from a father is treated as a parent, child relationship. Whereas a child receiving a gift or inheritance from their mother and maternal grandparents is treated as a stranger in blood relationship. There is a huge discrepancy in what you can gift, or your child born through surrogacy can inherit due to the significant tax penalties. Under current legislation a child can receive a gift or inheritance from a parent of €335,000 tax free, any figure over that threshold is taxed at 33%. This includes adopted children but not those born by surrogacy. If a mother of a child born through surrogacy were to leave a gift or bequeath a child, €16,250 would be tax free and the balance is taxed at 33%. Therefore if a child born through surrogacy was to inherit a house, an inheritance worth €335,000 they would have to pay tax totalling €105,187.
- One alarming consequence of the lack of legal parentage is that parents and particularly a mother who is often the primary caregiver cannot consent to emergency

²⁶ <https://www.thejournal.ie/parental-rights-legislation-limbo-noteworthy-5148504-Jul2020/>

medical treatment for the first two years of their child's life, prior to obtaining guardianship.

- There are high financial costs of applying for and obtaining;
 - I. declarations of parentage,
 - II. guardianship
 - III. sole custody,
 - IV. order dispensing with the necessity to obtain consent of the surrogate mother to the issuance of a child's passport
- Unlike all other mothers of newborn children, including through adoption, mothers of children born through surrogacy have no statutory entitlement to maternity leave or equivalent. There is a discrepancy in those that can get leave and those that can't in public bodies. Some HSE staff can access maternity leave, some can't, purely down to local management discretion. This prevents a child from being afforded the time with its mother to bond and be nurtured in a way all other children quite rightly benefit from.
- Mothers can't access maternity benefits which can cause financial and emotional strain. Many mothers have to return to work early due to financial strains. This right to leave and financial assistance following the birth of a child, is afforded to all other parents including adoptive parents. This is a serious inequality and failure of basic human rights to these children as it often forces mothers back to work early just to survive.
- Stress for parents caused by the lack of parental rights and financial support can have a negative effect on children's early development.
- Children already born via surrogacy do not have a legal parent-child relationship and are left in an ongoing vulnerable situation.

Aisling's Personal Story

” Aisling is married to Daniel and they are living and working in County Limerick. Aisling gave birth to their son Conor in 2009. After many heartbreaking years of dealing with multiple miscarriages, they went on to have their daughter Aoife through surrogacy in 2018.

Daniel has recently been diagnosed with stage 4 cancer. One can only imagine how difficult this is to deal with however it is made even more difficult by the knowledge that Aisling only has guardian status of Aoife which will end when she reaches 18 years of age and the lifelong impact this will have on their lives.

The family home will have to be put into Daniel's name, Aisling's name will have to be removed so that in the event of Daniel's death, both children can inherit the family home as Aoife cannot inherit anything from Aisling without there being severe and unequal tax implications between the two children.

Aisling will have to rely on the boys allowing her to live in the family home. Conor will have to compensate Aoife for the tax penalties she will inevitably face in the event of Aisling's death.

If Aisling were to sell the family business and pass on business assets to Aoife of more than €750,000 she would be liable to pay capital gains tax but in contrast can pass assets to Conor without any exposure to capital gains tax. She could also never be able to transfer a residential site to Aoife without triggering a potential capital gains tax liability for herself.

As Aoife is considered a 'stranger' in law to Aisling, any future gift or inheritance received directly from Aisling totalling more than €16,250 during his lifetime will be taxable at 33%. In contrast her brother Conor can receive up to €335,000 in gifts and inheritance from Aisling before paying any capital acquisitions tax. This would give Aoife a capital acquisition tax liability which would be €105,188 higher than her brother Conor.



IRISH FAMILIES THROUGH
SURROGACY

Aims

Ethical Assisted
Pregnancy



2 Aims

2.1 Ethical Assisted Pregnancy

This is our vision for an ethical assisted pregnancy process which details the pregnancy partner's safeguards and rights, the child's right to identity, and the intended parents' rights to be treated like 'any other family'.

2.1.1 Assisted Pregnancy Process

We want the legislation to define a process that is initiated and led by the pregnancy partner, available through and an integrated part of the public health service via the proposed Independent AHR Regulatory Authority, who will manage and approve agreements, ensure access for qualifying couples and individuals, and regulate the care providers so there are no profit-driven incentives.

2.1.2 Rights and Safeguards for the Pregnancy Partner

We want the legislation or regulation to provide the following rights and safeguards:

- Should not be dependent on assisted pregnancy for income or enter any assisted pregnancy agreement through coercion of any kind
- Must at all times through the agreement exercise fully informed consent throughout the process, from signing of contracts, transfer of embryo, and throughout pregnancy
- As a requirement it should not be the pregnancy partner's first pregnancy, previous pregnancies should have been uncomplicated, should have no genetic link to the child, and should be over 21 years
- Must have access to independent medical, legal, and psychological counselling and support with all related expenses being covered by the intended parents
- Have access to an independent public advocate who represents their interests
- Have full consent through the process and full bodily autonomy up to and during birth

2.1.3 Safeguards for the Child

For the children born through assisted pregnancy we want the legislation to prioritise all aspects of the rights, interests, welfare and well-being and to ensure that the government protects their rights as follows:

- Right to access genetic and gestational origins
- Right to full parental rights with intended parents with full parental rights and guardianship authority
- Right to be not disadvantaged or treated as a different / lesser class of citizen because of how they are conceived

- Right to citizenship that should be recognised through intended parents immediately without any risk to become stateless

The children should have the expectations of a relationship with the wider family along with the implicit rights of having care decisions over parents and grandparents, gifts and inheritance, etc.

2.1.4 Rights of the Family

The intended parents need to have one simple, universal and inalienable right: the right to have the same legal relationship with their child as any other family. They should be protected from discrimination, be seen like any other family, and benefit from the rights that any family has (like decisions over elderly care, inheritance etc). They need these rights to be able to ensure the child's sense of safety and security. The child needs their family unit to be protected and to have a parent for a lifetime, not just until they are 18 years of age.

Throughout the assisted pregnancy process they should receive specialist support especially to help them before and throughout the transition from pregnancy to family. The parents should be dealt with by informed courts and public services. We welcome the Family Court Bill 2020 which aims to put families and children front and centre in the family law system.

2.2 The future of IFTS

The proposed future vision for Irish Families Through Surrogacy is to become a centre of excellence for the families created through assisted pregnancy.

Our values would ensure inclusiveness and diversity for all parents via assisted pregnancy. We would aim to advocate for the children born through assisted pregnancy, intended parents, and pregnancy partners. IFTS would provide practical guidance, advice on best practice, emotional, and psychological support through all stages of the process. We would continue to connect families allowing real lived experiences and support to be shared.

We would support pregnancy partners to self advocate, to set up advocacy groups, in the hope that former pregnancy partners would help to facilitate these groups going forward with the support of IFTS.

We would aim to continue to support children through their lifetime into adulthood and would arrange opportunities for children to connect with children in a fun way.

IFTS would aim to collaborate with an Irish university to develop and explore research opportunities such as longitudinal studies to ensure best practices and emotional and psychological support are in place. IFTS would advocate for shared learning nationally and internationally.



IRISH FAMILIES THROUGH
SURROGACY

Recommendations

Ivanna Holub and Cathy Wheatley
They have been close friends since Ivana agreed in 2019 to be a surrogate mother for Cathy and her husband Keith and to carry and then give birth to the couple's now two-year-old twins, Ted and Elsie

3 Recommendations

3.1 Our recommendations for the legal framework for international surrogacy

The Health (Assisted Human Reproduction) Bill 2022 outlines the specific conditions under which domestic surrogacy will be permitted, this includes requirement for all surrogacy agreements to be pre-authorised by the Regulatory Authority and a court-based mechanism through which the parentage of a child born through surrogacy may be transferred from the surrogate to the intending parent(s).

We believe the route to parenthood through international surrogacy can follow the same ethical process and adopt the same safeguards as those proposed for domestic surrogacy.

However due to the very nature of international surrogacy arrangements and the fact that parents engage in surrogacy in different jurisdictions we realise that legislating for international surrogacy arrangements will be complex especially when there is no international consensus. We cannot legislate for what happens in another jurisdiction but we can guide all stakeholders to make ethical choices and legislate for what happens when the parents and children return home.

Our aim is to present arguments for legislation and provide practical solutions by illustrating how international surrogacy can equal the legal parameters and ethical safeguards set for domestic surrogacy.

The Global Surrogacy Practices thematic area of the August 2014 International Forum on Adoption and Global Surrogacy, held at the International Institute of Social Studies in the Hague, Netherlands, brought together some 25 women's health and human rights advocates, scholars, and policy experts from 14 countries.

"Specific policy recommendations on which there was wide agreement among participants were:

- Elimination of practices that pose unnecessary medical risks to surrogates and children
- Elimination of restrictions on personal autonomy of surrogates
- Establishment and maintenance of records giving participants in surrogacy arrangements the option of future contact should the mutual desire or need for it arise
- Basic screening of commissioning parents to reduce risks of abandonment or abuse of children born via surrogacy

- Provision of evidence-based information about known and potential risks, living conditions and outcomes for surrogate mothers, gamete providers and commissioning parents
- Heightened regulation and oversight of intermediaries”²⁷

”

It was a good experience. I had great medical, legal and psychological help in the program. I have children and know the joy they bring. I wanted to help the parents be parents. I also had to financially support my family at this time. - **Luda**, Ukraine - surrogate to Irish couple

A key component to achieving these ethical and social safeguards is to ensure information regarding safeguards can be shared in an open and honest manner. Additionally, there are clear guidelines to guide intended parents to ensure legal, ethical and social concerns are avoided.

For the purposes of this submission, we are using our experience of the USA, Canada and Ukraine as the top three countries where Irish parents engage in international surrogacy arrangements. Ukraine serves as an example of how a country that is not viewed as economically equal to Ireland, can still attain standards equal to those required for purposes of domestic surrogacy in Ireland.

We strive to establish an ethically driven process accompanied by appropriate safeguards, that addresses ethical, legal and social concerns relating to international surrogacy. In order to achieve our goal, we are making the following recommendations and are addressing issues pertaining to international surrogacy in the sections of The Health (Assisted Human Reproduction) Bill 2022.

3.1.1 Section 51 – Approval of surrogacy agreements

Section 51 stipulates that a person shall participate in a permitted surrogacy agreement prior to receiving authorisation from the Regulatory Authority and defines the process by which the Regulatory Authority will grant authorisation.

- The three countries that are predominantly used by intending parents undertaking the international surrogacy process are in order of preference USA, Canada and Ukraine.

²⁷ Darnovsky, M & Beeson, D, International Forum on Adoption and Global Surrogacy, 2014, AFIN Barcelona, Universitat Autònoma de Barcelona.

Table 3. Global Distribution of International Surrogacy Arrangements (countries that accept foreigners) ²⁸

Destination Country	N	%
USA	1532	38
Canada	724	18
Ukraine	707	18
Georgia	660	16
Thailand/Laos	153	4
Greece	125	3
Mexico	41	1
Kenya	36	1
Russia	34	1

- The AHR clinics in each of these countries are governed by regulation.
 - In Canada there are a number of bodies that to some extent oversee and regulate clinics. In Ontario, there is the College of Physicians and Surgeons of Ontario (this body is different in each province). There is Health Canada which oversees that the clinics are in compliance with the provisions and regulations to the Assisted Human Reproduction Act. There is also a body called Accreditation Canada.
 - The Ministry of Healthcare in the Ukraine provides licensing and supervision of medical facilities in the Ukraine.
 - State medical boards regulate the practice of medicine and the activities of health care professionals in the United States
- The majority of agencies in the USA, Canada and Ukraine are not licensed or governed by regulation.
- Intending parents sign contracts with AHR providers in their respective countries. The process is governed by the legislation of that country in which the process takes place. The legislative process undertaken and the extensive documentation that

²⁸ This data is not definitive and should be used with caution due to the lack of response from surrogacy agencies as only 28% of those invited, responded. Growing Families. International Trends in Utilisation of Surrogacy, 2018.

intended parents in the Ukraine must provide, are summarised as follows (also see [Appendix C.1](#))

- All Ukrainian advocates (Attorney at Law) are members of and governed by The Ukrainian National Bar Association <https://en.unba.org.ua/>
- US. Lawyers are governed by rules of professional conduct and disciplinary commissions administered by their respective state supreme courts.
- The Federation of Law Societies of Canada is the national coordinating body of Canada's 14 provincial and territorial law societies. Canadian lawyers are licensed and regulated at a provincial level, for example Ontario lawyer's are regulated by the Law Society of Ontario. However, most of the provinces have an agreement between them that allows, to some extent and with restrictions, the lawyers to practice in different provinces.

Our recommendations on Section 51

- Intended parents use clinics that are licensed and governed rather than agencies that are generally unregulated.
- The legal support for both the intended parents and the surrogate are members of and governed by a regulatory authority.
- The requirement for intended parents to undergo counselling can be completed in Ireland and the requirement for a section 17 report can be adhered to in the same manner. Counselling for the surrogate can be done virtually by an Irish practitioner or by a registered and licensed clinical psychologist in the country of the surrogacy arrangement.
- AHRRA can request information from the surrogate or donor to satisfy the child's right to identity
 - Received a form of consent from the surrogate mother to allow her name to be added to the National Surrogacy Register
 - Receives a form of consent from the donor, in the case of gamete donation, to allow the name of the donor to be added to the National Donor-Conceived Person Register

3.1.2 Section 52 – Surrogate mothers

”

...Each part of the program was well thought out. I received full medical support, my health and the health of the child were carefully monitored. I did not need psychological support, although they offered and were interested regularly. Before signing the contract, there were many meetings, everything was discussed, I was given enough time to familiarize myself with the contract before signing it²⁹
... - **Irina**, Ukraine - surrogate mother to Irish parents

This Head defines the age parameters and protections that must be provided to a surrogate such as physical and psychological assessment in order to protect the health and wellbeing of the surrogate.

- Section 52 stipulates that a surrogate must have attained the age of 25 years, must have previously given birth to a child and has been assessed and approved as suitable to act as a surrogate by a registered medical practitioner and as mentioned in 1. Must have a satisfactory section 17 report that states that she is suitable to act as a surrogate. There is no upper age restriction set for any prospective domestic Irish surrogate
- Canadian regulation demands that a surrogate must be 21 years of age before engaging in a surrogacy process and have previously given birth.
- Ukrainian regulation also stipulates that a surrogate must have previously given birth to a child and undertakes psychological and physical assessments before being approved to act as a surrogate. Irish intended parents are able to request surrogate profiles that match Irish parameters.

Our recommendations on Section 52

- The same parameters and protections that apply to Irish surrogates can apply to international surrogates.

3.1.3 Section 53 – Intending parents

This Head defines the age parameters and criteria that intending parents must meet to be able to enter into a domestic surrogacy agreement

- The parameters for intended parents in the Ukraine are no different to those proposed in Ireland for domestic surrogacy apart from the upper age limit being specified in Ukraine. In fact, for intended parents undertaking surrogacy in the Ukraine the

²⁹ Read [Appendix B](#) for more surrogate voices

requirements are more stringent than those proposed for Irish intended parents undertaking domestic surrogacy. Ukraine requires all intended parents are heterosexual and married.

- There are no legal age requirements for Canadian intended parents, as to do so by law would possibly contravene provincial human rights legislation, although some Canadian clinics do impose limitations for ethical reasons.

Our recommendations on Section 53

- We therefore recommend that in countries where the criteria for intending parents is equal to our domestic requirements, the same requirements can be applied to international surrogacy arrangements

3.1.4 Section 54 – Prohibition of commercial surrogacy

Section 54 prohibits commercial surrogacy and the payment of monies to anyone who receives payment or reward for facilitating a surrogacy agreement. It even goes as far to prohibit a person to agree to receive or agree to offer any payment or reward as this would be then deemed a commercial surrogacy arrangement.

- International surrogacy can be commercially driven but so are the majority of the fertility clinics in Ireland where intended parents will need to pay fees to assist them in their domestic surrogacy process.
- The fees paid to international clinics cover the added costs/complications of undertaking surrogacy in a foreign country and covers items such as the following:
 - Medical expenses (IVF, scans, tests, birth, medications etc)
 - Counselling fees
 - Expenses for the surrogate, maternity clothes, loss of income, travel, relocation costs if needed, etc)
 - Translators for surrogates and intended parents
 - The need for documents to be translated and apostilled to satisfy the requirements of Irish legislative process
 - Additional legal fees to provide the surrogate with independent legal counsel
 - Fees for legal services in a foreign country
 - Hospital charges
 - Paediatrician fees

Our recommendations on Section 54

- Irish legislation should recognise that Irish intended parents pursuing surrogacy arrangements both domestically and internationally are subject to commercial fees from both the clinics and legal services. The fees paid to international clinics and legal services in countries such as the USA, Canada and Ukraine are for surrogate compensation, medical and legal services. If the fees are paid directly to a clinic, then the international arrangement is no more commercial than if it was carried out in Ireland.
- To ensure the commercial aspects of surrogacy are not going to lead to exploitation
 - Surrogacy agreements need to be directly between intended parents and surrogate mothers
 - The main entities that are involved in a surrogacy (agency, clinic, legal advisors for surrogates and legal advisors for intended parents) must be independent of each other.

3.1.5 Section 55 – Surrogacy agreements and reasonable expenses

Section 55 prescribes the reasonable expenses that may be made to the surrogate.

- Subhead (8) states that for an expense to be considered “reasonable”, it has to actually have been incurred and this needs to be verifiable with receipts or other documentation.
- Surrogacy payments allow surrogates to have sufficient financial means to provide for their families and their families future.

Our recommendations on section 55

- The surrogate should be compensated for their pivotal role in the surrogacy process and reasonable expenses should include a compensation payment to the surrogate for their selflessness, lived risk, kindness and goodwill.

3.1.6 Section 56 – Non enforceability of surrogacy agreements

Section 56 protects the surrogate's right to bodily autonomy and ensures she has the right to manage her pregnancy and the birth as she sees fit. It also protects the right to privacy and confidentiality in relation to her medical treatment through the course of the pregnancy.

- The surrogate's right to privacy and confidentiality in relation to her medical treatment should take into account that the biological intended parents' rights to be informed of any issues that pertain to their child's health whilst in the womb.

Our recommendations on section 56

- International surrogacy agreements should allow and as stipulated in the Bill, protect the surrogate's right to bodily autonomy and ensure the right to manage her pregnancy and the birth as she sees fit. The surrogacy agreements in the country of the arrangement should reflect this.
- Intended parents who undertake international surrogacy are kept informed of their child's health through scans, investigation results and medical reports. We would consider this a fair and appropriate practice.

3.1.7 Proposals for an Ethical Pathway for International Surrogacy

We would advocate for a moderate approach to regulating surrogacy that addresses ethical concerns, learns from the lessons of other jurisdictions and crafts appropriate legislation to address the lacuna in our law. Therefore, we propose the following pathway that protects children's rights as identified by the UN Special Rapporteur and include the following features;

"... a well-regulated system overseeing the legality of proceedings through a designated oversight body, including pre-approval of surrogacy arrangements, a genuinely independent counselling process, the screening of both intending parents and surrogates and the voluntary consent of the surrogate, will effectively diminish the likelihood of proceedings into the determination of legal parenthood that place the child in a situation of uncertainty"³⁰

This route would involve a pre-approval or registration process that allows the Irish regulatory agency (AHRRA) to ensure the surrogacy agreement is in accordance with Irish requirements and protects the surrogate, the child's identity and with the intended parents being recognised as parents on birth of the child. A similar process is being proposed by the UK Law Commission which recommends that legal parenthood can be granted at birth to intended parents where, "The domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law."³¹ as it reflects the intentions of all parties. Pre-approval processes are recommended by the UN Special Rapporteur and Professor Conor O'Mahony as,

³⁰ Report of the UN Special Rapporteur on the sale and sexual exploitation of children, safeguards for the protection of the rights of children born from surrogacy arrangements, A/74/162, 15 July 2019.

³¹ UK Law Commission, Building families through surrogacy: a new law, A joint consultation paper, 2019. <https://www.lawcom.gov.uk/project/surrogacy/>

“Advance authorisation has the potential to prevent problems from arising in the first place instead of seeking to remedy problems after the child has been born (which can be extremely difficult, if not impossible, in surrogacy arrangements).”³²

and have been shown to result in fewer court disputes as in countries such as Greece. The parents would be recognised as parents from birth which removes the concerns regarding children being left vulnerable and unprotected.

This process could mirror the parameters set for domestic surrogacy. A child’s right to identity will be protected and secured prior to conception. Furthermore, having a direct contract with a surrogate who has independent legal advice would mitigate the chances of exploitation and ensure the best possible scenario for ensuring surrogate welfare.

Parents would still have to apply for an Emergency Travel Document or a passport for their child to return home to Ireland but this process could be started pre-birth by the relevant department in the Passport Office as done in the UK. Judicial processes could also be started pre birth to reduce the stress and uncertainty for intended parents. US and Canadian citizens have to complete similar processes as Irish intended parents when returning home to the U.S and Canada but do not have to complete any pre-birth or post birth processes, however we believe the pre-birth approval process, with parental rights assigned at birth and confirmed by a streamlined judicial process would address and alleviate concerns pertaining to child protection and surrogate welfare. We would envisage that the AHHRA would manage or be provided with the following information;

- The AHHRA would manage the pre-approval or registration, whereby intended parents would commit to attending an awareness briefing session where they are made aware of issues such as child identity and surrogate welfare and how to comply with the parameters for said issues.
- Evidence that intended parents have received legal advice. Solicitors could be obliged to provide advice on a given range of criteria and provide an affidavit or a letter to the AHHRA confirming this advice has been given.
- The intended parents must have medical and biological reasons for needing surrogacy to conceive.
- Appropriate screening of intended parents such as Garda vetting.

³² Special Rapporteur on Child Protection, O’Mahony, C, Prof. A Review of Children’s Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020 ([link](#))

- The registration process could involve registering the surrogates name and details and donor information if relevant to protect children and satisfy issues pertaining to a child's right to access their genetic and gestational origins.
- Evidence of a contract or agreement with a clinic that is accredited, licensed or governed by an official state body in the country where the agreement occurs. The clinic could complete a checklist for the AHRRA to confirm details of the surrogate, intended parents and donor where applicable.
- Evidence that a surrogate has independent legal counsel and that the legal counsel is registered, licensed or governed by an official state body in the country where the agreement occurs
- Evidence of a direct contract with a surrogate that pays due regard to surrogate welfare and ensures there is equality between the surrogate and intended parents. Documents must be translated, notarised and apostilled.
- Evidence of counselling and medical screening for the intended surrogate

We believe that this pre birth approval process with transfer of parental rights at birth is the most appropriate route to ensure the surrogate's welfare, the child's right to identity to protect their welfare and best interests and certainty over parentage for intended parents is assured before the surrogacy process starts. This process which involves both contractual and judicial processes, protects all parties, allows for disputes to be resolved such as the surrogate raising concerns but not in a way that might leave children vulnerable, while maintaining a high level of legal and ethical safeguards.³³

3.2 Parental recognition - creating a legal parent-child relationship

”

I am from Killarney. I was born in Kiev. Me and my twin sister were in Yana's tummy. My Mummy and Daddy were so happy to meet us. We flew home to Ireland. I live with my Mummy, Daddy, my sister and my dog. I love my house and my playroom. We are very happy. I love my family - **Caoimhe**, Age 5, County Kerry

A big gap in the current and proposed legislation is that there is not a mechanism in law to create the legal parent-child relationship for children born through international surrogacy so that the child has a legal link with both parents. Fathers can apply for a declaration of

³³ For further reading on contractual vs judicial processes see section 3.2.3.2 of the report by the Special Rapporteur on Child Protection, O'Mahony, C, Prof. A Review of Children's Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020 ([link](#))

parentage on returning to Ireland but as we have illustrated this process is long and arduous and carries great financial and emotional costs. Mothers are excluded from this process and cannot apply for a declaration of parentage. Mothers can only apply to the courts for guardianship after caring for their children for two years and after the father is granted his declaration of parentage. The father must grant permission for the mother to apply for guardianship, which leaves mothers vulnerable in situations of relationship breakdown or domestic abuse. Guardianship status ends when the child is 18 years of age. The status of guardianship can be given by the court but can also be taken away by the court, whereas parental rights cannot be taken away.

IFTS would advocate for a pre birth approval process whereupon the child's right to family life is established immediately at birth as appropriate to protect our children's best interests and welfare. Dr Brian Tobin also highlights the reasons for and difficulties with a post birth process as proposed in our own proposed domestic Health Bill, "According to the UN Special Rapporteur, the surrogate's choice after the birth to transfer the child to the intending parents must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation"..... "If so, then the Bill is according too much weight to international law to the detriment of the constitutional rights of the child."³⁴ As further states, "Indeed, Ireland has not yet even ratified the Optional Protocol on the sale of children, child prostitution and child pornography. However, children's rights are expressly protected in Article 42A of the Irish Constitution."³⁵

3.2.1 Intending parents returning home

In Ireland we cannot legislate for what happens in another jurisdiction but we can guide all stakeholders to make ethical choices. What we can legislate for is for what happens when parents and their child returns home following a child's birth in the country, where the surrogacy arrangement occurred.

We need to ensure that there is no delay in the time taken to return home and the legal parent child link needs to be created quickly to protect all involved.

The Department of Foreign Affairs has pre-existing guidelines on travel documents for children born under international surrogacy arrangements as a state we are therefore already recognising and assisting families in returning home with their children following

³⁴ Tobin, B, Dr, Regulating domestic surrogacy in Ireland: Is the process too perilous for intended parents? Bionews, Progress Educational Trust, 2022 [Regulating domestic surrogacy in Ireland: Is the process too perilous for intended parents?](https://www.bionews.com/articles/2022-03-10-regulating-domestic-surrogacy-in-ireland-is-the-process-too-perilous-for-intended-parents/)

³⁵ Constitution of Ireland 1937 <http://www.irishstatutebook.ie/eli/cons/en/html#article42>

international surrogacy arrangements. The law should recognise and build upon these existing arrangements.³⁶

There should also be recognition of parentage granted in another jurisdiction.

Canadian and US citizens follow similar procedures to Ireland when in Ukraine in terms of the processes and paperwork required by their Federal government, when applying for an Emergency travel document or passport to allow their baby to return with them. (See [Appendix D.1](#))

US intended parents also have to provide DNA samples and apostilled affidavits (see [Appendix D.1.1](#)) Yet American citizens are recognised as the intended parents of their child/children as soon as they return home and said children are recognised as American citizens. However, despite following the similar processes Irish intended parents and their children are not afforded the same privileges and protections.³⁷

Table 4. Summary of paths to parenthood for international surrogacy arrangements in different jurisdictions

	Ireland	USA	UK	Canada
Recognition of Pre Birth parental rights and obligations for Intended parents	No	No	No	No
Citizenship of child determined at or shortly after birth (via DNA testing)	Yes	Yes	Yes	Yes
Parental rights for intended father at birth	No	Yes	No	Yes
Parental rights for intended mother /second parent at birth	No	Yes	No	Yes
Parental rights for intended father following parental order	Yes	N/A	Yes	N/A
Parental rights for intended mother / second parent following parental order	No ³⁸	N/A	Yes	N/A
Entitlement to maternity leave (or equivalent) for mother / second parent	No	Yes	Yes	Yes

³⁶ Citizenship, parentage, guardianship and travel documents issues in relation to children born as a result of surrogacy arrangements entered into outside the state CITIZENSHIP, PARENTAGE, GUARDIANSHIP AND TRAVEL DOCUMENT ([justice.ie](https://www.justice.ie))

³⁷ [USA - Immigration and Nationality Act](#)

³⁸ not entitled to apply for parental order

Canada

As long as one of the Canadian parents is Canadian by birth, the baby automatically has a full legal parent-child relationship with its parents. The parents are automatically recognised as the child's parents and are granted Canadian citizenship on birth, there are no further judicial processes needed when they return home.

USA

Similarly US citizens, as long as one of the U.S parents is genetically related to the child, the baby automatically has a full legal- parent child relationship with its parents. The parents are automatically recognised as the child's parents and are granted U.S citizenship on birth, there are no further judicial processes needed when they return home.³⁹

Ireland

In contrast, we follow similar procedures as the USA and Canada with regards to the exit process but the surrogate mother is considered our child's mother despite not being genetically related and the intended mothers name being on the birth certificates. The father applies for a declaration of parentage after returning home to Ireland, through a High court or circuit court process, which can take in some cases 5 years. The mother can only apply for guardian status after two years of being the primary carer for their child but only after the father has his declaration of parentage granted. Then guardian status and the legal link ends at 18 years of age.

U.K.

The Law Commission for England and Wales and the Scottish Law Commission conducted a review of surrogacy in 2019. The findings reflect on the existing surrogacy laws and research to date. One of the recommendations made by the Commission was that,

“The intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but ... before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.”⁴⁰

³⁹ [USA - Immigration and Nationality Act](#)

⁴⁰ UK Law Commission, Building families through surrogacy: a new law, A joint consultation paper, 2019. <https://www.lawcom.gov.uk/project/surrogacy/>

This recommendation acknowledges and reflects the understanding of the shared intention of the intending parents and surrogate that intending parents are parents from birth and the lived realities of the families created through surrogacy.⁴¹

The overriding aim of legislation is to protect all stakeholders. We would consider a process similar to that adopted by Canada, U.S.A and the proposed U.K arrangement as appropriate in order to protect the best interests of our children, to ensure they are protected by assuming their citizen and parental rights as soon as reasonably possible.

3.3 The legal parent-child relationship and for those children already born (Retrospective Parental Recognition)

3.3.1 The importance of creating the legal parent-child relationship and for those children already born

Retrospective recognition of parentage is a process that allows children that were born through surrogacy before any surrogacy legislation is in place to have both parents recognised so that there is a legal parent-child relationship.

It is in the child's best interest to establish a legal relationship between mothers or second parents. The ECHR has tasked governments with providing a route to establishing a legal relationship between a child and their intended mother. The Commission on Assisted Human Reproduction in 2005 identified that intended parents should be parents from the outset as that was the intention of the surrogacy arrangement.

This type of declaration of parentage was legislated for in the Children and Family Relationships Act 2015 (sections 20-22) to allow children born via AHR before the act was enacted to provide a declaration of parentage for the intended parent that is not yet legally a parent.

The legislative process does not protect, support or assist our children. Our children are left unprotected and vulnerable. Pathways to parenthood are long and costly. Fathers have to apply for a declaration of parentage to become the legal parent when the child is born. Irish legislation only recognises the woman who gives birth as the legal mother of a child. Even though our constitution does not define what a mother is, this maxim is upheld in common law.

An intended mother cannot apply for a declaration of parentage. The only options available are guardianship that expires when the child becomes an adult or second-parent adoption which is not possible for many of our members because of their medical conditions. The intended mother can apply for guardianship via a court process after 2 years of caring for the

⁴¹ Bracken, L., Dr, Surrogacy and the Genetic Link, Child and Family Law Quarterly, Vol 32, No 3, 2020

child, when the father's parentage has been granted and with the father's permission. The guardian status however ends when our children reach 18 years of age. This process leaves our children without the protection and certainty of a legal Irish mother for at least the first two years of their lives and when they reach 18 years of age, for the rest of their lives. If the government does not act now, and provide a mechanism for establishing legal relationships between existing children born through surrogacy and their mothers. Many children who are reaching 18 years of age soon will lose the chance to have a lifelong legal relationship with their mothers.

Parents of children born through international surrogacy have fought long and hard to have their precious children only to have to face another uphill battle to have the parental rights they deserve. As a woman it is heartbreaking to realise that you cannot carry your own child. Many mothers of children born through surrogacy have suffered years of anguish and loss trying to carry their own children. It is further painful and demoralising to realise that you are not fully recognised as the parents of the precious children you have created, care for and have immeasurable love for.

Stress for parents caused by the lack of parental rights and financial support can have a negative effect on children's early development.

"Living in environments characterised by chronic, poorly managed stress has a direct impact on early brain development, especially in the weeks and months immediately after birth. Stressors in early childhood can disrupt neurologic, metabolic and immunologic systems leading to poorer development outcomes. Where parents experience stress through uncertainty or lack of clarity around the security of their role as parents, the environment within which children are developing may be unnecessarily stressful."⁴² Professor Nóirín Hayes.

We need a protective legislative framework to recognise and support the diverse family relationships that exist through international surrogacy in Ireland today. The importance for our children of creating the legal-parent child relationship on their social, emotional and psychological wellbeing is immeasurable.

As noted in court judgements in other jurisdictions such as the England and Wales High Court (Family Division) Decisions

Re A and B (2015) EWHC 911 – Ms Justice Russell:

"conferring joint and equal legal parenthood upon both the Applicants, thereby ensuring the children's security as lifelong members of the Applicants' family and curing their parentless status in the UK; (b) fully extinguishing the residual parental

⁴² Joint Committee on Health debate - Wednesday, 19 Dec 2018 ([oireachtas.ie](https://www.oireachtas.ie))

status of the Respondents under UK law; (c) ensuring that the children have inheritance rights as members of the Applicants' families; and (d) making the Applicants financially responsible for the children during their minority. In addition either parental or adoption orders would enable the Applicants to appoint guardians to care for the children in the event of their deaths in accordance with section 5(3) Children Act 1989; currently the Applicants have no legal power to appoint guardians for the children as they are not legal parents.”⁴³

Re X (2014) EWHC 3135 - Sir James Munby (President of the Family Division of the High Court):

Section 54 [the ability of the court to grant a parental order] goes to the most fundamental aspects of status and, transcending even status, to the very identity of the child as a human being: who he is and who his parents are. It is central to his being, whether as an individual or as a member of his family. As Ms Isaacs correctly puts it, this case is fundamentally about X's identity and his relationship with the commissioning parents. Fundamental as these matters must be to commissioning parents they are, if anything, even more fundamental to the child. A parental order has, to adopt Theis J's powerful expression, a transformative effect, not just in its effect on the child's legal relationships with the surrogate and commissioning parents but also, to adopt the guardian's words in the present case, in relation to the practical and psychological realities of X's identity. A parental order, like an adoption order, has an effect extending far beyond the merely legal. It has the most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious, consequences. It creates what Thorpe LJ in Re J (Adoption: Non-Paternal) [1998] INLR 424, 429, referred to as "the psychological relationship of parent and child with all its far-reaching manifestations and consequences." Moreover, these consequences are lifelong and, for all practical purposes, irreversible.”⁴⁴

Re A and B (2015) EWHC 911 – Ms Justice Russell:

Parental orders create a permanent parent-child relationship throughout the children's lifetimes which reflect the reality of their particular situation about which they are both already aware. Thus parental orders are explicitly the most apposite orders to be

⁴³ Re A and B (2015) EWHC 911 – Ms Justice Russell, England and Wales High Court (Family Division) Decisions <http://www.bailii.org/ew/cases/EWHC/Fam/2015/911.html>

⁴⁴ Re X (2014) EWHC 3135 - Sir James Munby (President of the Family Division of the High Court), England and Wales High Court (Family Division) Decisions <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Fam/2014/3135.html&query=Re+and+x+and+surrogacy&method=boolean>

made in keeping with the children's welfare throughout their lives, and which confer important status and rights over and above parental responsibility.⁴⁵

- Provision for retrospective As Brian Tobin points out, “The State cannot enact legislation that wilfully chooses to ignore the intended parents of those Irish children previously born to surrogates abroad. Any new surrogacy law should at least enable an intended parent of a child previously born to a surrogate abroad to apply to an Irish court for a declaration of legal parenthood.”⁴⁶

3.3.2 ‘Mother is certain’ argument

While the proposed AHR legislation is also welcomed as a progressive step forward towards greater legal recognition of the diversity of family life in Ireland, it does not regulate for the rights of the child born through surrogacy. Historically it upholds the ‘mater semper certa est’ principle whereby the woman who gives birth to the child is regarded as the legal mother. This principle ignores the fact that parenthood can and should be established by actual performance and fulfilment of the role of a parent and is no longer relevant. In fact, the Intended Parents are the parents fulfilling the parental role from the birth of the child.

As Susan Denham the C.J stated, “There is no definitive definition of “mother” in the Constitution. Nor is there anything in the Constitution which would inhibit the development of appropriate laws on surrogacy.”⁴⁷

The constitution does not define what a mother is, it is therefore open to our legislature to allow Intended mothers to be legal mothers of their children whether they are genetically related or not.

”

Anyone can potentially be a biological parent, but that doesn't automatically give you the title of "mum" or "dad". Those titles are earned and it takes someone special to become a mum or dad. My mum couldn't have children, and knowing that someone out there donated an egg and carried me in order to fulfil a dream of being a mother is something special - **Rachel Rowley-Smith** - born through surrogacy

⁴⁵ Re A and B (2015) EWHC 911 – Ms Justice Russell, England and Wales High Court (Family Division) Decisions <http://www.bailii.org/ew/cases/EWHC/Fam/2015/911.html>

⁴⁶ Tobin, B, Dr, Opinion: Long awaited surrogacy laws still won't recognise many parents, <https://www.thejournal.ie/readme/opinion-long-awaited-surrogacy-laws-still-wont-recognise-many-parents-4513551-Mar2019/>

⁴⁷ MR & Another v An tArd Chláraitheoir [2014] IESC 60, at 114 (Denham C.J)

Any legislation for international surrogacy should protect the family unit by giving equal status to the parents of the child. Every child deserves an equal legal relationship with both parents. Maintaining the ‘mater semper certa est’ principle and disregarding the legal link between the child and the intended mother leaves the child and the Intended mother vulnerable if conflict were to arise in a marriage or if the father passed away prematurely.

3.3.3 Arguments against adoption as a route to parenthood

EU convention does not discount adoption as a route to creating a legal parenthood however we do not believe adoption is in our children’s best interests or appropriate for the following reasons

3.3.3.1 Court judgements in the UK

A pivotal case in 1990 where Intended parents who had twins born via gestational surrogacy challenged the fact that they had to adopt their twins to create a legal parent child relationship led to a much needed change in UK law.

“What was to become s 30 of the 1990 Act, enacting for the first time a process whereby commissioning parents could apply for a parental order to reassign legal parenthood (as opposed to relying on adoption law), was only inserted at the Report Stage of the Bill as a last minute amendment. It was precipitated by the case of a couple who conceived twins following a surrogacy arrangement and complained to their MP in reaction to involvement by their local authority that they must apply to adopt their children. As the genetic parents they objected, and their dispute with their local authority subsequently led to wardship proceedings (*Re W (Minors) (Surrogacy)* [1991] 1 FLR 385). The couple’s MP proposed an amendment to the Bill, which would allow married couples to obtain parental rights for their child without relying on adoption law. The government supported the amendment which became s 30 of the 1990 Act, although it did not come into force until 1994 and most of the detail was left to be worked out in subsequent regulations.”⁴⁸

Re A and B (2015) EWHC 911 – Ms Justice Russell:

“In terms of their identity only parental orders will fully recognise the children's identity as the Applicants' natural children, rather than giving them the wholly artificial and, in their case, inappropriate status of adopted children. I keep in mind European jurisprudence, as set out above, in respect of their family life and their identity. As the President said in *Re X* (supra) at [54]: "Section 54 goes to the most fundamental aspects of status and, transcending even status, to the very identity of the child as a

⁴⁸ Gamble, N & Ghevaert, L, Partners, Gamble and Ghevaert LLP, *The Chosen Middle Ground: England, Surrogacy Law and the International Arena*, International Family Law, 2009

human being: who he is and who his parents are. It is central to his being, whether as an individual or as a member of his family."⁴⁹

Adoption is a totally inappropriate procedure for parents of children born through surrogacy. The child born through surrogacy has been wanted and planned for by the intended parents long before their conception, and has been loved and cared for by the intended parents since birth. The surrogacy process is a complex and highly regulated procedure. Families should not be put through another arduous and lengthy bureaucratic process, We are not stepmothers, we are mothers. Children born through surrogacy should not have to contend with the fact, when they are of an age to understand their origins, that they had to be adopted.

As Justice Theis in the UK, highlighted,

“In AB v CD (Surrogacy – Time Limit and Consent). In this case, she noted that intention is one of the main reasons why a parental order is better suited to surrogacy situations than an adoption order. She explained that a parental order “reflects the reality of what was intended”. In adoption, the genetic parents do not conceive a child with the intention of that child being adopted, and third parties are unlikely to be involved until after the birth. In surrogacy, by contrast, the intention of all the parties to the arrangement that the surrogate will have a child which the intended parents will then raise as their own is the very core of what a surrogacy arrangement is.”⁵⁰

The U.K law commission on surrogacy also recommends that a parental order application process is appropriate for all parents of children born through international surrogacy arrangements and those for whom the new pre-birth pathway (whereby parental rights are conferred on the birth of the child) doesn’t apply.⁵¹

Irish Families Through Surrogacy would also consider an expedited process to parenthood, through an application for a parental order, completed in a timely fashion, appropriate for Irish families who require retrospective recognition of parental rights, in recognition of the years of being parents.

3.3.3.2 Medical reasons

Cancer, Cystic Fibrosis, Congenital Heart Disease are just some of the reasons that brought about the need for couples to undertake surrogacy.

⁴⁹ Re A and B (2015) EWHC 911 – Ms Justice Russell, England and Wales High Court (Family Division) Decisions <http://www.bailii.org/ew/cases/EWHC/Fam/2015/911.html>

⁵⁰ <http://www.bailii.org/>

⁵¹ UK Law Commission, Building families through surrogacy: a new law, A joint consultation paper, 2019. <https://www.lawcom.gov.uk/project/surrogacy/>

These medical conditions are the same reasons that prevent intended parents from becoming parents through step-parent adoption. TUSLA medical requirements that are applied to all step parents applying to adopt their step children are being applied to intending parents. Many families through surrogacy would not meet the requirements for adoption in Ireland as it currently exists due to the very reasons they pursued surrogacy in the first place, i.e. complex medical conditions.

3.3.3.3 Speed of process

Delays in this process of recognising the legal relationship between a parent and their child are harmful, and far reaching to a child's future sense of identity. Adoption is a lengthy process. The mother or second parent has to be fulfilling the role of a parent for two years before they can start the process and then the length of the process is determined by local resources such as staffing and the fact that older children are prioritised. Members report having to wait until their children are 4 years of age before the process is even started and with no guarantee of an adoption order being granted. The ECHR guide on Article 8 of the European Convention on Human Rights cites adoption as a possible route to create the legal relationship but adoption processes can be much shorter in some European countries such as France where they have a short adoption process which can take as little as three months to complete.⁵²⁵³ Whereas our Irish adoption process can take years to complete. The EU recognises that the legal parenthood should be effected as soon as possible.

“Once the relationship between the child and the intended mother has become a “practical reality” the procedure laid down to establish recognition of the relationship in domestic law must be capable of being “implemented promptly and efficiently”⁵⁴

3.3.5 Our recommendations to create the legal parent-child relationship and for those children already born (retrospective provisions)

Irish Families Through Surrogacy welcomes and supports the recommendations in the report “A Review of Children's Rights and Best Interests in the Context of Donor- Assisted Human Reproduction and Surrogacy in Irish Law” by Professor Conor O'Mahony, Special Rapporteur on Child Protection, as a positive step forward for its recognition of international surrogacy arrangements and clear and comprehensive pathways to parenthood for parents of children born through surrogacy.

⁵² Guide on Article 8 of the European Convention on Human Rights Right to respect for private and family life, home and correspondence, 31 December 2020, European Court of Human Rights

⁵³ <https://solidarites-sante.gouv.fr/affaires-sociales/familles-enfance/article/adopter-un-enfant>

⁵⁴ Guide on Article 8 of the European Convention on Human Rights Right to respect for private and family life, home and correspondence, 31 December 2020, European Court of Human Rights

We call for the Special Joint Committee to give due consideration and adopt all of the recommendations in Professor O'Mahony's report to address our concerns for our children's welfare and 'best interests' To allow full parentage to mothers and second parents that are currently not recognised as parents in law. Section 6.2.⁵⁵ contains the recommendations in full.

”

I live in Galway and I was born in India, my Mam and Dad are my genetic parents. My younger sister was born in the Ukraine. We have a dog called Max - **Ella**, Age 7, Galway

We would like to see the following: “That provision be made to allow the court to make a declaration of parentage in respect of children born following surrogacy arrangements that were concluded prior to the commencement of any future legislation regulating surrogacy (and, where necessary, to grant nationality and citizenship to the child). Before making such a declaration, the Court would have to satisfy itself (upon provision of suitable evidence) of the following criteria:

- That it is in the best interests of the child to make a declaration of parentage;
- That the intending parents consent to the declaration;
- In cases where the arrangement took place outside of the State, that the arrangement was authorised by and fully complied with the law of the State in which the arrangement was concluded and the child was conceived and born;
- That the arrangement did not amount to sale or trafficking of children; and
- In the case of international surrogacy arrangements, that at least one intending parent has a genetic link to the child (see further Section 7 below).”

3.4 Summary of Recommendations

We hope that this Committee can meet the challenge, listen to those who have the knowledge and experience, the lived experience of the families through surrogacy, the surrogates, the adults and children born through surrogacy, the prominent legal and academic experts in the field of surrogacy to guide the recommendations to developing appropriate legislation for international surrogacy.

⁵⁵ Special Rapporteur on Child Protection, O'Mahony, C, Prof. A Review of Children's Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020 ([gov.ie](https://www.gov.ie/en/publication/68400-a-review-of-childrens-rights-and-best-interests-in-the-context-of-donor-assisted-human-reproduction-and-surrogacy-in-irish-law/))

We believe Ireland can accept the jurisprudence of certain jurisdictions that have the same or similar oversight as Ireland will have when the Health Bill (2022) is enacted.

3.4.1 International Surrogacy

In summary we would recommend that countries that meet the following can be accepted by the Irish courts as having exercised necessary due diligence as these criteria would match or be similar to Irish criteria for domestic surrogacy as laid out in The Health (Assisted Human Reproduction) Bill 2022

- To ensure an ethical surrogacy process
 - A regulatory authority that oversees and governs the clinic where the medical procedures of the surrogacy arrangement take place
 - Intended parents use clinics that are licensed and governed rather than unregulated agencies.
 - The criteria for intending parents is equal to our domestic requirements
 - The legal support employed for both the intended parents and the surrogate are members of and governed by a regulatory authority.
 - All parties can access counselling pre conception, post birth, during court processes and when required as a child matures
- To ensure the rights and safeguards of the surrogate mother
 - Surrogacy agreements need to be directly between parents and the surrogate.
 - International surrogacy agreements allow and, as stipulated in the Bill, protect the surrogate's right to bodily autonomy and ensure she has the right to manage her pregnancy and the birth as any other pregnant woman.
 - The same parameters and protections that apply to Irish surrogates apply to international surrogates.
 - The main entities that are involved in a surrogacy (agency, clinic, legal advisors for surrogates and legal advisors for intended parents) must be independent of each other.
 - The fees paid to international clinics and legal services in countries such as the USA, Canada and Ukraine are primarily for medical and legal services.
 - The surrogate is compensated for their pivotal role in the surrogacy process and reasonable expenses include a compensation payment to the surrogate.

- To ensure the child's right to identity
 - The formed AHR regulatory agency (AHRRA) would request information from the surrogate to add her name to the National Surrogacy Register, or donor, in case of gamete donation, to allow their name to be added to the National Donor-Conceived Person Register.

In our opinion the USA, Canada and Ukraine can meet the above criteria, if the above conditions/criteria are met throughout the surrogacy process.

Our "[Proposals for an Ethical Pathway for International Surrogacy](#)" demonstrate how this arrangement might work in practice.

3.4.2 The legal parent-child relationship

The outdated maxim in law of Mater Semper Certa Est is not applicable to all parental relationships in today's society and law has to be crafted to reflect this. It is incumbent on our legislators to address this lacuna in the law.

- We need to ensure that there is no delay in the time taken to return home and the legal parent child link needs to be created quickly to protect all involved.
- The Department of Foreign Affairs has pre-existing guidelines on travel documents for children born under international surrogacy arrangements as a state we are therefore already recognising and assisting families in returning home with their children following international surrogacy arrangements. The law should recognise and build upon these existing arrangements.⁵⁶
- There should also be recognition of parentage granted in another jurisdiction.
- The overriding aim of legislation is to protect all stakeholders. We would consider a process similar to that adopted by Canada and the U.S.A as appropriate in order to protect the best interests of our children, to ensure they are protected by assuming their citizen and parental rights as soon as reasonably possible.

3.4.3 Retrospective parental recognition

"That provision be made to allow the court to make a declaration of parentage in respect of children born following surrogacy arrangements that were concluded prior to the

⁵⁶ Citizenship, parentage, guardianship and travel documents issues in relation to children born as a result of surrogacy arrangements entered into outside the state CITIZENSHIP, PARENTAGE, GUARDIANSHIP AND TRAVEL DOCUMENT ([justice.ie](https://www.justice.ie))

commencement of any future legislation regulating surrogacy (and, where necessary, to grant nationality and citizenship to the child).”.⁵⁷

We therefore endorse all of the recommendations in Professor O’Mahony’s report outlined in Section 6.2.⁵⁸ to address our concerns for our children’s welfare and ‘best interests’ to allow full parentage to mothers and second parents that have children born following surrogacy arrangements that were concluded prior to the commencement of any future legislation regulating surrogacy and are currently not recognised as parents in law.

3.5 Conclusion

Our children deserve to have a legal relationship with their mothers. We can learn from our own constitution, the Family court judgements from our own and other jurisdictions and EU conventions to guide us.

”It will rarely be in the child’s best interests to refuse to recognise or grant parenthood that reflects the child’s lived reality.”⁵⁹

We have been waiting years for legislation and If legislators do not act quickly many children in this country will lose the opportunity to have a lifelong legal relationship with their mothers. This will affect the hundreds of children already born through surrogacy.

The State is in danger of putting our children in possible harmful situations by enacting laws that allow surrogates the opportunity to refuse to allow children to live with their genetic parents. The fact that in domestic surrogacy situations if a surrogate’s consent is not forthcoming, and can only be dispensed with if they are deceased or untraceable is also preventing judges from acting in the best interests of any child and allowing them to make necessary and prudent judgement according to the case at hand. The same process should not be applied to international surrogacy arrangements. The judicial system should be afforded the necessary powers to act in a child’s best interests and welfare at all times. This power should not be taken from them by any future legislation.

All our children and future children deserve equality in the eyes of the law. In our increasingly, globalised world we need to take a pragmatic approach to the rising need for legislation for international surrogacy.

⁵⁷ Special Rapporteur on Child Protection, O’Mahony, C, Prof. A Review of Children’s Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020

⁵⁸ Special Rapporteur on Child Protection, O’Mahony, C, Prof. A Review of Children’s Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020 ([gov.ie](https://www.gov.ie))

⁵⁹ Report of the UN Special Rapporteur on the sale and sexual exploitation of children, safeguards for the protection of the rights of children born from surrogacy arrangements, A/74/162, 15 July 2019

We believe that Ireland can craft legislation for international surrogacy that addresses legal, ethical and social concerns and forges a pathway to a brighter future for our children. One which is free from uncertainty, inequality and discrimination. In the words of Nelson Mandela, “There can be no keener revelation of a society’s soul than the way in which it treats its children.”



IRISH FAMILIES THROUGH
SURROGACY

References

4 References

Constitution of Ireland 1937 <http://www.irishstatutebook.ie/eli/cons/en/html#article42>

Gamble, N & Ghevaert, L, Partners, Gamble and Ghevaert LLP, The Chosen Middle Ground: England, Surrogacy Law and the International Arena, International Family Law, 2009

Citizenship, parentage, guardianship and travel documents issues in relation to children born as a result of surrogacy arrangements entered into outside the state CITIZENSHIP, PARENTAGE, GUARDIANSHIP AND TRAVEL DOCUMENT (dfa.ie)

Special Rapporteur on Child Protection, O'Mahony, C, Prof. A Review of Children's Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, 2020

The Health (Assisted Human Reproduction) Bill 2022

MR & Another v An tArd Chláraitheoir [2014] IESC 60, at 114 (Denham C.J)

University of Cambridge's Centre for Family Research <https://www.cfr.cam.ac.uk>

Golombok, S, Ilioi, E, Blake, L, Roman, G and Jadvá, V. The assessment of the "psychological adjustment" of a child included measures such as self-esteem, engagement, perseverance, optimism, connectedness and happiness: "A Longitudinal Study of Families Formed Through Reproductive Donation: Parent Adolescent Relationships and Adolescent Adjustment at Age 14" (2017)

Bracken, L, Dr, Surrogacy and the Genetic Link, Child and Family Law Quarterly, Vol 32, No 3, 2020

Mascarenhas, M, N, Flaxman, S, R, Boerma, T, Vanderpoel, S, Stevens, G, A, National, Regional, and Global Trends in Infertility Prevalence Since 1990: A Systematic Analysis of 277 Health Surveys, PLOS medicine, 2012

Report of the UN Special Rapporteur on the sale and sexual exploitation of children, safeguards for the protection of the rights of children born from surrogacy arrangements, A/74/162, 15 July 2019

European Court of Human Rights, Judgements and decisions of the Court, Advisory opinion concerning the recognition in domestic law of a legal parent child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001), Unite de la Presse, November 2020

Brunet, L, Carruthers, J, Davaki, K, King, D, Marzo, C, McCandless, J, A Comparative Study on the Regime of Surrogacy in EU Member States, Policy Department C: Citizens' Rights and Constitutional Affairs, European Parliament, 2013

Darnovsky, M & Beeson, D, International Forum on Adoption and Global Surrogacy, AFIN Barcelona, Universitat Autònoma de Barcelona, 2014

Growing Families. International Trends in Utilisation of Surrogacy, 2018

Tobin, B, Dr, Regulating domestic surrogacy in Ireland: Is the process too perilous for intended parents? Bionews, Progress Educational Trust, 2022

UK Law Commission, Building families through surrogacy: a new law, A joint consultation paper, 2019. <https://www.lawcom.gov.uk/project/surrogacy/>

Joint Committee on Health, Report on Pre-Legislative Scrutiny of the General Scheme of the Assisted Human Reproduction Bill, House of the Oireachtas, July 2019

England and Wales High Court (Family Division) Decisions <http://www.bailii.org>

Tobin, B, Dr, Opinion: Long awaited surrogacy laws still won't recognise many parents, <https://www.thejournal.ie/readme/opinion-long-awaited-surrogacy-laws-still-wont-recognise-many-parents-4513551-Mar2019/>

Guide on Article 8 of the European Convention on Human Rights Right to respect for private and family life, home and correspondence, 31 December 2020, European Court of Human Rights

O'Mahony, C, Prof, Bensusan, R, Byrne, D, English, L, Lhamo, Y, Massons Ribas, A, Noonan, T, Smith, M, Comparative Materials on Surrogacy Law, The Child Law Clinic, School of Law, University College Cork, March 2022

Council of Europe: COMMITTEE ON BIOETHICS (DH-BIO) SURROGACY Addendum to the Replies to questionnaire on access to medically assisted procreation (MAP), on right to know about their origin for children born after MAP, Strasbourg, 30 November 2021

<https://rm.coe.int/inf-2016-4-addendum-update-october-2021-e-/1680a5655e>

<https://www.coe.int/en/web/bioethics/embryo>



IRISH FAMILIES THROUGH
SURROGACY

Appendix

Appendix

A. Voice of the Children	53
B. Surrogate's Voice	54
C. Current safeguards and guidelines	56
C.1 Example: Requirements for surrogacy in Ukraine	56
D. Examples from other jurisdictions	59
D.1. US/UK/Canada parents using international surrogacy	59
D.2 New York Surrogacy Law	61
E. Addressing the Issues Paper on International Surrogacy for Special Joint Oireachtas Committee for January 2022	63

A. Voice of the Children

"My Mammy's belly was broken so a very kind lady came and got me in her belly. When I was ready to pop out she gave me back to my Mammy and Daddy. My Mammy, Daddy and my doggy Milly are my family. My Family will give me a big kiss when I go to creche every day when I go to creche. I love my mammy and daddy so much. I will give them a big kiss and a big hug every day when I see them."

Mark, Age 3.5 years old from Galway

"I am from Ireland, I was born in Ukraine. A nice lady called Lina helped my mummy and daddy have me. My family are my uncles, aunties, cousins and lots of friends in the estate and my mummy and daddy" - Liam, Age 5 from Clonmel, Co Tipperary

"We were in Olha's tummy, then we used to sleep in cots and Mammy and Daddy would feed us with bottles. David, my twin is my best friend and gives me hugs. I love all my family" - Aoife, Age 4 from County Limerick

"I was born in Lviv in Ukraine in 2017. My surrogate mother is called Tetiana. I live with my Mummy, Daddy and my pet dog Marvin. My Nana, Grandad and Aunt live next door. I go to Naoinra and I will be going to big school in September. I have lots of friends in school and a cousin called Harry. Harry is 4 and we are best friends." - Luke, Age 4.5 years old from County Cork

"I live in Galway and I was born in India, my Mam and Dad are my genetic parents. My younger sister was born in the Ukraine. We have a dog called Max" - Ella, Age 7, Galway

"I am from Killarney. I was born in Kiev. Me and my twin sister were in Yana's tummy. My Mummy and Daddy were so happy to meet us. We flew home to Ireland. I live with my Mummy, Daddy, my sister and my dog. I love my house and my playroom. We are very happy. I love my family" - Caoimhe, Age 5, County Kerry

B. Surrogate's Voice

"It was absolutely amazing! I hoped to help a couple complete their family, but I ended up getting more out of it. The experience was a blessing!. The organisation I went through made sure I was very much taken care of. I went in not expecting anything and just went with the flow. The organisation was in constant communication with the hospital and stepped in when necessary. My obgyn was very supportive and treated me and the couple with such dignity and respect. The couple I went through this with were so brave and stable. They had gone through so much and they treated me with such grace. I was blessed to be able to have smooth pregnancies. I couldn't imagine my life without my son, I wanted to be able to provide that experience to a couple in need." - Linda, Missouri, USA

"I carried my niece for my sister. We had to complete the process in New Zealand as Irish law did not allow us to do it. I am a New Zealand resident. There is a strict ethical process in NZ and we completed multiple counselling sessions independently and as a group. Both parties required legal counsel in NZ and Ireland. Unfortunately my husband and I are both the legal parents of our niece in Ireland and NZ. In NZ the birth mother is put on the birth cert and the intended parents usually adopt their biological child. The law is currently changing to support the biological parents. My niece is now 2 and her genetic parents still have no rights to her which is challenging for both them and us. The ethical process ensures all factors are considered for both parties and deals with issues that may arise before the process begins. My niece brings a level of joy to my own family that cannot be described and I would do it again." - Niamh, Irish and living in New Zealand.

"It was a good experience. I had great medical, legal and psychological help in the program. I have children and know the joy they bring. I wanted to help the parents be parents. I also had to financially support my family at this time." - Luda, Ukraine

"I have been a surrogate twice, I feel happy because I am able to make two families happy. There was support from all sides. Medical were constantly in touch, all tests and visits to doctors were on time. I was provided with vitamins and all other medicines. I had full legal support, everything was clear and understandable, no problems. In terms of Psychology, I had consultations and explanations of all possible consequences. There were a lot of positive things but still the best are the children. Some women are unable to conceive and give birth or have health problems for any

reason. This gives them the opportunity to feel the joy of motherhood, As a surrogate mother who likes to be aware of the benefits that society brings, as well as improve their financial situation by receiving monetary compensation.” - Anna, Ukraine

“I had a positive experience in the surrogacy program, pregnancy and childbirth were successful. I went through the program in a good clinic, with an excellent agency.

Each part of the program was well thought out. I received full medical support, my health and the health of the child were carefully monitored. I did not need psychological support, although they offered and were interested regularly. Before signing the contract, there were many meetings, everything was discussed, I was given enough time to familiarise myself with the contract before signing it.

There were a lot of positive moments, and now the time has passed, I remember this part of my life with joy. Carrying a child for other people, I imagined how they were waiting for the baby to be born, how they would love him, and from this I became happy. The awareness that I can make other people happy, get a new experience in my life is a wonderful feeling. Get rewarded for your work, and buy a home, now my sons have their own rooms”

Irina, Ukraine

“Being a surrogate for my sister has been the single most rewarding and character defining thing I have ever done. I was able to give my sister a very precious gift and now enjoy seeing her relish in being a mother. I have no maternal instincts towards my godson. I love him just as much as I do my niece. Luckily my pregnancy was uncomplicated and I would like to do it again for my sister. I don’t think you should restrict surrogacy to people who have already had children. It was my first pregnancy and I don’t see the point in that stipulation. I only carried my godson gestationally, I am not his mother in any sense of the word. I feel it does not represent the usual situation to be considered the mother. There is no legislation to protect me.

It was the right thing to do, I could do it and I wanted to do it. Life is short. I had some small power to make my sister's life better so I did. I love her dearly.”

Susan, Donegal

C. Current safeguards and guidelines

C.1 Example: Requirements for surrogacy in Ukraine

Before entering a surrogacy arrangement, intending parents should seek legal advice in Ireland to ensure they meet all the requirements and are fully aware of the correct procedures to ensure all parties are protected.

The Irish government released a set of guidelines⁶⁰ to deal with children born via international surrogacy agreements. They constitute a burden of proof that sometimes (DNA tests) is higher than the Ukrainian requirement and they are followed by local solicitors to respect the Irish regulations. This is a practical example of how Irish laws, and regulations can improve a legal process abroad.

Broadly speaking, these are the main steps in the Ukrainian process :

1. Before starting on their surrogacy journey the intended parents must engage with four entities
 - a. An Irish solicitor that will help the couple with the legal process in Ireland and by making sure the agency coordinates the process in a way that respects Irish law and rules as the final parental order is given by an Irish court.
 - b. A fertility clinic in Ukraine that will do the IVF procedure. Clinics are regulated by the Ukrainian Department of Health.
 - c. An agency that will help the parents match a pregnancy partner (surrogate) and provide support for the surrogate by arranging for medical appointments, psychological assessment and tests, finding her an independent solicitor
 - d. A Ukrainian solicitor that will help the parents with the legal aspects of surrogacy and make sure that the agreement between them and the surrogate is lawful.
2. The intending parents must prove that they meet the requirements of Ukraine to pursue a surrogacy arrangement in the country.
 - a. An Irish doctor must provide a statement that the intended mother is unable to successfully carry a pregnancy herself to prove they cannot conceive because of a medical condition e.g. at least 4 failed IVFs, absence or deformation of the uterus or cervix or non-receptivity of the endometrium, or that because of a

⁶⁰ Citizenship, parentage, guardianship and travel documents issues in relation to children born as a result of surrogacy arrangements entered into outside the state CITIZENSHIP, PARENTAGE, GUARDIANSHIP AND TRAVEL DOCUMENT ([justice.ie](https://www.justice.ie))

specific medical condition a pregnancy would put the intended mother's life at risk. The parents must also provide medical records as proof

3. After the agency matches the intended parents with a surrogate they must sign a surrogacy agreement.
 - a. This agreement provides safeguards for the surrogate, allowable expenses, compensation, and medical requirements
 - b. The agreement allows the clinic to carry out the IVF procedure to implant the surrogate with the intended parent's embryos
4. Following the birth of the child, the intending parents and the surrogate must register the birth with the Ukrainian authorities. The surrogacy agreement and the proof of birth from the surrogate will be needed to name the intended parents as the parents on the birth certificate.
 - a. The official birth registry contains the name of the surrogate as the person who gave birth.
5. In order to travel home with their newborn baby, the intended parents must provide a set of documentation to the Irish Embassy in Ukraine to allow the Embassy to issue an Emergency Travel Document. The documents must prove
 - a. That the surrogate, after receiving independent legal advice in a language she understand she consents to
 - i. A DNA test of the child, and herself
 - ii. The issuing of an Emergency Travel Certificate for the child to enable the child to leave the country of birth
 - iii. The father of the child being made the sole guardian
 - iv. The removal of the necessity to acquire the consent of the surrogate to apply for a passport for the child
 - b. That the intended father is the genetic father, and the surrogate is not genetically linked to the child via a DNA test
 - i. The test is done by a certified doctor and in the presence of Irish embassy staff. The samples are sent to an approved laboratory
6. The Irish Court grants a declaration of parentage to the father of the child once the Court is satisfied that all legal requirements are fulfilled.

- a. This process involves the State Solicitor's Office acting as a party that verifies the legal requirements
 - b. Further affidavits and consent is needed from the surrogate
7. After looking after the child for at least 2 years, the second parent (Irish mother) can apply for guardianship.

D. Examples from other jurisdictions

D.1. US/UK/Canada parents using international surrogacy

In other jurisdictions where domestic surrogacy (altruistic and/or compensated) is legislated for, people still pursue international surrogacy for a number of reasons such as delays in finding a suitable surrogate, administrative delays in acquiring parental rights for one or both parents, or financial reasons.

Here is an outline of the process for citizens of some of these countries to achieve full legal parenthood of their children born outside their own jurisdiction.

D.1.1 United States of America

For citizens of the U.S.A. pursuing international surrogacy, a child born outside of the U.S.A. acquires US citizenship at birth if the parent or parents of the child meet the conditions prescribed in the [Immigration and Nationality Act](#) (INA). In international surrogacy situations:

- A U.S. citizen father who is the genetic father of the child may transmit citizenship to the child if he meets all statutory requirements in order to transmit U.S. citizenship to the child at birth, and is therefore recognised as the legal parent of the child from birth.
- A U.S. citizen mother who is the genetic **or** the gestational and legal mother of the child may transmit U.S. citizenship to the child if she meets all statutory requirements in order to transmit U.S. citizenship to the child at birth, and is then recognised as the legal parent of the child at birth. (A gestational mother is the woman who carries and gives birth to the child.)
- A U.S. citizen parent (male or female) who is not genetically or gestationally related to the child may transmit citizenship to the child if they are, at the time of the child's birth, married to a parent who has a genetic or gestational connection to the child, and is therefore recognised as the legal parent of the child at birth. They must also meet all statutory requirements in order to transmit U.S. citizenship to the child at birth.

D.1.2 United Kingdom⁶¹

- A U.K. citizen father who is the proven genetic father of the child may bring the child into the U.K. under the standard immigrations rules. He then makes an application to the courts for a Parental Order within six months of the child's birth, and the Parental Order may be made in respect of the commissioning couple when the couple is married, i.e. both intended parents get full parental rights at this time, although the

61

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/261435/Intercountry-surrogacy-leaflet.pdf

female may not have a genetic connection to the child. If the surrogate is married, the surrogate's husband must consent to this.

- A U.K. citizen mother who has a proven genetic connection with the child, no matter what the surrogate's marital status, is not considered as the child's mother at birth. The surrogate mother, and her husband if she is married, renounces their parental rights and an application is made for entry clearance to bring the child to the U.K. outside the standard immigration rules. If this is granted, the child enters the U.K. and an application is made to the courts for a parental order within six months of the child's birth. A parental order may be made for the commissioning couple (i.e. the woman who provided the egg, and her husband).

D.1.3 Canada⁶²

A Canadian citizen of any gender, including those non-biologically related to the child, may be considered to be the legal parent of the child at birth. The legal parent of the child is the biological or non-biological parent listed on the original birth certificate or birth record(s) issued at the time of the child's birth in the country of birth. Parents who have been recognised as their child's legal parent at birth are eligible to pass down Canadian citizenship, with or without a genetic or gensational link to their children.

For those who are not recognised as the legal parent at birth, but who have claimed a biological connection to the child, DNA testing or medical records may be requested to support their biological connection.

62

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/canadian-citizenship/admininistration/identity/who-parent-purposes-where-assisted-human-reproduction-including-surrogacy-arrangements-involved.html>

D.1.4 Summary of paths to parenthood for international surrogacy arrangements in different jurisdictions

	Ireland	USA	UK	Canada
Recognition of Pre Birth parental rights and obligations for Intended parents	No	No	No	No
Citizenship of child determined at or shortly after birth (via DNA testing)	Yes	Yes	Yes	Yes
Parental rights for intended father at birth	No	Yes	No	Yes
Parental rights for intended mother /second parent at birth	No	Yes	No	Yes
Parental rights for intended father following parental order	Yes	N/A	Yes	N/A
Parental rights for intended mother / second parent following parental order	No ⁶³	N/A	Yes	N/A
Entitlement to maternity leave (or equivalent) for mother / second parent	No	Yes	Yes	Yes

D.2 New York Surrogacy Law

The New York State law is in effect since 2020 and is an example of a legal framework that gives great safeguards to surrogate mothers, a tight regulatory framework on assisted reproduction providers like clinics and agencies.

D.2.1 Surrogate Safeguards

The set of rules and regulations that protect a surrogate are detailed in the Surrogate's Bill of Rights. We are highlighting a few:

- A gestational surrogate has the right to make all health and welfare decisions regarding themselves and their pregnancy.
- A gestational surrogate has the right to legal counsel of their choice, paid for by the intended parent(s).
- A gestational surrogate has the right to a comprehensive health insurance policy that covers preconception care, prenatal care, major medical treatments, hospitalisation and behavioural health care.

⁶³ not entitled to apply for parental order

- A gestational surrogate must be provided a life insurance policy that takes effect before they use any medication or begin any treatment for embryo transfer.
- A gestational surrogate has the right to end a surrogacy agreement before becoming pregnant by means of assisted reproduction

Any AHR clinical provider must follow a set of guidelines for screening surrogate mothers.

D.2.2 Children Safeguards

- Provides for clarity as to who the child's parents are, from the moment of birth.
- Establishes legally-binding financial and parental responsibility for the health and welfare of the child.
- Assures that both parents (where applicable), whether or not married and whether or not they contributed genetic material, are legally and financially responsible for the child, even in the event of the death of one parent or the separation of the parents.

D.2.3 Parentage Process

Intended parents are screened to make sure they are ready to begin the surrogacy process. This includes being physically, mentally and legally capable of parenting and can afford potential costs associated with the surrogacy process.

The Child-Parent Security Act allows for parentage judgements to be issued prior to birth, to be valid at the time the child is born. The parentage order ensures the intended parent's rights to their child after birth, terminating any assumed rights of a gestational carrier or egg/sperm donor.

The Act orders that a copy of the parentage judgement must be released to the Department of Health upon the birth of the child to ensure an accurate birth certificate, listing the intended parents as the parents of the child.

Second-parent adoptions are legal in New York and provide a way for unmarried intended parents to establish parental rights over their child born via surrogacy.

D.2.4 Regulations

All entities that participate in surrogacy and AHR must register and be licensed. Examples of the regulations set in law can be found here:

- [Title: Section 69-11.7 - Surrogacy registry | New York Codes, Rules and Regulations](#)
- [Title: SubPart 69-11 - Surrogacy Programs and Assisted Reproduction Service Providers | New York Codes, Rules and Regulations](#)

E. Addressing the Issues Paper on International Surrogacy for Special Joint Oireachtas Committee for January 2022

(a) Maintain the current legislative provisions which apply to international surrogacy arrangements

This is not an option for reasons outlined in this submission. The children born through surrogacy would remain unprotected and vulnerable.

(b) Provide in Irish law for assignment of parentage in international surrogacy arrangements only where consistent with the requirements for surrogacy in Ireland

As noted in the Issues paper, “While this option is consistent with the proposed prohibition of commercial surrogacy arrangements in Ireland, it is likely that this option would be availed of in very few cases, given the prevalence of commercial surrogacy internationally.” The current problems relating to lack of parentage would continue to persist.

Our submission illustrates where we can be consistent with the majority of requirements for surrogacy in Ireland aside from the issue of commercial payment. It should be noted that there is no agreed definition as to what constitutes commercial surrogacy. As noted earlier in this submission, whether surrogacy arrangements occur domestically or internationally they will involve paying legal and medical fees to either legal counsel or private medical clinics.

Therefore, the only difference is the payment to the surrogate. A form of exploitation is to not pay the surrogate but conversely paying the surrogate a fee that unduly influences their decision to undertake surrogacy is also considered exploitative. In our opinion raising awareness with intended parents, counselling, independent counsel for the surrogate and direct contract with the surrogate to ensure informed consent can alleviate these concerns and ensure an ethical approach and appropriate safeguards.

(c) Provide in Irish law for assignment of parentage in international surrogacy arrangements

This proposal in principle would be the closest to our proposal however this option outlines a post-birth process whereby intending parents will be eligible to apply to the courts for a parental order to become the child’s legal parents. We would argue that the parental rights being assigned on birth as appropriate as that is the intention of all parties from the outset, to maintain a surrogate’s right to bodily autonomy and to protect the child’s rights and protections to a legal link with their parents on birth.

This option also suggests that where legal frameworks for surrogacy provide appropriate standards of protection that surrogacy arrangements undertaken in designated countries would be eligible for recognition under Irish law and intending parents will be eligible to apply to the courts for a parental order to become the child’s legal parents

We would argue that this designated country system could be beneficial and encourage countries where there are widespread safeguards in their National laws but would argue that where the arrangement does not occur in a designated country then the surrogacy arrangement could be decided on a case by case basis as per our proposal by the proposed AHHRA.

(d) A reduced waiting period for applying for guardianship for the second intending parent in surrogacy cases

This option is inappropriate as from our experience the Fathers declaration of Parentage can take many years to be granted due to court delays. Guardianship status of the second intending parent needs the permission of the Father who cannot grant this if he doesn't have the Declaration of Parentage. Children will remain unprotected and vulnerable and need legal parents from birth.

(e) Step-parent adoption

As outlined in our submission section "3.2.3 Arguments against adoption as a route to parenthood" we have clearly demonstrated how implementing existing family law procedures are not appropriate for dealing with international surrogacy arrangements.

(f) A route to legal parentage for an intending mother who is also the genetic mother

We agree with the assertion illustrated by the issues paper that this would be a difficult matter to provide for.

(g) Surrogacy in Ireland

This option addresses the option of outright prohibiting international surrogacy arrangements in Ireland. There are pertinent points to address in this option.

1. The assertion that "Government policy to prohibit commercial surrogacy is consistent with similar policies internationally" and "If commercial surrogacy were to be allowed in the State, Ireland would be an outlier in an EU context and internationally," are misleading assertions as stated earlier in our submission the European Parliament recognises the complexity of the issues across the EU.

"The EU landscape is extremely varied when it comes to surrogacy policies and legislation. Despite general similarities related to whether states adopt prohibiting or permissive policies, each case is unique and any attempt at generalisation would

obscure significant aspects of diverse legislative and policy itineraries.It is impossible to indicate a particular legal trend across the EU.”⁶⁴

2. It is important to bear in mind that even where surrogacy is prohibited the European Court of Human Rights has granted parentage to parents who have challenged their home countries' lack of legislation or refusal to create/recognise their legal parenthood.
3. The concern of a double standard between altruistic domestic surrogacy and commercial international surrogacy however as we have discussed in option (b) There is no agreed definition as to what constitutes commercial surrogacy. As noted earlier in this submission, whether surrogacy arrangements occur domestically or internationally they will involve paying legal and medical fees to either legal counsel or private medical clinics. Therefore, the only difference is the payment to the surrogate. A form of exploitation is to not pay the surrogate but conversely paying the surrogate a fee that unduly influences their decision to undertake surrogacy is also considered exploitative. In our opinion raising awareness with intended parents, counselling, independent counsel for the surrogate and direct contract with the surrogate to ensure informed consent can alleviate these concerns and ensure an ethical approach and appropriate safeguards.

⁶⁴ Brunet,L, Carruthers,J, Davaki,K, King,D, Marzo,C, McCandless,J, A Comparative Study on the Regime of Surrogacy in EU Member States, Policy Department C: Citizens' Rights and Constitutional Affairs, European Parliament, 2013