

Committee on International Surrogacy
Opening Statement by Annette Hickey, Solicitor

Thursday, 9th June 2022

Chair, members of the Committee I want to thank you for inviting me to attend today's committee meeting.

My name is Annette Hickey, I work as a solicitor with Poe Kiely Hogan Lanigan solicitors in Kilkenny. Since 2013 I have specialised in surrogacy law. Over the last decade I have been privileged to support Irish intended parents navigate the complex, challenging journey of pursuing international surrogacy

From my experiences working with these intended parents, the journey to parenthood through surrogacy is a huge emotional, psychological, and financial undertaking. Made all the more challenging by the lack of legal certainty and structure which currently exists.

The undeniable reality is that Irish intended parents are continuing and will continue to pursue international surrogacy. In our practice approximately 2% of intended parents are pursuing domestic surrogacy, while 98% are pursuing international surrogacy.

In my briefing document I have included an overview of a surrogacy journey of an Irish intended parent with their surrogacy solicitor. I have also included details of the current procedure, including the Court procedure after the birth of the baby.

All of us here want Irish international surrogacy to be of the highest possible ethical standard. My fear is that if we allow the Assisted Human Reproduction Bill to go ahead without including a regulated statutory framework for international surrogacy in the future Irish children may be born into a stateless legal limbo, stranded in the country of birth with no nationality. We cannot run that risk. It would lead to a crisis that would paint Ireland in the worst light internationally. The failure to use this Bill to provide that legal certainty would be regretted as a missed opportunity by future Governments, Ministers, officials and the public.

As a solicitor working in this area, my recommendations for the Committee are the following:

1. The inclusion of a regulated statutory framework for international surrogacy in the Assisted Human Reproduction Bill.

2. The inclusion of retrospective recognition of parentage in the Assisted Human Reproduction Bill for all existing children born through surrogacy, (both domestic and international) at the commencement date of this legislation.
3. The inclusion of an obligation on intended parents in an international surrogacy arrangement to apply for pre-approval from the Regulatory Authority before they start their surrogacy journey, in a similar way provided for in the Assisted Human Reproduction Bill for intended parents in a domestic surrogacy arrangement. Once the intended parents comply with the list of proofs required by the Regulatory Authority they receive a pre-approval certificate. This ensures that before any assisted human reproduction treatment commences all parties are complying with the prescribed criteria, all safeguards have been met and the surrogacy arrangement meets ethical standards. If the Regulatory Authority do not grant a pre-approval certificate the intended parents have the liberty to appeal that decision to the High Court.
4. That the Guardianship of Infants Act 1964 as amended be further amended to provide that where intended parents have received pre approval of their surrogacy arrangement from the Regulatory Authority they shall both automatically be guardians of the child upon birth, this guardianship to cease upon the granting of Parental Orders.
5. That upon return to Ireland with their child, once the intended parents comply with the post birth list of proofs which includes the certificate of pre-approval from the Regulatory Authority, Parental Orders for both parents will be granted by the Court. This may be a function of the Regulatory Authority in due course following future reviews and post enactment scrutiny of the implementation of the legislation.
6. That when an application for the child's Irish PPS number is made by the intended parents the Department of Social Protection shall give notice in writing to the Regulatory Authority of the identifying information. This would be similar to the notice provision for treatment providers as detailed at Section 59(4) of the Assisted Human Reproduction Bill.
7. Assisted reproduction treatment is a continuing, developing and evolving area. There will continue to be advances in this field. The Assisted Human

Reproduction Bill must include provisions for post enactment scrutiny of the implementation of the legislation. I support the recommendation of the Joint Health Committee in 2019 and that a review of the operation of the legislation and a related report would be brought to the Houses of the Oireachtas and that an ethics committee be established as part of the oversight and governance by the Board of the Regulatory Authority. As a practising solicitor working in this area I would suggest that perhaps 24 months would allow the legislation a period of time in operation to allow those working with the law to identify any gaps before the review commenced. There is precedent for this in how the Gender Recognition Act was reviewed. I would also ask that such a review be undertaken by a multi-disciplinary review group, as was the case with the Gender Recognition Act, with representatives of the Departments involved, intended parents, surrogate mothers, children's rights advocates and legal practitioners in the area.

Finally, it would be remiss of me today not to acknowledge and thank most sincerely Minister Coveney, officials from the Department of Foreign Affairs and all of the politicians from across the political divide who helped and supported Irish intended parents whose babies were due to be born in Ukraine at the outbreak of the war. I would like to especially thank Senator Mary Seery Kearney who provided tremendous support, guidance, help and advice to those intended parents. Many people worked incredibly hard behind the scenes to ensure that those Irish babies would be safe and protected.

The commitment shown by our Government to protect those Irish babies was an example to the world. Our Government really stood beside and supported our intended parents and their children. All of those children are now safely home in Ireland, but when they arrived home, they entered a legally vulnerable limbo. I am confident, trust and believe that our Government and you our elected public representatives will put the best interests and welfare of children first, that Minister Donnelly will take the opportunity that currently exists to include international surrogacy in the Assisted Human Reproduction Bill and that our Government will stand beside, support and protect Irish children.