**Questionnaire on Safeguards for the protection of the rights of children born from surrogacy arrangements**

**Ireland’s Response**

**Identity, origins and parentage**

**1. Describe safeguards protecting identity rights (CRC art. 7 and 8) that are currently being implemented in your State. Safeguards include laws, judicial and administrative procedures, enforcement actions, and other practices intended to prevent or remedy violations of human rights norms. Note whether and how such general safeguards protecting identity rights apply in the context of surrogacy arrangements.**

In the case of surrogacy arrangements, the biological father of the child may apply to court under section 35 of the Status of Children Act 1987 for a declaration of parentage of the child born through surrogacy. This vindicates the child’s right to his/her identity.

The relevant provisions of section 35 of the Status of Children Act 1987, as amended by section 80 of the Children and Family Relationships Act 2015, are as follows:

(1) A person specified in subsection (1A) of this section may apply to the Court for a declaration under this section that—

(a) a person named in the application is or is not the mother,

(b) a person named in the application is or is not the father or second parent, or

(c) 2 persons named in the application are or are not the parents,

of a person (other than a person who is an adopted person) named in the application (in this section referred to as the ‘person concerned’).

(1A) An application for a declaration under this section may be made, in relation to a person concerned, by—

(a) the person concerned,

(b) any person seeking a declaration that he or she is the mother, father or second parent of the person concerned, or

(c) any person seeking a declaration that he or she is not the mother, father or second parent of the person concerned.

(8) Where on an application under subsection (1) of this section it is proved on the balance of probabilities that—

(a) a person named in the application is or is not the mother,

(b) a person so named is or is not the father or second parent, or

(c) persons so named are or are not the parents,

of the person concerned, the Court shall make the declaration accordingly.

(Note: The references in section 35 to “second parent” have not yet been brought into operation.)

**2.** **Describe safeguards protecting the access to origins (****CRC art. 7 and 8) that are currently being implemented in your State. Note whether and how such general safeguards protecting the access to origins apply in the context of surrogacy arrangements.**

Currently there is no specific regulation in Ireland dealing with surrogacy. In October 2017, the Government approved the drafting of a Bill on assisted human reproduction (AHR) and associated areas of research, based on the published General Scheme of the Assisted Human Reproduction Bill, which includes provisions relating to surrogacy.

The aim of the AHR legislation is to promote and ensure the health and safety of parents, others involved in the process (such as donors and surrogate mothers) and, most importantly, the children who will be born as a result of AHR. Consideration of the welfare and best interests of children born through AHR is a key principle underpinning the Scheme.

The specific provisions relating to surrogacy are outlined in Part 6 of the General Scheme. These provisions outline the specific conditions under which surrogacy in Ireland will be permitted, including a requirement for all surrogacy agreements to be pre-authorised by the AHR Regulatory Authority, the establishment of which the Assisted Human Reproduction Bill will provide for. The Scheme also provides for the AHR Regulatory Authority to establish and maintain a National Surrogacy Register. For each child born through surrogacy in Ireland, an entry will be made in the National Surrogacy Register containing specific information (e.g., contact details) about the child, the surrogate, each intending parent, and any donor who provided a gamete. Once that child has reached the age of 18 years, he or she may request the Regulatory Authority to provide him or her with the information recorded in the Register in respect of the surrogate, an intending parent or a gamete donor.

**3. Describe how the right to access origins is balanced with the right to privacy of parents and gamete donors. Indicate specifically how the best interests of the child are factored in.**

The Adoption (Information and Tracing) Bill 2016 has been developed by the Department of Children and Youth Affairs. This bill provides for a scheme whereby adoption information, including information required to obtain a birth certificate, may be provided to an adopted person subject to certain conditions. The right to privacy of the birth parents is considered, and the Bill allows for the birth parent to make a case for the non-release of this information in certain circumstances.

**4. Describe safeguards protecting the family environment (CRC art. 7, 8, 9, 10, 20) that are currently being implemented in your State. Note whether and how such general safeguards protecting the family environment apply in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.**

Article 42A.4 of the Constitution requires that provision be made by law that in the resolution of all proceedings concerning the guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration. It also requires that provision be made by law for securing, as far as practicable, that in all such proceedings in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

The Children and Family Relationships Act 2015 contains new provisions regarding the best interests of children in family law proceedings which have been in operation since 18 January 2016.

Section 3 of the Guardianship of Infants Act 1964, as amended by section 45 of the 2015 Act, provides that the best interests of the child shall be the paramount consideration for the court in proceedings where the guardianship, custody or upbringing of, or access to, a child is in question.

The best interests of a child are to be determined in accordance with the new Part V of the 1964 Act, inserted by section 63 of the 2015 Act. Part V, entitled “Best Interests of the Child”, contains two sections.

Section 31 sets out an extensive list of factors and circumstances to be taken into account by a court when determining the best interests of a child. These include the views of the child that are ascertainable (whether in accordance with section 32 or otherwise). The court can ascertain the views of the child in person or through an expert. Section 31(6) provides that in obtaining the ascertainable views of a child, the court shall facilitate the free expression by the child of those views and endeavour to ensure that any views expressed by the child are not expressed as a result of undue influence, and may make an order under section 32.

Section 32 of the Children and Family Relationships Act 2015 facilitates the hearing of the voice of the child by enabling the court to appoint an expert to determine and convey the child’s views to the court, so that the child’s voice can be heard in the proceedings. These provisions allow the courts to take account of the evolving capacity of children and also give the courts the flexibility to ensure that all children’s views can be heard.

These provisions would apply in the context of surrogacy arrangements where the biological father applies to court for custody and guardianship of the child born through surrogacy.

**5. Provide information on existing laws, regulations or practices for the establishment, recognition and contestation of legal parentage. Indicate specifically how the best interests of the child are factored in.**

The relevant provisions of section 35 of the Status of Children Act 1987, as amended by section 80 of the Children and Family Relationships Act 2015, are as follows:

(1) A person specified in subsection (1A) of this section may apply to the Court for a declaration under this section that—

(a) a person named in the application is or is not the mother,

(b) a person named in the application is or is not the father or second parent, or

(c) 2 persons named in the application are or are not the parents,

of a person (other than a person who is an adopted person) named in the application (in this section referred to as the ‘person concerned’).

(1A) An application for a declaration under this section may be made, in relation to a person concerned, by—

(a) the person concerned,

(b) any person seeking a declaration that he or she is the mother, father or second parent of the person concerned, or

(c) any person seeking a declaration that he or she is not the mother, father or second parent of the person concerned.

(8) Where on an application under subsection (1) of this section it is proved on the balance of probabilities that—

(a) a person named in the application is or is not the mother,

(b) a person so named is or is not the father or second parent, or

(c) persons so named are or are not the parents,

of the person concerned, the Court shall make the declaration accordingly.

(Note: The references in section 35 to “second parent” have not yet been brought into operation.)

Where the parentage of a child is being contested, the court may order that DNA tests are used to establish parentage. Section 38 of the Status of Children Act 1987, as amended by section 80 of the Children and Family Relationships Act 2015, provides that:

(1) In any civil proceedings before a court in which the parentage of any person is in question, the court may, either of its own motion or on an application by any party to the proceedings, give a direction for the use of DNA tests for the purpose of assisting the court to determine whether a person named in the application or a party to the proceedings, as the case may be, is or is not a parent of the person whose parentage is in question, and for the taking, within a period to be specified in the direction, of bodily samples from the person whose parentage is so questioned, from any person alleged to be a parent of that person and from any other person who is a party to the proceedings, or from any of those persons.

**6. Specify how the establishment of parentage occurs in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.**

In the case of surrogacy arrangements, the birth mother is deemed to be the mother of the child, even if a donor egg has been used. There is a rebuttable presumption that her husband is the father of the child. However, the biological father of the child may apply to court under section 35 of the Status of Children Act 1987 for a declaration of parentage of the child born through surrogacy. This vindicates the child’s right to his/her identity.

The relevant provisions of section 35 of the Status of Children Act 1987, as amended by section 80 of the Children and Family Relationships Act 2015, are as follows:

(1) A person specified in subsection (1A) of this section may apply to the Court for a declaration under this section that—

(a) a person named in the application is or is not the mother,

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of a person (other than a person who is an adopted person) named in the application (in this section referred to as the ‘person concerned’).

(1A) An application for a declaration under this section may be made, in relation to a person concerned, by—

(a) the person concerned,

(b) any person seeking a declaration that he or she is the mother, father or second parent of the person concerned, or

(c) any person seeking a declaration that he or she is not the mother, father or second parent of the person concerned.

(8) Where on an application under subsection (1) of this section it is proved on the balance of probabilities that—

(a) a person named in the application is or is not the mother,

(b) a person so named is or is not the father or second parent, or

(c) persons so named are or are not the parents,

of the person concerned, the Court shall make the declaration accordingly.

(Note: The references in section 35 to “second parent” have not yet been brought into operation.)

**Sale of children**

**1. Provide information on the laws prohibiting the sale and trafficking of children as well as corresponding implementation measures. Note whether and how such general safeguards against the sale and trafficking of children apply in the context of surrogacy arrangements.**

The Adoption Act 2010 gives force of law to the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption signed at the Hague on 29 May 1993 (the Hague Convention). While the Act makes no reference to surrogacy, it does contain provisions for the protections of children, such as the prohibition on; payments in contemplation of adoption, advertisements for adoption, and private placements of children for adoption. These apply to all applications for adoption orders, including where the child is born as a result of surrogacy.

* Describe any safeguards against the sale of children and child trafficking specifically created for surrogacy arrangements.
* Comment on the adequacy of current safeguards against the sale of children and child trafficking in the context of surrogacy arrangements.
* Note situations and provide data, if any, where a lack of safeguards have allowed or unduly risked violations of these norms in the context of surrogacy arrangements.
* Note the number and types of cases where safeguards against the sale of children have been used in criminal cases in the context of surrogacy arrangements.

**Data**

**1. Indicate if surrogacy arrangements are legal in your State and if so how many occur every year.**

There is currently no specific legislation pertaining to the practice of surrogacy in Ireland.  However, it is intended to regulate surrogacy as part of draft legislation on assisted human reproduction, which is published on the website of the Department of Health at: <https://health.gov.ie/wp-content/uploads/2017/10/AHR-general-scheme-with-cover.pdf>

The majority of surrogacies dealt with in Ireland involve parties travelling abroad. Government guidelines were issued in 2012 covering surrogacy arrangements occurring outside the State where it is intended to bring the child into Ireland entitled “Citizenship, parentage, guardianship and travel document issues in relation to children born as a result of surrogacy arrangements entered into outside the State”. This document is intended to provide guidance as to the principles that will be applied by the Irish authorities when considering whether a child is an Irish citizen, and who the child’s legal parents and guardians are, for the purposes of dealing with applications for travel documents on behalf of children born outside the State as a result of surrogacy arrangements.

The document can be accessed here: <http://www.justice.ie/en/JELR/20120221%20Guidance%20Document.pdf/Files/20120221%20Guidance%20Document.pdf>

Entitlement to Irish citizenship for a child born outside the State is based on Irish parentage, although the birth mother is recognised as the legal mother for this purpose –she is usually a non-Irish citizen and therefore citizenship is typically derived through the child’s father. A genetic link to the intending father (an Irish citizen), established by DNA test, permits the child to travel to Ireland on foot of an undertaking by him to regularise the child’s position by applications to Court for a declaration of parentage and guardianship pursuant to domestic legislation.

The Civil Registration Act 2004 (s.26) provides a limited basis for the registration in Ireland of foreign births. The birth of a child outside the State to an Irish citizen, domiciled in Ireland, may be registered in Ireland where it can be established that there was no birth registration system in the place where the birth occurred, or the system in place did not apply to the child or it is not possible to obtain copies of or extracts from civil records of the birth. Provision is also made for registration of children of Irish citizens born on foreign ships or aircraft travelling to or from ports in Ireland and for the children of police and members of the Defence Forces born outside the State during service abroad.

Ireland is also a contracting party to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. A birth certificate produced pursuant to that Convention is not evidence of the truth of its contents.

2. For countries where surrogacy is permitted, please indicate the number of cases, if any, of contract breaches or of refusal to transfer the child.

3. Indicate if intermediaries facilitating surrogacy arrangements must be registered and, if so, how many are registered in your State.

4. For countries where surrogacy is prohibited, please indicate the number of cases, on an annual basis, where nationals have made a surrogacy arrangement abroad and have returned to their country of origin with the surrogate-born child.

5. Following on the previous question, please indicate under which circumstances authorities have allowed their nationals to bring the child born from a surrogacy arrangement back into their country of origin and if so please indicate which ones (e.g. domestic parenting orders, judgements, best interests of the child determinations, etc.), and how often they have been used.

6. Lastly, in the same context, please indicate how many cases have led to the non-recognition of parentage orders established in the State where the surrogacy arrangement occurred.