

# **General Scheme of the Children and Family Relationships Bill**

## **Summary of Provisions**

The aim of the General Scheme of a Children and Family Relationships Bill is to put in place a legal architecture to underpin diverse parenting situations. The Scheme was originally published for consultation on 30 January 2014. It has been modified in response to issues raised during the consultation process, including by the Joint Oireachtas Committee on Justice, Defence and Equality and by the Ombudsman for Children. The revised Scheme was approved by the Government on 23 September and will now begin to be drafted formally as a Bill.

The General Scheme proposes, in summary to:

- modernise the law regarding the parental rights of children living in diverse family forms;
- establish that the best interests of the child are paramount in decisions on custody, guardianship and access;
- set out how parentage is to be assigned in cases of assisted reproduction (the child's parent will be the birth mother or biological parent or married to / civil partnered to / cohabiting with the child's biological or birth parent);
- extend automatic guardianship to non-marital fathers who have lived with the child's mother for at least 12 months, including 3 months following the child's birth;
- enable civil partnered or cohabiting couples to be eligible jointly to adopt a child;
- allow civil partners, step-parents, those cohabiting with the biological parent for 3 years and those acting in loco parentis for a specified period (a minimum of 12 months where no other guardian is available) to apply for guardianship and custody;
- enable members of the wider family to apply for access to the child;
- put in place a series of provisions on making parenting work;
- impose a maintenance liability for civil partners and cohabiting partners in respect of a dependent child of the family, depending on the nature and duration of the relationship between child and civil partner / cohabiting partner.

### **Key changes from originally published General Scheme**

- Provisions on surrogacy have been removed. It was considered particularly problematic to finalise provisions on surrogacy in advance of the Supreme Court's ruling on the MR & Ors - v- An tArd-Chláraitheoir case given the uncertainty on

the balance of constitutional rights between a birth mother and a genetic mother and because there are very critical issues needing to be resolved, relating for example to how the law deals with commercial surrogacies and to the rights of children born through surrogacies.

- A new Part has been included to preserve a child's right to know his or her identity: "Safeguards to Preserve the Child's Identity in Cases of Assisted Reproduction using Donor Gametes". This was recommended by the Joint Oireachtas Committee and by the Ombudsman for Children. The new provisions create a national donor-conceived person register into which hospitals, clinics and medical services will be obliged to provide information. Future use of anonymous donor eggs or sperm will be prohibited.
- Adoption provisions have been revised to enable cohabiting couples as well as civil partners to be eligible to apply to adopt jointly. It is proposed that cohabiting couples must be living together for at least 3 years to be eligible to apply for a declaration of suitability to adopt.
- The requirement that an unmarried father has to cohabit with the child's mother for at least 12 months prior to the child's birth to qualify for automatic guardianship has been changed. The revised provision specifies that an unmarried father will automatically become guardian of his child if he lives with the child's mother for at least 12 months, including 3 months following the child's birth. This provision will enable a larger number of unmarried fathers automatically to become guardians of their children than under current provisions and recognises the commitment of a father to his child in the form of cohabitation in a family unit with him / her, following the child's birth.
- The provisions on guardianship have been modified to mitigate risks of undermining the guardianship rights of a parent. Guardians who are not parents will be able to take day-to-day decisions on behalf of a child but will not be permitted to take decisions regarding the child's place of residence, education or religious upbringing, unless the court specifically confers those powers in the best interests of the child.
- Provisions allowing a guardian or any person to apply to court to review a 'significant decision' of a guardian have been removed to avoid allowing a third party to intrude unreasonably on the rights of families and to avoid conflicting with the public law child protection remit of the Child Care Acts.
- Certain penalties for non-compliance with custody and access orders have been removed. The focus instead is on more targeted measures such as requiring a parent persistently violating a custody or access order to participate in a post-separation parenting programme or to give the other parent compensatory time with the child or to refund the other parent's expenses.
- A new category of "child's views expert" is proposed. This expert will have the role of ascertaining a child's views, where necessary, in proceedings on custody and access and of assessing whether or not a child is of sufficient age and maturity to be capable of forming views on the matters being determined.