

**Joint Committee on International Surrogacy**

**Thursday, 28 April 2022**

**Department of Foreign Affairs Opening Statement**

Good morning Members, my name is Siobhan Byrne and I am the Director of the Passport Service at the Department of Foreign Affairs. I am accompanied here today by my colleagues, Una Fannon, who is Head of the Policy and Legal unit of the Passport Service and, Trevor Redmond, Legal Counsellor in the Department.

The Department of Foreign Affairs welcomes the opportunity to address the Joint Committee this morning.

The Department receives a significant and increasing number of requests for passport and consular services from Irish citizens who have entered into international surrogacy arrangements.

The Department is often the first state body encountered by Irish intending parents in their surrogacy journey as they seek to return to Ireland with a child following its birth overseas. The role of the Department in these cases concerns the processing of applications for travel documents for children born through international surrogacy arrangements and providing consular assistance as necessary in the country of birth.

Our Embassies and Consulates provide consular assistance and are the main points of contact from this Department for Irish intending parents who are applying for an Emergency Travel Certificate (ETC) for a child born abroad through international surrogacy. The Passport Service in Dublin prioritises the

review of the ETC application and approves the issuance of an ETC, which is then issued by the local Embassy or Consulate.

The Minister for Foreign Affairs is responsible for the issue of passports and other travel documents to Irish citizens under the Passports Act 2008, as amended. The 2008 Act clearly sets out the criteria for issuance of a passport to a child including that the child must be an Irish citizen and that the guardian(s) of the child consent to the issue of the passport, subject to limited exceptions. In addition, the 2008 Act in section 15 specifically provides for the issuance of ETCs.

An ETC is not a passport. Rather it is a temporary travel document for one-time use. It is valid for such period as the Minister considers appropriate to enable the person to undertake the journey in respect of which it is issued (generally, 72 hours). An ETC includes a photo of the child, their details, and the details of their intended travel.

In the absence of a specific legal framework for children born through international surrogacy, a Guidance Document published by the Department of Justice in 2012 provides guidance as to the principles that will be applied by the Irish authorities when considering (i) whether a child is an Irish citizen, and (ii) who the child's legal parents and guardians are, for the purposes of dealing with applications for travel documents on behalf of children born overseas through surrogacy arrangements. The Guidance Document was agreed by an Inter-Departmental Group on Surrogacy, comprising the Departments of Justice, Health, Children, Foreign Affairs, and Social Protection, and the Office of the Attorney General. Amongst other things, the Guidance Document outlines the information required in order for a travel document to issue for the child.

In applying the Department of Justice Guidance Document and the Passports Act 2008, as amended, an approach to the processing of ETC applications has developed in consultation with the Inter-Departmental Group on Surrogacy. The following is the general approach.

In order for an ETC to issue for a child born through international surrogacy, the Minister must be satisfied that there is reasonable cause to believe that the child is or may be an Irish citizen. For a child born outside Ireland through surrogacy, this is typically based on their genetic link to an Irish citizen father. In addition, the ETC application must be made by a parent or guardian of the child and the guardian(s) of the child must consent to the issuance of the travel document, subject to limited exceptions. When a child is born through a surrogacy arrangement, under Irish law, the surrogate mother is the legal mother of the child. If she is married, then the surrogate mother's husband is presumed by law to be the father of the child. The husband will also, along with the surrogate mother, be the joint guardian of the child.

The documents required in such ETC applications relate to:

- The child;
- The Irish citizen genetic father;
- The surrogate mother;
- If the surrogate mother is married, her husband; and
- DNA evidence from a satisfactory source demonstrating that the Irish citizen intended father is the genetic father of the child.

A list of the documentary requirements is included in the briefing document shared with the Committee and we would be happy to answer any questions you might have on those requirements.

A number of key documents include:

- The child's birth certificate.
- A written undertaking from the Irish intended father that states that he will notify his local health centre of the child's presence within two working days of their arrival in Ireland; and that he will apply to the Irish courts for a declaration of parentage and a guardianship order in relation to the child.
- An affidavit sworn by the surrogate mother in her native language consenting to the taking of DNA samples; to the issuing of a travel document for the child; to the genetic father being made a guardian. The affidavit should also state her marital status and confirmation that she has received independent legal advice.

With regard to the verification of documents, public documents issued in the country where the birth takes place must have an apostille certificate. Affidavits and official documents that are provided in a language other than English, must be accompanied by a notarised translation with an apostille certificate.

An apostille is an official government-issued certificate added to documents verifying the signature and/or seal of a public officer on a public document. This means that the document will be recognised and accepted when presented in another country which has acceded to The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

An apostille is issued by the designated competent authority of the state from which the document originates. In Ireland, the Department of Foreign Affairs is responsible for issuing apostille certificates on Irish public documents.

The requirement for documents and translations to be apostilled in the Emergency Travel Certificate process allows for further verification that the documents are genuine and means that the Passport Service can be satisfied that they are authentic.

Given the number of documents required, the process of gathering the documents can be lengthy. The Passport Service takes very seriously its obligation to uphold the integrity of the process in order to protect all parties, including the child and the surrogate mother. The rights of the child are of paramount consideration.

Furthermore, our officials in overseas missions are obliged to comply with local law as well as with Irish law. The Department will not facilitate the unlawful movement of children across national boundaries. In jurisdictions where an international surrogacy case has not been encountered by the Department before, the Department seeks local legal advice to seek to ensure that it acts in compliance with local law.

This means that the ETC application process can be complex and time-consuming. The Department of Justice Guidance Document flags that commissioning adults intending to apply for a travel document for a child should plan for the possibility of the child having to remain in the country of birth until it has been established whether a travel document can be issued. While we endeavour to deal with all applications as promptly and efficiently as possible, the Department can give no guarantees, before the birth of a child, that they will be regarded as an Irish citizen or that the intended father will be regarded as a parent or guardian of that child, and, therefore, that a passport or other travel document can be provided for the child.

When intending parents contact us in advance of a child's birth we direct them to the Department of Justice Guidance Document and advise them to ensure that they have both Irish and local legal advice. We also advise them of the documentary requirements for a travel document application,

and of the need to remain in the country of birth until it has been established whether a travel document can be issued.

The Department advises the HSE when the written undertakings as set out in the Department of Justice Guidance Document have been given by the intended father and notifies border control that an ETC has been issued in respect of a child travelling to Ireland.

When the Irish court proceedings referenced in the intended father's written undertaking are complete, a court order is typically issued which relates to a declaration of parentage, guardianship and custody. The court order will also typically dispense with the consent of the surrogate mother (and where applicable, her husband) to the issuing of a passport to the child and to the issuing of all travel documentation until the child reaches majority. At this point, the father can submit a passport application for their child to the Passport Service.

The Department welcomes the work of this Committee and hopes that its recommendations will bring greater clarity and certainty to the current travel document application process for children born outside the State through surrogacy, as well as to Irish intending parents. In the meantime, we will continue to assist families going through this process.

We would welcome any questions you might have.

Thank you.