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for children

Oireachtas Joint Committee on International Surrogacy

Opening Statement by the Ombudsman for Children, Dr Niall Muldoon

Thursday, 12th May 2022

I would like to thank the Joint Committee on International Surrogacy for the invitation to appear today to discuss international surrogacy, including the right of children born through surrogacy to preserve their identity.

As members of the Committee are aware, the Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002. Under the 2002 Act, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

The OCO has previously expressed the view, and continues to hold the view, that provision should be made in law for the rights of all children in Ireland born through surrogacy.

The Health (Assisted Human Reproduction) Bill 2022 presents a significant opportunity to provide clarity for children who will be, and have been, born through domestic and international surrogacy.

However, as outlined in the OCO's observations, we are of the view that the Bill as it stands does not have sufficient regard to children's rights, and that a number of issues need to be considered further in order to ensure the Bill is child-centred and rights-based.

Surrogacy arrangements not addressed in the Health (Assisted Human Reproduction) Bill 2022

Ireland has an obligation under international law to respect, protect and fulfil the rights set out in the UN Convention on the Rights of the Child (CRC) for all children in Ireland born through domestic or international surrogacy.

In this regard, we are concerned about the absence of provision in the Bill for children born through international surrogacy and the Bill's silence as regards children already born through a domestic or international surrogacy arrangement.

The OCO acknowledges concerns that a 'double standard' may arise if parental orders may be granted in respect of a child born through commercial surrogacy abroad. The objective of maintaining the integrity of a domestic prohibition of commercial surrogacy is understandable. However, categorically excluding the possibility of recognising the relationship between a child born

through international surrogacy and their intending parents will have immediate and grave consequences for the child, and is contrary to the CRC and the European Convention on Human Rights.

We therefore recommend that the Bill should:

- include provision for children born through international surrogacy arrangements; and
- include provision for retrospective assignment of parentage and parental responsibility in both domestic and international surrogacy arrangements.

Children's right to have their best interests regarded as the paramount consideration

Article 3 of the CRC requires that the best interests of the child must be treated as a primary consideration in all decisions relating to a surrogacy arrangement that affects the child.

Though the best interests of the child principle is partially reflected in some of the Part 7 provisions of the Bill concerning surrogacy, we believe that these provisions can be strengthened to fully align the Bill with the principle set out in the CRC and the standard set out in Article 42A of the Constitution of Ireland.

Therefore, we recommend that the Bill explicitly provides that all decisions made in relation to a surrogacy arrangement that affect the child must have regard to the best interests of the child as the paramount consideration.

Children's right to access information relating to their identity

We welcome that the Bill provides for the recording of information relating to the origins of children born through domestic surrogacy on a National Surrogacy Register and that it allows children aged 16 and 17 to apply to obtain such information.

However, we believe that further attention needs to be given to the provisions relating to children's access to information, with a view to fully aligning the Bill with children's right to preserve their identity under Article 8 of the CRC and with an approach that respects the evolving capacities of children.

In this regard, we encourage consideration to be given to amending the Bill to:

- provide that information on the origins of children born through international surrogacy and children already born through surrogacy must be recorded; and
- provide that applications to obtain identifying and non-identifying information on origins may be made by a child or on behalf of a child by the child's parent(s) or guardian(s), without limitations as to the child's age.

Thank you again for your invitation to meet you today and we are happy to take questions.