



# UL ENGAGE

## Community Briefing

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**Information booklet on Donor-Assisted Human Reproduction (DAHR) and the Law in Ireland**

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# THE BRIEF

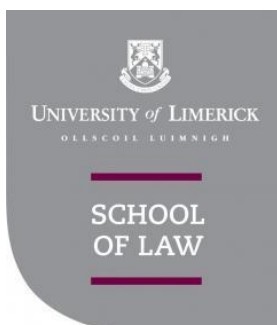
The aim of this UL Engage Project was to produce a plain-English information booklet explaining the provisions of the Children and Family Relationships Act 2015 that relate to donor-assisted human reproduction (DAHR) in Ireland. The resulting booklet is designed to help stakeholders to understand the main legal changes introduced by the 2015 Act and to explain how the Act will apply to existing and prospective parents, gamete donors and donor-conceived children once it is commenced.

The information booklet produced as part of this project will assist in explaining the legal provisions relating to DAHR to a non-legal audience. Almost 40 sections of the 2015 Act apply to DAHR making it difficult to navigate. The information booklet provides information for existing and intending parents, gamete donors and donor-conceived children helping them to understand the main legal changes introduced by the 2015 Act

Eight final-year Law Plus students worked together to produce this information booklet during the 2016/17 Spring semester. The students researched the law relating to DAHR and used their knowledge to produce the information booklet under the supervision of a lecturer from the School of Law.

This project was completed in collaboration with the National Infertility Support and Information Group (NISIG).

**Please note that this information booklet is for information purposes only and does not represent legal advice.**



## PROJECT PARTNERS

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The National Infertility Support and Information Group (NISIG) was the community partner for this project. NISIG is a voluntary organisation, established in 1996, to provide practical supports and to advocate on behalf of those who experience reproductive challenges and their families. NISIG runs a support number, which is available 24 hours a day, and holds support group meetings throughout Ireland. NISIG also engages with the public through a quarterly newsletter that is distributed to members, fertility clinics and health and legal professionals.

The School of Law, University of Limerick, facilitated the creation of this project. Eight final-year Law Plus students worked together to produce the information booklet during the 2016/17 Spring semester under the supervision of a lecturer from the School of Law. The following students were involved in the creation of the information booklet: Meadh Egan, Lauren Heffernan, Rosaleen Keating, Claire Kelly, Doireann McDonagh, Maegan McNamara, Honorata Ochowiak, and Ellen Ryan. The students were supervised by Dr Lydia Bracken.

# PROJECT RATIONALE

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The principal objective of this project was to produce a plain-English information booklet explaining the provisions of the Children and Family Relationships Act 2015 that relate to donor-assisted to a non-legal audience. The information booklet will provide information for various stakeholders in the DAHR process namely existing and prospective intending parents, gamete donors and donor-conceived children, helping them to understand the main legal changes introduced by the 2015 Act.

As part of this project, students engaged in both independent and collaborative research, thereby enhancing their capacity for critical thought and evaluation. The project also allowed them to hone their research and communication skills and to use their research to benefit community stakeholders.

# INTRODUCTION

*Recent years have brought great change and improvement with regards to the protections afforded to the family in Ireland. The Children and Family Relationships Act 2015 was an especially critical piece of legislation due to its creation of a workable system of operation for donor-assisted human reproduction.*

Once fully commenced, the Act will significantly reform the law governing various areas including Guardianship, Custody & Access and of course, Donor-Assisted Human Reproduction. It also establishes legal rights and responsibilities for cohabiting couples, civil partners, same-sex couples and unmarried fathers.

This user-friendly guide is intended to provide information to help ensure families who have conceived or who wish to conceive through DAHR are fully aware of each step of the process as well as their legal rights and responsibilities.

For ease of access to relevant information, the guide is divided into the following sections:

- ✓ *Definitions* (pages 7-8)
- ✓ *Intending Mother* (pages 9-10]
- ✓ *Second Intending Parent* (pages 11-13)
- ✓ *Egg Donor* (pages 14-15)
- ✓ *Sperm Donor* (pages 16-17)
- ✓ *Donor-Conceived Children* (pages 18-21)
- ✓ *Retrospective Parentage* (pages 22-24)
- ✓ *The National Donor Conceived Person Register* (pages 25-26)
- ✓ *Case Study* (page 27)

The relevant changes in the law will be described in each section. These changes include the issues of consent, declarations of parentage, the introduction of the National Donor-Conceived Person Register, and the rights of parties to receive information

**Please Note:** As the 2015 Act has not been fully commenced, relevant sections have been divided into two parts: *“Once the Act is commenced”* and *“Current Position”*. The system of operation regarding DAHR in this country is still based on past case-law and therefore certain parties to a DAHR procedure will need to keep updated on the law as it stands as well as the how the law will change once the legislation is fully enacted. This information is not to be confused with the *“Retrospective Parentage”* section, which describes the application process which will become available for parents of donor-conceived children born before the Act is commenced to retrospectively apply for full legal parentage under the new legislation.

# DEFINITIONS

*Firstly, it is helpful to understand the following definitions as they will be used throughout the guide:*

**The 2015 Act** – This refers to the Children and Family Relationship Act 2015 which contains the new laws regarding Donor-Assisted Human Reproduction.

**Authorised Person** – An authorised person is an individual appointed by the Minister under Section 30 of the 2015 Act to ensure the correct running of a DAHR Facility. An authorised person is responsible for ensuring that the facility and employees of the facility including the owner comply with the 2015 Act in relation to the operation of the DAHR facility.

**Cohabitant** - A cohabitant is one of 2 adults who live together as a couple in an intimate and committed relationship, and who are not married to each other, or are civil partners of each other.

**DAHR** – Donor-Assisted Human Reproduction

**DAHR Facility** – A place at which a DAHR procedure is performed.

**Declaration** – The act of making or the document containing an official statement.

**Donor** – In this instance, a donor refers to the person who gives his or her egg cells or sperm for the purpose of reproduction.

**Embryo** – A new organism in the earliest stage of development during the period from approximately the second to the eight week after fertilisation.

**Facility Operator** – The person who owns or manages the facility or is otherwise responsible for the running of the facility.

**Gamete** – A gamete is the male or female reproductive cell that contains half the genetic material of the organism. Female gametes are called ova or egg cells, and male gametes are called sperm. When two human gametes meet it creates a zygote, which is a fertilized egg capable of growing into a human baby.

**Gestational** – Gestation is the period of time when something is conceived and developed. The gestation period for human babies lasts nine months.

**Intending Mother** – A woman who requests the performance of the procedure for the purpose of her becoming the mother of a child born as a result of the procedure.

**Intending Parents** – In relation to a child who is born as a result of a DAHR procedure, a person, other than the intending mother of the child who, at the time the DAHR procedure is performed, was aware of the performance of the procedure and undertook to care for, and exercise responsibilities towards, any child born as a result of the procedure, as if he or she were the parent of the child.

**Minister** – Minister for Health

# DEFINITIONS

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**Parentage** – The identity and origins of one's parents, in this context it refers to who is legally recognised as a donor-conceived child's parents under Irish law.

**Register** – The National Donor-Conceived Persons Register was established under the 2015 Act. It will contain details such as the name, date, place of birth, address and sex of the donor-conceived child as well as information about their legal parents and donor.

**Retrospective** – Looking back on or dealing with past events or situations; in this context retrospective refers to cases of DAHR which occurred prior to the 2015 Act.

**Succession rights** – The right and transmission of the rights and obligations of the deceased to his heirs. Succession signifies the estate, rights and charges which a person leaves after his death.



# INTENDING MOTHER

*This section is relevant to those who wish to become a mother through Donor-Assisted Human Reproduction. The laws regarding the birth mother of a donor-conceived child will not be impacted by the commencement of the Act.*

## **Who is the legal mother of a donor-conceived child?**

- The Children and Family Relationships Act 2015 does not change the basic rule that the birth mother is the legal mother of the donor-conceived child.
- This is the current situation based on the Supreme Court in the case of *M.R. and D.R. & others v An t-Ard-Chlaraitheoir & others* and will remain the case after the commencement of the Act. In that case the Supreme Court ruled that the birth mother is the legal mother of the child.
- This is the rule in all cases including where the child is conceived through the donation of a gamete and the birth mother has no biological connection to the child.

## **How can I consent to being the legal mother?**

- The legal mother carries and gives birth to the child, they do not require any genetic connection to the child, e.g. if a donor egg was used in a DAHR procedure.
- An intending mother consents to become the legal mother of a child conceived through a DAHR procedure where, before that procedure is performed, she has attained the age of 21 years and has made a declaration which is signed and dated by the intending mother in the presence of the operator of the DAHR facility where the procedure is to be performed.
- The declaration shall include the following statements:
  - That the intending mother has received the information about the procedure;
  - That in the event that a DAHR procedure is performed, the intending mother is aware that the donor of a gamete or embryo used in the DAHR procedure shall not be the parent of any child born as a result of that procedure, and she shall be the mother of such a child.
  - Where applicable, the intending mother consents to her spouse, civil partner or cohabitant, as the case may be, being the parent of any child born as a result of the DAHR procedure.
  - She may revoke her consent.

## **Does the donor of the egg/sperm have any rights?**

- A donor is not a parent and has no parental rights or responsibilities in respect of the child. Once the legislation is commenced, the intending parent will be regarded as a legal parent if certain criteria as laid down under the 2015 Act are met.

# INTENDING MOTHER

## **What if I change my mind?**

- As stated above, you may revoke your consent to be recognised as a parent but only before the DAHR procedure has been performed.
- This notice must be in writing to the operator of the DAHR facility.
- Once you consent, and a child is born as a result of the DAHR procedure, you will be the parent of the child and will have all parental rights and duties in respect of that child.

## **Will any further contact with the DAHR facility be required after the procedure has been performed?**

- Where a DAHR procedure is performed, the intending parents must inform the DAHR facility if the procedure has led to a pregnancy and if so, the date the intended mother is expected to give birth.
- If the procedure results in the birth of a child, you must inform the DAHR facility of the name, date and place of birth, sex and address of the child.

## **Can I use an anonymous donor?**

- After the commencement of the Act, donation will not be permitted if given anonymously. Donors will be added to the National-Donor-Conceived Persons Register which will then contain details such as their name and contact information.

## **Can my child find out about or contact the donor or vice versa?**

- Please see the "*Donor-Conceived Person Register*" section.

# INTENDING SECOND PARENT

*This section is relevant to a person who, partnered with an intending mother, wishes to become the second legal parent of a child conceived through Donor Assisted Human Reproduction. The Children and Family Relationships Act 2015 has not been fully commenced and therefore this section has been divided into two parts, one which outlines the laws which will be in place after the commencement of the Act and the second to outline the law as it stands today.*

## **Once the Act is commenced:**

*This section is relevant to those persons who are the second legal parent of a child conceived through Donor Assisted Human Reproduction after the commencement of the Act.*

### **After the birth mother, who is the second legal parent of a donor-conceived child?**

- The second intending parent of the donor-conceived child must be a spouse, civil partner or cohabitee of an intending mother.
- The second intending parent is a person, other than the intending mother who, is aware a DAHR procedure will be performed and consents to parentage before the performance of the procedure.
- The partner of an intending mother can consent to be a parent of a child born as a result of a DAHR procedure, by way of a declaration.
- The new rights given to the second intending parents after the commencement of the Act means that once you consent to parentage, by way of declaration and a child is born as a result of the DAHR procedure, you will be the parent of the child and you will have all parental rights and duties in respect of that child.

### **Can a female partner be a second intended parent?**

- Yes, a female partner can be a second intended parent. The information in this section applies to any partner of an intending mother, regardless of sex. You can be a second intending parent, provided that you are either married, in a civil partnership or cohabitating with the woman who will give birth to the child.

### **Can anyone that lives with the intending mother be a second intended parent?**

- No, the term 'cohabitant' is defined as one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship, they will be legally recognised as a cohabiting couple with certain rights and obligations if they live together for a period of 5 years, or 2 years and have a child together.
- To be considered cohabitants they must not be related to each other within the prohibited degrees of relationship, married to each other or civil partners of each other.

# INTENDING SECOND PARENT

## **Does the donor of the egg/sperm have any rights?**

- A donor is not a parent and has no parental rights or responsibilities in respect of the child. Once the legislation is commenced, the intending parent will be regarded as a legal parent if certain criteria as laid down under the 2015 Act are met.

## **How can I consent to being the second legal parent?**

- To consent to being the second legal parent of a donor-conceived child a Declaration of Parentage must be made before the DAHR procedure is performed.
- This must be in writing, dated and signed by you, the intended parent, in the presence of an authorised person.
- In order to make this declaration, you must be:
  - Over the age of 21.
  - The intending mother must have consented to a DAHR procedure, and her declaration, must include a statement in respect of you, the second intending parent.
  - You must have received all relevant information from the facility.
- If a DAHR procedure is performed, your name, date of birth, address and contact details will be provided to the Minister. This information will be entered into the National Donor-Conceived Person Register along with the name, date, sex, place of birth and address of the child. The mother's details and relevant details of the donor will also appear on the register.

## **What if I change my mind?**

- You may revoke your consent to be recognised as a parent but only before the DAHR procedure has been performed.
- This notice must be in writing to the operator of the DAHR facility.
- Once you consent, and a child is born as a result of the DAHR procedure, you will be the parent of the child and will have all parental rights and duties in respect of that child.

## **Will any further contact with the DAHR facility be required after the procedure has been performed?**

- Where a DAHR procedure is performed, the intending parents must inform the DAHR facility if the procedure has led to a pregnancy and if so, the date the intended mother is expected to give birth.
- If the procedure results in the birth of a child, you must inform the DAHR facility of the name, date and place of birth, sex and address of the child.

# INTENDING SECOND PARENT

## Can we use an anonymous donor?

- After the commencement of the Act, donation will not be permitted if given anonymously. Donors will be added to the National-Donor-Conceived Persons Register which will then contain details such as their name and contact information.

## Can my child find out about or contact the donor or vice versa?

- Please see the “*Donor-Conceived Person Register*” section.

### Current position:

*This section is relevant to those persons who are the second parent of a child conceived through Donor Assisted Human Reproduction before the commencement of the Act.*

## Who are the parents of a donor conceived child?

- The birth mother of a donor-conceived child is the mother of the child, regardless of whether she is genetically linked to that child.
- However, there is uncertainty involving the recognition of second intending parents of donor conceived children.
- At present, there is a legal presumption that the mothers’ husband is the father of a donor-conceived child even if the husband has no biological connection to the child but this presumption is not guaranteed and can be rebutted.
- The female spouse, a civil partner or female cohabitant of an intending mother have no means at present of being recognised as the parent of a child who they may be jointly raising.

## Can a female partner be a second intended parent?

- For a lesbian couple who decide to go through donor assisted human reproduction, the woman that gives birth to the child is automatically the legal mother.
- However, as her partner you currently have no legal rights over the child but you may apply for guardianship.

## My child was born before the Act was commenced and I wish to declare parentage, what can I do?

- Please see the “*Retrospective Parentage*” section.

# EGG DONOR

*This section is relevant those interested in donating their Eggs for the purpose of Donor Assisted Human Reproduction. This section is relevant only for those who donate after the 2015 Act is commenced.*

## **What is an egg donation?**

- It is the process by which a fertile woman provides one or several eggs to an infertile woman for purposes of assisted reproduction.

## **Who can donate?**

- Any female who has reached the age of 18 and who has consented to the procedure.

## **How do I donate?**

- Before donating, you must make a declaration, which shall be in writing, dated, and signed by you in the presence of a person authorised to do so on behalf of the operation of the donation facility.
- A declaration should state that you have received information and that you consent to the use of the gamete/embryo provided by you in a DAHR procedure.

## **Am I the legal mother?**

- In the event that a child is born, you will not be the parent of a child. You will have no parental rights.

## **Can I find out about the child/ can the child find out about me?**

- Please see the “*Donor-Conceived Person Register*” section.

## **Can I contact the child/can the child contact me?**

- Please see the “*Donor-Conceived Person Register*” section.

## **Can I donate anonymously?**

- No, in Ireland you have an obligation to provide your personal details to the Register. This abolished anonymous donation.

## **Do I have a say in who gets my sample?**

- A donor may restrict consent to a specific individual/couples, but may not restrict based on sexual orientation, marital status etc.

# EGG DONOR

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## **What if I change my mind?**

- You have a right to revoke your consent at any stage subject to certain conditions. You may, by notice in writing to the operator of the donation facility, revoke your consent.
- Nevertheless, you must be aware that the revocation made will have no effect where a gamete/embryo has already been used in a DAHR procedure.

## **Can I accept/request money from the intending parent(s)?**

- Your consent to a DAHR procedure will not be valid where it is given in exchange for financial compensation. You may, however, receive compensation for reasonable expenses e.g. travel costs, medical expenses and legal counselling costs incurred by you.

## **What happens if I live outside the State?**

- If you do not live in Ireland and your gamete/embryo is acquired from outside the State, a valid consent must be present. Your consent must be substantially similar to a consent that would otherwise be given in Ireland.

# SPERM DONOR

*This section is relevant to those interested in sperm donation for the purpose of Donor Assisted Human Reproduction. This section is relevant only for those who donate after the 2015 Act is commenced.*

## **What is sperm donation?**

- Sperm donation is a procedure in which a man donates semen to help an individual or a couple conceive a baby.

## **Who can donate?**

- Any male who has reached the age of 18 or over and who has consented as per the 2015 Act which is detailed below can donate.

## **How do I donate?**

- Before donating you must consent by way of a declaration.
- A declaration is a written sworn statement and should be made under Section 1 of the 2015 Act.
- The declaration must be in writing, dated and signed by you the donor in the presence of an authorised person.
- An authorised person is an individual appointed by the Minister under Section 30 of the 2015 Act.
- This person is appointed to ensure that the DAHR Facility, the owner of such facility and any employees of the establishment comply with the 2015 Act in relation to the operation of the facility.

## **Am I the legal father?**

- As the donor, you will not be the parent of any child born as a result of a DAHR procedure in which your sperm sample is used.

## **Can I find out about the child/ can the child find out about me?**

- Please see the *“Donor-Conceived Person Register”* section.

## **Can I contact the child/can the child contact me?**

- Please see the *“Donor-Conceived Person Register”* section.



# SPERM DONOR

## **Can I donate anonymously?**

- No, the obligation to provide your personal details to the register ultimately abolishes anonymous donations.

## **Do I have a say in who gets my sample?**

- You can restrict your consent to specific couples/individuals but may not restrict based on marital status/sexual orientation.

## **What if I change my mind?**

- You have the right to revoke your consent at any stage before the DAHR procedure is performed.
- You may, by notice in writing to the operator of the donation facility, revoke your consent.
- You should be aware that the revocation made will have no effect in respect of a sperm sample that has already been used in a DAHR procedure.

## **Can I accept/request money from the intending parent(s)?**

- The consent of a donor will not be valid where it is given in exchange for financial compensation in excess of the reasonable expenses associated with the procedure.
- Reasonable expenses mean in relation to the donor, the donor's travel costs, medical expenses and any legal or counselling costs incurred by him in relation to the donation of sperm for DAHR.

## **What happens if I live outside the State?**

- If you live outside of Ireland and your sample is acquired from outside of the State a valid consent must be present. Your consent must be similar to a consent that would otherwise be required in Ireland.

# DONOR-CONCEIVED CHILDREN

*This section is relevant to those persons who have been conceived through Donor Assisted Human Reproduction.*

## **What is a gamete and an embryo?**

- A man's sperm and woman's egg are cells known as gametes.
- For a pregnancy to take place, a woman's body must release an egg from one of her ovaries which must become attached to a man's sperm.
- Once this happens, the egg is fertilised and continues through the fallopian tube and then must attach to the inside of the uterus.
- The fertilized egg develops into an embryo and after about 8 weeks is known as a foetus.
- This foetus grows and develops in the womb and becomes known as a baby upon entering into the world roughly 9 months later.

## **What is donor conception?**

- Donor conception is defined as being a process whereby the gametes (egg or sperm) from either a man or a woman, or from both, are attached inside the womb of the woman who has requested the procedure.
- The woman who has requested the procedure would generally do this if her and her partner were having trouble conceiving a child by themselves.
- The donor gamete(s) fertilise as described before and form into an embryo, foetus and finally a child inside the womb of the requesting mother over the span of 9 months.

## **Why might my parents have needed to use a donor to assist them in having a child?**

- Sometimes potential mothers and fathers have difficulty conceiving a child.
- Many problems can arise when it comes to combining their gametes, issues might also arise with regards to the fertilised egg attaching to the mother's womb.
- In this situation they may need another woman to donate her egg or another man to donate his sperm, or both. These people are known as donors.
- The donated gamete or gametes is then attached the intending mother's womb (the woman who wants to have child).
- This is what is known as Donor Assisted Human Reproduction (DAHR), as a donor assists people in reproducing and having a family.

# DONOR-CONCEIVED CHILDREN

## What is stated in the 2015 Act?

- Donor Assisted Human Reproduction (DAHR) is defined in the 2015 Act as a being a process which is performed in Ireland, which results in, as described above, gametes being taken from either a male or female donor, or from both, which are then attached to the womb of the woman who has requested the procedure.
- These gametes become an embryo, which then grows into a foetus and finally a baby.
- The 2015 Act goes on to explain the legal rights and obligations regarding the donor-conceived child as well as the egg and sperm donor and the intending parents. All of this information is laid out in the different sections of this report.

## Who can be a donor and who can be an intending parent?

- In this situation there are a number of possibilities about who can donate gametes and who can be intending parents.
- For example, an intending mother might receive an egg from a donor woman, this would be joined with the sperm of the intending father.
- In other cases the intending mother would use her own egg and receive sperm from a donor man to fertilise the egg.
- This is also relevant in the case of same-sex couples, for example a same-sex couple consisting of two women would need donor sperm to create a child also.
- Sometimes both the egg and the sperm must be donated, but they can still be fertilised and grow into a baby in the womb of the intending mother. This means that in some situations the intended parents, the parents who were having trouble making a child and who asked for the procedure, may not be genetically related to the child they have together.
- An intending parent is anyone of any gender or sexual orientation who wishes to become a parent with the help of donor-assisted human reproduction.

## How do I find out if I am a donor-conceived child?

- Firstly, you should ask your parents. But if you do not wish to do this the second option is to ask to for your birth certificate if you are over 18 years of age.
- This certificate will indicate whether or not you are a child born through DAHR.

# DONOR-CONCEIVED CHILDREN

## Once the Act is commenced:

*This section is relevant to those who are conceived through Donor Assisted Human Reproduction after the commencement of the Act.*

### **Who are my legal parents?**

- The Act states that while the woman who gave birth (intended mother) to the child is the automatic mother, the spouse, civil partner or cohabitant of the mother may also be regarded as a parent of the child provided they comply with the requirements of the Act and give the necessary consents.
- The spouse of the mother or the civil partner of the mother is automatically a guardian of the child.
- With regards to a cohabitant, they can only be a guardian provided they have been cohabiting with the mother for not less than 12 months occurring after the date on which the sub-section comes into operation. This must also include a period of not less than 3 months of co-habitation at any time before the child is born.

### **Is the donor a legal parent?**

- The person who has donated the egg or sperm is not regarded by the law as a parent of that child and has no parental rights for that child. These rights and obligations fall on the intended parents of the child.

### **Can I find out about the donor/can the donor find out about me?**

- Please see the “*Donor-Conceived Person Register*” section.

### **Can I contact the donor/can the donor contact me?**

- Please see the “*Donor-Conceived Person Register*” section.

# DONOR-CONCEIVED CHILDREN

## Current position:

*This section is relevant to those who have been conceived through Donor Assisted Human Reproduction before the full commencement of the 2015 Act.*

### **Who are my legal parents?**

- The basic rule is that the birth mother is the legal mother of the child. Under the law as it stands, the birth mother of a donor-conceived child has certainty as to her situation. Case law confirms that she is the mother of the child, regardless of whether or not she is genetically linked to that child.
- It is presumed that the birth mother's husband is the father of a donor-conceived child even if he is not biologically linked to the child.
- However this can be complicated for instance, if the presumption is tested such as in the event of a dispute between both parents. If the father is found not to be the biological parent of the child, he may lose the right to be the child's legal parent.
- Where a child is born in Ireland as a result of Donor-Assisted Human Reproduction treatment carried out before the 2015 Act comes into effect in Ireland an application can be made to the courts for a declaration of parentage.
- However, there are conditions to be met such that the intending parent was the intending parent at the time of conception and that nobody other than the mother and the intending parent is recorded as a parent on the birth register.
- Once the Act is commenced, a declaration may be granted if the court is satisfied that the conditions are met and, if the child is aged under 18, if it is in the best interests of the child.
- The mother and the intending parent of the child may apply to the District Court or Circuit Court to have the intending parent declared a parent.

### **Is the donor a legal parent?**

- Before the commencement of the 2015 Act, a sperm donor is regarded as the legal father. An egg donor is not regarded as a legal mother.

### **Can I find out about the donor?**

- Before the commencement of this Act, thousands of Irish children have been born using sperm from anonymous and non-anonymous donors. If anonymous sperm was used then you cannot find out about the donor.
- The introduction of the 2015 Act has banned the use of anonymous sperm donation.

# RETROSPECTIVE PARENTAGE

*This section is relevant for those parents of donor-conceived children who wish to benefit from the Retrospective nature of the Act once it has been fully commenced.*

## **What is retrospective parentage and who does it apply to?**

- Retrospective parentage is a process whereby a person can apply to be recognised as a legal parent of a child born through DAHR before the full commencement of the 2015 Act.
- It allows a person who is not currently recognised as the legal parent of a donor-conceived child to apply to be recognised as such.
- The 2015 Act applies to the parents of a donor-conceived child born as a result of DAHR.
- This includes the mother, and the spouse, civil partner or cohabitant of the mother.

## **What are the criteria which must be met in order to be legally granted retrospective parentage?**

- The donor must not have been an intending parent at the time of the DAHR procedure and he or she must have been unknown to the intending parents at the time the DAHR procedure was performed.
- If the donor was known to the parents, the application cannot be made to recognise the second intended parent as the legal parent.
- Furthermore the donor must remain unknown to the intending parents during the application process.
- The intending mother must be recorded as the legal mother in the 'Register of Births' and no person other than the second intending parent can be recorded as the child's father or second legal parent.

## **I already have a child, am I a legal parent? Is my spouse/partner a legal parent?**

- Prior to the commencement of the 2015 Act, the woman who gives birth to the child is the legal mother and though her husband is generally assumed to be the legal father there is uncertainty, and if there is no biological connection this presumption is not guaranteed and can be rebutted.
- The female spouse, a civil partner or cohabitant of an intending mother have no means at present of being recognised as the parent of a child who they may be jointly raising.

# RETROSPECTIVE PARENTAGE

## **My partner wishes to be recognised as a legal parent, what are our options?**

- Once the 2015 Act is commenced, parents can seek declarations of parentage before the court. The mother and second intending parent can apply jointly to the court for a declaration of parentage.
- Where the child in question has reached the age of 18, he/she must be put on notice of the application and joined as party to the application

## **How is an application for retrospective parentage made?**

- An application can be made to the District Court or Circuit Court for a declaration as to parentage by the child, the mother of the child or the relevant person.
- An application can be made to the District Court by the mother and intending parent jointly if the child in question was born prior to s.20 of the Act, meaning the child was born before the Act commenced.
- If the Child is 18 years of age, he or she is included as party in the application and the proceedings.

## **The declaration of parentage can only be granted if:**

- The child falls within the scope of section 20, meaning that the child was born through DAHR before the 2015 Act was commenced and also:
  - At the time of the DAHR procedure, the applicant was an intending parent and no one else (other than the intending mother) was listed as a parent on the child's birth certificate
  - He/she consents to the declaration being made.
- The donor was and still is unknown to the intending parents
- If the court is satisfied that it would be in the best interests of the child to do so, a declaration shall be made that the applicant is a parent of the child.

## **My friend acted as a sperm donor, can my spouse now be recognised as a legal parent?**

- No, it is important to note that the provisions under the 2015 Act, state that in order for a retrospective declaration of parentage to be granted, the donor must have been and remain unknown

# RETROSPECTIVE PARENTAGE

## **When is the District Court used and what is the process?**

- The mother and person wishing to be recognised as the second intending parent can apply to the District Court for a declaration of parentage setting out that the second intending parent is a legal parent.
- The child, mother, or person wishing to be recognised as a second intending parent may apply to the Circuit Court for a declaration of parentage setting out that the second intending parent is a legal parent.
- In deciding upon making the declaration, the court shall give the child an opportunity to express his/her views to the court – with regards to the child’s age and understanding.

## **What are the legal effects if the application is granted?**

- Where a person is declared (under S.21 or S.22) to be a parent or parents of the child:
  - That person is legally recognised as a parent of that child and will have all parental rights and duties in respect of that child.
  - The gamete donor used in the DAHR procedure will not be recognised as parent of the child, and has no parental rights or duties in respect of that child.
  - The declaration may have an effect on the succession rights of all parties concerned in bringing an application



# NATIONAL DONOR CONCEIVED PERSON REGISTER

## **What is the National Donor Conceived Person Register?**

- Section 33 of the 2015 Act introduces a National Donor Conceived Person Register, a new system of information retrieval for both the child produced by a donor gamete and also for the donor themselves.
- It is a register of information containing details of all individuals born through or involved with donor conception and when it comes into effect the child, his or her parents and donor will have access to their respective identifying information and contact details under certain conditions.
  - The child will also be given access to information about their possible half-siblings.
- The Minister will make an entry in the Register in respect of each child born in the State as the result of a DAHR procedure.
  - The entry contains details such as the name, address, date and place of birth and information regarding the sex of the child. The date on which the DAHR procedure that resulted in the birth of the child was performed is also stated. The name and address of the DAHR facility at which the DAHR procedure was carried out is also outlined.
- It outlines the information with regards to the parent of the child and the donor concerned.

## **Does a donor have to give identifying information?**

- Yes, the donor when donating his or her gamete must also provide information to the DAHR facility such as their name, date of birth, date and place of donation, nationality and contact details.
- If any of this information changes, the Minister must be notified and the information on the Register updated.

## **Can a donor find out information about a child conceived through their donation?**

- Yes, the donor may request for the Minister to provide them with the sex and dates of birth of any individual born by way of DAHR procedure with their sample.

## **Can a donor contact a child conceived through their donation?**

- The donor will have no right to contact a child born from their donation, however once certain criteria are met the donor-conceived child will have the option to contact the donor.
- A child who has attained the age of 18 may request the Minister to record on the Register a statement with his/her name, date of birth and contact details confirming that he/she consents to the release of this information to the donor.
- If the donor requests this information, the Minister will inform the child about this.
- Unless the child objects to the release of information within 12 weeks, the Minister shall release the information to the donor.

# NATIONAL DONOR CONCEIVED PERSON REGISTER

## **Will a donor-conceived child be notified of their information on the Register?**

- Where a donor-conceived child who has attained the age of 18 applies for a copy of his/her birth certificate, the child will be informed that additional information is available to them from the Register.

## **Can a donor-conceived child find out information about their donor?**

- Yes, at the time of the donation the donor must supply the Minister with personal information (see “*Does a donor have to give identifying information?*”)
- This information will be kept and updated on the Register and any child born as a result of the procedure using the donor’s sample can access certain information depending on their age.
- A donor-conceived child who is under 18 years old can access non-identifying information about their donor such as their nationality.
- A donor-conceived child who is 18 years old or over may request access to identifying information such as the name, contact details and date of birth of the donor.
- They may also request information regarding the number of children who have been born as a result of the donor’s donation and the sex and year of birth of each child.
- If information is not provided on the Register then the Minister will request that information from the donor.

## **Can a donor-conceived child contact their donor?**

- As stated above, once a donor-conceived child reaches the age of 18 they may request the information about the donor from the Minister.
- Where the Minister receives such a request, he or she will send the donor a notice informing them of the request.
- The requested information will be released to the child 12 weeks after this notice is sent if the donor does not outline to the Minister why it is in the interest of the donor/donor-conceived child’s safety that the information not be released.
- Where the Minister is satisfied that it is in the best interest of the child not to release the information he will refuse to do so, this decision can be appealed to the Circuit Court.
- Where the Minister is not satisfied or where no objection is made, the donor’s information will be released to the child, this decision cannot be appealed.
- The child has a right to appeal a decision to withhold information to the Circuit Court within 21 days from the date on which they were notified of the refusal, the proceedings will be held in camera (in private)

# CASE STUDIES

## **Case Study 1 – Children born after the commencement of the 2015 Act**

Anne and her partner John have been together for 5 years and have a daughter named Sarah. Anne and John have recently decided to separate; as Sarah was conceived through DAHR this separation has led to questions arising regarding who Sarah's legal parents are.

When Anne and John decided to have a child, they realised that they needed the help of a sperm donor. They were informed that every donor has their rights and responsibilities as a donor explained to them before a sample is taken. This includes the fact that they will have no parental rights to any child born by way of the procedure and that they can revoke their consent at any stage before the DAHR procedure is commenced. The donor in this case gave his consent for the procedure by way of declaration and therefore has no parental rights.

As Anne gave birth to the child, she is automatically the legal mother. However, it is John's legal parentage that is in question. Before undergoing the DAHR procedure, Anne and John had decided to raise the child together. They were informed that Anne's spouse, civil partner or cohabitee could be a second intending parent if the requisite consents were made and her partner was over 21. John and Anne were both 28 and were cohabitees. Anne signed a declaration that stated that John would be an intending parent and John also made a declaration of intended parentage before the procedure took place. The declarations were in writing, dated and signed in the presence of an authorised person. Therefore, John is a legal parent.

## **Case Study 2 – Children born prior to the commencement of the 2015 Act**

Joanna, age 18 was born in 2000 by way of Donor-Assisted Human Reproduction. Joanna's mother Clara and her partner Marcus did not believe in marriage and decided they would be happy to cohabit and raise a family together by way of DAHR.

The couple made arrangements with a close friend Daniel to act as sperm donor for the procedure as Clara's cohabitating partner Marcus suffered from reproductive issues. Clara and Marcus welcomed baby Joanna into the world and although they were not married and Daniel was the genetic father, Marcus cared for Joanna and acted as her legal father from the date of her birth.

Joanna has decided to join the skydiving society in UL, but will need the written consent of both of her parents. Joanna is aware that she was conceived through DAHR but is now curious as to who is legally recognised as her father. Although Joanna sees Marcus as her father, she also remains close with Daniel.

Joanna begins to research the situation and notes that that under the new 2015 Act, in order for a retrospective declaration of parentage to be granted, the donor (Daniel) must have been anonymous to the intending parents and must remain so.

Joanna finds that previous to 2015 the mother and sperm donor are automatically recognised as a legal parent. Daniel is a known donor and so a retrospective declaration of parentage cannot be granted to Marcus in this case – Daniel is Joanna's legal father.



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