

Submission to Joint
Oireachtas Committee on
Justice, Defence and
Equality on the Heads of the
Children and Family
Relationships Bill

GLEN - Gay and Lesbian Equality Network

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1. Introduction

GLEN strongly welcomes the publication of the General Scheme of the Children and Family Relationships Bill 2014 which aims to put in place a legal architecture to underpin diverse parenting situations and provide legal clarity on parental rights and responsibilities for these families.

The proposed Bill is perhaps the greatest family law reform in a generation and will be of enormous benefit to very many children and families, in particular to the very significant numbers of children who are born or being brought up outside the traditional marital family. Minister for Justice, Equality and Defence, Alan Shatter TD., and the staff at the Department have done excellent work in ensuring that the inequalities experienced by such children will be addressed through the proposed Bill.

The proposed Bill will ensure that the principle of the best interests of the child is reflected by providing security and legal certainty for the family in which a child is being brought up, including for children born to cohabiting couples, for children in step-parent families and for the many children in lesbian and gay headed families throughout Ireland. These reforms are urgently needed and GLEN looks forward to the earliest possible passage of this Bill.

There has been enormous progress for LGBT (lesbian, gay, bisexual and transgender) people in Ireland over the last 20 years, with a transformation in the status of lesbian and gay people through far-reaching legislative change, including the powerful equality legislation and the marriage-like Civil Partnership Act 2010 which was passed by the Oireachtas with the support of all Parties. Almost 1,500 civil partnerships have already taken place all across Ireland which have been warmly welcomed by family, friends and communities and which has seen pictures of the happy couples in very many regional newspapers throughout the country.

The current Government continued that progress and enacted the Finance (No. 3) Act 2011 which provides for tax equality for civil partners, including equal treatment in all tax codes for children in a civil partnership; provided for equal treatment in citizenship provisions for civil partners; and have continued to update the provisions

to recognise the increasing numbers of foreign civil partnerships and marriages of lesbian and gay couples being enacted abroad.

Building on all of these critically important advances, the current Programme for Government undertook to modernise and reform outdated elements of family law and to address the omissions in the Civil Partnership Act relating to children, to ensure that children whose parents are in a civil partnership are able to form legal relationships with their parents, providing security and certainty to the family and ensuring that children are fully protected within these families. We warmly welcome the provisions within this General Scheme that amend the Civil Partnership Act to fully include rights and responsibilities towards dependent children of the family, including in protections around the shared home, maintenance and at dissolution of a civil partnership.

As one of Ireland's leading advocacy organisations for lesbian, gay and bisexual people, GLEN is delighted with the opportunity to make this submission for consideration by the Joint Committee on Justice, Defence and Equality. We would also welcome the opportunity to make an oral submission to the Committee.

2. Lesbian and Gay Headed Families

The General Scheme is significant and comprehensive. It includes many much needed reforms including recommendations of the 2010 Law Reform Commission Report on [Legal Aspects of the Family Relationships](#). That report acknowledged that there were many families all across Ireland which are headed by civil partners and recommended that children in these families should be able to establish legal relationships with both of their civil partner parents. GLEN's submission to the Law Reform Commission outlined some of the ways in which such families are formed:

- i. **Children from a previous relationship:** one or both of the civil partners, or the cohabiting lesbian or gay couple, were previously in a married or unmarried heterosexual relationship and bring children from that marriage or unmarried relationship into the new relationship, in the same way as a step-parent opposite-sex family. In many cases, the biological parents may have joint or shared parenting arrangements that involve both of the biological parents and, in practice, also involve the new same-sex partner.

- ii. **Donor conception and parenting through agreement with a known father:** one of the women in a civil partnership or cohabiting relationship has become pregnant through donor insemination. In some cases this is arranged through an intermediary in the form of a professional fertility service. In some cases couples make private arrangements with a known donor. In such cases it may be intended by all parties that the father will be known to the child and will have some agreed involvement in the life of the child. It may well be the case that a lesbian couple make an arrangement with a gay male couple, sharing parenting arrangements.
- iii. **Adoption by one of the couple:** there is no ban on adoption by lesbian and gay people in Ireland. Lesbian and gay people can and do adopt children, however, they cannot jointly apply to adopt as a couple, even if they are in a civil partnership. In that context, there are families where one partner in a civil partnership or cohabiting same-sex relationship is an adoptive parent to one or more children.
- iv. **Foster parents:** lesbian and gay couples are currently providing long term and short term foster care to children all across Ireland. The success of lesbian and gay couples as foster parents of children entrusted to them by the HSE has also been acknowledged in the Oireachtas¹.
- v. **Surrogacy:** it is possible for a couple (for example two gay men) to enter into a surrogacy arrangement, whereby a woman agrees to carry a child where one of the couple is the biological father.

The proposed Children and Family Relationship Bill provides a clear framework which would establish legal clarity on parental rights and responsibilities for these families, and which would provide legal certainty and security to all the children being parented in these families.

3. Comments on Certain Heads in the General Scheme

Some key principles underline GLEN's approach to the General Scheme:

- The concept of the best interests of the child being the key consideration
- A child's right to know their identity
- A child's right to have their family recognised

Our comments on certain heads reflect these key principles.

¹ Seanad debate on Adoption Bill 2009. Vol. 194, No. 6.

HEAD 32: Every Child has a Right to Decisions Made in their Best Interests

GLEN strongly supports the principle that the best interests principle of the child must be applied in all matters concerning the child and taken to be the paramount consideration in proceedings concerning a child's welfare or safety or on decisions concerning adoption, guardianship or custody of, or access to a child. GLEN is a member of the Children's Rights Alliance and has contributed to the Alliance's submission on this Scheme which gives a detailed overview of how the best interest principle has been incorporated into the General Scheme, building on the provisions of the (not yet completed) Children's Referendum.

While the exact numbers of children being parented in Ireland by same-sex couples are unknown there are small scale research samples available to indicate that there are substantial numbers parenting children already and there is a growing number of couples who are forming families together². These families currently exist without the protection of a secure legal framework.

The implications of lack of recognition of same-sex families, especially for the children being parented by same-sex couples, has been highlighted in a range of reports, including in the Report from the 2006 Governmental [Working Group on Domestic Partnership](#) and the 2010 Law Reform Commission Report on [Legal Aspects of the Family Relationships](#) and illustrate how the principle of the best interests of the child are not currently being met:

- Children are excluded from the protection and legal obligations of their non-biological parent towards them in terms of inheritance, maintenance and other benefits.
- In the event of the dissolution of a relationship or in the event of the death of the legal parent, the child can be separated from their second parent, who has no legal connection to their child but who may have co-parented the child from birth. Equally, the child could be separated from the family of their non-biological parent, for example, this partner's parents, who may have played a significant role in the life of the child as *de facto* grandparents but who have no legal link or connection to their *de facto* grandchild.
- More day to day difficulties arise because the second parent has no legal connection with their child. For example, the non-biological parent may not be

²NLGF and 2012. Pillinger J and Paula Fagan (2013). [LGBT Parents in Ireland: Report from a Study into the Experiences of LGBT people in Ireland who are parents or planning parenthood](#). LGBT Diversity. NLGF (2009). Burning Issues: Listening to the Voices of the LGBT Community, Research Report.

able to sign a consent form for medical treatment in the event of the other parent being incapacitated or unavailable. Similar issues arise in relation to daily issues such as consent forms for school trips and in other areas including barriers to travel arising from non-recognition of the second parent.

These issues are also relevant for many children, for example children in opposite-sex families where a step parent has taken on a day-to-day parenting role but where there is no provision for them to make an application for guardianship or parental responsibility, or for the biological parent or parents of a child to confer guardianship on them.

GLEN strongly welcomes the provisions of **HEAD 32** which applies the best interests of the child as the paramount consideration in “guardianship, custody, upbringing of or access to a child” which would be the principle underpinning the resolution of many of the inequalities outlined above which are addressed in the General Scheme.

HEAD 9, 10, 11, 38 & 39: Every Child has a Right to His or Her Identity and to Have their Family Recognised

GLEN fully supports a child’s right to know his or her biological and genetic identity.

We strongly support the need for regulation of assisted reproductive services in Ireland in order to ensure that this right is adequately protected for children conceived as a result of assisted human reproduction. Such regulation should ensure that all similarly positioned couples will have equal access to fertility treatment and assisted reproduction regardless of sexual orientation in line with the Equal Status Acts.

GLEN also fully supports the right of a child to have their family recognised. The Children’s Rights Alliance [Report Card 2014](#) (p139) articulates both of these rights:

The UN Convention on the Rights of the Child recognises the central role played by parents in the lives of children. Under the UN Convention every child has the right to be cared for by his or her parents insofar as possible.³ The term ‘parent’ is interpreted to mean genetic, birth and psychological parent, the latter referring to a person who is not biologically related to the child but cares for the child for significant periods of their childhood as they are ‘intimately bound up in children’s identity’ and identity rights. They also have the right to contact their parents on a

³ UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989), Article 7.

regular basis, to maintain personal relations and not to be separated from their parents against their will, unless it is contrary to the child's best interests or determined by a court.⁴ Children have the right to know their parents and to have accurate information about their identity as well as the assistance and protection of the State where the child has been denied an element of their identity.⁵ The UN Convention recognises that both parents have a role in the child's life and focuses on the parental responsibilities involved in raising a child⁶. In 'all actions concerning children', including those that fall outside the direct scope of the Convention, the best interests of the child principle must apply⁷.

GLEN welcomes **HEAD 9** which clarifies that the child's relationship with the broader family (grandparents, siblings etc.) is also determined by reference to the parent/child relationship established in other Heads in the General Scheme.

GLEN welcomes **HEAD 10 and HEAD 11** which lay a clear framework for the establishment of parentage in cases of assisted human reproduction. GLEN also welcomes the provisions of **HEAD 38 and HEAD 39** which provides for a framework where parents, civil partners or cohabiting partners can apply for and assume the duties and responsibilities of guardianship.

There are many lesbian and gay-headed families already existing in Ireland. The Bill should include appropriate provisions to ensure that existing families and the children in existing families can equally benefit from the provisions.

HEAD 10 & 11: Parentage in cases of Assisted Reproduction & Declarations of Parentage

This Head sets out how parentage is determined in the case of a child born through assisted reproduction other than through surrogacy. The Heads provide for a clear framework for all couples, including same-sex couples, planning parenthood in the future through assisted reproduction and will provide the means by which parentage

⁴ Ibid., Article 9.

⁵ Ibid., Articles 7 and 8.

⁶ Ibid., Article 18.

⁷ Ibid., Article 3(1).

can be assigned to the intending parents of children conceived through assisted reproduction.

Subhead 7 (Head 10) provides for retrospective (and presumptive) assignment of parentage for opposite-sex couples. It appears that same-sex couples will be able to apply for retrospective assignment of parentage through a Declaration of Parentage through the Courts, as outlined in Head 11.

Subhead 6 & 8 (Head 10) outline provisions relating to consent in the context of assignment of parentage for all parents of children conceived through assisted reproduction.

GLEN agrees that there should be regulations that will govern the form of consent that is required for assignment of parentage under Head 10. This should include the principle of 'fully informed' consent, and should include:

- Independent legal advice governing the legal implications of parentage in assisted reproduction for both the biological and intending parents
- Independent counselling advice for both the biological and intending parents.

Where this advice is provided independently and where all parties agree, the assignment of parentage should be provided through the most effective and simplest means, with appropriate oversight provisions, to ensure that the provisions available through Heads 10 & 11 are as widely accessible as possible.

PART 11: HEADs 72 to 75: Inclusion of Children in Civil Partnership Protections

The 2010 Civil Partnership and Certain Rights of Cohabitants Act provides for extensive marriage-like rights and responsibilities for civil partners in respect of each other. These have been comprehensively outlined in the GLEN/ICCL publication [*Know Your Rights: The Rights and Obligations of Civil Partners and Other Same-Sex Couples*](#). The Act did not provide for children in a civil partnership or for the responsibilities and rights of children in a civil partnership in respect of their *de facto* parent (i.e. the civil partner of their biological parent). The 2011 Finance (No.3) Act however, did provide for equality in all tax codes (inheritance, capital acquisition, maintenance payments etc.) for children whose parents are in a civil partnership.

There is now no difference in the tax codes in relation to children, whether their parents are in a civil partnership or in an opposite-sex marital family.

GLEN strongly welcomes the provisions set out in Part 11 of the General Scheme which will amend the 2010 Civil Partnership and Certain Rights of Cohabitants Act to provide for the recognition of dependent children where couples are civil partnered, and provide clarity on the rights and obligations of civil partners to children whom they are parenting. These provisions are the same as those that are available to children in an opposite-sex marital family. The amendments to the 2010 Act provided for under **HEADS 72 to 75** will:

- Extend the provisions of the shared home protections to dependent children,
- Create a specific maintenance liability for each civil partner in respect of each dependent child of the family
- In cases of dissolution of a civil partnership the responsibilities of civil partners towards a child of the family are provided for analogous to proceedings in divorce.

PART 12: HEADS 76 to 86: Amendment of the Adoption Act of 2010

There is no ban on adoption by lesbian and gay single people in Ireland. Lesbian and gay people can and do apply to and adopt children. However, lesbian and gay couples, even if they are in a civil partnership, cannot apply to adopt jointly.

GLEN welcomes the provision in **HEAD 77** to extend the categories of people who can apply to become adoptive parents to civil-partnered couples. Such couples, like all couples who apply to be considered as adoptive parents, would undergo all of the assessment processes that currently apply.

GLEN is fully supportive of the concept of adoption being a right of a child to a family and considers that the broadening of the categories of people who are eligible to apply for consideration to jointly adopt to civil partnered couples is a child-centred provision.

The other Heads in this section would provide for adoptive parents from other countries moving to Ireland to have their adoptions recognised in Ireland. This is an important provision for lesbian and gay couples who may have adopted jointly in

other countries, for example the UK and who subsequently move to live and work
Ireland, to be recognised as the parents of the child here.

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