AN BILLE UM LEANAÍ AGUS CÓNGAIS TEAGHLAIGH, 2015
CHILDREN AND FAMILY RELATIONSHIPS BILL 2015

EXPLANATORY MEMORANDUM

Background and purpose of the Bill

The purpose of the Bill is to reform and update family law to address the needs of children living in diverse family types.

The Bill amends the Guardianship of Infants Act 1964 to provide for children living with cohabiting parents or civil partners or with a parent and a step-parent, civil partner or the parent's cohabiting partner. The Bill also provides for children living with another relative or with a person other than a parent. It sets out the provisions concerning guardianship, custody and access for each of these situations.

It amends the Family Law (Maintenance of Spouses and Children) Act 1976, the Family Law Act 1995 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to provide for a potential maintenance liability in respect of the child on a civil partner or a parent's cohabiting partner where that person is also a guardian of the child.

The Bill amends the Adoption Act 2010 to extend its provisions to civil partners and cohabiting couples. Civil partners and cohabiting couples, where the latter have lived together for three years, will have the right to apply jointly to adopt a child. It provides for such couples to be subject to the same assessment processes and eligibility criteria as for married couples. It also makes provisions for a civil partnered or a same-sex cohabiting couple to place a child for adoption where that child is the child of both of them. The Bill provides for civil partners and cohabiting couples to be eligible for adoptive leave.

The Bill also provides for a man or woman to be the second parent of a donor-conceived child born to the woman or man's spouse, civil partner or cohabiting partner. It sets out the requirements that will have to be fulfilled for the man or woman to be recognised as the second parent, including as regards the consent of the mother, the intending second parent and the donor. It provides for consequential legislative amendments, including to the Civil Registration Act 2004, to allow for a second female parent to be recorded as a child's parent. It also amends the Parental Leave Act 1998 and the Maternity Protection Act 1994 to enable a female second parent to have the same rights as a father under these Acts.

The Bill makes provision for a national donor-conceived person register to be established to enable a donor-conceived child to

ascertain his/her identity, in accordance with the obligations of the UN Convention on the Rights of the Child. It sets out the obligations that will apply to Donor Assisted Human Reproduction facilities, to parents and to donors with regard to the information that will be required for the register.

PART 1

Preliminary and General

Part 1 provides standard provisions relating to citation, commencement, interpretation, repeals and expenses.

Section 1 (Short Title, collective citation and commencement) sets out the short title of the Bill, which is to be the Children and Family Relationships Bill 2015.

Section 1 provides for different provisions to be commenced at different times by the Minister for Justice and Equality or by, or in consultation with, other Ministers as specified. Parts 2 and 3 will be commenced by the Minister for Health. Part 8 will be commenced by the Minister for Children and Youth Affairs. Part 11 will be commenced by the Minister for Justice and Equality in consultation with the Minister for Social Protection.

Section 2 (Interpretation) is a standard interpretation section which defines the primary terms used throughout the Bill.

Section 3 (Expenses) is a standard provision which enables the expenses in relation to the Bill of the Minster for Justice and Equality or any other Minister of the Government to be paid out of monies provided by the Oireachtas. It provides general authority for the Minister, with the approval of the Minister for Public Expenditure and Reform, to expend monies provided by the Oireachtas.

PART 2

Parentage in Cases of Donor-Assisted Human Reproduction

Summary: *Sections 4* to *21* set out the parentage rules that will apply where a child is born through donor assisted human reproduction.

Section 4 (Interpretation (Parts 2 and 3)) sets out key definitions for the purposes of Parts 2 and 3. It defines a donor-assisted human reproduction facility as a place at which a donor-assisted human reproduction (DAHR) procedure is performed. It defines a DAHR procedure as a procedure performed in a DAHR facility for the purposes of human reproduction where one or both gametes has been provided by a donor.

A donor is defined as a person who has consented to the donation of a gamete or an embryo. An intending mother is a woman who requests a DAHR procedure to perform a DAHR procedure for the purpose of her becoming the mother of a child born through the procedure. An intending parent is a person who requests a DAHR facility to perform a DAHR procedure for the purpose of becoming the parent of the child born as a result and includes an intending mother.

Section 5 (Parentage of child born as a result of DAHR procedure) sets out who are legally the parents of a child born through donor assisted human reproduction.

- A birth mother will always be a parent of the child.
- The child's second parent will be the birth mother's spouse, civil partner or cohabiting partner if the birth mother and that person consent in advance of the birth mother undergoing a donor-assisted human reproduction procedure.
- Both parents will have all the parental rights and responsibilities for the child.

A donor, in the donor-assisted human reproduction circumstances set out in this Bill, of gametes (a gamete can be either sperm or an ovum) or of an embryo will not be a parent of the child and will not have parental responsibilities for the child.

Section 6 (Consent to use of gamete in DAHR procedure) sets out the procedures that will apply to the consent of a donor of a gamete. A donor must be over 18 and must give consent in writing, having confirmed that s/he has been informed that s/he will not be the parent of a child born through the donation. The consent must be witnessed by a person authorised to do so by the donor assisted human reproduction (DAHR) facility. The donor's consent must stipulate that s/he knows that s/he will not be the parent of a child born as a result of the donation. The donor must agree, when consenting, to the inclusion of information about the donor on the national donor-conceived person register. The consent must also indicate that the donor understands that a donor-conceived child born through the procedure may seek to contact her/him.

The donor has the right to make a ''directed'' donation to a specified intending mother or to a couple of intending parents. Other than in the case of such directed donation, the donor may not set out any grounds preventing a class or category of persons from using the donation.

Section 7 (Information to be provided for purposes of section 6) sets out the information which a DAHR facility must provide to the donor. The facility must inform the donor that s/he will not be the parent of a child born through a DAHR procedure, that information on the donor will be held on the national donor-conceived person register and that the donor-conceived child may seek to contact her/him. It must also inform the donor that her/his entitlement to information will be restricted to information on the number of children born through the donation and the sex and year of birth of each of them. It must also inform her/him of her/his right to revoke consent for the donation.

Section 8 (Revocation of consent given under section 6) sets out the procedures for revoking a donor's consent. A donor who wishes to revoke his or her consent to the use of his/her gametes must do so in writing to the DAHR facility at which his/her original declaration of consent was made. The revocation has no effect if the gametes have already been used in a DAHR procedure or an embryo has been created using those gametes before the revocation has been received.

Section 9 (Consent of intending mother) sets out the provisions that will apply to the consent of an intending mother (i.e. a mother seeking to have a child through a DAHR procedure). The intending mother must be over 21. She must have been informed of the

procedures for revoking her consent. She must make a declaration in writing that is witnessed by a person authorised to do so by the DAHR facility in which the procedure is being carried out. The declaration must confirm that the mother has been informed that she may revoke her consent. It must indicate that she consents to the DAHR procedure, that she knows that she will be a parent of the child born through the procedure and that she knows that the donor will not be a parent of the child.

Where applicable, she must also consent that her spouse, civil partner or cohabiting partner will also be a parent of the child born through the procedure.

The intending mother must consent that, if a child is born as a result of the procedure, information in respect of the child must be recorded in the national donor-conceived person register and that her personal details will also be recorded. She must also indicate that she understands that the child will have the right to access the information provided on the donor in the national donor-conceived person register and to seek to contact the donor.

Section 10 (Revocation of consent given under section 9) sets out the procedures for revocation of an intending mother's consent. An intending mother has the right to revoke her consent to the DAHR procedure. She must revoke her consent in writing to the DAHR facility where she gave her consent to the procedure. The revocation of her consent will have no effect if notice of the revocation is received by the DAHR facility after the procedure leading to the implantation of an embryo in her womb.

Section 11 (Consent of husband, civil partner or cohabitant of intending mother) sets out the consent provisions that will apply to a spouse, civil partner or cohabitant of the intending (birth) mother.

The spouse, civil partner or cohabiting partner must be 21 years or over. S/he must give her/his consent in writing, witnessed by a person authorised to do so by the DAHR facility, stating that s/he is the spouse, civil partner or cohabiting partner of the intending mother, that s/he has been informed that s/he can revoke her/his consent and that s/he consents to being a parent of a child born as a result of the DAHR procedure performed on the intending mother.

S/he must consent that s/he understands that s/he will be the parent of the child born through the procedure and that s/he knows that the donor will not be the parent. S/he must consent to the recording of personal details on her/him and on the child in the national donor-conceived person register. S/he must also indicate that s/he understands that the child may seek to contact the donor (when the child reaches 18).

Section 12 (Revocation of consent given under section 11) sets out the procedures for revocation of the consent of an intending mother's spouse, civil partner or cohabiting partner. Revocation of consent must be made in writing to the DAHR facility at which the declaration of consent was made. The revocation will have no effect if it is received after the procedure leading to the implantation of the embryo in the womb.

Section 13 (Information to be provided for purposes of section 9 and 11) outlines the information that a DAHR facility must provide to intending parents. It must inform her/him that:

- s/he will be the parent of the child born through the AHR treatment,
- the donor will not be a parent of the child,
- information on the parent(s), donor and child will be recorded in the national donor-conceived person register,
- the child will be able to access the information on reaching the age of 18,
- the parent will be able to request non-identifying information relating to the donor,
- the parent is obliged to tell the clinic if the AHR treatment results in the intending mother becoming pregnant or if she has a child as a result of the treatment, and
- that s/he can revoke consent.

Section 14 (Consent to use of embryo in further DAHR procedure) sets out the consent provisions that will apply to the donation of an embryo. A person or couple who has AHR treatment and who has remaining embryos after she/he/they have finished treatment will have the possibility to donate the embryo to another person or couple. The consent of each member of the couple is required, whether or not the person provided a gamete from which the embryo was formed. S/he must indicate that s/he has been informed and must make a declaration confirming that s/he consents to the donation of the embryos and understands that s/he will not be the parent of any child born as a result. If the embryo was formed using her/his gamete, s/he must also consent that her/his personal details will be recorded on the national donor-conceived person register and acknowledge that any child born as a result may access that information (when 18 or over) from the register and may seek to contact the donor.

The person may stipulate that the embryo is to be donated to a specific intending birth mother or donated to a specified couple. In these circumstances, it will be possible only for the specified mother or couple to use the embryo. However, it will not be possible for a donor to prevent a specific class or category of people (such as people of a specific nationality) from using the embryo.

Section 15 (Information to be provided for purposes of section 14) outlines the information provisions concerning the donation of an embryo with which a DAHR facility must comply. A DAHR facility will be obliged to inform a person wishing to donate an embryo under section 15 that the person will not be the parent of any child born as a result and that the person will have the right to revoke consent to the donation.

If the embryo contains the person's gametes, the DAHR facility must inform her/him that s/he will not be a parent of the child and that the person's personal details must be recorded on the national donor-conceived person register. It must also inform her/him that the child may seek to access information on her/him and to contact her/him and that it is desirable that the person update her/his personal details for the purposes of the register. The donor will be entitled to request information from the register on the number of persons born as a result of the donation and the sex and year of birth of each of them.

Section 16 (Revocation of consent given under section 14) sets out the provisions for revocation of consent to the donation of an embryo. A person who has given consent to the donation of an

embryo will have the right to revoke that consent. The revocation must be made in writing to the DAHR facility in which the declaration was made giving consent to the donation. Where the embryo is donated by a couple, and either of them revokes his or her consent, then the embryo may not be used. Revocation of consent will have no effect if it is received after the procedure leading to implantation of the embryo in the womb of the mother receiving the donation has been performed.

Section 17 (Payment of reasonable expenses) stipulates that it will not be permitted for a donor to receive a payment for the donation of a gamete or of an embryo. The donor's consent to the donation will be invalid if s/he has been paid for the donation of the gamete or embryo. However, it will be possible for the donor to be refunded for any reasonable expenses that may arise from making the donation. Reasonable expenses will include travel costs, medical expenses (other than in the case of embryo donation, because the donors would in any case have incurred those medical expenses) and legal or counselling costs.

Section 18 (Child to whom this section applies) sets out the scope of ''retrospective recognition'' of parentage of certain donor-conceived child born before the commencement of this Part. The section applies to any donor-conceived child born in the State following a DAHR procedure carried out in a clinic or hospital in the State or in a DAHR facility outside the State that is authorised to do such procedures under the law of the state in which the procedure is performed. The second parent must be able to demonstrate that s/he knew at the time of the DAHR procedure that s/he intended to be a parent of the child. The donor must be unknown to the birth mother or intending parent. The section will not apply if anyone other than the birth mother and, if the other parent is male, that man, is recorded as a parent on the child's birth certificate.

Section 19 (Declaration by District Court of parentage of child to whom section 18 applies) outlines the District Court procedure that will apply where a declaration of parentage is sought in respect of a donor-conceived child born before the commencement of this Part. A birth mother or a second parent may apply to the District Court to seek a declaration of parentage in respect of a donor-conceived child. A child over 18 will be on notice of, and can be party to, proceedings. The Attorney General will have the possibility of being party to proceedings. The court may also consider the views of the child, having regard to the child's age and maturity.

The court will make a declaration of parentage in respect of a donor-conceived child if satisfied that it is in the best interests of the child to do so. The declaration will be binding on the parties to the proceedings and on the State if the Attorney General is a party to the proceedings. Where the court makes a declaration of parentage, the person declared to be a parent will have all the rights and duties of parentage. All other familial relationships will be deduced accordingly. The declaration of parentage will confirm that the donor of a gamete is not a legal parent of the child.

Section 20 (Declaration by Circuit Court of parentage of child to whom section 18 applies) sets out the Circuit Court procedure that will apply where a declaration of parentage is sought in respect of a donor-conceived child born before the commencement of this Part. An application can be made by a donor-conceived child, a birth mother or the person seeking to be recognised as the second parent. The court will have the possibility of making a declaration of parentage where it is proved on balance of probabilities that the

person is the child's second parent. However, the court can decide not to make the declaration of parentage if it determines that it is in the best interests of the child not to do so. The court will be able to take account of factors that may prevent a person from providing the stipulated evidence such as the death of the birth mother or second intending parent, a dispute between these parties, the closure of the DAHR facility in which the procedure took place or its inability to provide such evidence or the incorrect recording of another person on the child's birth certificate.

The declaration of parentage made by the court will be binding on the parties to the proceedings and on the State if the Attorney General is a party to the proceedings. Where the court makes a declaration of parentage, the person declared to be a parent will have all the rights and duties of parentage. All other familial relationships will be deduced accordingly. The declaration of parentage will confirm that the donor of gametes is not a legal parent of the child.

Section 21 (Effect of declaration under section 20 or 21) provides that where a person is declared to be a parent of a child, the person shall have all parental rights and duties in respect of the child from that date and the child's other relationships shall be deduced accordingly. The declaration will have the effect that the donor of the gamete or embryo will not be the parent of the child and will have no parental rights or duties in respect of the child.

PART 3

Donor-Assisted Reproduction

Summary: *Sections 22-39* set out the obligations that will apply to Donor-Assisted Human Reproduction (DAHR) facilities arising from this legislation. They provide for the establishment of a national donor-conceived person register which will record information on donor-conceived children, donors and parents for the purpose of enabling a donor-conceived child to trace his/her identity.

Section 22 (Acquisition by operator of DAHR facility of gamete, embryo) prohibits a DAHR facility from acquiring anonymous gametes or embryos. The DAHR facility must, when acquiring donor gametes or embryos, ascertain the donor's name, date and place of birth, his/her nationality, the date and place of donation, and his/her contact details.

Section 23 (Performance of DAHR procedure) sets out the obligations on a DAHR facility that will apply to the performance of a DAHR procedure. A DAHR facility must seek the name, date of birth, address and contact details of an intending parent. The DAHR facility must ensure that it has secured the consent of an intending mother. Where the birth mother's spouse, civil partner or cohabiting partner is to be the second parent of any child born as a result of the procedure, the DAHR facility must ensure that both the birth mother and that person have specifically consented to that person's being a parent.

Section 24 (Use of gamete, embryo in DAHR procedure) sets out the obligations that will apply to the use of a gamete or embryo in a DAHR procedure. A DAHR facility must ensure that each donor has consented to the use of the gametes or embryos. It is prohibited from using gametes or embryos where consent to do so has been revoked by the donor(s).

A DAHR facility will have the possibility of using anonymous gametes for up to three years from commencement of this section where an intending parent wishes to use the donation to have a genetic sibling for a child already born to the intending parent. A DAHR facility may also continue to use embryos formed pre commencement of this Part. No time limit is set out for the use of such embryos.

Section 25 (Intending parent to provide information to DAHR facility following DAHR procedure) sets out the obligations of an intending parent to provide information to the DAHR facility. An intending parent will be obliged to inform the DAHR facility as to whether the procedure has resulted in a pregnancy and, if so, the expected date of birth of the child. Where a child is born as a result of the procedure, the intending parent will be obliged to inform the DAHR facility of the name, date of birth, sex and address of the child. If the intending parent does not provide such information, the DAHR facility is required to contact the parent or to make reasonable efforts through other means to obtain the information.

Where the intending parent(s) provide the information sought, the DAHR facility will issue a certificate to the parent(s) confirming that the DAHR procedure took place, indicating whether the donation was of gametes or an embryo and confirming the consent of the birth mother and, where applicable, of her spouse, civil partner or cohabiting partner.

Section 26 (DAHR facility to return and provide certain information) sets out the information that a DAHR facility must provide to the Minister for Health. The DAHR facility must provide information to the Minister on the donor and intending parent(s). It must inform the Minister as to whether a DAHR procedure resulted in a pregnancy. Where the procedure resulted in the birth of a donor-conceived child, it must inform the Minister of the name, date of birth, sex and address of the child. It must provide an initial notification of a DAHR procedure no later than 6 months after the procedure, and provide full information to the Minister following the birth of any child born as a result of the procedure.

Section 27 (Minister may require information on compliance by DAHR facility with section 26) provides that the Minister for Health has the right to seek any information that s/he needs to determine whether or not the DAHR facility is in compliance with the obligations of section 26.

Section 28 (Authorised persons) gives the Minister for Health the power to appoint a person or persons as authorised persons for the purposes of the Act. Such persons shall be furnished with warrants of appointment that can be produced when the authorised person is exercising functions under this Act, particularly inspection functions at a DAHR facility.

Section 29 (Powers of authorised persons) gives authorised persons the powers to inspect DAHR facilities and to inspect their records to ensure that they are in compliance with the Act. An authorised person may also interview the staff, owner or operator of a DAHR facility. The operator of a DAHR facility must cooperate with an inspection and provide any information sought. It provides for a District Court to issue a warrant to enable the authorised person, accompanied as necessary by An Garda Síochána, to enter a DAHR facility to inspect its records.

This section provides that that it will be an offence for a person to obstruct or fail to comply with the requests of the authorised person(s) with regard to the inspection of the facility. The penalties for such an offence are set at a class A fine and/or imprisonment for up to 12 months on summary conviction and a fine of €70,000 and/or imprisonment for up to 2 years.

Section 30 (Enforcement of obligations of DAHR facility under section 26) sets out the mechanisms that will apply to ensure that DAHR facilities comply with their obligations to provide information to the Minister for Health.

If the Minister considers that the DAHR facility is not in compliance with these obligations, s/he can issue an order directing the facility to comply. If the facility continues not to comply with the order, the Minister can apply to the Circuit Court to seek an order directing the facility to comply. If a facility persistently fails to comply with these obligations, the Minister can apply to the Circuit Court for an order preventing the facility from carrying out DAHR procedures until such time as the court is satisfied that it is in compliance with these obligations.

Section 31 (National Donor-Conceived Person Register) provides for the establishment of a national donor-conceived person register under the auspices of the Minister for Health. The register shall record information on the name, date of birth, sex and address of the donor-conceived child. It shall hold information on the donor, the parent(s), the date and place of the DAHR procedure and the name and address of the DAHR facility at which the procedure took place. The Minister will have the right to prescribe how the information is to be recorded on the register.

Section 32 (Access to certain information from Register) sets out the information that each category of person will be entitled to receive from the national donor-conceived person register.

The donor-conceived child who has reached the age of 18 or the parent of a donor-conceived child will be able to receive non-identifying information on the donor, the number of children born through gametes donated by the donor and the sex and year of birth of each of them.

The donor will be entitled to request information from the register on the number of persons born as a result of the procedure and the sex and year of birth of each of them.

Section 33 (Information in respect of relevant donor to be provided to donor-conceived child) sets out the information that can be provided on a donor to a donor-conceived child. A donor-conceived child over 18 will be able to access information on the donor by writing to the Minister for Health requesting the release of all information held on the relevant donor on the register. In response, the Minister for Health must inform the donor that a request has been made by the donor-conceived child. The donor will have 12 weeks from the date on which the notice is sent to indicate any objection to the release of the information. The objection must be on the grounds that the safety or well-being of the donor or of the child would be affected if the information were released. The Minister will have the right to decide if there are sufficient reasons to withhold or to release the information. If the donor does not reply within the 12 weeks, the information will be released to the donor-conceived child.

Section 34 (Information in respect of donor-conceived child to be provided to relevant donor) sets out the information that a donor can obtain on a donor-conceived child. A donor will have the right to ask the Minister for the name, date of birth and contact details of a donor-conceived child over 18. The donor-conceived child will be able to ask that her/his name, date or birth and contact details be recorded on the register. S/he will be able to record a consent on the register to the release of such information to the donor. If the donor requests information on the child, the Minister for Health will write to the child asking if s/he objects to the release of the information, but only if the child has already asked the Minister to note on the register that s/he is willing to have that information released. The child will have 12 weeks in which to object. If s/he does not object, the information will be released to the donor.

Section 35 (Information in respect of other persons to be provided to donor-conceived child) sets out the information on a donor-conceived sibling that can be given to a donor-conceived child. A donor-conceived child will be able to ask the Minister for Health to record his/her consent, on the national donor-conceived person register, to the release of his/her name, date of birth and contact details to a donor-conceived sibling. In these circumstances, if a request is made by a donor-conceived sibling for these details, the Minister for Health will write to the donor-conceived child asking if that information can be released to the donor-conceived sibling. The donor-conceived child will have the opportunity to object within 12 weeks of the date on which the notice is sent to him/her. If no objection is received by that date, the Minister for Health will release the information on the donor-conceived child to the donor-conceived sibling.

Section 36 (Additional provisions in relation to sections 31 to 35) sets out the additional provisions that will apply with regard to the information held on, or released from, the national donor-conceived person register. A person whose personal details are held on the national donor-conceived person register will be able to write to the Minister for Health to have that information updated on the register.

Section 36 also requires that the Minister for Health must be satisfied that a donor-conceived child or a donor has received counselling before the Minister records a statement on the register giving the donor-conceived child's consent to the release of information to the donor or to a donor-conceived sibling, or before the Minister releases information to a donor-conceived child on the donor or a donor-conceived sibling, or to a donor on a donor-conceived child.

Section 37 (Interaction of the Register and the register of births) sets out how the national donor-conceived person register will interact with the birth register.

When an entry is made on the national donor-conceived person register, the Minister for Health must notify the General Register Office that a record on the child is held on the national donor-conceived person register. The General Register office must note on the Register of Births that there is a record on the child on the national donor-conceived person register. If a person over 18 applies for a copy of his/her birth certificate, a Registrar shall inform the person, when issuing the birth certificate, that further information relating to the person is available from the national donor-conceived person register.

Section 38 (Regulations (Parts 2 and 3) gives the Minister for Health a regulation-making power in relation to the provisions of Parts 2 and 3. These regulations must be laid before the Oireachtas. If the Oireachtas passes a resolution within 21 sitting days annulling the regulations, the regulations will be annulled but without affecting the validity of anything done under them while they were in effect.

Section 39 (Service of documents (Parts 2 and 3) sets out the procedures for serving documents on a person.

PART 4

Amendments to Guardianship of Infants Act 1964

Summary: *Sections 40 to 58* amend the Guardianship of Infants Act 1964 to enable the court to appoint step-parents, civil partners and cohabiting partners as guardians, to allow a parent or guardian with custody of the child to nominate a temporary guardian, and to enable wider categories of persons to apply for custody and access.

Section 40 (Amendment of section 2 of Act of 1964) amends the definitions that are contained in section 2 of the Guardianship of Infants Act. The definition of 'father' excludes the donor of a gamete. The definition of 'parent', in relation to a donor-conceived child, includes the spouse, civil partner or cohabiting partner of a birth mother, where that person is recognised as a second parent under *section 5* of the Children and Family Relationships Bill 2015. It also defines a 'qualifying guardian' (i.e. a guardian who can nominate a temporary guardian in respect of a child) as one who is either the parent of the child and has custody of him/her or who, if not the parent, has sole custody of the child.

The section inserts a new subsection (4A) after subsection (4) which provides for an unmarried father to be a guardian of his child automatically where he has cohabited with the child's mother for 12 consecutive months, including 3 months with the mother and child following the child's birth. There is no requirement that any part of the 12 consecutive months should be before the birth of the child.

Section 41 (Best interests of the child to be paramount) replaces section 3 of the Guardianship of Infants Act 1964. It stipulates that the best interests of the child will be the paramount consideration for the court in proceedings on guardianship, custody or upbringing of, or access to, a child or in relation to the administration of any property belonging to, or held on trust for, a child.

Section 42 (Amendment of section 5(2) of Act of 1964) amends section 5(2) of the Guardianship of Infants Act 1964. It raises the maximum thresholds for maintenance that can be ordered by the District Court and Circuit Court. It provides for the District Court or the Circuit Court on appeal from the District Court to make maintenance orders of up to €200 per week in respect of a child or to make lump sum orders of up to €15,000.

Section 43 (Amendment of section 6 of Act of 1964) inserts a new subsection after subsection 1 of section 6 of the Act of 1964 to provide that civil partners or a cohabiting couple who have jointly adopted a child will be guardians jointly. It also inserts a new subsection after subsection 3 that where one member of the couple dies, the surviving member can act alone as a guardian or jointly with a testamentary guardian appointed by his or her partner.

Section 44 (Amendment of section 6A of Act of 1964)

Power of court to appoint parent as guardian

Section 44 replaces the existing section 6A of the Guardianship of Infants Act 1964. It provides for the court to appoint a parent as a guardian of a child. The appointment of the parent as guardian will not affect the prior appointment of any other person as the child's guardian.

Section 45 (Insertion in Act of 1964 of sections 6B to 6E) inserts sections 6B to 6E into the Guardianship of Infants Act 1964 after section 6A.

Rights of certain parents to guardianship

The new section 6B provides that the following parents, other than the birth mother, will have the rights to guardianship of a child:

- The married husband of the birth mother who has provided the gamete for a donor-conceived child;
- The civil partner of the birth mother, where recognised as a parent under section 6 of this Bill;
- The unmarried father who has cohabited with the child's mother for 12 consecutive months and with the child for 3 months following the child's birth;
- The cohabiting same-sex partner, recognised as a parent under *section 5* of this Bill, who has cohabited with the child's mother for 12 consecutive months including with the child for at least 3 months following the child's birth;
- The unmarried father or cohabiting same-sex partner recognised as a parent under *section 5* of this Bill, who has made a statutory declaration with the birth mother agreeing to the former's appointment as guardian.

Power of court to appoint person other than parent as guardian

The new section 6C enables the court to appoint a person other than a parent as a guardian where the person is married to, is in a civil partnership with, or has cohabited with the child's parent for over 3 years, and in each case has shared responsibility for the child's day-to-day care for more than 2 years. A person can also be appointed as a guardian if s/he has provided for the child's day-to-day care for more than 12 months and where there is no parent or guardian willing to exercise the rights and responsibilities of guardianship in respect of the child. In the latter case, Tusla will be on notice of the application and will have the possibility of giving views.

When determining whether or not to appoint someone as guardian, the court will be required to ascertain the child's views, having regard to the child's age and maturity. The court will also have to consider the number of persons already guardians of the child and the degree to which they are involved in the child's upbringing.

Where a person other than a parent is appointed as a guardian, that person will generally enjoy limited rights of guardianship. The court will extend the following rights of guardianship to a person other than a parental guardian only where it is in the best interests of the child to do so and taking account of the relationship between the person and the child:

- The right to make decisions on the child's place of residence;

- The right to make decisions regarding the child's religious, spiritual, cultural and linguistic upbringing;
- The right to decide with whom a child is to live;
- The right to consent to medical, dental or other health-related treatment;
- The right to consent to the issue of a passport to the child;
- The right to place the child for or to consent to the child's adoption.

Rights and responsibilities equivalent to guardianship arising in another state

Section 6D provides that where a person has rights and responsibilities equivalent to guardianship arising from a judgement in accordance with the Brussels II *bis* Regulation or the Hague Convention on Parental Responsibility and Measure for the Protection of Children or from a measure under the Hague Convention, s/he will be recognised as a guardian under Irish law. Similarly, a person will be recognised as a guardian under Irish law where s/he has been given rights and responsibilities equivalent to guardianship by operation of the law of another state.

Power of court to appoint temporary guardian

Section 6E enables a qualifying guardian (i.e. either a parent who has custody of a child or a person other than a parent who has sole custody of a child) to nominate another person as a temporary guardian where the qualifying guardian becomes incapable through illness or injury of exercising the rights and responsibilities of guardianship. The qualifying guardian can specify limitations on the rights and responsibilities to be exercised by the temporary guardian.

To be appointed as a temporary guardian, either the person nominated or the qualifying guardian can apply to court if either of them considers that the qualifying guardian is unable to exercise the rights and responsibilities of guardianship. The application must be on notice to any parent/guardian of the child and to Tusla.

The court can appoint the person as a temporary guardian where it considers that:

- the qualifying guardian is incapable of exercising guardianship; and
- the proposed temporary guardian is a fit and proper person to exercise guardianship; and
- it is in the best interests of the child to do so.

The court can impose limitations as to the rights and responsibilities of guardianship which the temporary guardian can exercise, having regard to any limitations specified by the qualifying guardian. It can also impose any conditions on the appointment which it considers necessary in the child's best interests. A temporary guardian or the qualifying guardian can apply to the court where s/he believes that the qualifying guardian is once again capable of exercising guardianship. The application must be on notice to any parent and/or guardian of the child and to Tusla.

The court can:

- confirm the continuing appointment of the temporary guardian;

- revoke the appointment of the temporary guardian;
- specify that certain guardianship rights and responsibilities can be exercised by the qualifying guardian, and require the temporary guardian to act jointly with the qualifying guardian on the other rights and responsibilities of guardianship.

The court must enable the child to give his/her views, taking account of the child's age and maturity.

Section 46 (Power of parents to appoint testamentary guardians) replaces section 7 of the Guardianship of Infants Act 1964. It provides for a parent to be able to appoint a testamentary guardian to be a guardian of the child in the event of that parent's death. A testamentary guardian is a guardian appointed by a person in his or her will. The testamentary guardian will act jointly with the surviving guardian. Where the surviving parent objects to the testamentary guardian acting jointly with him/her or where the testamentary guardian considers the surviving parent to be an unfit guardian, the surviving parent or the testamentary guardian can apply to the court for an order. The court will be able to make an order revoking the appointment of the testamentary guardian, requiring the testamentary guardian to act jointly with the surviving parent or giving the testamentary guardian the right to act as sole guardian. The court can make certain orders in respect of custody and maintenance. It will also have the power to revoke the appointment of the testamentary guardian.

Section 47 (Amendment of section 8 of Act of 1964) amends subsection (4) of section 8 of the Guardianship of Infants Act 1964.

The new subsection provides that only the court may remove from office a testamentary guardian, a court-appointed guardian or certain parents.

New subsections (6) and (7) are inserted to allow the court to remove a guardian in particular circumstances:

- where there is another guardian in place or about to be appointed;
- where it is in the best interests of the child to do so;
- for substantial reasons that the court considers makes it desirable or necessary to do so;
- where the guardian consents to his/her removal;
- where the guardian is unable or unwilling to exercise the rights and responsibilities of guardianship;
- where the guardian has failed in his/her duty to the child so that the welfare and safety of the child could be affected if the guardian were not removed.

The categories of guardian who may be removed under subsection (4) or (6) do not include the child's birth mother or marital father who have a constitutional right to guardianship.

Section 48 (Insertion of section 8A in Act of 1964) inserts an additional section 8A after section 8 of the Guardianship of Infants Act 1964. Section 49 provides that a guardian, except where removed by the court, will continue to be the child's guardian until the guardian dies, the child reaches 18 or the child marries, whichever happens first.

Section 49 (Amendment of section 11 of Act of 1964) amends section 11 of the Guardianship of Infants Act 1964 by replacing the existing subsections (2) and (4) with the provisions set out in section 50. It enables a court to make the orders the court considers appropriate regarding the custody of a child and the right of access by each parent to the child. It also enables the court to order a parent to pay maintenance for the child weekly or periodically, taking account of the means of the parent. The court may make this order whether or not the parent concerned is a guardian of the child. It stipulates that applications under section 11(1) for the court's direction on a question affecting the welfare of a child will be on notice to any other parent or guardian of the child.

Section 50 (Amendment of section 11A of Act of 1964) amends section 11A to allow a court to grant custody to a child's parents. The previous provision applied only where the parents were an opposite-sex couple.

Section 51 (Amendment of section 11B of the Act of 1964) amends section 11B of the Guardianship of Infants Act 1964 to enable a relative (e.g. a grandparent) or a person with whom the child resides to apply for access to the child without having first to seek the permission of the court to do so. The provision has also been amended to enable the court to seek the views of the child on the application for access.

Section 52 (Amendment of section 11D of Act of 1964) amends the provisions of section 11D of the Guardianship of Infants Act 1964 to enable them to apply to same-sex parents as well as to opposite-sex parents.

Section 53 (Relatives and certain persons may apply for custody of child) inserts a new section 11E after the existing section 11D. It enables:

(1) a relative of a child,

(2) a spouse or civil partner of the parent who has shared responsibility with the parent for the child's day-to-day care for more than 2 years,

(3) a person who has cohabited with the child's parent for over 3 years and has shared responsibility with the parent for the child's day-to-day care for more than 2 years, or

(4) an adult who has provided day-to-day care for the child for more than 12 months where there is no parent or guardian willing or able to assume guardianship rights and responsibilities in respect of the child,

to apply for custody for the child.

The court cannot make an order for custody without the consent of each guardian of the child except where the court is satisfied that it is in the best interests of the child to dispense with such consent.

Custody can be granted jointly to a parent and to one of the persons specified in categories (2) to (4). In such circumstances, the court can specify the child's residential arrangements where these have not been agreed between the parent(s) and the person being granted custody. It can also specify the contact that a child will have with a parent where the child's residential arrangements involve the child living apart from the parent for any period.

Section 54 (Additional powers of court in relation to applications under this Act) adds a new section 12A after section 12. It provides for the court to impose any conditions that it considers necessary in a child's best interests when making orders under the Guardianship of Infants Act. The court will be able to impose conditions on the holding of a child's passport in order to protect a child's best interests and the child's right to the care and custody of both parents. The court will be able to retain the passport or to order that it may be held by a specified person and released according to specific conditions decided by the court.

If the court decides that a care order or a supervision order may be needed in respect of the child, the court will be able to adjourn proceedings and may make directions under section 20 of the Child Care Act 1991 with regard to the issuing of a care order or a supervision order in respect of the child.

Section 55 (Amendment of section 18(2) of Act of 1964) amends section 18 of the Guardianship of Infants Act 1964, which says that a separation agreement is not invalid by reason only of providing that one parent is to give up custody of the child to the other, so that it applies to separation agreements made by same-sex couples as well as to opposite-sex couples.

Section 56 (Insertion in Act of 1964 of sections 18A to 18D

Enforcement Orders

Section 56 inserts a new section 18A into the Guardianship of Infants Act 1964 after section 18 which provides the court with the possibility of imposing new enforcement orders against a guardian or parent of a child who has unreasonably denied the other parent or guardian custody or access.

The court will have the possibility, where it is in the best interests of the child to do so, to make an enforcement order providing that:

- the parent or guardian denied custody or access be granted additional time with the child so as to re-build their relationship;
- the person who has denied custody or access be required to reimburse the other parent or guardian for any expenses incurred;
- the person who has denied custody or access may be required to attend a post-separation parenting programme, to avail of family counselling or to be informed of mediation programmes. The other parent may also be required to attend these programmes.

The court must take account of the views of the child, where possible, given the child's age and understanding. The court may refuse to make the enforcement order where it considers the denial of custody or access to have been reasonable.

Person presumed to have seen order of court

The new section 18B provides that a person will be presumed to have seen an order of the court if the person was present at the court hearing at which the order was made.

Power of court to vary or terminate custody or access enforcement order

The new section 18C provides for the court to vary or terminate an enforcement order relating to custody or access.

Enforcement of custody or access order

The new section 18D enables a parent or guardian who has custody of a child to apply to the court for reimbursement of expenses where the other parent or guardian fails to exercise court-ordered rights of custody and access. The expenses for which reimbursement can be awarded can include travel expenses and lost remuneration.

Section 57 (Amendment of section 23 of Act of 1964) amends section 23 of the Guardianship of Infants Act to specify that, where disclosed in mediation, an admission by a child under 18 or by one of the parties to the mediation that the child has been abused or is at risk of abuse, will be admissible in subsequent court proceedings.

Section 58 (Insertion of Part V in Act of 1964) inserts a new Part V entitled 'Best Interests of the Child' into the Guardianship of Infants Act 1964 after the existing Part IV.

Determination by court of best interests of child

The proposed section 31 sets out a list of the factors that the court may take into account when determining the best interests of the child. These factors will include:

- the benefit to the child of having a meaningful relationship with each parent;
- the child's views, where ascertainable;
- the physical, psychological and emotional needs of the child;
- the child's religious, spiritual, cultural and linguistic upbringing and needs;
- the child's social, intellectual and educational upbringing and needs;
- the proposals made for the child's custody, care, development and upbringing and for access to and contact with the child;
- the capacity of each person for whom an application is made under the Bill to care for and meet the child's needs.

The court shall also have regard to family violence and the impact or likely impact on the safety of the child and on other members of his/her family and the child's personal wellbeing.

Power of court to make certain orders

Section 32 provides the court with the option to seek a report in writing from an expert on the welfare of the child. It also enables the court to appoint an expert to determine and convey the child's views. When considering whether to seek a welfare report or to appoint a child's views expert, the court will have regard to the age and maturity of the child, the nature of the issues at dispute in the proceedings, any previous report, the best interests of the child and whether this will assist the child in conveying his/her views.

- The expert appointed to ascertain a child's views will have the role of ascertaining the maturity of the child and of assessing whether the child is sufficiently mature to be capable of forming views on the issues at dispute in the proceedings. Where the expert considers the child to be capable of forming

views, the expert will have the role of ascertaining those views and of preparing a report on them for the court.

- The section provides for the Minister for Justice and Equality to have the possibility of making regulations, in cooperation with the Minister for Children and Youth Affairs, on the fees, qualifications, experience and standards applicable.

PART 5

Amendments to Succession Act 1965

Summary: *Sections 59-65* make technical amendments to the Act of 1965 to reflect that civil partners may both be the legal parents of a child through donor-assisted human reproduction or by joint adoption, and that joint adopters may not be married to or civil partners of each other. It does not make any fundamental changes to the law on succession. The children of a deceased person have rights to inherit a share of the estate if that person dies without making a will. If a person makes a will in which he or she makes no provision for his or her child, the child may apply for provision from the estate of the deceased under section 117 of the Act if the deceased had not made proper provision for the child during his or her lifetime. None of this is changed in the Bill.

Section 59 (Amendment of section 3 of Act of 1965) amends section 3 of the Succession Act 1965 to add a definition of this Bill.

Section 60 (Amendment of section 4A of Act of 1965) makes technical amendments to section 4A of the Act of 1965, to recognise the parentage of children born as a result of donor-assisted human reproduction procedures.

Section 61 (Amendment of section 27A of Act of 1965) makes technical amendments to section 27A of the Act of 1965 to take account of cases where children are adopted by couples who are civil partners or cohabitants of each other, or are the children by donor-assisted human reproduction of couples who are not married to or civil partners of each other.

Section 62 (Amendment of section 67A of Act of 1965) amends section 67A of the Act of 1965 to exclude a child applying under this section to court for provision out of the intestate's estate, if the child is also the child of the surviving civil partner of the intestate. This is a recognition that, under the provisions of this Bill, the civil partners may both be parents of a child through joint adoption or through donor-assisted human reproduction. A similar exclusion exists under section 67 in relation to a child of both the intestate and the surviving husband or wife.

Section 63 (Amendment of section 72A of Act of 1965) amends section 72A of the Act of 1965 to include a civil partner. This section provides that if part or all of an estate of a person who has died intestate is disclaimed, then the estate is distributed as if the person who disclaimed it died before the intestate without having children. The exception is where the person is a ''spouse, civil partner or a direct lineal ancestor'' of the intestate. This is a technical amendment to reflect that where a couple are civil partners, they may both be the parents of a child. In that case, if one parent dies intestate and the other disclaims the estate, the rule set out by this amendment means that the child would inherit the estate. This is exactly how it operates in relation to children of a marriage.

Section 64 (Amendment of section 117 of Act of 1965) amends section 117 of the Act of 1965 by replacing the existing section 3A. This provision enables the court, on application by a child to make provision for the child out of the parent's estate. The court will not make provision that would affect the legal right of the surviving civil partner, unless the court is of the opinion that it would be unjust not to make an order in favour of the child. The amendment takes account of the fact that the surviving civil partner may also be a parent to the child, and in these circumstances states that the court will not make provision for the child that affects the legal share of the civil partner, or any legal share the civil partner has on intestacy. The same rules apply in relation to a child who is a child of the intestate, and who may or may not be a child of the surviving spouse.

Section 65 (Amendment of section 121 of Act of 1965) amends section 121 of the Act of 1965 to exclude a child applying under this section for a legal remedy if his or her parent has made a disposition of property to the parent's civil partner, when the child is a child of both the parent and civil partner. A similar exclusion already exists under this section where the child is the child of both the parent and the parent's spouse.

PART 6

Amendments to Family Law (Maintenance of Spouses and Children Act) 1976

Summary: *Sections 66-73* of the Bill amend the Act of 1976 to take account of the fact that the unmarried parents of a dependent child may be parents of the same sex. The amendments also allow the court, in certain circumstances, to order payment of maintenance by a cohabitant of a child's parent for the support of the child.

Section 66 (Amendment of section 3 of Act of 1976) amends section 3 of the Act of 1976 and makes technical changes. Existing definitions under the Act of 1976 are adapted and new definitions are inserted, which are necessary to take account of the amendments being made.

Section 67 (Amendment of section 5A of Act of 1976) amends section 5A of the Act of 1976 to recognise that parents of the child, who apply under section 5A for maintenance for the dependent child, may be parents of the same sex, if they are both the parents of the child through donor assisted human reproduction or by adoption. The amendments are to ensure that if they are not civil partners of each other, they may seek maintenance for a dependent child under section 5A. Paragraph (*a*) amends section 5A of the Act of 1976 to include civil partners within the category of parents (currently limited to spouses) who cannot apply for maintenance for the dependent child under this section of the Act. Spouses currently apply for child maintenance under section 5 of the Act of 1976. Other amendments in this Bill will enable civil partners to apply for maintenance for the benefit of a dependent child under section 45 of the Act of 2010.

Paragraph (*b*) amends subsection (3)(*b*)(i) to ensure that the responsibilities of a parent to a civil partner are taken into account when the court is deciding whether to make a maintenance order under section 5A.

Section 68 (Maintenance by cohabitants of certain dependent children) inserts two new sections, sections 5B and 5C into the Act of 1976.

Section 5B enables a parent of a child, or a person acting *in loco parentis* to apply to court for a maintenance order for a dependent child, from the parent's cohabitant, provided the cohabitant is not the parent of the child and he or she has been appointed a guardian of the child under the Act of 1964, as amended by this Bill. A cohabitant cannot automatically become a guardian to a child. The requirement that the cohabitant is to be a guardian establishes the principle that only a cohabitant who has established a legal relationship with child may be subject to a maintenance liability. Section 5B applies only where the cohabitant from whom maintenance is being sought is not a parent of the child: where a cohabiting couple are both parents of a child, then any application would continue to be made under the current section 5A of the Act of the 1976.

Section 5C extends the provision under 5B to allow an application to be made by a person who is not the child's parent, to seek maintenance from a parent's cohabitant who is a guardian. Equivalent provisions are already made for applications for maintenance from spouses or from parents, to take account of the rare situations where another person who has no maintenance responsibility for a child may be caring for him or her. The court will not make an order under section 5C if an order has been made under Section 5B, unless the cohabitant is not complying with that order and the court considers it necessary.

Section 69 (Amendment of section 6 of Act 1976) amends section 6 of the Act of 1976 and states that any maintenance order made under section 5B or 5C is discharged when the dependent child reaches 18 years. This is because the guardianship of the cohabitant ends when the child reaches the age of 18 and therefore the maintenance responsibility of the cohabitant also ceases when the dependent child reaches 18 years.

Section 71 (Amendment of section 10 of Act of 1976) amends section 10 of the Act of 1976 by replacing the word ''spouse'' with the word ''person''. This is a minor technical amendment to recognise the extended categories of persons who can now be defined as a maintenance debtor under the Act of 1976.

Section 72 (Amendment of section 21A of Act of 1976) amends section 21A of the Act of 1976 and includes civil partners within the category of parents who cannot apply for a lump sum order towards the birth or funeral expenses of a dependent child under this section. The Bill makes separate provision in Part 9 to enable civil partners to apply for such lump sums in respect of a dependent child.

Section 73 (Amendment of section 23 of Act of 1976) amends section 23 of the Act of 1976 to extend the jurisdiction of the court to determine proceedings brought under the new subsections 5B and 5C. It also replaces subsection 3 with a new subsection. This new subsection extends the current obligations to provide the particulars of property or income as may be reasonably required in proceedings under the Act of 1976, to apply to all persons who are parties to any proceedings under the Act of 1976.

PART 7

Amendments to Status of Children Act 1987

Summary: *Sections 74-83* of the Bill amend the Act of 1987 to widen the category of persons who can apply for a declaration of

parentage and to enable the court to order the use of DNA testing instead of blood testing to establish parentage.

Section 74 (Amendment of section 33 of Act of 1987) amends section 33 of the Act of 1987 by inserting new definitions to take account of the amendments made by the Bill.

Section 75 (Amendment of section 35 of Act of 1987) amends section 35 of the Act of 1987 by replacing subsection (1) and inserting new subsections (1A) and (1B). The provision, as before, enables a person to apply for a declaration of parentage stating that the person or persons named in their application is or are the parent(s). The change made by the Bill is to widen the categories of persons who can make the application. The people who may apply for a declaration are the person whose parentage is in question, a person alleging that he or she is the person's parent, and a person alleging that he or she is not the person's parent. The Bill inserts a new subsection (1B) which states that anyone other than the person whose parentage is in question who makes an application to the court for a declaration, must put that person on notice of the application. This ensures that the civil status/parentage of the person cannot be changed by a court without the person being a party to the proceedings.

Subsection (4) of section 35 of the Act of 1987 is deleted, so that the discretion of the court to refuse to hear an application for a declaration of parentage is removed. This is because it is considered that it is in the best interests of the child to know his or her identity, and it would not be in the child's interests to allow the court to refuse to hear an application brought by the child or any person(s) claiming to be, or not to be, the parent(s) of the child.

A new subsection (8) of section 35 of the Act of 1987 allows the court to declare that a person is, or two people are, the parents of a child; the change from the previous provision is that the court now also has the power to make a declaration, on the basis of evidence provided to it, that a specified person is not the parent of a child.

Section 76 (Amendment of section 37 of Act of 1987) amends section 37 of the Act of 1987 by deleting the definitions of 'blood test' and 'blood samples' and adding in the new definitions of 'DNA test' and 'bodily sample'. A critically important definition is the definition of 'parent' which excludes a 'donor' within the meaning of this Bill. This means that in relation to a donor-conceived child, DNA testing to establish parentage is used only to the extent that the person tested provided a gamete that was used in the procedure leading to the child's birth *and* is the child's parent under *section 5* of this Bill, not a donor under *section 6*.

Sections 77-82 (Amendment of section 38 of Act of 1987; Amendment of section 39 of Act of 1987; Amendment of section 40 of Act of 1987; Amendment of section 41 of Act of 1987; Amendment of section 42 of Act of 1987; Amendment of section 43 of Act of 1987) amend sections 38-43 of the Act of 1987 stating that any reference to 'blood test', will be replaced with 'DNA test', and any reference to 'blood sample' will be replaced with 'bodily sample.' These changes enable the court to direct the use of DNA testing rather than blood testing to establish parentage. DNA testing can now be carried out on the less invasive mouth swabs or saliva samples. The possibility of DNA testing of blood samples is retained as this can be necessary if mouth swabs or saliva samples yield inconclusive results.

Section 83 (Amendment of section 46 of Act of 1987) amends

section 46 of the Act of 1987 which sets out the presumptions of parentage. In relation to a mother who is married at the time a child is born or was married at the time the child was conceived, the presumption is rebuttable in certain circumstances. The husband of a woman will not be presumed to be the father of her child, if the child was born ten or more months after their date of separation. The amendment makes technical changes to the basis on which the presumption may be rebutted by taking into account the date on which a decree of judicial separation was issued or on any other such date that may be established (on the basis of clear evidence) by the woman.

PART 8

Amendments to Family Law Act 1995

Summary: *Sections 84-86* of the Bill amend the Act of 1995 to enable the court to secure maintenance payments that have been ordered against a cohabitant of a parent, for the benefit of a dependent child, and provide the court with the power to specify how such payments should be used to benefit the dependent child.

Section 84 (Amendment of section 2 of Act of 1995) amends section 2 of the Act of 1995 by inserting the definition of a 'cohabitant' as contained under the Act of 2010.

Section 85 (Amendment of section 41 of Act of 1995) amends section 41 of the Act of 1995 by inserting a new subsection (c) to enable the court to make an order to secure a periodical maintenance order that has been ordered against a cohabitant of a parent under any other Act. Section 41 already enables the court to secure a maintenance order that has been made against spouses, or parents or persons acting *in loco parentis*. This amendment ensures that where a cohabitant is ordered to pay maintenance in respect of a dependent child, the same security can be provided for that order, in the interests of the child. This is a consequential amendment to the amendments made in Part 5 of the Bill, to the Act of 1976.

Section 86 (Amendment of section 42 of Act of 1995) amends section 41 of the Act of 1995 by inserting a new subsection 2A. If the court makes an order to secure a periodical maintenance order under section 41, the court is given an additional power under this subsection to specify how the maintenance payment should be applied, including in the provision of suitable accommodation for the dependent child to whom the maintenance payment relates.

PART 9

Amendments to Civil Registration Act 2004

Summary: *Sections 87-93* make amendments to the Civil Registration Act 2004 to enable the registration of the birth of a child born as a result of a donor assisted human reproduction procedure as defined under *section 4* of the Bill, and amends the Act of 2004 to take account of the definitions of a 'father' and a 'parent' in relation to a child born as a result of donor assisted human reproduction.

Section 87 (Amendment of section 2 of Act of 2004) amends section 2(1) of the Act of 2004 by inserting new definitions in relation to parentage of a child born as a result of a donor-assisted human reproduction procedure. A 'father' as defined, does not include a male person who is the donor of a gamete that is used in such a procedure, and a 'parent' means the parent or parents of that child,

as defined under *section 5* of the Bill, which states that the birth mother is always the parent to the child, and the child's second parent will be the spouse, civil partner or cohabiting partner of the mother, provide they have given the requisite consents. The definitions of 'donor', 'gamete' and 'donor-assisted human reproduction procedure' are inserted and defined as they are under the Bill. Further technical changes are made to the required particulars in relation to the birth of a child, to reflect that parents may be of the same sex.

Section 88 (Special provisions in relation to registration of birth of donor-conceived child) amends the Act of 2004 by the insertion of a new section 19A detailing the process of registration and the particulars that are required in relation to registering the birth of a child born as a result of a donor assisted human reproduction procedure. The new section requires that the parents provide an tArd-Chláraitheoir with a statutory declaration that they are the child's parents, and a certificate from the treating clinic which states that the parents have provided the requisite consents to becoming parents as required under *section 5* of the Bill.

Section 90 (Re-registration of birth on foot of court order of donor-conceived child) inserts a new section 23B in the Act of 2004. This section enables the parents of a child who was born as a result of a donor assisted human reproduction procedure to re-register the child's birth on foot of a court order granted under *section 19* or *section 20* of the Bill (these sections enable a parent or child born as a result of a donor assisted human reproduction procedure to apply to the court for a declaration of parentage) or under section 35 of the Status of Children Act 1987 as amended by this Bill.

Section 91 (Miscellaneous amendments to Act of 2004) makes minor technical corrections to Section 22 of the Act of 2004, as it will stand after the commencement of the Civil Registration (Amendment) Act 2014.

Section 93 (Amendment of First Schedule to Act of 2004) amends the First Schedule to the Act of 2004 to take account of the fact that the parent, other than the mother to be registered may be a parent of the same sex as the mother.

PART 10

Amendment to Passport Act 2008

Section 94 (Amendment to Passports Act 2008) amends section 14 of the Passports Act 2008 to enable the Minister for Foreign Affairs and Trade to issue a passport to a child ordinarily resident outside Ireland, without the consent of a guardian, where a court or competent judicial or administrative authority of the state in which the child is resident has ordered that the passport can be issued or where the consent requirements with regard to guardians in the law of the state in which the child is resident have been fulfilled.

PART 11

Amendments to Adoption Act 2010

Summary: This Part enables civil partnered couples and cohabiting couples who have cohabited for over three years to be eligible to adopt jointly. It also provides for situations in which a female same-sex couple is placing a child for adoption.

Section 95 (Definition (Part 11)) defines 'Principal Act' for this Part as the Adoption Act 2010.

Section 96 (Amendment of section 3 of Principal Act) amends section 3 of the Adoption Act 2010 to insert a series of new definitions.

It uses the definition of 'civil partner' in section 3 of the Civil Partnership and Certain Rights and Responsibilities of Cohabitants Act 2010 and the definition of 'cohabitant' of section 172(1) of that Act.

It defines 'cohabiting couple' for the purposes of the Adoption Act 2010 as two adults who have been living together as cohabitants for not less than 3 years. The section also defines a 'father' as including a man who has been recognised as the parent of a donor-conceived child under *section 5* of this Bill. Similarly, it defines a 'second female parent' as a woman other than a mother who has been recognised as the parent of a donor-conceived child under *section 5* of this Bill. The definition of 'guardian' includes guardians other than a child's parents except where they have not been given the right to place, or consent to placement of, a child for adoption.

Section 97 (Amendment of section 4 of Principal Act), section 98 (Amendment of section 11 of Principal Act) and *section 99 (Amendment of section 12 of Principal Act*) makes technical changes to definitions to provide for a situation in which a donor-conceived child has been placed for adoption by a person recognised as a parent under *section 5* of this Bill (i.e. where the child is a donor-conceived child).

Section 100 (Amendment of section 16 of Principal Act) replaces section 16 of the Adoption Act 2010 and provides that, where applicable, a second female parent may inform the Adoption authority of her wish be consulted on a proposal to place a child for adoption or on an application by a mother or a child's relative for an adoption order in respect of the child, in the same way that a father may.

Section 101 (Amendment of section 17 of Principal Act) amends section 17 of the Adoption Act 2010 to provide for a second female parent to be consulted on the placement of a child for adoption on the same basis as a father and for her to be informed, like a father, of the implications of placing the child for adoption.

Section 102 (Amendment of section 18 of Principal Act) amends section 18 of the Adoption Act 2010 to set out the procedures which apply where either a father or a second female parent have not been consulted on the placement of the child for adoption.

Section 103 (No pre-placement consultation procedure required) adds a new section 18A after section 18 of the Adoption Act 2010 which removes the requirement for pre-placement consultation (of a second parent) where a donor-conceived child has no legal parent other than his/her birth mother.

Section 104 (Amendment of section 20 of Principal Act) amends section 20 to enable the Adoption Authority to make an adoption order in respect of civil partners or a couple who have been cohabiting for over 3 years, if they have been assessed as eligible and suitable to adopt. It also provides for an inter-country adoption undertaken outside Ireland to be recognised where the adopting

couple are civil partners or cohabitants who have cohabited together for over 3 years.

Section 105 (Amendment of section 21 of Principal Act), *section 107 (Amendment of section 32 of Principal Act)*, *section 111 (Amendment of section 38 of Principal Act)*, *section 117 (Amendment of section 60 of Principal Act)*, *section 119 (Amendment of section 62 of Principal Act)*, *section 120 (Amendment of section 68 of Principal Act)*, *section 121 (Amendment of section 69 of Principal Act)*, *section 122 (Amendment of section 78 of Principal Act)*, and *section 123 (Amendment of section 79 of Principal Act)* make technical amendments to the Adoption Act 2010 to provide for the situation in which a donor-conceived child is placed for adoption by a parent recognised as a parent under section 5 of this Act (i.e. not a natural parent).

Section 106 (Amendment of section 30 of Principal Act) amends section 30 of the Adoption Act 2010 to provide for a second female parent, where applicable, to be consulted on the same basis as a father where an application is made to adopt a child.

Section 108 (Amendment of section 33 of Principal Act) amends section 33 of the Adoption Act 2010 to enable a civil partnered couple or a cohabiting couple who have lived together for over 3 years to be eligible jointly for an adoption order or for their inter-country adoption undertaken outside Ireland to be recognised in Ireland.

Section 109 (Amendment of section 34 of Principal Act) amends section 34 of the Adoption Act 2010 to enable a civil partnered couple or a couple who have lived together for over 3 years to be suitable for an adoption order to be issued to them jointly or for an inter-country adoption undertaken by them outside Ireland to be recognised in Ireland.

Section 110 (Amendment of section 37 of Principal Act) amends section 37 of the Adoption Act 2010 to enable a civil partnered couple or a couple who have lived together for over 3 years to apply jointly for a declaration of eligibility and suitability to adopt a child.

Section 112 (Amendment of section 40 of Principal Act) amends section 40 of the Adoption Act 2010 to enable the Adoption Authority to issue a declaration of eligibility and suitability to a civil partnered couple or a cohabiting couple who have lived together for over 3 years who are seeking to adopt a child jointly. *Section 113 (Amendment of section 41 of Principal Act)* provides for the same conditions of expiry to apply to a declaration of eligibility and suitability for civil partnered or cohabiting couples as for married couples.

Section 114 (Amendment of section 43 of Principal Act) amends section 43 of the Adoption Act 2010 to provide for a second female parent or any guardian to be added to the categories of persons entitled to be heard in relation to an application for an adoption order.

Section 115 (Amendment of section 58 of Principal Act) amends section 58 of the Adoption Act 2010 to provide that where a civil partnered couple or a couple who have lived together for 3 years jointly adopt a child, each member of the couple and the child will have all the rights and duties of parents and children in relation to each other. It also provides that a female second parent who places

a child for adoption will be freed from such parental rights and duties on the same basis as a father in this situation.

Section 117 (Amendment of section 60 of Principal Act) and *section 118 (Amendment of section 61 of Principal Act)* apply the provisions regarding property rights and stamp duty on conveyances or transfers of land to a situation in which a child has been adopted jointly by a civil partnered couple or cohabiting couple who have lived together for 3 years.

Section 124 (Amendment of section 97 of Principal Act) amends section 97 of the Adoption Act 2010 to enable the Adoption Authority to make rules concerning the consultation of a second female parent where a donor-conceived child is being placed for adoption.

Section 125 (Amendment of section 125 of Principal Act) and *section 128 (Amendment of Schedule 3 of Principal Act*) are technical amendments to provide for a situation in which a child may be adopted jointly by a civil partnered couple or a couple who have lived together for 3 years.

Section 126 (Amendment of section 144 of Principal Act) and *section 127 (Amendment of section 145 of Principal Act)* are technical amendments extending certain offences in relation to placing a child for adoption to encompass any guardian of the child appointed under the Guardianship of Infants Act 1964.

PART 12

Amendments to Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Summary: *Sections 129-166* amend the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. The amendments ensure that the same protections, rights and obligations that are afforded to the dependent members of the family in legislation, in particular in relation to maintenance, the protection of the family home, and on the breakdown of the marriage of spouses, are afforded to dependent children of one or both civil partners. In addition, they provide that a civil partner of a parent, who is not also the parent of the dependent child, has the same liabilities imposed on him or her towards the dependent child that a spouse currently has under legislation towards the dependent child of his or her spouse. The amendments enable 'any person' in certain circumstances, to make an application to court on behalf of the dependent child for provision for the dependent child. This is to take account of situations where a person, other than one of the civil partners, is responsible for caring for a dependent child of the civil partners.

Section 129 (Amendment of section 2 of Act of 2010) amends section 2 of the Act of 2010 by defining a 'dependent child' as a child under 18 years, or over 18 years and under 23 years and still in full time education, or a child who is suffering from a mental or physical disability and who cannot maintain themselves. A 'dependent child of the civil partners' is defined as a child of both the civil partners who are parents of the child (either by jointly adopting the child or by donor assisted human reproduction procedure), or if one of the civil partners is a parent or has adopted the child or is acting *in loco parentis* to the child, and the other civil partner is treating the child as a member of the family. This definition reflects the definition of

a ‘dependent member of the family’ in which the dependent member may be the child of one or both spouses.

Sections 130 (Amendment of section 29 of Act of 2010), *section 131 (Amendment of section 30 of Act of 2010)* and *section 132 (Amendment of section 34 of Act of 2010)* amend sections 29, 30 and 34 of the Act of 2010 to ensure that the protections afforded to a dependent child of spouses under the Act of 1976 in relation to the family home, are afforded to a dependent child of the civil partners in relation to the shared home of the civil partners. The court must consider the dependent child when making any order under these sections. Previously, under the Act of 2010, the court only had to consider the other civil partner when making an order and did not have to consider any dependent child of the civil partners.

Section 130 amends section 29 of the Act of 2010 and requires the court to consider the respective needs and resources of the civil partners and of any dependent child, when dispensing with the consent of a civil partner for the conveyance of a shared home. *Section 131* amends section 30 of the Act of 2010 and enables the court to consider the position of a dependent child when making any orders necessary for the protection of the shared home, including compensating the dependent child, if the court considers that the conduct of a civil partner is leading to the loss of the shared home. *Section 132* amends section 34 of the Act of 2010 and allows the court to prohibit a civil partner from disposing of household chattels if it makes it difficult for the other civil partner or dependent child to live there, and can make can order to compensate the civil partner and a dependent child.

Sections 132-38 of the Bill amend sections 43-52 of Act of 2010 and *sections 139* and *140* insert two new sections into the Act of 2010. The amendments create a maintenance obligation towards the dependent child of the civil partners, and ensure that the current legislative protections afforded to a dependent child of spouses in relation to maintenance are provided under the Bill to a dependent child of the civil partners.

Section 133 (Amendment of section 43 of Act of 2010) amends section 43 of Act of 2010 by amending the definition of maintenance creditor to include any person. This is to ensure that in circumstances where a person other than the other civil partner is caring for the dependent child of civil partners, that person has the right under the Act of 2010 to apply for maintenance from the civil partner for the dependent child.

Section 134 (Amendment of section 45 of Act of 2010) amends section 45 of Act of 2010 by substituting subsections (1) and (3). The new subsections enable a civil partner to apply to court for a maintenance order from his/her civil partner and now includes maintenance for the benefit of any dependent child, if the civil partner has failed to provide proper maintenance. The maintenance liability towards the dependent child continues to apply in situations where the parent civil partner deserts the family or dies *(subsection 1)*. Previously, a civil partner who was not a parent of the dependent child had no maintenance obligation towards the dependent child. The amendments set out the factors in subsection (3) that the court must consider when making an order and the new subsections mirror the provisions under the Act of 1976, in relation to a maintenance order made against a spouse of the parent of the dependent child for the benefit of a dependent child.

Section 135 (Amendment of section 46 of Act of 2010) amends

section 46 of the 2010 Act and states that a maintenance order for the benefit of the dependent child is discharged when the dependent child ceases to be dependent, which will usually be when the dependent child reaches 18 years or, if in full-time education, 23 years of age. If the dependent child has a mental or physical disability to such an extent that he or she cannot maintain him- or herself fully, the maintenance order may be of indefinite duration. A similar provision exists under the Act of 1976 in relation to a dependent child of spouses or unmarried parents.

Section 136 (Amendment of section 47 of Act of 2010) amends sections 47 of the Act of 2010 to take into account that an applicant in an interim maintenance application can be the civil partner (as currently provided) or a person applying, on behalf of a dependent child, for maintenance for the benefit of the dependent child.

Section 137 (Amendment of section 48 of Act of 2010) amends section 48 of the Act of 2010 and enables any provision relating to a maintenance payment for a dependent child in an agreement made between civil partners, to be made a rule of court. Previously, only maintenance agreements for the benefit of the civil partner could be made a rule of court. This amendment brings this provision into line with section 8 of the Act of 1976 which enables agreements made between spouses to be made a rule of court, in so far as they relate to maintenance for the other spouse or for the dependent child.

Sections 138 (Amendment of section 51 of Act of 2010) and *139 (Amendment of section 52 of Act of 2010)* amend sections 51 and 52 of the Act of 2010. The amendments made by sections 124(a) and 125 are technical and enable the court to exercise its power under these sections in relation to variation orders (an order changing the amount of or terms of a maintenance order) as well as maintenance orders. A new subsection (2A) is inserted into section 51 to enable the court, when making an order to secure a periodical maintenance order, to specify how the payment should be applied, including in the provision of suitable accommodation for the dependent child to whom the maintenance payment relates. The same change is separately made to the Act of 1995 by *section 86* of the Bill to allow the court make such a specification where the dependent child is a child of spouses or unmarried parents. This ensures the court has the same power regardless of whether the application is brought under the Act of 1995 or the Act of 2010.

Section 140 (Failure to make payments and certificate of outstanding payments) inserts two new sections 52A and 52B after section 52 into the Act of 2010 which state that the failure by the maintenance debtor to make payments due under an order, will be a contempt of court. The new subsections are identical to the subsections inserted into the Act of 1976 by the Civil Law (Miscellaneous Provisions) Act 2010 and ensure that a maintenance debtor under the Act of 2010 is subject to the same enforcement regime as a maintenance debtor under the Act of 1976.

Section 141 (Birth and funeral expenses of dependent child) inserts a new section after section 67 of the Act of 2010 to enable the court to make an order against a civil partner for payment of a lump sum for the birth or funeral expenses of a dependent child. This provision is already provided for in section 21A of the Act of 1976 for the benefit of a dependent member of a family or a dependent child of unmarried parents.

Sections 143-162 amend sections 109-138 of the Act of 2010. The provisions relate to the dissolution of a civil partnership and allow

the court, when making a range of orders, to take into account the position of, and make orders for the benefit of, dependent children of the civil partners. The amendments ensure that the law on dissolution of civil partnerships provides the same rights, protections and obligations to dependent children of civil partners, as the law currently provides to dependent members of the family on divorce under the Act of 1996.

Section 143 (Amendment of section 109 of Act of 2010) amends section 109 of the Act of 2010 by defining the Guardianship of Infants Act 1964 as 'the Act of 1964'.

Section 144 (Amendment of section 110 of Act of 2010) amends section 110 of the Act of 2010 to state that when the court grants a decree of dissolution to civil partners, it must ensure that proper provision has been made for the civil partner and any dependent of the civil partners. Prior to this the court only had to consider proper provision in relation to the civil partner. In addition, a new subsection is inserted which states that the court can make orders in relation to the welfare of the dependent children under the Act of 1964, such as custody and access orders. These amendments ensure that the court has the same powers to make orders for the benefit of the dependent children of civil partners on dissolution, as they currently have in the granting of a decree of divorce between husbands and wives.

Section 145 (Amendment of section 113 of Act of 2010) amends section 113 of the Act of 2010 to state that a decree of dissolution will not affect the rights of the civil partners, if they are both the child's parents, as joint guardians of the dependent child.

Section 146 (Amendment of section 115 of Act of 2010) makes technical changes to section 115 of the Act of 2010 to allow the court to make custody and access orders in relation to a dependent child in the early stages of divorce proceedings.

Section 147 (Amendment of section 116 of Act of 2010) amends section 116 of the Act of 2010 by inserting a new subsection (1) which enables the court to include provision not only for the civil partner, but also for a dependent child of civil partners, when making a maintenance order pending the grant of decree of dissolution.

Section 148 (Amendment of section 117 of Act of 2010) amends section 117 of the Act of 2010 and inserts new subsections enabling the court to order periodical payments, secured periodical payments or a lump sum payment for the benefit of the dependent child of civil partners. Similar provisions are made in the Act of 1995 and the Act of 1996 in relation to any dependent member of the family.

Section 149 (Amendment of section 118 of Act of 2010) amends section 118 of the Act of 2010 to enable the court to make a property adjustment order for the benefit of the dependent child of the civil partners, on the granting of a decree of dissolution or thereafter. Section 118 had previously enabled the court to make such orders only in relation to the other civil partner.

Section 150 (Amendment of section 119 of Act of 2010) amends section 119 of the Act of 2010 and allows the court to make a number of orders, on application to it by the civil partner or any person, in relation to the shared home on the granting of the decree or thereafter, including for example conferring on one civil partner the right to sole occupancy or an order extinguishing or reducing the interest of a civil partner in the shared home. The amendments set

out in this section allow the court to have regard to the welfare of any dependent child of the civil partners.

Section 151 (Amendment of section 120 of Act of 2010) amends section 120 of the Act of 2010 to allow the court, on application to it by either civil partner or any person, to make an order requiring a civil partner to put in place a life insurance policy for the dependent child of the civil partners and to assign all or part of the policy for the benefit of the dependent child. This provides additional financial security to the dependent child of civil partners, in the event of the death of the civil partner.

Sections 152 (Amendment of section 121 of Act of 2010, section 153 (Amendment of section 122 of Act of 2010), section 154 (Amendment of section 123 of Act of 2010), section 155 (Amendment of section 124 of Act of 2010) and *section 156 (Amendment of section 125 of Act of 2010)* amend sections 121-125 of the Act of 2010, respectively, to enable the court, when making a pension adjustment order, to make specific provision for the benefit of the dependent child. The amendments make some technical changes to account for the fact that the dependent child of the civil partners may be a beneficiary of an order, for example in relation to any contingent benefit.

Section 157 (Amendment of section 129 of Act of 2010) amends section 129 of the Act of 2010 which sets out the matters that the court should have regard to when determining any application for financial relief or other orders to ensure that proper provision exists for the civil partners and any dependent children. The amendment requires the court to consider the dependent child of the civil partners in making these orders. It must also consider the standard of living enjoyed by the dependent child and the civil partners before the proceedings commenced and the contributions that can be made by either civil partner for the benefit of any dependent children. A new subsection *(section 129(3A))* is inserted which sets out the factors the court should have particular regard to in making an order for the benefit of a dependent child. These factors ensure that the courts can adopt a consistent approach based on the needs of the child concerned when determining applications for the benefit of the dependent children in a decree of dissolution.

Sections 158 (Amendment of section 131 of Act of 2010) amends section 131 of the Act of 2010 to enable a person on behalf of the dependent child to apply for a variation of any of the orders made for the dependent child. A new subsection *(4A)* is inserted which provides that an order made for the benefit of the dependent child ceases when the child ceases to be dependent, generally on reaching the age of 18, or 23 in relation to a dependent child who is still in full time education.

Section 159 (Restriction in relation to orders for benefit of dependent children of civil partners) inserts a new subsection 131A to ensure that the court does not have regard to the conduct of a civil partner or civil partners when determining whether to make provision for a dependent child.

Section 160 (Amendment of section 133 of Act of 2010), section 161 (Amendment of section 137 of Act of 2010) and *section 162 (Amendment of section 138 of Act of 2010)* amend sections 133, 137 and 138 of the Act of 2010 respectively, making technical changes to take account of the amendments under the Bill to the Act of 2010 enabling the court to make orders in relation to the dependent children of civil partners. The amendments include enabling some of those orders to be stayed by the court pending appeal, giving powers

to the court to prevent certain transactions, and that the costs of mediation and counselling services for the dependent child, as well as the civil partners, are at the discretion of the court.

Section 163 (Amendment of section 140 of Act of 2010) amends section 140 of the Act of 2010 by enabling the District Court to make a maintenance order of up to €150 per week for the benefit of the dependent child.

Section 164 (Custody of dependent children and social reports) amends section 141 of the Act of 2010 by inserting two new subsections. The amendments enable the court to declare, on the granting of a dissolution, that either of the civil partners is unfit to have custody of any dependent child *(section 141A)* and provide the court with the power to order a social report on any question affecting the welfare of any party to the proceedings or any dependent child *(section 141B)*.

Section 165 (Amendment of section 142 of Act of 2010) amends section 142 of the Act of 2010 and extends the requirement of civil partners, when providing particulars in relation to property and income to the court, to provide the court with the financial circumstances of any dependent child of the civil partners.

Section 166 (Orders under Family Law (Maintenance of Spouses and Children) Act 1976) amends Part 15 of the Act of 2010 by inserting a new subsection 196A after section 196. This amendment allows the court, on any application made by a cohabitant under Part 15 of the Act of 2010, to make an order under section 5A or 5B of the Act of 1976. The Bill inserts the new section 5-B into the Act of 1976 to enable a cohabitant to apply for maintenance for the benefit of the dependent child, and where the cohabitants have a child of whom they are both the parents, they may also be eligible to apply under section 5A of the Act of 1976.

PART 13

Miscellaneous Consequential Amendments to Other Acts

Summary: This Part provides for a series of changes to other Acts to enable, *inter alia*, a civil partnered or cohabiting male same-sex couple to qualify for adoptive leave and to enable a female second parent to have the same rights to maternity leave and parental leave as a father.

Section 167 (Amendment of section 2 of Redundancy Payments Act 1967) amends section 2(1) of the Redundancy Payments Act 1967 by amending the definition of 'adopting parent' to mean an employee who is an adopting parent within the meaning of the Adoptive Leave Act 1995. This definition takes into account the wider categories of persons who can adopt a child, and is no longer restricted to an adopting mother, adopting father or sole male adopter.

Section 168 (Amendment of section 1 of Unfair Dismissals Act 1977) amends section 1 of the Unfair Dismissals Act 1977 by amending the definition of 'adopting parent' to mean an employee who is an adopting parent within the meaning of the Adoptive Leave Act 1995. This definition takes into account the wider categories of persons who can adopt a child, and is no longer restricted to an adopting mother, adopting father or sole male adopter.

Section 169 (Amendment of section 20 of Child Care Act 1991) amends section 20 of the Child Care Act 1991. Section 20 of the

Child Care Act gives the court the power to adjourn proceedings under the Act of 1995, the Act of 1996 and the Guardianship of Infants Act to direct the Child and Family Agency to undertake an investigation of the child's circumstances. The amendment made by this section extends this power of the court to adjourn proceedings under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Prior to the amendments made by this Bill, proceedings under this Act did not involve any dependent child of civil partners.

Section 170 (*Amendment of Maternity Protection Act 1994*) amends the Maternity Protection Act 1994 to enable the current protections provided for under that Act to an employed father of a child, to apply to the parent of a child born as a result of a donor-assisted human reproduction procedure. The definitions of 'expectant father' and 'other parent' are inserted in section 2 of the Act of 1994. Section 16 of that Act refers to a father's entitlement to leave, where the mother dies during the period of her maternity leave. It is amended by section 162 so that the same entitlements to leave apply to the other parent.

Section 171 (Amendment of section 2 of Adoptive Leave Act 1995) amends section 2 of the Adoptive Leave Act 1995. This Act provides the entitlement to leave of employees who have adopted a child. As the Bill has extended the categories of persons who are eligible to adopt a child to include persons who are cohabitants or who are civil partners the amendments made are technical in nature to take account of the extended categories, and include for example the insertion of definitions of 'cohabitant' and 'civil partner' as they are defined under the Act of 2010. Under present law, an adoptive mother may be entitled to adoptive leave of up to 24 weeks. Where an adopting couple are of the same sex, one of them will have that entitlement irrespective of that adopter's sex. This is the effect of the amendments in section 2 of the Adoptive Leave Act.

Section 172 (Amendment of section 6 of Parental Leave Act 1998) amends section 6 of the Parental Leave Act 1998 by replacing the definition of 'relevant parent' to be 'the parent, the adoptive parent or the adopting parent' instead of 'the natural parent, the adoptive parent or the adopting parent.' This change takes account of the wider categories of persons who can be considered a parent and who are entitled to the same protections under this Act.

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